THE UNIVERSITY OF HULL

THE ANALYSIS OF THE ACCESSION OF SULTANATE OF OMAN TO THE WORLD TRADE ORGANIZATION (WTO) AND ITS CONSEQUENCES

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By

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Abstract

Literature on the accession of developing countries to the World Trade Organization (WTO) shows two opposing views on the effectiveness and efficiency of their system. In the light of these views, this study analyses the accession of Oman to the WTO and the consequences arising from this accession, focusing on the importance of international economic integration -as one of the key issues now facing Oman- represented by the successful outcome of the Uruguay Round GATT negotiations establishing the WTO. In addition, it examines the importance of economic integration with Gulf Co-operation Council (GCC) States, which is listed as amongst the most important policies that can help the Sultanate to benefit from the conditions of the international environment. In this context, the thesis explains the accession process of Oman and the commitments arising from its negotiations of accession. Moreover, the study provides an analysis of the WTO Agreements and their impacts for Oman in selected sectors and industries, these being: the petrochemical industry; the manufacturing industry; the agriculture sector, and the banking sector.

This study leads to the conclusion that the trade policies framework of Oman imposes limitations and inefficiency in dealing with the WTO issues, so that only certain groups will benefit if these situations continue. From here, in order to face the negative consequences and maximize the benefits from her accession to the WTO, recommendations are suggested for Oman, these being: administrative reforms; according the private sector a greater role, and co-ordinating Oman's economic policies with those of other GCC States.

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Abbreviations and Acronyms

AMS: Aggregate Measurement of Support
ASEAN: Association of Southeast Asian Nations
BAA: British Airports Authority
CTE: Committee on Trade and Environment
DCs: Developing countries
DGSM: Directorate General for Specifications and Measurements
DSU: Dispute Settlement Understanding
EEC: European Economic Community
EOI: Export-oriented industrialization strategy
EU: European Union
Falaj: underground canal
FATF: Financial Action Task Force
FDI: Foreign direct investment
FLG: Financial Leaders Group
GATS: General Agreement on Trade in Services
GATT: General Agreement on Tariffs and Trade
GCC: Gulf Cooperation Council
GDP: Gross domestic product
GPA: Agreement on Government Procurement
GS: Gulf standard
GSP: Generalized System of Preferences
GTAP: Global trade analysis project
GTO: General Telecommunication Organization
IAS: International Accounting Standards
IFM: International Monetary Fund
ILA: Agreement on Import Licensing Procedures
IMWG: Inter-ministerial working group
IOSR: Internal-oriented sustainable reform
IPPC: International Plant Protection Convention
IPR: Intellectual property right
ITA: Information Technology Agreement
ITC: International Trade Centre
ITO: International Trade Organization
LDCs: Less developed countries
MENA: Middle East and North Africa
MFA: Multi-Fiber Arrangements
MFN: Most favoured nation
NAFTA: North American Free Trade Agreement
NGO: Non-government organizations
NT: National Treatment
OECD: Organization for Economic Co-operation and Development
OIE: Office International des Epizooties
OMANTEL: Oman Telecommunications Company
OOR: Outward-oriented reforms
ORC: Oman Refinery Company
PAMAP: State Controlled Agricultural Commodities markets
PDO: Petroleum Development Oman Company
R&D: Research and development

Shariah: Islamic Law
SPS: Agreement on Sanitary and Phytosanitary measures
SWOT: Strengths, weaknesses, opportunities and threats
TBT: Agreement on Technical barriers to Trade
TMB: Textiles Monitoring Body
TRIMs: Agreement on Trade-Related Investment Measures
TRIPs: Agreement on Trade-Related Aspects of Intellectual Property Rights
UAE: United Arab Emirates
UN: United Nation Organization
WCO: World Customs Organization
WIPO: World Intellectual Property Organization
WTO: World Trade Organization
WTOC: WTO Centre
WTO-TBT: World Trade Organization Agreement on Technical Barriers to Trade

The Holy Quran

"Verily! Allah commands that you should render the trusts to those to whom they are due; and that when you judge between men, you judge with justice."

[An-Nisa (58)]

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CHAPTER ONE: RESEARCH OVERVIEW

1.1. INTRODUCTION

The world has undergone a fundamental evolution during the last few centuries, characterized by the transition from dependence, and the prevalence of colonialism and domination, to independence, during the 18th and 19th centuries for the colonies in the Americas, and during the 20th century for those in Africa and Asia. The last quarter of the 20th century witnessed a further evolution, with the emergence of the phenomenon of interdependence, which is expected to continue in the early part of the 21st century. The essential paradigm shift in political thought and action is reflected in the handling of political conflicts, in the relations between states and international economic relations. These changes in the infrastructure of international relations, in turn, affect the superstructure, in the field of political institutions, culture, and in particular political culture, as well as social values. It is widely held that such developments will lead to a new global code of conduct in the 21st century.[1] However, the prevailing view among many scholars in the field of economic development is that the social and cultural institutions in developing countries are structured in a way that impedes development. In anticipation of further developments in international relations, therefore, it is important to analyse the related issues and put forward some ideas for consideration by scholars as well as politicians.[2] The concepts of reconciliation and interdependence which emerged in the last part of the 20th century are expected to increase in importance at least in the first quarter of the 21st century. These can be seen as symptoms or manifestations of globalization.

However, globalization is not a recent phenomenon. As long ago as the 11th century, the wealth of the Venetian Republic was founded on trade with other cities and regions. In the 16th century, advances in maritime technology made possible the Portuguese, Spanish, and Dutch voyages of discovery, giving further impetus to global integration. However, it was the technological and economic innovations of the second half of the 19th century, such as the harnessing of electricity, the invention of the steam

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[1] Mohammed, N. G., "Globalization: National Characteristics And International Imperatives", *Al-Siyassa Al-Dawliya*, Vol 37, Issue 145, 2001, pp 9-16 at pp 9-11.

[2] Ibid, p12.

engine, the expansion of the railways, and establishment of the gold standard, that gave the first comprehensive impetus to globalization.[3]

Continuing improvements in the technologies of travel, transportation and communication have had inevitable impacts. Several trends can be identified in human history: improvement in the transport and processing of matter, improvement in the transport and processing of energy, improvement in the transport and processing of information.[4] When, around 40 years ago, Marshall McLuhan coined the phrase "global village" in his book *The Gutenberg Galaxy,* he claimed that as a result of electronic technology, the planet was shrinking, that *"time has ceased and space has vanished."*[5] Thus, it has become common to speak of globalization, referring to the way that the proliferation of global means of communications such as the satellite dish and the internet has invalidated pre-modern conceptions of space and time, compressing the latter and annihilating the former,[6] or delineating space and time and freeing them from their local markets.[7] As space shrinks phenomenologically, people in disparate locations experience the same events simultaneously. Another feature of globalization, and one by which it is often defined, given the widespread aspiration of national development (however it is interpreted) is the economic aspects. From this perspective, globalization implies trade liberalization and the expected benefits of ensured employment and income for all who want it. This is the dimension of globalization with which this thesis is concerned. Thus, in the discussion that follows, globalization means trade liberalization.[8]

The term globalization is widely used to describe the processes of international economic integration. In general terms, it means the increasing trend for interrelationships between countries of the world in production and trade activities, including both goods and services, supported by flows of capital and technology, and made possible by phenomenal advances in information and communications technology.

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[3] Kohler, H., "Toward Better Globalization", *Transatlantic International Politik,* Vol 4, Winter Issue, 2004, pp 3-11 at p 3.

[4] Wright, R., *Nonzero:The Logic Of Human Destiny*, Pantheon Books, New York, 1999, at p196.

[5] Aitkenhead, D., "Globalization And Technology: Their Effect On Banking, Presentation At A Banking Program Held At Central Bank Of Oman", *Al-Markazi,* Vol 25, Issue 3, 2000, pp 36-42 at p 36.

[6] Harvey, D., *The Condition Of Postmodernity,* Cambridge, Ma, Blackwell, 1989, at p16.

[7] Giddens, A., *The Consequences Of Modernity,* Stanford University Press, Stanford, 1990, at p 21.

[8] *Better Governance For Development In The Middle East And North Africa: Enhancing Governance In MENA,* World Bank, 2003, at p 1.

This process of continuing and increasing integration with the world economy is an established reality.[9] Economic integration has been classed into two broad types: the shallow, represented by cross-border trade, and deep integration at the production level. The latter involves longer lasting and deeper linkages between economic agents located in different countries, than arm's length trade, which is confined to the initial transaction.[10] Four factors have contributed prominently in the rapid establishment of the end of socialism, bringing around a third of humanity into the global market system, with consequent changes in the balance of skills and economic geography; the shift from natural resource to brainpower industries; demographic changes such as ageing and population movement; and communications technology.[11]

International trade has attracted much theoretical controversy and predictions on trade and growth have changed over the years. Whereas trade policy has always been seen as central to the overall design of policies for economic development, there has been a striking shift from the early focus on "import substitution" to the current thinking that growth prospects for developing countries are greatly enhanced through an outwardly-oriented trade regime and fairly uniform incentives.[12] This shift towards economic liberalization has been encouraged by evidence that open economies have grown much faster than those with high protection during the last three decades; an example is Central America. The trend is further reinforced by the economic crises and collapse experienced in the 1980s and 1990s by some economies that followed import substitution policies.[13] Most studies have focused on two main channels through which trade fosters economic growth: technology and investment.

Key writers emphasising the first channel include Grossman and Helpman,[14] Rivera-Batiz and Romer[15] and Romer individually.[16] This body of literature suggests four

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[9] Harald, S. & Andras, I., *World Trade After The Uruguay Round: Prospects And Policy Options For Twenty-First Century,* Routledge, London, 1996, pp 27-28.

[10] *World Investment Report 1994: Transnational Corporations Employment And The Workplace,* UNCTAD, United Nations, 1994, p 33.

[11] Shurchuluu, P., "National Productivity And Competitive Strategies For The New Millennium", *Integrated Manufacturing Systems,* Vol 13, Issue 6, 2002, pp 408-414 at p 408.

[12] Krueger, A. O., "Trade Policy And Economic Development: How We Learn", *American Economic Review,* Vol 87, March, 1997, pp 1-22 at p 3.

[13] Sachs, J. D. & Warner, A., *Economic Reform And The Process Of Global Integration,* Brookings Papers On Economic Activity: 1, Brookings Institution, at p 26.

[14] Grossman, G. M. & Helpman, E., *Innovation And Growth In Global Economy,* MIT Press, Cambridge, 1991, at p 22.

reasons why free trade policies benefit the countries that adopt them: (1) a large international market provides technological spill over effects; (2) research and development can be conducted more economically over a larger scale; (3) a large international market encourages innovation because of the higher profits available; and (4) duplication of research and development efforts across countries can be avoided. These claims are supported empirically by Coe and Helpman[17] and Coe et al.[18] Regarding the second channel, other economists have, from a theoretical standpoint, asserted that investment is the key factor in the relationship between trade and growth. Baldwin and Seghezza, suggest three main reasons for this, namely: (1) the traded sector is more capital intensive than the non-traded sector; (2) the production of investment goods uses imported intermediates; and (3) competition in the international market of machinery and capital equipment lowers the price of capital.[19]

Globalization is driven by the expansion of trade in goods and services. This gives the World Trade Organization (WTO) an essential role in channelling the forces of globalization. The role of the WTO is based on the existence of markets, which enable people voluntarily to buy and sell, in contrast to having responsibilities assigned to government, which normally requires taxes, which are not voluntary. The governments should be satisfied, provided markets achieve the basic objectives of efficiency and social justice, and only if they fail to do so, should governments need to consider intervening in the market mechanism.[20] Nevertheless, in recent years, the process of globalization and the WTO, as one of its main institutions, has been widely criticised by many organizations in civil society. Blunt, unsophisticated criticism, however, fails to acknowledge the important role played by the GATT/WTO system in the rapid

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[15] Rivera-Batiz, L.A. & Romer, P.M., "Economic Integration and Endogenous Growth", *Quarterly Journal of Economics,* Vol 106, May, 1991b, pp 531-555.

[16] Romer, P. M., "Endogenous Technological Change", *Journal of Political Economy,* Vol 98, October, 1990, pp 71-102.

[17] Coe, D. T. & Helpman, E., "International R&D Spillovers", *European Economic Review,* Vol 39, May, 1995, pp 859-887.

[18] Coe, D. T. Et Al., "North-South R&D Spillovers", *Economic Journal,* Vol 107, January, 1997, pp 134-139.

[19] Baldwin, R. & Seghezza, E., *Trade-Induced Investment-Led Growth,* NBER Working Paper No. 5582, National Bureau Of Economic Research, Cambridge, 1996a. In addition, see Baldwin, R. & Seghezza, E, *Testing For Trade-Induced Investment-Led Growth,* NBER Working Paper No. 5416, National Bureau Of Economic Research, Cambridge, 1996b.

[20] Hillman, A.L., *Public Finance And Public Policy: Responsibilities And Limitations Of Government,* Combridge University Press, Cambridge, 2003, at p 3.

development of world trade and the world economy for more than half a century. Since the Second World War, the rules of the new multilateral trading system have encouraged trade liberalization and greatly improved the stability, predictability and transparency of international trade relations. Therefore, it can be said that without the WTO, globalization could be much more painful.[21]Despite these advantages, however, not all groups of developing countries are smoothly integrated into the multilateral trading system.

One of the key impacts of globalization is that states have less autonomy in economic policy, especially at the macroeconomic level, in relation both to the market and to other governments. In addition, although trade integration continued to increase from the aftermath of the Second War onward, it is important to note that in the 1980s, higher trade integration took place despite increasing non-tariff protectionism, whereas before that time it was spurred by the predictable outcome of multilateral tariff reductions. During most periods of capitalist development, growth in trade has outstripped real production. Between 1820 and 1989, the international trade of sixteen industrial countries grew at a significantly higher rate than their output, averaging 4% annually, 2.7% for the growth in GDP.[22] It is important, here, to recognize that the growth rates of international trade among the major regions are in line with the golden age trade growth average. Second, despite a relative disintegration of some developing country regions, the developing countries took a greater share in world manufacturing production, with an increase between 1965 and 1985 from about 14% to 18%, and their world export share in manufactured goods increased even more sharply from 9% to 18%. Over the 1980s, Third World manufactured exports grew at an annual rate of 12%, two to three times faster than the corresponding number for industrial countries.[23]

International business activities since 1960 have been characterized by a shift from market-seeking and resource-seeking investments to rationalisation and strategic asset-acquiring investment, with the former activities increasingly being viewed from a global perspective as a part of a geocentric or transnational organizational strategy of

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[21] Naray, P., *Integration Of Countries Into The Multilateral Trading System: The Role Of Institutions And The Human Factor* in WTO Accessions And Development Policies, United Nations Conference Of Trade And Development (UNCTAD), New York, 2001 at p 96.

[22] Maddison, A., *Dynamic Forces In Capitalist Development: A Long Run Comparative View,* Oxford University Press, Oxford, 1991 at p 74.

[23] Singh, A., "Global Economic Changes, Skills, And International Competitiveness", *International Labour Review,* Vol 133, Issue 2, 1994, pp 167-183 at p 177.

multinational enterprises. Another characteristic of international business is more pluralistic organizational forms of international, including all forms of non-equity cooperative ventures such cross-border strategic alliances and networks of suppliers and customers. Moreover, organizational forms and decision-taking structures are frequently changed to meet new environmental and technological challenges, with multinational enterprises increasingly performing as a controller of a system of interlocking value-added activities.[24]

With the increase in global competition, a tendency is observed for the disruption of entrenched oligopolies, effectively changing the rules of the game in the struggle for competitive advantage among firms within, as well as between and among, countries.[25] This raises the question whether these trends constitute a qualitative change in international economic integration or simply a quantitative increase in an essentially unaltered process of increasing global integration. It is, therefore, the causes and effects of the above mentioned trends rather than the trends themselves, which could be significant.[26]

Certainly, there have been many benefits accruing from globalization, which have encouraged the rapid spread of this phenomenon. Nevertheless, not everyone benefits; around a fifth of the world's population, nearly 1.2 billion people, still live in absolute poverty (as classified by the World Bank), with income of less than $1 a day.[27] Critics of globalization point out that although much progress has been made in opening up world markets during the last decades, substantial segments of the world economy, such as agriculture, textiles and shipping, are still highly protected. Many tariffs are still high and new trade barriers continue to be imposed. In computing and telecommunications, for example, the application of standards serves as a constraint. E-commerce is subject to trade restrictions. Anti-dumping duties on imports are increasing; the USA alone imposes about 300 of them. In some cases, exporting countries are forced to accept restrictions, as in the case of Japanese restraints on their steel exports to USA. Europe and Japan are protecting their farmers to a degree which hurts their own

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[24] Dunning, J.H., *Multinational Enterprises And The Global Economy,* Addison Wesley, Wokingham, 1992, pp 128-133.

[25] Oman, C., *Globalization And Regionalisation: The Challenge For Developing Countries,* OECD, Paris, 1994, p 33.

[26] Harald, S. & Andras, I., 1996, op. cit., p 28.

[27] Kohler, H, 2004, op. cit., p 4.

consumers, harms their exports, and has a detrimental impact on the poor developing countries which are prevented from exporting their agricultural products to Europe and Japan. Textiles is another area where several restrictions are still in operation, the effects again being felt by poor developing countries whose own textile industries are affected. There is a close connection between foreign trade and foreign policy. Trade liberalization tends to take place between countries which have similar political aims. For example, trade agreements between the EU and associated countries in Central and Eastern Europe are supposed to support development in this region. Similarly, the extension of the North American Free Trade Area to Latin American countries is assumed to stabilize these economies.[28]

Reducing barriers to international trade and capital movements has been a central part of many reform programmes. Reforms have also been widespread in other areas, such as liberalizing investment regulations, reducing or eliminating a large assortment of subsidies to bring down fiscal deficits, and privatizing many state enterprises. However, the question is, have these reforms delivered the expected growth payoff? A large empirical literature has documented that on average, countries with market-friendly policies such as openness to international trade, disciplined monetary and fiscal policy, and well-developed financial markets enjoy better long-run growth performance than countries where such policies are absent. In sum, market-oriented reforms have been wide-spread, though uneven, throughout the developing world. On average they have delivered lower inflation and higher growth, both powerful forces for reducing income poverty. But reforms can also go awry, with painful consequences for poor people, as a result of lack of supporting institutions, mistakes in sequencing reforms, and the capture of the reform process by powerful individuals or groups. Thus, not surprisingly, case studies of reform episodes show that market-friendly reforms have uneven costs and benefits -especially in the near term- with the costs concentrated on particular groups and the benefits spread broadly over the economy as a whole. Costs and benefits can also be distributed unevenly over time. However, on the whole, these costs do not negate the benefits of the reforms, but they do highlight the importance of social policies to ease the burdens that reforms impose.

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[28] Fidrmuc, J. et al., "Does Foreign Policy Determine Foreign Trade? Co-Integration Analysis Of Exports From Selected Countries To The Middle East", *Applied Economics,* Vol 35, 2003, pp 565-571 at p 565.

So who wins? And who loses? The winners are often those in urban areas, those in countries where the enabling environment for the private sector is strong and private sector capacity to seize new opportunities is good, those with skills to be absorbed into new occupations and sectors. The losers have often been in rural areas (where services have been hit), in government jobs, and in jobs where protected insiders once earned more than market wages would support. The losers might also include the unskilled, the immobile, and those without access to the new market opportunities, because they lack human capital, access to land or credit, or infrastructure connecting far-flung areas. Since poor people are represented among both the winners and the losers described here, there can be no lesson that reforms are good (or bad) for all poor people, all the time.

Trade reforms -the reduction of tariffs and non-tariff barriers- have had strong impact in many developing countries. On the one hand, open trade regimes have been demonstrated to support growth and development; hence the incentive for trade reforms in the direction of economic openness. On the other hand, how far people benefit depends crucially on the impact of trade liberalization on the demand for their (often unskilled) labour, which is their greatest asset. Moreover, if complementary reforms are not made by rich countries, the remaining protection has adverse consequences for the developing world. The original impetus for trade liberalization as a strategy for overcoming poverty was based on a narrow interpretation of trade theory. It was assumed that removing trade barriers in developing countries would increase demand for their abundant low-skilled labour and expand unskilled employment and earnings. Trade liberalization was therefore expected to raise incomes in general, and particularly to benefit the poor. In practice, however, this has not always been the case. Whilst growth and, hence, poverty reduction have occurred, they have not been equally or consistently distributed. In some countries, poor people had gained from trade restrictions which artificially increased the prices of the goods they produced, and they suffered from the withdrawal of such restrictions. In other cases, countries that liberalized trade did not have a large supply of unskilled labour, and whilst reform might still be supported on other grounds, namely, efficiency and growth, it casts doubt on the validity of the argument of equalizing effects through increased demand for unskilled labour. Moreover, trade reforms were often accompanied by other developments that increased, rather than removed, inequalities. In many developing countries that liberalized their trade regimes, as in many industrial countries, growth in

wages has benefited skilled more than unskilled workers. Economists such as Krugman have estimated that approximately 10% of the increase in wage inequality can be ascribed to trade. Moreover, trade liberalization may impact indirectly on wages. For example, the prospect of jobs being moved abroad can disrupt wage negotiations or unionization effort. Taking such effects into account, Krugman's figure is almost certainly underestimated. A much higher estimate of the impact of trade liberalization on wage inequality is offered by Cline, who estimates it at 39% for the period from 1973-1993 (7 percentage points out of a net increase in inequality of 18%).[29]

Another important issue for liberalization of trade has been technological change favouring workers with better education and skills, sometimes in the form of imported foreign technologies. However, this is of course not to say that technological change should be avoided because it hurts poor people. On the contrary, technological change is a fundamental determinant of growth and rising relative demand for skills points to the need to invest in the skills of the labour in developing countries, to enable them to take advantage of the new opportunities that technological change brings.

Notwithstanding the differences as to the benefits and risks involved, it is generally agreed by economists that globalization is the way forward for the new millennium. It is no longer an option, but an almost inevitable fact of modern political economic reality. The question is how to cope with the challenges and threats of globalization, and to maximize gains from the opportunities.[30] LDCs and many DCs and transition economies are not yet integrated fully into the multilateral trading system, and the impediments to the integration of many of its Members into this system, including problems related to WTO accession, need to be addressed. To do so requires a broader approach, including the consideration of conditions for trade liberalization and the economic and legal institutions involved. In addition, countries which have not yet fully integrated into the multilateral trading system will need to reflect critically on which elements in their system are preventing their integration and impeding their reaping the advantages of globalization[31] In short, integration has been a slow process, which is ongoing and, in the case of movement of people at least, will probably never be

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[29] Cline, W., *Trade And Income Distribution,* Institute For International Economics, Washington DC, 1997, pp 263-269.

[30] For a good summary of the globalization debate, see Malcome, W., *Globalization,* Routledge, New York, 1995.

[31] Naray, P., 2001, op. cit., p 103.

completed. Nor has full economic integration been achieved. Two major issues as yet unresolved in this area are: development, particularly of the weaker economies, in which around quarter of the world's population live; and the need to improve stability in capital markets. Much remans to be done. Nevertheless, the level of liberalization in the world economy achieved in the past 50 years can be considered a major achievement. [32]

1.2. STATEMENT OF THE PROBLEM

Many economists and politicians claim that greater integration into the world economy is conducive to the economic growth that is required in any country, as it helps to attract investment and create wider employment opportunities. It has also been widely asserted that accession to the WTO, and effective participation in successive rounds of multilateral negotiations launched within the WTO framework can enable states to assess their trade and investment policy strategies and to identify how best to use trade as an instrument of growth. In addition, active involvement in multilateral institutions such as the WTO can greatly assist governments carrying out comprehensive economic reforms.

Such concerns are particularly salient, currently, to the oil producing countries, which not only suffer from volatility and demographic dynamics, but have also experienced what Abed and Davoodi term the "resource curse."[33] The wealth accruing from abundant natural resources has led to an appreciation of the real exchange rate resulting from large oil-related foreign exchange inflows. In consequence, non-oil exports became less competitive and the relative size of non-oil export sector shrank, with detrimental impact on growth. [34] In recent decades, Oman has been neither as deeply nor as rapidly integrated into the world economy as other countries, due largely to a mix of restrictive trade and investment policies. For example, numerous non-tariff barriers, including licensing, subsidies, domestic monopolies, technical product standards and administrative regulations, have complemented import duties. Efforts to reduce such barriers to intra-regional trade are needed, although these alone will not be enough to achieve sustained levels of growth. This study argues that Oman also needs to

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[32] Wolf, M., "Is Globalization In Danger?" *World Economy,* Vol 26, Issue 4, 2003, pp 393-411 at p 410.

[33] Abed, G. T. & Davoodi, H. R., *Challenges Of Growth And Globalization In The Middle East And North Africa,* International Monetary Fund, 2003, p 5.

[34] Ibid, p 5.

address "behind-the border" policies that impede investment and liberalization of services. Oman's economic performance during the past quarter or half century has been lower that might have been hoped for a state benefiting from great oil wealth. Clearly, the regional conflicts and political tensions that have prevailed over the last twenty five years have contributed significantly in the lagging performance of the region. There have been three wars (Iran-Iraq, the Persian Gulf War and the war against Iraq), involving large military expenditures which have undermined economic performance and constrained public investment throughout the region. Nevertheless, these tensions do not fully explain the underperformance. The experience, since the Second World War, of countries such as Chile, Taiwan and South Korea, shows that high rates of economic growth can be achieved and sustained, and real per capita incomes dramatically increased in nations with uncertain borders, civil unrest, ethnic tensions, and heavy military burdens.[35]

It is obviously known throughout the world that the most dangers and risks facing and obstruct or even frustrate the foreign investments in developing countries is the absence of the legal cover and organization capable of encouraging and protecting foreign investments. Likewise, host countries (countries accept or admit foreign investments) now aware enough of all apprehensions and risks threatening foreign envestment, thus, they are trying through a comprehensive and a well built legal systems to reveal and abolish these appreheusions. Part of the effective methods adopted by these countries is to legislate for organization, encouragement and protection and affraction of foreign investments or even giving guarantees in formal declarations or special constitutive provisions declaring thereby its intention and policy towards foreign investments. All such guarantees ought to be provided for in special legislations and laws.This study argues that in the case of Oman, one important explanation is the failure to develop links with the global economy through foreign investment and trade in services and goods other than oil. A useful indicator of an economy's attractiveness is foreign direct investment (FDI). Thus far, Oman is attracting sufficient inward investment, because of bureaucracy inadequate legal systems. In this respect, it is well to be noted that the laws and legislations responsible for investment organization and promtien should be developed and maintained in a way capable of encouraging and

[35] Hoekman, B. & Messerlin, P., *Harnessing Trade For Development And Growth In The Middle East, Report By The Council On Foreign Relation Study Group On Middle East Trade Options,* Council On Foreign Relations, USA, 2002, p 7.

attracting foreign investments especially in the services sector which is now one of the most attractive and promising sector in Oman. Such a notious and an idea is one of the serious debates to be handled and touched by the study. No doubt that the development of laws and legislations should serve attaining clarity, transparency and compatibility with the modern and latest trends of business and international commercial law. A second reason is that the government has not yet made sufficient progress in reducing the interventionist role of state in the economy. The economic domination of the state has often been a source of resistance to trade liberalization. One reason for maintaining trade barriers on imported goods has been to protect state-owned enterprises and employment in the public sector, as well as to shelter a select group of private firms from competition. In addition to protection, these companies benefited from subsidized credit and preferential access to inputs (through, for example, tax and duty exemption). Fear of the consequences of increasing competition, and Oman's tendency to approach service reform in a piecemeal fashion, help to explain the slow progress of privatization in Oman. Elsewhere, notably in the Member States of the European Union, the last two or three decades have witnessed a significant withdrawal of the state from running industry and services, resulting in large scale privatizations and the introduction of competition in vital utilities.[36] This study argues that because of the dominance of the public sector, Oman has not seen the emergence of a vibrant private sector capable of providing competitively priced, high-quality services to firms and consumers. The resulting higher production costs make Oman less attractive to private investment. Although a large informal private sector exists, in which many people are engaged, its growth has been constrained. The study is trying to give effect to the role of private sector and its contribution to the national economy by extinguishing monoplism in the sector. Such a trial need to be achieved trough a widely comprehensive economical and legal view by enacting laws and legislations capable of re-structuring the whole relationship between the state and private sector. In this respect, it is not sufficient to adoptand implement privatisation methods but it is quite necessary to keep such a process of privatisation well organized and governed by law and legal disciplines in order to achieve and attain the privatisation objectives.

[36] Economic research forum for the Arab Countries, Iran, and Turkey, *Economic Trends In The MENA Region,* 2000

These are, of course, not the only issues to be addressed. One is the education system. The impact of globalization on higher education is much debated. On the one hand are those who expect globalization, the internet and the scientific community to level the playing field in the new age of knowledge interdependence. On the other are those who fear both worldwide inequality and the McDonaldisation of the university, and blame globalization for all of the contemporary pressures on higher education, from the pressures of massification to the growth of the private sector.[37] Be that as it may, the importance of finance as an input into production cannot be denied. Investment in education is a critical determinant of the longer term ability of an economy to raise per capita/ income. Without a good educational system that produces workers with the skills required by industry, the country will be unable to maximize its economic productivity. In this context, Oman suffers from a discrepancy between the supply generated by the education system and the demands of the labour market. The country faces the question of what to do with the addition of well over 40,000 secondary school graduates and drop-outs every year. In the past, a large proportion of secondary school graduates found employment in public enterprises and the government bureaucracy. However, since the early 1990s, the government has not allowed this level of hiring, leaving many secondary schools graduates unable to find jobs. These young people currently account for a significant portion of the unemployed and often lack the skills demanded by industry. Extensive research shows that educational attainment, investment, and the growth performance of countries are closely linked.[38] The study refers to the legal structure of work environment through an attemp to enact and legislate for organization of the relationship between the educational output and the needs of work market hence through providing and establishing a concrete educational system. Such an achievement is hence obtainable from the international educational institutieus and also through the effective legal organization of foreign investment in the sector of higher education.

In short, Oman's size, per se, need not be a constraint on growth and development, as some small economies have set notable example of success in the last three decades. In the present era of globalization, the key to growth and development is not size, but degree of integration into world economy, with all the potential it brings

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[37] Altbach, P. G., "Globalization And The University: Myths And Realities An Unequal World", *Tertiary Education And Management,* Vol 10, Issue 1, 2004, pp 3-25 at p 3.

[38] Hoekman, B. & Messerlin, P., 2002, op. cit., p 23.

for export markets and access to up-to-date technologies and know-how. In this context, government administrative entities need to be providers of public services, not just instruments of "command and control."[39] Oman, therefore, now faces the challenge of transformation, not simply to a major economic actor but more broadly to a provider of services that create an attractive investment climate. [40] Oman faces formidable challenges after oil, but there is scope for optimism, despite past mistakes and shortfalls in goal achievement, given the Omanis' capacity for resilience and adaptability.[41] However, the necessary reforms will not be easily implemented. Change needs to be greatly accelerated and the vested interests that resist that change must be faced down.

All the above issues, which constitute the most important dimensions of the problem of the costs and benefits to Oman of her accession to the WTO, are the concern of this study, which investigates these issues and offers solutions.

The growth of the cases discussed by the WTO in therms of domain and impact led to complicated negotiations that included various bargains and goals. This reflects the different economic complications faced by the Members, and also illustrates the problems of the system that call for identical obligations on all Members. A great number of agreements and issues to be negotiated involve various economic effects such as the impact on income, intellectual property, employment, food safety, general health, gender, and technology possession. In addition to those effects, those agreements could also have an impact on local policies regarding market access, in that it could loosen or harder the flexibility of policies and the independence of the Members. The challenges could take different dimensional principles that could ban or restrict certain tools for policies, that could, if adopted and implemented adequately, contribute to the economic development.

Oman applied for accession to the WTO under Article 12 of the Agreement establishing the WTO. To become a Member of the WTO, Oman had to assume the obligations and commitments stipulated in the WTO Agreement and the Multilateral Trade Agreements annexed thereto, including the negotiated schedule of commitments

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[39] Ahmed, G., "The Welfare Impact Of Telecom Reform In Egypt: An Ex Ante Analysis", in Fawzy, S. & Ahmed, G., *Bartners For Development: New Roles For Government And The Private Sector In The Middle East And North Africa,* World Bank, Washington, 1999, at p 34.

[40] Brunetti, A. et al., *How Business Sees Government,* IFC Discussion Paper No. 33, International Finance Corporation, Washington, 1998, at p 17.

[41] Peterson, J. E., "Oman: Three And A Half Decades Of Change And Development", *Middle East Policy,* Vol 11, Issue 2, 2004, pp 125-137 at p 136.

in the goods sector and negotiated schedule of specific commitments in the services sector under the General Agreement on Trade in Services. In other words, joining the WTO requires a Member - country to adjust its economy and laws to the standards and requirements of the organization. The study argues that because the existing system in Oman (especially the legal system) was not fully compatible with WTO requirements, some existing laws needed to be amended and new laws needed to be passed in accordance with the TRIPs Agreement and other obligations. Furthermore, new administrative arrangements had to be set up and personnel trained. The study argues also the importance of Oman's Membership of WTO and its commitment to the liberalization of trade, in keeping with the orientations of the organization and in the interests of avoiding international isolation. In addition, the study emphasises that Oman was pursuing a policy of income resource diversification that would be beneficial once global markets had been opened up and customs and other barriers had been abolished in the interests of economic integration. Of particular importance was the customs union established by the GCC States. Major policy questions are raised with respect to the implementation of the reforms that Oman needs in order to maximize the benefits of accession to the WTO, and how to pursue them. Generally speaking, three potential approaches can be identified: unilateral action taken by the government individually; concerted action through regional cooperation (regional integration with the other GCC States); and a multilateral approach, where reforms are anchored in the WTO. Comprehensive unilateral reform would be difficult for Oman, despite the achievements of the last decade, because the rate of progress has been too slow to generate and sustain high rates of growth. Thus, consideration is given to the potential to facilitate and sustain the implementation of reforms through action taken in concert with other GCC States. Oman has three options: pursuing agreements with powerful economic actiors such as the EU and United States; deepening intra-regional cooperation efforts with the other GCC States to include domestic regulatory regimes that affect investment and competition; and active engagement in the WTO. These are not mutually exclusive; however, the discussion in this study covers only the last two options, and how they can help Oman to benefit from the integration in the global economy and expand the gains from any reforms it makes. In other words, the study looks at the ingredients of economic freedom more closely in order to identify what policy and institutional re-arrangement is needed to further raise the profile of economic freedom in Oman.

From the above point of view, the study argues that Membership in the WTO allows Oman to design her development strategies and trade policies in a more predictable and stable trading environment. In addition, the accession of Oman to the WTO must be seen not as end in itself but as a key element in the pursuit of national development policy objectives. Thus, the main question in this study is how can Oman capitalise on its WTO Membership? In other words, what should it do to benefit from WTO accession and Membership? The study investigates the reasons which made Oman join the WTO, and what are the potential consequences arising from the efforts of Oman to integrate into the world economy, namely, from her accession to the WTO. In addition, the study also investigates how Oman can benefit from her Membership in the GCC to increase the benefits and reduce the costs of this accession, and what kind of reforms it has to make in this regard. In other words, the study aims to answer the questions: Does Oman benefit from the accession to the WTO? What is the impact of this accession on Oman's economy? What policies should Oman made to maximize the benefits and minimize the losses from WTO accession and Membership?

1.3. Significance Of The Study And Its Objectives

Overall, globalization represents more hope than fear; hope for better lives; for individual and corporate prosperity. However, for many developing countries like Oman, globalization also implies threat: threat of losing jobs, threat of being crushed by competition, of being unable to afford customary lifestyles and traditions. Thus, governments are under growing pressure to walk a tightrope: they will be measured by their success in reaping only the benefits of globalization, while averting the painful changes involved. These are particular concerns for Oman, a country which has weak manufacturing structures, limited industrial skills, low level of manufacturing exports, inadequate research and development (R&D), small companies with limited international experience, limited regional cooperation and trade, heavy dependence on government, inefficient bureaucracies, and limited private sector participation. From this perspective, the study has words of caution for those (decision-makers) unprepared for the sudden pressures which can be imposed by globalization. The researcher would be remiss if he did not warn against the likely impact of a too sudden free trade WTO regime in countries wholly unprepared for the sudden onslaught of competitive forces, which will be unleashed within these nations. However, to benefit in the highly

cooperative global environment, it is recommended that Oman must adopt combined and coordinated internal and outward development strategies. Any outward-oriented reforms (OOR) or export-oriented industrialization strategy (EOI) must be a part of an internal-oriented sustainable reform (IOSR). The latter should include as its fundamental elements the following: the development of human resources, equality of opportunities, and transparency in governance, strong local demand and sustainable environment. Lack of progress in IOSR, relative to that of OOR/EOI, could be a cause for social unrest and costly economic losses. Nevertheless, the accession to the WTO is a major and significant step which Oman has taken towards integration in the global economy.

External economic liberalization and openness nowadays figure significantly in the economic agenda, policies and programmes of many countries worldwide. The benefits of trade liberalization have been widely asserted. In particular, trade liberalization, as the cornerstone of economic liberalization strategy, is taken as a policy prescription by many countries, which aim to increase trade flows and hence enhance growth rates. Oman is no exception to this pattern. Central to this trend is the creation of the WTO, which can be considered one of the most important events in the international law sphere during the last decade of the twentieth century. This new institution encompasses both sovereign States and separate customary territories, which agree to be bound by the unified trade rules made in the Uruguay Round negotiations. Moreover, the WTO legal system is one that is still evolving. With the establishment of the WTO, a new era of trade liberalization has started, and as a result, twenty-eight agreements have been signed aiming at the principal goals of eliminating barriers relating to tariffs, facilitating easy access to markets and creating an international free trade environment. States applying for Membership of the organization must abide by such agreements, as indicated in the final constitution of the organization. Recent accession protocols are based on the concept of universal and uniform liberalization, with little regard to the specificity of the acceding country. Almost all accession protocols impose stringent obligations on new Members. They are required to comply with WTO rules by the time of their accession, and they are also required to undertake substantial trade liberalization. In recent years a number of studies have been written about the WTO, in addition, a number of case studies about the consequences arising from the accession to the WTO

discussed these consequences not only from the economic point of view, but also dealing with the legal impacts of the WTO Agreements.

Oman's geographic location has advantages for external trade, particularly as a strategic point connecting the countries of South-West Asia, especially India, with the countries on the east coast of Africa, in movement of people and goods. However, industries in industrialized countries have little knowledge about Oman. This is because of the small size of the domestic market and weakness of Oman's participation in the global market. This may be why writers in English have paid little or no attention to the accession of Oman to the WTO, compared with the accession of some countries such as China. In addition, due to the recent nature of the accession of Oman - 9 November 2000 - there are still few studies in Arabic, and these have dealt with aspects of the subject but they do not cover all the issues at the same time. However, considering the utmost importance of the legal aspect of WTO, and because all states ultimately must join the WTO in order not to be isolated from the global society, accession to the WTO and the endeavours of states to join the WTO have recently become a hot issue. As Oman is still in the early stage of her accession to the WTO, evaluating the results of this accession is considered necessary, and it might be easier and less expensive at this stage. In addition, with the experience of about six years of the implementation of the WTO agreements behind her, now is an appropriate time for Oman to reconsider the agreements again, with two objectives main considerations in mind. First, she should review the extent of the concessions made in relation to the returns gained. Doing so may help in identifying Oman's strengths and weaknesses and provide lessons on which to draw when setting future strategies. Second, Oman together with other developing countries would be well advised to examine the deficiencies and imbalances in the WTO agreements from their perspective and take action to bring about changes to serve their interests. In this respect, the recommendations that emerge from this study could help to improve capabilities of Oman to cope with the challenges of these agreements. The economic importance of the Gulf region to the developed countries (especially the European Union), and the absence, to the best of the researcher's knowledge, of previous studies about Oman or even the Gulf States in this field, all make this study significant.

Undoubtedly in a global trading system in which both the poorest and richest countries in the world are engaged, some special provisions must exist to help secure

advantages to all countries, from the agreements they have signed. In the same way, the implementation of obligations by the WTO Members must take account of those differences between countries. In this respect, the integration of Oman into the world trading system means that she is obliged to adhere to the rules of conduct that govern the multilateral trading system. The establishment and implementation of these rules take place within the framework of WTO agreements, contractual in nature, which bind governments to keep their trade regulations and policies within agreed limits. In this context, Membership of and effective participation in the WTO is a key part of, and perhaps even a prerequisite for complete integration into the world trading system. Maximization of the benefits of the WTO requires Member countries' understanding of their WTO rights and obligations, and their implications for their present and future business activities. Such knowledge is essential to enable WTO-related opportunities to be identified, enabling the country concerned to realise commercially valuable benefits in both domestic and foreign markets, through strategic planning in light of the WTO rules. This is however, a matter to which the Omani government has so far paid insufficient attention. Despite its importance, the WTO is poorly understood. Oman is therefore in need of a clear explanation of how the WTO operates as an organization, the scope of its authority and power, and the potential implications of this legal framework for the Omani economy. Such a need is met by the present study, which analyses the provisions of the WTO Agreements that have particular relevance to Oman's economy, and by offering detailed information on how Oman can participate in the WTO, on special provisions for Oman and the other GCC States in the WTO agreements, as well as information on these countries' trade and trade policies.

This study also provides a legal guide to the study of Oman's accession. Whilst consideration is given to the process by which Oman sought to accede the WTO, it differentiates between Oman's integration into the global economic system and its actual legal accession to the WTO. In this respect, the study can more appropriately be seen as an examination and overview, from a legal perspective, of Oman's integration into the multilateral trading system. Particular attention is also paid in this study to the complex interrelationship between Oman's accession and an array of domestic (to Oman) and legal factors. For this reason, consideration is given to the legal context within which the Omani economy operates.

In this context, the present study has been undertaken to fill an existing gap in academic research about the legal impact of the accession of Oman to the WTO practically. The study will be more comprehensive, identifying positive and negative aspects, proposing solutions and means of addressing existing problems. Whilst the perspective of the thesis is primarily legal, it reflects the intimate association, between law and issues of economics and political economy. The thesis will be highly beneficial for anyone interested to know the legal and economic impact of the accession of Oman to the WTO generally, whether officials, lawyers, economists, political scientists, researchers, investors, and Members of the public who are not specialists in international economic law but wish to understand the relationship between Oman and WTO. It will especially interest those concerned with the Gulf States, due to common elements between Oman and these countries, and the Gulf Cooperation Council (GCC), of which Oman is a Member. It will also be beneficial to those interested to know about the impact of the WTO upon the developing countries, as Oman is such a country. Moreover, the study expects to make an important contribution to the understanding of the relationship between the Sultanate of Oman, the Gulf Cooperation Council and the World Trade Organisation. The thesis will have both academic appeal as well as being a valuable instrument for policy-making and economic planning in the Sultanate.

To get a clear answer to the questions this study poses, the study has three purposes. First, it investigates both the potential benefits arising from accession to the WTO, and the costs and challenges arising from this accession for Oman. Thus, the study aims to point out the consequences of the commitments undertaken by Oman consequent to its Membership of the WTO, by examining the challenges and opportunities of WTO agreements for Oman in selected sectors and industries. Second, it sets out the importance to Oman of the economic integration between the GCC States, in facing the consequences of her accession to the WTO and increasing benefits derived as a result. Third, to complete the discussion on these consequences, the study suggests some recommendations for Oman in order to deal with the challenges of the WTO issues.

Moreover, as the economic structures and institutions of the GCC States do tend to exhibit common features and, given the need for a policy focus on the challenges and opportunities that face the region, there is a strong case for treating Oman and these countries as a unit of analysis. Thus, this study from the discussion of the consequences

arising from the accession of Oman to the WTO, takes a close look at the economic performance in the Gulf region generally, and in Oman particularly, with respect to global integration, growth, and unemployment, followed by an exploration of possible reasons for the weak performance. In the conclusion, the study outlines the reforms needed to improve Oman's economic performance. The crucial message in this study is that greater openness to trade and domestic economic reforms can mutually reinforce each other to generate faster growth, lower unemployment, and higher standards of living. Regardless of the precise world economic environment, however, the fundamental point is that all examples of successful economic development have involved the harnessing of trade. The researcher hopes that this study can provide a blueprint for Oman to maximize the benefits reaped from trade policy reform.

In short, it can see the overarching of this study to be to-fold. First, to assist Oman to participate successfully in the multilateral trading system. Second, to help identify ways to support Oman's preparations for, and participation in, the current negotiating process. The study present a opportunity to presnt views and experiences on a range of WTO and trade-related issues. It will help the decision makers in Oman to learn more about the challenges Oman face. It also gives them opportunity to engage in an interactive and business-like discussion on issues of importance to all the Omani citizens.

1.4. RESEARCH METHODOLOGY

The researcher, while ensuring the relevant data in relation to the research questions focused primarily on utilizing those sources which could exactly answer the questions under study. In this respect, it was necessary to address the challenge of collecting evaluating and consolidating scarce and fragmented data concerning Oman in general and on the accession of Oman to the WTO in particular, in order to fill a gap in the literature. In addition, since the topic touches upon what are considered in many developing countries as politically sensitive issues, it was necessary to employ a high degree of sensitivity to elicit information and opinions from people who would not wish to appear to criticize the system, and thereby incur a hostile reaction. Government officials dealing with this subject had to be approached with great tact, especially about the negative consequences of the accession of Oman to the WTO. Furthermore, most people in Oman have little idea about the WTO; some of them do not know what it

means and what its functions and role are. For this reason, the questionnaire method would be impractical in dealing with this topic. However, the researcher conducted a number of interviews with some officials, a few of whom agreed to the use of their interviews as a resource in the study.

The above challenges make the present study distinctive, as the first attempt at a comprehensive discussion of the issues related to Oman's accession to the WTO. Moreover, the non-availability of consolidated information prompted the researcher to undertake this research, not only to fill the gap, but also to make available a comparative based research to others for further utilization, especially for other cases in the same environment. In this context, the researcher, in order to ensure the validity and relevance of the data in relation to the questions, utilized triangulation of sources.

Thus, this study is dependent on many different sources, which vary from one chapter to another. The main sources for the whole work are legal documents, such as legal studies (books, theses, Articles, and studies and reports); relevant Omani laws; legal texts of the WTO Agreements; data from the internet, and unpublished reports and studies. The purpose behind the use of these various sources was to check and cross-check the data from these different sources with each other.

1.5. THE ORGANIZATION OF THE STUDY

To achieve the aims of the study and provide systematic and comprehensive coverage of all relevant issues of the accession Oman to the WTO, the thesis is organized into six chapters, including this introductory chapter.

The second chapter establishes the context of the study and discusses the World Trade Organization system as the main channel for integration into the global economy, and in order to provide the reader with an understanding of the WTO's system before starting the analysis of the accession of Oman to the WTO and it's consequences. Thus, this chapter is to explain the legal personality of the WTO and its legal effects. Furthermore, the WTO's goals are discussed in terms of the principles of the world trading system underlying the WTO agreements. In addition, the chapter explains the legal and organizational framework (the political bodies; the Dispute Settlement Understanding; and the decision-making procedures in the WTO).

The third chapter provides a general introduction about the meaning of economic integration: the theory; its importance, and its forms, as a basis for discussion

of the issues relating to economic integration, especially for Oman. It begins with a background overview of the legal and economic system of the Sultanate of Oman, in order to give the reader a full understanding of the legal and economic status and developing strategies of Oman on which the accession of Oman to the WTO is based. These issues include economic integration between the GCC States and their relation with WTO as an instrument towards this integration, in terms of the importance of the council in promoting the integration of Oman into the global economy, and its influence on Oman's ability to face the impacts of accession to the WTO. As Oman is a Member in the GCC, in her stand on the trade issues, she has coordinated her position with that of other GCC States. It is argued that Oman and the GCC States, in view of the commonality of their interests, should continue to collaborate together and attempt to forge a united front in approaching the built-in agenda of the WTO on agriculture and services, as well as the new issues. Furthermore, as oil dependent economies, the GCC States have common interests and concerns (which have been unaddressed in the WTO so far), and together with the support of the OPEC countries, they may form a common front to press in the WTO, at an appropriate stage, the viewpoint of the oil producing countries and work for reduction/abolition of trade restrictive practices and levies on oil imports such as energy tax in advanced countries.

The fourth chapter aims to pave the way for the next chapter, which considers the selected sectors and industries that stand to be affected by the accession of Oman to the WTO. This chapter contains a discussion on the potential benefits and costs that could arise from the accession of Oman to the WTO. In addition, it provides discussion on the procedures taken by Oman in order to accede to the WTO, and explains how the accession of Oman took place. Moreover, the chapter points out the commitments resulting from that accession in general, focusing in particular on the commitments of Oman.

The fifth chapter analyses the relevant WTO agreements and points out its impact for Oman in four selected sensitive sectors and industries, namely, the petrochemicals industry; manufacturing industries; the agriculture sector and the banking sector. The chapter is divided into two parts, each covering two sectors or industries, with the discussion in each part containing two main elements: the importance of the sectors or industries in the economy of Oman, and the relevant WTO agreements and their impacts for the selected sectors or industries. This discussion leads

to some suggestions to improve these sectors and industries in order to place them in a better position to face the challenges of these agreements and benefit well from the opportunities provided. It is argued that in the globalised world and integrated world markets, what holds the key for success for any country is gaining a competitive edge by improving productivity. The prime requirement for Oman, as for any other developing country, therefore, should be improvement in productivity.

The sixth chapter is the concluding chapter, which summarises the main research findings. In addition, the chapter contains some recommendations for steps which Oman should take in order to maximize the benefits and minimize the losses of WTO Membership. These recommendations are grouped in three categories. The first one contains administrative recommendations, for example, that Oman should appoint a permanent ambassador in Geneva to keep regular and continuous contact with WTO. In addition, a specialized body for WTO has to be set up. Moreover, the need is highlighted for Oman to start training Omanis to deal with all the complexities of the organization, and it is argued that a special emphasis should be given to training in some areas, such as capable customs staff to deal with harmonized valuation procedures, TRIPs violations and requirements, and suitable administrative personnel to understand and carry out the implementation of WTO.

As the private sector will no doubt bear the biggest responsibilities of the WTO Membership, it will be responsible for the developments of trade, industry, finance and services with other international parties. Therefore, the next era will need the consolidation of the efforts of the private and public sectors to enable the private sector to shoulder its responsibilities of implementing the WTO Agreements. Thus, the second category of recommendations concerns the expansion of the private sector's role, to enable it to be better qualified to face challenges and competition with other WTO Members during the interaction of Omani economy with the international economy.

To handle effectively the implications of globalisation, as strength lies in unity, for Oman to acquire a level playing field in the world economy, the policy option of enhancing regional cooperation becomes imperative. The formation of the GCC has already laid the foundation of regional cooperation. Now, the task is to strengthen further the complementarity and economic integration which will bring in the advantages of industrial linkages, marketing, technical cooperation and consultancy, and regional economies of scale. Thus, the third recommendation calls for co-ordination of

Oman's economic policies with those of other GCC States, to strengthen regional cooperation. In other words, the third recommendation explains what Oman should do in order to use her Membership in the GCC to benefit from the accession to the WTO.

CHAPTER TWO: THE WORLD TRADE ORGANIZATION

2.1 INTRODUCTION

WTO rules are presented in WTO decisions and documents, and accepted by academic writers, as part of the wider body of public international law. Thus, WTO law stands alongside international environmental law and human rights law, as a branch of public international law.[42] Although it is tempting to see the WTO as the logical result of a developing trend in the GATT, which was stimulated by the failure of the ITO,[43] the establishment of such an organization was in fact not envisaged in the Ministerial Declaration at Punta del Este, which launched the Uruguay Round. The idea of establishing a fully-fledged world trade organization was first suggested in February 1990 by the then Italian Trade Minister, Renato Ruggiero, and was formally proposed by the Canadian Ambassador, John Crosbie, at an informal meeting of trade ministers at Puerto Vallarta, Mexico. The primary focus of the meeting was the constitutional implications of the agreements which would emerge from the round. Ambassador Crosbie argued that a world trade organization based on an international treaty was needed in order to implement the results of the Uruguay Round. He emphasised that from a constitutional perspective, the GATT needed to be converted from a provisional trade agreement into an international organization commanding legal recognition.[44] The WTO was established by Member countries under the Marrakech Agreement Establishing the World Trade Organization (the WTO Agreement) on January 1995, as an organization whose task is, among others, to supervise international commerce from a legal standpoint.[45]

The inauguration of the WTO can be seen as a significant departure from previous multilateral attempts at trade liberalisation. It was recognised from the outset that the test of the new era would be the way in which barriers to trade are dealt with,

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[42] Pauwelyn, J., "The Role Of Public International Law In The WTO: How Far Can We Go?" *The American Journal of International Law,* Vol 95, Issue 3, 2001, pp 535-578 at p 538.

[43] The main reason for this was the withdrawal of support from the ITO's original "sponsor" the USA enough; USA interests and farm organization were among the main opponents of the creation of an ITO. See for more Hillman, J., "The US Perspective", in Ingersent, K. et al., (eds), *Agriculture In The Uruguay Round,* ST. Martin's Press, New York, 1994, at p 29.

[44] Blakeney, M. op. cit., 1995, p 52.

[45] Tita, A., "A Challenge For The World Trade Organization: Towards A True Transnational Law", *Journal of World Trade,* Vol 29, Issue 3, 1995, pp 83-90 at p 86.

See also GATT document MTN. TNC/MIN (94/6), 15/4/1994.

and that a mixture of innovation and compromise would be needed for progress to be made. Whether many countries will be able to call up these qualities, or whether they will pursue a narrow national interest, remains to be seen from the discussions later in this chapter.[46] Annexed to the WTO Agreement are a number of agreements: the Multilateral Trade Agreements, which are binding on all WTO Member countries, and the Plurilateral Trade Agreements, which are binding only on those WTO Members that have accepted them.[47] According to Krueger, the WTO is *the legal and institutional foundation of the multilateral trading system.*[48] In other words, the WTO is the only international body dealing with the rules of trade between nations. At its centre are the WTO agreements, the legal ground rules for international commerce and trade policy.[49] The growing power and importance of WTO marks it out for scholarly analysis.[50] Since its inception, the WTO has been the topic of numerous speeches, Articles, books and debates. Despite this attention, according to Werner, "*there have been some serious gaps in public understanding about the functions and mission of the WTO, especially as an organization which helps safeguard good commercial relations.*"[51] The WTO is an organization that is responsible for administering multilateral trade agreements negotiated by its Members. The main agreements are the GATT itself, which was immersed into the WTO, the General Agreement on Trade in Services (GATS), and the Agreement on Trade Related Intellectual Property Rights (TRIPs), but there are dozens of other diverse agreements, ministerial decisions, and declarations. The addition of

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[46] Bright, C. *International Trade; World Trade Organization* (Article), Sweet & Maxwell Limited, London, 1995, pp 3-4 at p 3.

[47] George, C. and Orava, S., 'Introduction', in George, C. and Orava, S. (eds), *A WTO Guide For Global Business,* Cameron May Ltd, London, 2002, at p 30.

[48] Krueger, A.O., op. cit., 1998, p 32.

[49] Abdoul-Enein, M.I., "Islamic (Shari'a) Law And The Commitments To The World Trade Organization Agreements (A Brief Study), in *Strengthening Relations With Arab And Islamic Countries Through International Law: E-Commerce, The WTO Dispute Settlement Mechanism And Foreign Investment.* Edited by the International Bureau of the Permanent Court of Arbitration, 2001, at p 25.

[50] Attention is also attracted by the importance of international trade for global economic growth and prosperity and the relation that international trade law and the institutions that governing it are part of the wider body of international law that governs interstate relations. Moreover, since its creation the WTO has become increasingly active. See Bacchus, J., "Groping Toward Grotius: The WTO And The International Rule Of Law", *Harvard International Law Journal,* Vol 44, Issue 2, 2003, pp 533-50 at p 540.

[51] Werner, Hans-Peter, *Activities And Aims Of The World Trade Organization,* Gulf Organization for Industrial Consulting, Doha 2000, p 1, unpublished, obtainable from Gulf Organization for Industrial Consulting.

GATS and TRIPs extended the responsibilities of the new organization to trade in services and intellectual property rights. The WTO is now a complex organization whose importance is steadily rising.[52] It was also intended that the WTO would provide a permanent forum in which negotiation could take place with a view to further liberalisation. As well as formalising, deepening and widening the international system of trade regulation, it was hoped that the WTO would facilitate greater coherence in global economic policy making by bringing together the work of the three international economic organisations: the WTO, the International Monetary Fund (IMF) and World Bank, as well as through its relations with other international bodies that influence global economic policy making.[53]

Whilst it is assumed that there is a general interest in seeing that the rules embodied in the WTO legal instruments are applied and respected by all Member countries, an examination of normative linkage requires clarification of the WTO's norms. What is the WTO intended to achieve? What is its essential nature? Some clue can be found in the language of the WTO Agreement. Article 2, under the heading, "scope of the WTO", states that "the WTO shall provide the common institutional framework for the conduct of trade relations among its Members in matters related to the agreements." Article 3 is devoted to the "functions of the WTO" and states that "the WTO shall provide the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements....and may also provide a forum for further negotiations among its Members concerning their multilateral trade relations". Further clues can be found in the WTO preamble, which expresses the parties' wish to enter into "reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations." It goes on to assert the commitment of Members "to preserve the basic principles and to further the objectives underlying this multilateral trading system." However, these

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[52] Steger, D. P., "Peace And Prosperity Through Trade", In *Strengthening Relations With Arab And Islamic Countries Through International Law: E-Commerce, The WTO Dispute Settlement Mechanism And Foreign Investment.* Edited by the International Bureau of the Permanent Court of Arbitration, 2001, p 45.

See also generally: Pauwelyn, J., "A Typology Of Multilateral Treaty Obligations: Are WTO Obligations Bilateral Or Collective In Nature?", *European Journal of International Law,* Vol, 14, 2003, at p907.

[53] Wilkinson, R., "The World Trade Organization", *New Political Economy,* Vol 7, Issue 1, 2002, pp 129-140 at p 129.

indicators are of only limited usefulness, because key terms are not defined and explained. The WTO Agreement, for example, does not define what is meant by trade relations. The preamble, whilst referring to "mutually advantageous arrangements," does not specify how this goal is to be evaluated, for example whether the criterion of mutual advantage must be met by every treaty clause, or at the level of the constituent agreement, for the WTO system overall. The preamble mentions the WTO's "basic principles," but does not state what these principles are.[54]

The aim of this chapter is to explain the legal personality of the WTO and its legal effects. Furthermore, the WTO's goals will be discussed in terms of the principles of the world trading system underlying the WTO agreements, in order to provide the reader with an understanding of the new world trading system. In addition, the chapter will explain the legal and organizational framework and the decision-making of the WTO. Thus, this chapter is divided into two sections: the first one explains the legal personality of the WTO and its effects, and point out its goals and principles, whereas the second one contains the discussion on the legal and organizational framework and the decision-making of the WTO.

2.2. THE WTO AND ITS LEGAL PERSONALITY, GOALS, AND PRINCIPLES

This section divided into two sub-section, the first one contains the legal personality of the WTO and its effects, whereas, the second one explain the WTO goals and principles.

2.2.1. The Legal Personality Of The WTO And Its Effects

The term "legal personality" means the ability to acquire rights, assume obligations and perform all forms of legal transactions. The legal personality in this context was only confined to countries and not organizations, but due to the developments in the principles of Public International Law, the international organization has acquired the legal personality and becomes an international person since the issuance of the consultative opinion of the International Court of Justice (ICJ) in 1949.[55] Since then, most agreements establishing international organizations stated

[54] Charnovitz, S., "Triangulating The World Trade Organization", *The American Journal of International Law,* Vol 96, Issue 1, 2002, pp 28-55 at p 32.

[55] Abdul Hamed, M. S., *Alqadah Adawleyah (The World Rule)*, Al Alexandria, 2003, at p270.

that such an organization should have a legal personality, a matter that is clearly included in the agreement establishing the WTO. The Agreement stated that the WTO would have a legal personality and each Member state shall grant it the required capability, privileges and immunities to assume its functions. Likewise, each Member state shall grant the employees and representatives of the organization (Article 8 of the WTO Agreement)[56], the required privileges and immunities necessary for the proper execution of their jobs whenever related to the organization. Such privileges and immunities to be granted by each Member state to the organization and its employees shall be the same as those privileges and immunities provided for in the Agreement for the Benefits and Immunities of the Specialized Agencies approved by the United Nations General Assembly in November 1947.[57]

The WTO enjoys a legal personality and as such shall bear all legal effects of its exercise of its functions and powers stipulated in its agreement. The exercise of functions and powers affects either its external relationship with other international organizations, its internal relations, and the internal legal system of its Members.

Firstly, the effects of legal personality of the WTO on its external relationship generally concern the organization's relations with other international persons; however, what is intended here is its relations with the Member and non-Member States and with other international organizations. The WTO may, by virtue of its legal personality, enter into bilateral or multilateral international treaties with Member and non-Member States or with another international organization. The organization also has the right to submit petitions for claiming damages incurred by it or its employees. Likewise, claims for damages may be instituted against the WTO in case any of its units commits a mistake

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[56] This Article states: "1. The WTO shall have legal personality, and shall be accorded by each of its Members such legal capacity as may be necessary for the exercise of its functions."

2. The WTO shall be accorded by each of its Members such privileges and immunities as are necessary for the exercise of its functions.

3. The officials of the WTO and the representatives of the Members shall similarly be accorded by each of its Members such privileges and immunities as are necessary for the independent exercise of their functions in connection with the WTO.

4. The privileges and immunities to be accorded by a Member to the WTO, its officials, and the representatives of its Members shall be similar to the privileges and immunities stipulated in the Convention on the Privileges and Immunities of the Specialized Agencies, approved by the General Assembly of the United Nations on 21 November 1947.

5. The WTO may conclude a headquarters agreement.

[57] Kalifa, A. E., *Al Netham Al Kanoony Le Monadamate Al Tejarah Al Alameyah (The Legal System Of The WTO),* Dar Al Jameah Al Jadeedah, Alexandria, 2006, pp143-144.

as a result of which damage is incurred by any Member state. Considering the broad and wide range of powers of the organization and its organs, it is expected that an error or a deviation in exercising authority might occur. The WTO may become subject to claims where no error has occurred on its powers or functions in accordance with the theories of risk and vicarious liability. In addition to this, the WTO by virtue of its legal personality may play an efficient role in establishing and promoting the principles of international law especially in the field of International Commercial Law.[58]

Secondly, there are also the effects of the WTO's legal personality on internal relations, thus, by virtue of this legal personality, the WTO may contract with whomever it wishes in accordance with its internal laws, and such contracts may even be with its employees and staff. The WTO may also create any subsidiary units that seems fit to aid in the achievement of its purposes, setting legal principles relevant to creating these units and determining their jurisdiction and powers. The WTO shall have the right also to take disciplinary and legal actions as against its employees and likewise these employees may sue the organization, in addition, the WTO may have the rights to set any financial rules concerning its financial system and budget. All these stated effects serve only as an example and are not exclusive as there could be other legal effects in this respect.[59]

Thirdly, there are the legal effects of the WTO Agreement on the internal legal system of its Members, thus, by virtue of the WTO's legal personality; it enters into a legal relationship with the state who wants to be a Member by signing an agreement with the organization (protocol of accession). According to the well recognized principles in law the result of this protocol well be that the state becoming a party to the WTO should become under an obligation to execute the agreement establishing the WTO and all other related agreements, and should take all necessary steps to ensure application and execution of such agreements within its internal legal system.[60] A state Member cannot absolve itself from such an obligation on the ground that the agreements are contradictory to its internal laws as these trade agreements should

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[58] Ibid, p 144.

[59] Abu Alwafa, A. *Mondamte Al Omam Al Motahedaa Wa Al Mondamate Al Motakasesah Wa Al Eclemeyah (The United Nations & Specialized And Oriental Organizations),* Cairo, Alnahadah Press, 1997 at p 33.

[60] More discussion on the general accession commitments found in Chapter Four of this thesis.

prevail and get priority in application.[61] In this context, the WTO Agreement has provided that each state Member should subject its laws, regulations and administrative procedures to be compatible with its obligations provided for in its annexed agreements (Article 16.4 of the WTO Agreement).[62] According to this provision, the priority of application should be to the WTO Agreements, and hence, it is not permissible to have any internal legislation contradicting these agreements. Such a legal effects does not contradicting any problem in countries that gives priority to international agreements in application such as Oman (as will be seen in chapter four) where the WTO Agreements prevail over the internal legislation. Whereas, according to Dr Salama, in countries where internal laws rank over international agreements as embodied in Egyptian Constitution a real problems may arise in respect of the enforcement and execution of international agreements. The only practical solution from his respect is to apply general principles of interpretation such as the principle of preferring the subsequent legislation and principle of enforcing private provisions rather than the general ones.[63] However, this notion matches with the general rules, firstly it does not match with standing of the international trade agreements and the WTO. Secondly, it contravenes the objective of free trade.

Throughout the development of international trade, it appeared that international trade had been organized for the first time from both, objective and organizational aspects. Objectively, it is well observed that international trade has been subject to bilateral agreements between states, but now it is well organized by concluding agreements with multiparty in 1994, which covers all aspects and fields of international trade. As to the organizational aspect, the international organization was instituted with a main objective to supervise the execution of such agreements. As we mentioned above the main condition for a state to enter the WTO is to oblige itself hardly with the task of full execution of all provisions embodied in the WTO Agreements, mainly the absolute compliance of its internal laws, regulations and administrative procedures with the provisions of these agreements. In addition, as will be explained in the next section, it is observed from the WTO's goals that the WTO is conscientious and keen to reveal any barriers that might impede the attainment of liberalization of international trade.

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[61] See Article 27 of Vienna Convention on the Law of Treaties (1969).

[62] This Article states: "4. Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements."

[63] Salama, M., *Qwaed Al GAT (GAT Rules)*, Egypt, 2001, p39.

From all of that, it will not be acceptable for any Member state to allege non-application of WTO agreements for the reason that its subsequent legislation is in contradiction with these agreements. Therefore, the WTO Agreement contains a provision obligating any Member state to have its internal laws in full compliance with the WTO agreements. Such an obligation comprises of two obligations, one is to obligate the state Member to effect amendments in its internal laws in order to match with the WTO agreements and secondly, is to obligate the state Member to consider and observe the WTO provisions before issuing any new legislations in order to avoid any contradictions.[64]

2.2.2. The WTO's Goals And Principles

This sub-sections contains two parts. The first one explain the WTO's goals, whereas, the second one discusses the WTO's principles.

2.2.2.1. The WTO's Goals

An aspect of the WTO's work that has not often been discussed is the benefits of the organization and the multilateral trading system for business, in terms of secure and predictable access to foreign markets, encouraging development and economic reform and promoting fair competition. This sub-section outlines the WTO's role in relation to these primary goals. [65]

2.2.2.1.1. Predictable And Growing Access To Markets

The multilateral trading system is an attempt by governments to give investors, employers, employees and consumers a business environment, which encourages trade, investment and job creation, as well as choice and low prices in the market place. Such an environment needs to be stable and predictable, particularly if businesses are to invest and grow. The existence of secure and predictable market access is largely determined by the use of tariffs, or customs duties. While quotas are generally prohibited, tariffs are legal in the WTO and are commonly used by governments to protect domestic industries and to raise revenues. Following the establishment of GATT in 1948, average tariff levels fell progressively and dramatically through a series of

[64] Kalifa, A. E., 2006, op. cit., p175.

[65] Werner Hans-Peter, op. cit., 2000, p 1.

seven trade rounds. The Uruguay Round added to that success, cutting tariffs substantially, sometimes to zero, on the other hand raising the overall numbers of bound tariffs significantly. Therefore, one of the achievements of the Uruguay Round of multilateral trade talks was to increase the amount of trade under binding commitments (see table below).[66]

Increase in binding commitments under the Uruguay Round

Percentages of tariff bound before and after the 1986-94 talks

	Before	After
Developed countries	78	99
Developing countries	21	73
Transition economies	73	98

Source WTO website from www.wto.org

The table shows that the Uruguay Round increased the percentage of bound product lines from 78 to 99% for developed countries, 21 to 73% for developing countries and from 73 to 98% for economies in transition, results which provide a substantially higher degree of market security for traders and investors.

Broadly speaking, the GATT/WTO provides a framework for the negotiation of market access which is seen in the GATT/WTO as reflecting the competitive relationship between imported and domestic products. When conducting GATT/WTO negotiations, governments generally treat tariff reductions as costs which can only be justified by negotiation of an offsetting benefit in the form of a reciprocal tariff concession by a trading partner. In the view of Bagwell, et al., an important role of the GATT/WTO is in the provisions of a legal structure that facilitates such mutually beneficial increases in the degree of market access.[67] However, Perdikis, quoted by Grant, draws attention to the challenge to international trade posed by market access barriers resulting from social regulations, due to the different interests they serve to protect. Food safety and environmental protection measures are not introduced in the interest of producers, but are demanded by consumer organizations, environmental organizations and other non-governmental organizations; parties not previously

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[66] *Basic Principles Of The Trading System*: consulted on 11 October 2002, from, http://www.WTO.org/english/theWTO_e/whatis_e/tif_e/fact2_e.htm

[67] Bagwell, K. et al., 'It's A Question Of Market Access', *The American Journal of International Law*, Vol 96, Issue 1, 222, pp 56-76 at p 59.

influential in shaping trade policy. Moreover, according to Isaac, also quoted by Grant, these groups view trade liberalisation rules that constrain domestic food safety and environmental protection regulations as an intrusion on domestic regulatory autonomy. *In fact, trade protectionism -not trade liberalisation- is largely seen as a valid and socially acceptable goal.*[68]

2.2.2.1.2. Encouraging Development And Economic Reform

Over three quarters of WTO Members are developing countries and countries in the process of economic reform from non-market systems. During the seven-year course of the Uruguay Round - between 1986 and 1993 - over 60 such countries implemented trade liberalization programmes. Some did so as part of their accession negotiations to GATT, while others acted on an autonomous basis .At the same time, developing countries and transition economies took a much more active and influential role in the Uruguay Round negotiations than in any previous round. The WTO argues that this "*trend effectively killed the notion that the trading system existed only for industrialized countries*". It also changed the previous policy on exempting developing countries from certain GATT provisions and agreements. With the end of the Uruguay Round, developing countries showed that they were prepared to accept the obligations that are required of developed countries. They were, however, given transition periods to adjust to the more unfamiliar and perhaps difficult WTO provisions, particularly so for the poorest, "least developed" countries. In addition, a ministerial decision on measures in favour of least developed countries gave extra flexibility to those countries in implementing WTO agreements, called for acceleration in the implementation of market access concessions affecting goods of export interest to those countries, and sought increased technical assistance for them. Thus, the value to development of pursuing, as far as is reasonable, open market oriented policies based on WTO principles was widely recognized, but so was the need for some flexibility with respect to the speed at which those policies are pursued.[69]

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[68] Grant E. et al, op. cit., 2003, p 29.

[69] *Basic Principles Of The Trading System*, op. cit..

See also: *Principles of the trading system*: consulted on 11October 2002 from, http://www.princeton.edu/~adickins/po1385/principles.htm; Afolayan, Joe, *Function of World Trade Organization (WTO)*: consulted on 13 October 2002 from, http://www.africansmagazine.com/Articles/WTOFunctions.html;WTO basics: consulted on 13 October 2002 from, http://www.ueplac.kiev.ua/eng/WTO/basics.shtml

Nevertheless, the provisions of the GATT intended to favour developing countries remain in place in the WTO. In particular, part 4 of GATT 1994 contains three Articles, introduced in 1965, encouraging industrial countries to assist developing nation Members in their trading conditions, and not expect reciprocity for concessions made to developing countries in negotiations preferences. A second measure, agreed at the end of the Tokyo Round in 1979 and normally referred to as the "enabling clause", provides a permanent legal basis for the market access concessions made by developed to developing countries under the generalized system of preferences (GSP).[70]

In many respects, the developing countries need further ongoing support from the WTO to liberalize their trade. For example, many such countries are dominated by small and medium enterprises, which frequently cannot reap the full benefit of government measures for liberalization of trade in goods, because of the complexities of import and export procedures, and lack of an effective trade and transport infrastructure. The movement and clearance of goods would therefore best be facilitated by assistance to developing countries to improve the relevant mechanisms at the national level, rather than complicating the procedures further by the addition of rules developed at international level. A key feature of the Doha Ministerial Declaration is its recognition of the need for technical assistance and support for capacity building, both during the negotiations and after the conclusion. Nevertheless, in-depth discussion is needed as to how best to provide and monitor such assistance because, as Vinod notes, there is a tendency for the assistance provided in the trade policy field to be biased by the views and policy preference of the agencies providing the assistance.[71] Trachtman likens the technical assistance in the trade sphere to legal aid in the domestic sphere, in the roles it can play. It can be used to help poor countries to negotiate, or to put forward disputes for resolution, or to fulfil their obligations. Research and negotiation, on ways of helping developing countries better to understand and argue their positions, are of critical importance.[72] On the other hand, some writers, like Hunter, question the value of special and differential treatment in the form of transition periods. Some developing countries have requested transition periods comparable to those that might be granted

[70] Fadeel, Ali Mothna, op. cit., 2000, p 25.

[71] Vinod, R. "Theory And Practice Of Harmonization Of Rules On Regional And Multilateral Bases: Its Relevance For World Trade Organization Work On Trade Facilitation", *Journal of World Trade,* Vol 36, Issue 4, 2002, pp 699-720 at 701.

[72] Trachtman, J. "Legal Aspects Of A Poverty Agenda At The WTO", *Journal of International Economic Law,* Vol 6, Issue 1, 2003, pp 3-21 at p 15.

before they eliminate tariff protection for a sector, supposedly due to fears that dislocations caused by increased international competition risk unemployment and failure of domestic firms. Moreover, in some cases, the extended time periods granted have expired without any real evidence that countries have made sufficient progress towards full implementation. Consequently, there has been criticism of the arbitrariness of the time frames and calls for them to be determined in a more systematic way, by relating them to individual countries' specific capacities and needs.[73]

2.2.2.1.3. Promoting Fair Competition

Soon after the Uruguay Round ended, GATT Members agreed on three new focuses of attention for the WTO: trade and labour, trade and environment and trade and competition. With regard to the latter, a disagreement emerged between those Member countries favouring immediate negotiation of a competition agreement and those who thought the matter required further consideration. Consequently, the idea of such an agreement has been shelved in successive meetings at Singapore, Seattle and Doha. One of the reasons given for not pursuing the idea is that most, if not all, of the purposes of such a code have been achieved in other ways, due to other pressures.[74]

The WTO is not the free trade organization it is sometimes described if only because it permits tariffs and in limited circumstances other forms of protection. It is more accurate to say it is a system of rules dedicated to open, undistorted competition between the countries, by discouraging some procedures which WTO describe as "unfair" practices, such as export subsidies and dumping products at below cost to gain market share. The issues are complex and the WTO by its rules tries to establish what is fair or unfair, or more accurately to establish what is prohibited and what is not in trade relationships. In addition, the rules try to establish how governments can respond, in particular by charging additional import duties calculated to compensate for damage caused by the sorts of procedures mentioned above. In connection with this approach,

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[73] Hunter, N. "Trade And Competition In The WTO: Pondering The Applicability Of Special And Differential Treatment", *Journal of International Economic Law,* Vol 6, Issue 1, 2003, pp 23-47 at p 45.

[74] Davidow, J. And Shapiro, H., "The Feasibility And Worth Of A World Trade Organization Competition Agreement", *Journal of World Trade,* Vol 37, Issue 1, 2003, pp 49-68 at p 49.

many WTO agreements aim to support fair competition, for example, the agreement on agriculture, intellectual property, and services.[75]

2.2.2.2. The WTO's Principles

The power, rules, and principles of the WTO have evolved gradually over time, although the preamble of the WTO Agreement indicated the existence of some basic principles underlying the multilateral trading system, when the parties declared their "determination to preserve the basic principles and further the objectives underlying this multilateral trading system." No list of such principles is contained in the other agreements.[76] However, a number of simple and fundamental principles run through all of these instruments, which together make up the multilateral trading system. Each of the WTO agreements is generally grounded on two principles of non-discrimination, which are adopted with the aim of creating a level playing field for products and services, irrespective of their national origin in each Member's market. The principles concerned are the most-favoured nation principle (MFN) and the national treatment principle (NT). Other basic principles include the principle of transparency, and the removal of non tariff barriers, which are intended to serve the same functions as the non-discrimination principles.[77] Each will be discussed in turn.

2.2.2.2.1. MFN Principle

The core principle is that Members must not exercise discrimination among nations in their conduct of trade. Signatory states are obliged to accord each other treatment no less favourable than they give to any country in the application and administration of import and export duties and charges and other covered matters. Thus, no Member may award special trading advantages to another, or discriminate against it.[78] For almost fifty years, key provisions of the GATT outlawed discrimination among Members and between imported and domestically produced merchandise. Such a

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[75] *Basic Principles Of The Trading System*, op. cit..

See also: *Principles of the trading system*, op. cit.; Afolayan, Joe, op. cit.; WTO basics, op. cit..

[76] Hilf, M., "Power, Rules And Principles-Which Orientation For WTO/GATT Law", *Journal of International Economic Law,* Vol 4, Issue 1, 2001, pp 111-130 at pp 111-112.

[77] George, C. and Orava, S., op. cit., 2002, p 31.

[78] Desta, M. G., *The Law Of International Trade In Agricultural Products: From GATT 1947 To The WTO Agreement On Agriculture,* Kluwer Law International, Hague, Netherlands, 2002, at p 23.

provision is contained in Articles 1:1of the General Agreement on Tariffs and Trade (GATT).[79] GATT contains a number of other provisions requiring MFN treatment: Article 3.7 (regarding internal quantitative regulations), Article 5 (regarding freedom of transit), Article 9.1 (regarding marking requirements), Article 13 (regarding the non-discriminatory administration of quantitative restrictions) and Article 17 (regarding state trading enterprises). The MFN Principle is also a priority from Article 2.1 in the General Agreement on Trade in Services (GATS)[80] and Article 4 in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs); together those three agreements cover all three main areas of trade handled by the WTO. In the case of goods, MFN treatment applies to customs duties, other border duties and charges, rules and regulations relating to imports and exports, methods of levying customs duties, and international transfers of payments for imports. If, for example, a WTO Member reduces the customs duty on a particular product imported from a specific country, it has to make an identical reduction in the duty on imports of that product from all WTO Members. Similarly in services, whatever treatment is given by a Member to a specific country in relation to measures applicable to services must immediately and unconditionally be extended to all other Members. In relation to intellectual property rights, any advantage, favour, privilege, or immunity granted by a WTO Member to the nationals of one country must similarly be accorded immediately and unconditionally to the nationals of all WTO Members.[81] However, there are a number of exceptions to the MFN obligation, notably that covering customs unions and free trade areas.[82] So when a country is entertaining an agreement to form a free trade zone or customs union, some exceptions may be allowed (similar to the practice in the GCC states), but provided that

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[79] The Article 1.1 states: "With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article 3, any advantage, favour, privilege or immunity granted by any [Member] to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other [Members]."

[80] This Article prohibits discrimination between like services and service suppliers from different countries. Accordingly: "With respect to any measure covered by this agreement, each Member shall accord immediately and unconditionally to services and service suppliers of any other suppliers of any other countries."

[81] Rasheed, K. et al, *The World Trade Organization And The Developing Countries,* The OPEC Fund For International Development, Pamphlet Series 31, 1999 at p 14.

[82] Article 24 of GATT. For additional exceptions from the MFN Principle in GATT see Articles 6; 14; 19, 21.

exceptions will be limited to those countries only and not applied for WTO Members. Another exception is that a country can raise barriers against products from a specific country that are considered to be traded unfairly. And in services, GATS permits listed exemptions covering specific measures for which WTO Members are unable to offer such treatment initially.[83] However, where such exemptions are taken, they are to be reviewed after five years and should not be maintained for more than ten years. In general, MFN treatment ensures that developing countries and others with little economic leverage are able to benefit freely from the best trading conditions wherever and whenever they are negotiated.[84] As Anwarul notes, an exception to the general prohibition on the grant or maintenance of any tariff preference, has also been made for the "historical" preferences which were listed in Article one and Annexes A to F of GATT 1947. The countries with the greatest number of exceptions of this type were the Commonwealth countries and France. Although they were allowed to keep these preferences, in order to preserve the spirit of the MFN principle, the margins of preference were frozen at the levels indicated in the schedules of tariff concessions, or where no such margin was indicated, at the historical level that existed on the dates mentioned in the text of, or annexes to GATT 1947.[85]

Although Article 1 exceptions were important economically when GATT came into being in 1947, their importance has subsequently been eroded by the reduction of MFN tariffs in successive negotiations, with corresponding reductions generally not being made in preferential tariffs. Moreover, as a result of the formation of the European Economic Community (EEC), some of the preferences were swept into such arrangements as the Lome Convention, where the legal basis changed from historical preferences to waivers. Following the UK's entry to the EEC, most of the Commonwealth preferences were withdrawn. Although a few preferences still exist,

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[83] The GATS allows Members to schedule exemptions from the MFN treatment obligation in Article 2.1, and Article 2.2 which provides: "A Members may maintain a measure inconsistent with paragraph 1 provided that such a measure is listed in, and meets the conditions of, the Annex on Article 2 exemptions." However, since 1st January 1995, a Member can only exempt a measure from the application of the MFN obligation under Article 2.1 by obtaining a waiver from the MFN obligation pursuant to Article 9.3 of the WTO Agreement (see paragraph 2 of the Annex on Article 2 exemptions).

[84] Al Foory Abdul Wahed, *Alawlamah And GATT Altahdyat WA Al Foras [Globalisation And GATT Opportunities And Challenges]*, Madbuly Library, Cairo, Egypt, 2000, pp 42-47.

[85] Anwarul, H. *Tariff Negotiations And Renegotiations Under The GATT And WTO: Procedures And Practices,* Cambridge University Press, Cambridge, 2002, at p 18.

they are of little economic importance, and there are even fewer preferential concessions still subject to commitments continue in schedules of WTO Members.[86]

2.2.2.2.2. National Treatment Principle

A second form of non-discrimination, known as "national treatment", requires that once goods have entered a market, they must be treated no less favourably than the equivalent domestically produced goods .The same rules should apply to foreign and domestic services and to foreign and local trademarks, copyrights and patents. It therefore prohibits any discrimination between foreign and national products .The principle of national treatment applies to all goods, whether they are listed in the tariff schedules or not. A country may impose any duties on foreign goods, provided that the same are imposed on similar goods produced locally, even when such goods are not subject to custom duties. This principle of national treatment is also found in all the three main WTO Agreements (Articles 2.2, 3 of GATT, Article 17 of GATS and Article 3 of TRIPs),[87] which extends also to the national treatment clauses of the TBT and SPS Agreements.[88] A difference between national treatment in the case of goods and that in services is that in the former case it is unqualified, whereas in the latter it applies to sectors and sub-sectors that are the subject of specific commitments recorded in the schedule of commitments of each Member. On the other hand, the TRIPs obliges each

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[86] Ibid. For mor information on MFN see generally, Saggi, K., *Eassays On The Most Favored Nation Clause And The World Trading System,* PhD, Southern Methodist University, 2006.

[87] In this context, Article 3 of the GATT entitled 'National Treatment on International Taxation and Regulation', states in relevant part: "2. The Member recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production. 3. The products of the territory of any Member imported into the territory of any other Member shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no Member shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1. 4... 5. The products of the territory of any Member imported into the territory of any other Member shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use." The other parts of Article 3 deal with other measures like paragraphs 5 to 7, which deal with internal quantitative regulations relating to the mixture, processing or use of products in specific amounts; paragraph 8 (a) for government procurement; paragraph 8 (b) for subsidies to domestic producers; paragraph 9 for maximum price control measures; and paragraph 10 for internal quantitative regulations relating to cinematographic films.

[88] Choi, W. M., *'Like Products' In International Trade Law: Towards A Consistent GATT/WTO Jurisprudence,* Oxford University Press, Oxford, 2003, at p 104.

WTO Member to accord the nationals of other WTO Members no less favourable treatment than that it accords to its own nationals with regard to the protection of intellectual property rights, although exceptions to national treatment are provided in the Paris, Bern and Rome Conventions. [89] Other WTO agreements with non-discrimination provisions include those on rules of origin, preshipment inspection, trade related investment measures and the application of sanitary and phytosanitary measures.[90]

However, these rules are not easy to implement in practice because discrimination is not always overt. A government measure may, without explicit reference to foreign goods, nevertheless be applied with protectionist intent. In such situations the application of the national treatment requirement becomes difficult. In consequence, many of the GATT/WTO disputes about discrimination are related to this type of discrimination, sometimes called *de facto* discrimination.[91] It also remains unclear whether national rules discriminating on a superficially origin-neutral basis violate the non-discrimination rule only if they impose a greater overall disadvantage on imports than on comparable domestic goods, or whether it is sufficient that they disfavour some imports.[92]

2.2.2.2.3. Transparency Principle

Transparency is one of the fundamental principles of the WTO system. The GATT, GATS and TRIPs, as well as sundry other WTO agreements, contain provisions concerning the transparency of Members domestic systems. Examples include Article 10 of GATT 1994; GATS Article; TRIPs Article 63; TBT Agreement Article 2 and 10; SPS Agreement Article 7 and Annex B; agreements. These provisions require WTO Members to: *publish all laws, regulations, international agreements, judicial decisions, administrative rulings and other measures of general application affecting imports and exports before they are implemented or enforced, promptly in such a manner as to*

[89] Rasheed, K. et al, op. cit., 1999, p 14.

[90] For more information see in general Matsushita. M. et al., op. cit., 2003, pp 155-180.

[91] Simon, L., "Book Review: National Treatment And WTO Dispute Settlement, By Gaetan, V." *Journal of International Economic Law,* Vol 6, Issue 1, 2003, pp 291-298 at p 291.

[92] Lothar, E. "De Facto Discrimination In World Trade Law National And Most-Favoured Nation Treatment Or Equal Treatment", *Journal of World Trade,* Vol 36, Issue 5, 2002, pp 921-977 at p 922.

enable governments and traders to become acquainted with them, and notify the WTO of any change in such laws, regulations, decisions, ruling and measures.[93] For markets to be genuinely open, there must be transparency in the rules affecting participation. Similarly to all other principles, transparency is a broad concept that could be interpreted in at least three different contexts: in the internal legal regimes of WTO Members, in the procedures conducted by WTO institutions, and in the dispute settlement procedure.[94]

There are many WTO agreements that aim to ensure that conditions of investment and trade are more predictable by making it very difficult for Member governments to change the rules of the trading game. Generally, the key to predictable trading conditions is often the transparency of domestic laws, regulations and practices. Therefore, the WTO agreements contain transparency provisions which require disclosure at national level, for example, through publication in the official journals, or at the multilateral level by notifying the WTO. Indeed, much of the work of WTO bodies is concerned with reviewing such notifications. In addition, the regular surveillance of national trade policies through the Trade Policy Review Mechanism (TPRM) provides a further means of encouraging transparency, both domestically and at the multilateral level.[95]

Although these functions are directly concerned with the WTO's objectives of promoting trade by removing protectionist measures, doubt has been raised as to the justifiability on this basis of developing WTO transparency rules. The value of such

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[93] Julia, Y. "WTO-Plus Obligations And Their Implications For The World Trade Organization Legal System", *Journal of World Trade,* Vol 37, Issue 3, 2003, pp 483-522 at p 484.

For more information about the transparency see also: Ostry, S. Article 10 and the concept of transparency in the GATT/WTO, in Ostry, S. and et al (eds), *China and the long march to global trade: The accession of China to the World Trade Organization,* London and New York, Routledge, 2002, pp 123-135.

[94] Hilf, M. op. cit., 2001, p119.

[95] For more information on TPRM, see the following: Mavriodis, P. C., "Surveillance Schemes: The GATT's New Trade Policy Review Mechanism", *Michigan Journal of International Law,* Vol, 13, Issue 2, 1992, pp374-414; Keesing, D. B., *Improving Trade Policy Reviews In The World Trade Organization,* Institute For International Economics, Washington, DC, 1998; and Laird, S., "The WTO's Trade Policy Review Mechanism: From Through The Looking Glass", *The World Economy,* Vol 22, Issue 6, 1999, pp 741-764.

See also: *Principles of the trading system*, op. cit.; Afolayan, Joe. op. cit.; *WTO basics*, op. cit..

rules depends on whether the advantages brought by a particular measure outweigh its detrimental effects.[96]

2.2.2.2.4. Anti-Non Tariff Barriers Principle

Apart from quotas, non tariff barriers may take the form of standards, labelling requirements or environmental compliance measures. Trade restrictions that Members seek to justify on the grounds of health and hygiene may also be considered as coming into this category, but are treated separately.[97] There is a general principle (albeit with a very few exceptions), that any protection given to domestic industry should take the sole form of customs tariffs and other commercial measures are not permissible. One of the intentions underlying this rule is to provide transparency as to the extent and value of protection. Fees and charges other than tariffs should not exceed the approximate cost of the services. Marks of origin should not be treated in a discriminatory manner, and the protection of the consumer should be the prevailing principle. Provision is made for the imposition of tariffs and non-tariff barriers where unforeseen developments result in a importation of a product into the territory of a contracting party in such increased quantities and under conditions that domestic producers of similar products are caused or threatened with serious harm; however, such measures must be limited to the degree necessary to prevent or remedy the injury, and must be abolished once that aim has been attained. Other situations for which exceptions are provided include national security, public morals, short supply or domestic price stabilization, health, and other valid public policy reasons.[98]

Nevertheless, the question is how the WTO implementing all the above goals and principles, in other words, what are the decision-making procedures in the WTO?

2.3. The Legal And Organizational Framework Of The WTO

To understand how the WTO works it has to know the instruments which help the WTO in her functions, and reach her goals and principles. In addition, it has to know

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[96] Arrowsmith. S., "Transparency In Government Procurement: The Objectives Of Regulation And The Boundaries Of The World Trade Organization", *Journal of World Trade,* Vol 37, Issue 2, 2003, pp 283-303 at p 288.

[97] Pedler, R. "The EU In The WTO", in Rugman, A. And Boyd, G., (Eds), *The World Trade Organization In The New Global Economy: Trade And Investment Issues In The Millennium Round,* Edward Elgar Publishing Limited, Cheltenham, 2001, p 167.

[98] Gregory, G. op. cit., 2001, p 38.

the rules and procedures governing dispute settlement, and how the decision-making in the WTO. Thus, this section contains three sub-sections. The first section describes the WTO's bodies. The second one illustrates how the WTO resolves trade disputes. The third one discusses the decision-making procedures in the WTO.

2.3.1. The Political Bodies

To carry out the functions and tasks entrusted to the WTO, the WTO Agreement provides for a manifold of bodies.[99] According to Article 4.1 of the WTO Agreement,[100] the highest decision making authority of WTO is the Ministerial Conference, composed of representatives of all Members of the WTO at the ministerial level, so it injects high-level political impetus into the WTO system. However, it is not clear whether this very broad power to make decisions in fact enables the conference to take decisions which are legally binding on the organization's Members.[101] The conference meets at least once every two years. Ministerial Declarations, Decisions and Understanding emanate from the Ministerial Conference.[102] The first Ministerial Conference of WTO, since its establishment on 1 January 1995, was held at Singapore in December 1996; the second one was in Switzerland in 1998; the third one was in USA in 1999; the fourth one was in Qatar in 2001; the fifth one was in Mexico from10 to 14 September 2003; and the sixth one was in Hong Kong from 13 to 18 December 2005.

The second level in the hierarchical structure is the General Council, composed of representatives of all Members of the WTO, which meets on a regular basis (normally once every two months), usually at the level of their permanent ambassadors to WTO at Geneva, which oversees the functioning of all the other subsidiary bodies

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[99] To get a broad discussion on the institutional structure of the WTO, see Van den Bossche, P., *The Law And Policy Of The World Trade Organization, Text, Cases And Materials,* Cambridge University Press, Second Edition 2006, pp119-140.

[100] Article 4.1 of the WTO Agreement states: "There shall be a Ministerial Conference composed of representatives of all the Members, which shall meet at least once every two years. The Ministerial Conference shall carry out the functions of the WTO and take actions necessary to this effect. The Ministerial Conference shall have the authority to take decisions on all matters under any of the Multilateral Trade Agreements, if so requested by a Member, in accordance with the specific requirements for decision-making in this Agreement and in the relevant Multilateral Trade Agreement."

[101] See in this respect, Kuijper, P. J., "Some Institutional Issues Presently Before The WTO", in Kennedy, D. and Southwick, J. (eds), *The Political Economy Of International Trade Law,* Cambridge University Press, 2002, p82.

[102] Hainsworth, Susan, *An Insider's Guide To The World Trade Organization (Article),* Sweet & Maxwell Limited, London, 1998, pp1- 8, at p 2.

prescribed in the WTO agreement or constituted by Ministerial Declarations and Decisions. The General Council carries out during the intervals between meetings of the Ministerial Conference its functions. According to Article 4.3 of WTO Agreement[103], the General Council convenes in two particular forms - as the Dispute Settlement Body, to oversee the dispute settlement procedures, and as the Trade Policy Review Body to conduct regular reviews of the trade policies of individual WTO Members.[104] These provisions give General Council responsibility for the day-to-day operations of the WTO. For example, the General Council can approve requests for waivers of obligations under the WTO agreement, and for accession to the WTO. It can also issue interpretations of the WTO agreement. It grants observer status to requesting countries; establishes committees and subsidiary bodies when needed; provides a channel of communication in which Members may raise matters of concern to them; and sets general policy guidelines for the organization. Furthermore, the General Council is the body tasked with making appropriate arrangements with nongovernmental and other intergovernmental organizations having mandates relating to the WTO.[105]

The third level - established at the same level as the General Council - is the Trade Policy Review Body (TPRB).Surveillance of national trade policies is a fundamentally important activity running throughout the WTO. At the centre of this work is the Trade Policy Review Mechanism (TPRM). The objectives of the TPRM are, through regular monitoring, to increase the transparency and understanding of trade policies and practices, to improve the quality of public and intergovernmental debate on the issues and to enable a multilateral assessment of the effects of policies on the world trading system. In this way Member governments are encouraged to follow more closely the WTO rules and disciplines and to fulfill their commitments. Reviews are conducted on a regular, periodic basis. The four biggest traders - the European Union, The United States, Japan and Canada - are examined approximately once every two years, the next 16 countries in terms of their share of world trade are reviewed every four years and the remaining countries every six years, with the possibility of a longer

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[103] Article 4.3 of the WTO Agreement states: "The General Council shall convene as appropriate to discharge the responsibilities of the Dispute Settlement Body provided for in the Dispute Settlement Understanding. The Dispute Settlement Body may have its own chairman and shall establish such rules of procedure as it deems necessary for the fulfilment of those responsibilities."

[104] *WTO Structure,* consulted on 27 February 2003 from, http://www.WTO.org/English/theWTOe/whatise/eo1/e/WTO01/WTO112.htm

[105] Hainsworth, S., op. cit., 1998, p3.

interim period for the LDC. The TPRB conducts to reviews on the basis of two documents: a policy statement prepared by the government under review, and a detailed report prepared independently by the WTO Secretariat. These two reports, together with the proceedings of the TPRB are published after the review meeting. In addition to the TPRM many other WTO agreements contain obligations for Member governments to notify the WTO Secretariat of new or modified trade measures. For example, details of any new antidumping or countervailing legislation, new technical standards affecting trade, changes to regulations affecting trade in services, and laws or regulations concerning the TRIPs agreement, all have to be notified to the appropriate body of the WTO. Special groups are also established to examine new free trade arrangements and the trade policies of acceding countries.[106] The fourth level which is also established at the same level as the General Council and TPRD is the Dispute Settlement Body (DSB). The DSB will be discussed in the context of the Dispute Settlement Understanding in a separate section later on in this chapter. In addition, pursuant to Article 4.5 of the WTO Agreement,[107] to help the Ministerial Conference and the General Council in executing their functions, there are three sector specific councils, namely, the Council for Trade in Goods; the Council for Trade in Services; and the Council for Trade Related Aspects of Intellectual Property Rights. Each of these councils bears the responsibility for their respective WTO agreements (Annex 1A, 1B, and 1C of WTO Agreement).Membership in these councils shall be open to representatives of all Members of the WTO. Besides, there are the committees which are established by the Ministerial Conference, for example the Committee on Trade and Environment; the Committee on Trade and Development; the Committee on Balance of Payments Restrictions; the Committee on Budget, Finance, and Administration; the committee on Regional Trade Agreements;

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[106] *About The WTO Trading Into Future,* consulted on 21 January 2003 from, http://www.WTO.org/english/res e/doload e/tif.pdf

[107] Article 4.5 of the WTO Agreement states: "There shall be a Council for Trade in Goods, a Council for Trade in Services and a Council for Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the "Council for TRIPs"), which shall operate under the general guidance of the General Council. The Council for Trade in Goods shall oversee the functioning of the Multilateral Trade Agreements in Annex 1A. The Council for Trade in Services shall oversee the functioning of the General Agreement on Trade in Services (hereinafter referred to as "GATS"). The Council for TRIPs shall oversee the functioning of the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the "Agreement on TRIPs"). These Councils shall carry out the functions assigned to them by their respective agreements and by the General Council. They shall establish their respective rules of procedure subject to the approval of the General Council. Membership in these Councils shall be open to representatives of all Members. These Councils shall meet as necessary to carry out their functions."

and any such additional committees which may be established by the Ministerial Conference. These committees shall carry out the functions assigned to them by the WTO Agreements, as also any additional functions assigned to them by the General Council. Membership in these committees shall be open to representatives of all Members of the WTO.[108]

Furthermore, each of the higher level councils has subsidiary bodies, which shall report to General Council through its related council. For example, the Goods Council has about 11 committees dealing with certain subjects, such as the Committee on Market Access and the Committee on Agriculture. Again, these subsidiary bodies are open also to all Member countries. There are also the Working Parties on some militated matters, which work until the end of the negotiations. Such groups are established to analyze a specific issue, for example, investment and competition, or the accession of new Members.[109] However, they do not themselves create any new rules or obligations, and negotiations arising out from their discussions can only take place with a consensus decision of the WTO Membership.[110] This section is concluded with a brief consideration of the Secretariat and budget. Despite the WTO's major responsibilities in the global economy, it operates with very limited resources. A comparison of the staffing and budget of several international organizations revealed that the WTO's total staff was 513 and annual budget 94 million US Dollars, less than a tenth of staff and budget of the World Bank and significantly less than those of WIPO or the International Telecommunication Union.[111] The capacity of the WTO is increased by the active participation involvement of the Geneva delegations of the WTO Members, which helps to explain the small size of the Secretariat. The WTO is usually described as a 'Member-driven' organization, meaning that Members, rather than the secretariat, take the major role in performing the functions of the organization.[112] Nevertheless, there is currently a crisis at the WTO regarding the status and functions of the organization's

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[108] Mothna, F. A., *Al Athar Al Mohtamaalah Le Monadamate Al Tegarah Al Alameyah Ala Al Tegarah Al Karegeyah Wa Al Duwal Al Nameyah [The Probable Consequences For WTO Upon The Foreign Trade And The Developing Countries]*, Madbuly Library, Cairo, 2000 at p82.

[109] Bercero, G., *Functioning Of The WTO System: Elements For Possible Institutional Reform,* Sweet & Maxwell Limited, London, 2000, pp103-115 at p 108.

[110] Hainsworth, S., op. cit., 1998, p 4.

[111] Bercero, G., op. cit., 2000, p 111.

[112] Winham, G. & Lanoszka, A., "Institutional Development Of The WTO", in Rugman, A. and Boyd, E. (eds), *The World Trade Organization In The New Global Economy Trade And Investment Issues In The Millennium Round,* Edward Elgar Publishing Limited, Cheltenham, 2003 at p 28.

secretariat and the observance of principles, norms and rules by Member governments. The secretariat is an "understaffed and overworked technical bureaucracy", whose role is largely confined to facilitating, often opportunistically, bargains by governments to reduce trade barriers. There is an apparent unwillingness on the part of governments to confer substantial independent research and advocacy capabilities on the Secretariat.[113] Currently, the Secretariat, located in Geneva, Switzerland, is headed by a director-general, Mr Pascal Lamy who is the fifth director general, which his appointment took effect on 1st September 2005 for a four-year term, and four deputies. Each division of the WTO is under the supervision of these four deputies or the director-general.[114] There are around 635 staff Members, and the budget funded by assessed contributions on Members, calculated on the basis their share in total trade of all WTO Member countries, and is 175 Million Swiss Francs for the year 2006. [115] In particular the Secretariat is responsible for: Administrative and technical support for WTO delegate bodies (councils, committees, working parties, etc.); Technical support for developing countries, and especially the least-developed; Trade performance and policy analyses by WTO statisticians and economists; Assistance from legal staff in resolution of trade disputes involving interpretation of WTO rules and precedents; and Dealing with accession negotiations and providing advice to governments considering Membership.[116] If those constitute the WTO structure, how does the WTO solve the disputes between the Members? This question is answered in the next section.

2.3.2. Dispute Settlement Understanding (DSU)

In the 1991 Uruguay Round, a new integrated structural frame work as described which significantly improved the existing dispute settlement system. The DSU which was revised between January 1992 and December 1993 and enforced later in 1995 not only reflected the rules and practices of GATT, but also introduced some

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[113] Rugman, A., "The World Trade Organization And The International Political Economy", in Rugman, A. and Boyd, E. (eds)., *The World Trade Organization In The New Global Economy Trade And Investment Issues In The Millennium Round,* Edward Elgar Publishing Limited, Cheltenham, 2003, p 1.

[114] For more information see generally: Kowalczyk, C., *The WTO Director General: The Capacity For Influence,* PhD, Fletcher School Of Law And Diplomacy (Tufts University), 2005.

[115] See the WTO website on www.WTO.org

[116] Atkinson, D. et al., *A Three Year Review Of The WTO,* The Elliott School Of International Affairs In George Washington University, consulted on 19 December 2000 from, http://www.internationalecon.com

modifications. Therefore, the rules and principles of the pre-WTO regimes have been incorporated into the WTO understanding and updated.[117] The WTO dispute settlement understanding (DSU) set forth in Annex 2 of the WTO agreement created accompanied the system of rules, rights and obligations among Members, adopted from the (GATT) and other covered agreements (including all those concluded in the Uruguay Round), with an enforcement mechanism based on the consistent application of the rule of law.[118] Specifically it applies to disputes involving provisions of the Multilateral Trade Agreements listed in Appendix 1 of the DSU, including the Multilateral Agreement on Trade in Goods in 1A, the General Agreement on Trade in Services (GATS) in Annex 1B, and the Agreement on Intellectual Property Rights (TRIPs) in Annex 1C of the WTO Agreement; also to disputes between WTO Members concerning their rights and obligations under the DSU. Article 23 of the DSU clearly outlines these rights and obligations.[119] It prohibits WTO Members from making a determination to the effect that a violation has occurred, that benefits have been nullified or impaired or that the attainment of any objective of the covered agreements has been impeded, other than through recourse to dispute settlement in accordance with the rules and procedures set forth in the DSU.[120]

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[117] Hijazi, M., *WTO Reform Of Disputes Settlement Procedures Under The World Trade Organization,* LLM Dissertation, The University of Hull, 1995 at p 23.

[118] Cameron, J. & Campbell, K., *Dispute Resolution In The World Trade Organization,* Cameron May Ltd, London, 1998, p 17.

[119] Article 23 of the DSU states: "1. When Members seek the redress of a violation of obligations or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered agreements, they shall have recourse to, and abide by, the rules and procedures of this Understanding."

2. In such cases, Members shall:

(a) not make a determination to the effect that a violation has occurred, that benefits have been nullified or impaired or that the attainment of any objective of the covered agreements has been impeded, except through recourse to dispute settlement in accordance with the rules and procedures of this Understanding, and shall make any such determination consistent with the findings contained in the panel or Appellate Body report adopted by the DSB or an arbitration award rendered under this Understanding;

(b) follow the procedures set forth in Article 21 to determine the reasonable period of time for the Member concerned to implement the recommendations and rulings; and

(c) follow the procedures set forth in Article 22 to determine the level of suspension of concessions or other obligations and obtain DSB authorization in accordance with those procedures before suspending concessions or other obligations under the covered agreements in response to the failure of the Member concerned to implement the recommendations and rulings within that reasonable period of time."

[120] Cuppett, B. *Case Study On World Trade Organization Dispute Settlement: European Communities - Measures Affecting Meat And Meat Products (Hormones), Complaint By The United States,* M A Thesis, Virginia Polytechnic Institute and State University, 2000, consulted on 13 October 2003 from, http://scholar.lib.vt.edu/theses/available/etd-02052001-155532/

The DSU can be seen as a response to the deficiencies of procedures for settling disagreements among Members. Under the GATT system, procedures for settling disputes were undermined and prolonged, because it was possible for a single nation effectively to block or delay every stage of the dispute resolution process. The DSU was created to address problems arising out of attempts to eliminate non-tariff barriers to trade. Such barriers could include any government policy or regulation that results in greater difficulty or cost for foreign competitors to do business in a country. In some cases, countries had been suspected of deliberately introducing, on a regulatory pretext, measures which in practice protected domestic industries from open international competition, thereby undermining the international free-trade regime. Thus, it was decided that under the WTO, a mechanism would be created with the authority to tackle this " fine line between national prerogatives and unacceptable trade restrictions."[121] The key feature that distinguishes the dispute settlement system of the World Trade Organization from those of other international organizations is that the WTO can authorize a complaining government to impose trade restrictions on a country that violates trade rules and does not rectify the situation. There have been three instances of complaining governments making use of that authority to impose 100 percent tariffs. This process can be seen in too ways; as a restoration of trade balance on the part of the complaining government, and as the use of trade sanction by the WTO to induce compliance.[122]

The new system is stronger, more automatic and more credible than its GATT predecessor. Its effectiveness can be evidenced by the number and range of countries using it, and by the tendency for disputes to be settled out of court before a final judgement. The system is serving the intended purpose of promoting conciliation and resolution of disputes, rather than focusing solely on judgement. Also, by reducing the scope for unilateral actions, it helps to ensure fairness for less powerful countries. Esserman commends the dispute settlement at the WTO for asserting the rule of law, rather than allowing issues to be decided by simple power politics. Each Member country has equal rights within the system, and each is also equally obliged to accept

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[121] See generally Carol, C. & Stephen, J. *A WTO Guide For Global Business,* Cameron May Ltd, London, 2002, pp 34-35. See also Zdous, W., WTO Dispute Settlement Practices Relating To The GATS, *Journal of International Economic Law,* Vol 2, Issue 2, 1999, pp 295-346.

[122] Charnovitz, S. et al., "The WTO's Problematic "Last Resort" Against Non-Compliance", *Aussenwirtschaft,* Vol 57, Issue 4, 2002, pp 409-439 at p 409.

the results. Although developing countries have not yet taken full advantage of the system, use of the dispute settlement mechanism is crucial to full participation in the WTO. Binding adjudication, moreover, has increased the certainty that trade agreements, once negotiated, will be adhered to.[123]

The DSU under the new procedure is having a profound impact on the world trade system. In particular, diplomats find themselves in new territory. Rather than operating in what is thoroughly a "negotiating atmosphere" diplomats find themselves acting as a lawyers, or relying on lawyers, much more heavily than before, and much more heavily than some of them would like. The dispute settlement procedure itself becomes part of the negotiating tactics for various dispute settlement attempts. One hears or sees in the media reference to "nation A" arguing against "nation B" measures, and "threatening to bring a case in the WTO" if it does not get the matter resolved.[124] However, the question now is how long it takes to settle any dispute under the DSU and what is the procedure should the dispute parties fail? There is an approximate period laid down for each stage of a dispute settlement procedure, which means of course that there is a set procedure that should be followed to solve any dispute. However, the agreement is flexible; in addition, the countries can settle their dispute themselves at any stage.[125]

Firstly, it should be made clear that the dispute settlement procedures do not prevent the parties in a dispute from resorting to arbitration. What it does, however, is to change the informal procedure that formerly existed into a more formal framework in which arbitration is explicitly considered as an alternative method. Accordingly, Article 25 of the DSU[126] provides for speedy arbitration as an alternative means of dispute

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[123] Esserman, L. et al., "The WTO On Trail", *Foreign Affairs,* Vol 82, Issue 1, pp 130-135 at p 131.

[124] Jackson, J., "Dispute Settlement And The WTO- Emerging Problems", *Journal of International Economic Law,* 1998, Vol 1, Issue 3, pp 329-351 at pp 342-343.

[125] For the approximate periods for dispute settlement procedure see table 2.1.

[126] Article 25 of the DSU states: "1. Expeditious arbitration within the WTO as an alternative means of dispute settlement can facilitate the solution of certain disputes that concern issues that are clearly defined by both parties.
2. Except as otherwise provided in this Understanding, resort to arbitration shall be subject to mutual agreement of the parties which shall agree on the procedures to be followed. Agreements to resort to arbitration shall be notified to all Members sufficiently in advance of the actual commencement of the arbitration process.
3. Other Members may become party to an arbitration proceeding only upon the agreement of the parties which have agreed to have recourse to arbitration. The parties to the proceeding shall agree to abide by the arbitration award. Arbitration awards shall be notified to the DSB and the Council or Committee of any relevant agreement where any Member may raise any point relating thereto.
4. Articles 21 and 22 of this Understanding shall apply *mutatis mutandis* to arbitration awards."

settlement where the issues in dispute are clearly defined by both parties. The disputants must agree on arbitration and all Members must be informed to that effect before the arbitration begins. An agreement to have recourse to arbitration also constitutes an understanding to abide by the arbitration award. This is intended to discourage selective compliance. Furthermore, awards are, inter alia, notified to the DSB which has the responsibility to monitor compliance and may when appropriate, authorize the taking of enforcement measure in the same way as if the full dispute settlement procedure had been followed. So far, just one arbitration has been conducted under Article 25; it occurred in the UD-Copyright dispute and concerned the level of nullification or impairment resulting from the findings of violation by the panel in that case.[127] A criticism of the WTO's arbitral system has been raised by Esserman, who is concerned about the lack of transparency and due process. The ruling of WTO judges have wide repercussions for the public interest, particularly in cases related to health and the environment, yet the WTO's hearings and submissions take place in secret and are not reported. Such a lack of transparency undermines the legitimacy of the WTO and may give rise to groundless suspicions. Moreover, it is unnecessary; and there is no good reason why WTO hearings should not be open to the public.[128]

If arbitration is not used, the procedures under the DSU begin. The WTO General Council convenes as the Dispute Settlement Body (DSB) to deal with disputes arising from any agreement contained in the final act of the Uruguay Round. Thus the DSB has the sole authority to establish panels, adopt panel and appellate reports, maintain surveillance of implementation of rulings and recommendations, and authorize retaliatory measures in cases of no implementation of recommendations.[129] There is awareness that prompt settlement of disputes is essential to the effective functioning of the WTO. Thus, the DSU sets out in considerable detail the procedures and the timetable to be followed in resolving disputes. The aim of the WTO dispute settlement mechanism is "to secure a positive solution to a dispute"; thus, finding a mutually - acceptable solution to a problem between Members consistent with WTO provisions is encouraged. This may be possible through bilateral consultations between the

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[127] Kara, L. & Simon, L., "WTO Dispute Settlement 1995-2002: A Statistical Analysis", *Journal of International Economic Law,* Vol 3, Issue 2, pp 251-261 at p 257.

[128] Esserman, L. et al., op. cit., 2003, p 134.

[129] Wareham, P., *The New WTO Dispute Resolution Procedure,* Sweet & Maxwell Limited and Contributors, 1995, pp 114-121.

governments concerned. Thus, the first stage of settling disputes requires such consultations. Should they fail, and if both parties agree, the case at this stage can be brought to the WTO Director General, who, acting in an ex officio capacity, will offer good offices, conciliation or mediation to settle the dispute.[130]

If consultations fail to arrive at a solution after 60 days, the complainant can ask the DSB to establish a panel to examine the case. The establishment of a panel is almost automatic. Procedures require the DSB to establish a panel no later than the second time it considers the panel request, unless there is a consensus against the decision. The determination of the panel's terms of reference, as well as its composition, is also straightforward. The DSU procedures provides for standard terms of reference that mandate the panel to examine the complaint in the light of the agreement cited, and to make findings that will assist the DSB in making recommendations or giving rulings provided for in that agreement. The panel may operate under different terms of reference if the parties concerned so agree. The panel must be constituted within 45 days of its establishment. The WTO Secretariat will suggest the names of three potential panellists to the parties to the dispute, drawing as necessary on list of qualified persons. If there is real difficulty in the choice, the Director General can appoint the panellists, who serve in their individual capacities and are not subject to government instructions. The panel's final report should normally be given to the parties to the dispute within 6 months unless there are emergency circumstances, such as a complaint involving perishable good. In these cases, the time requirement is shortened to 3 months.[131]

During the 6 month period (or three months in emergency situations) the panel is to adhere to the procedural stages outline in the DSU. Each party to the dispute transmits to the panel its submission on the facts and arguments in the case, in advance of the first hearing. At the first hearing, the complainant presents its case and the responding party its defence orally to the panel. Third parties who notified their interest in the dispute may also present views. The next stage is the rebuttals. Formal written rebuttals and oral arguments are made by each party at the panel's second hearing. In cases where a party raises scientific or other technical matters, the panel may appoint an expert review group to provide an advisory report. Once the panel has consulted with the advisory experts, it submits descriptive (factual and arguments) sections of its report

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[130] *About The WTO Trading Into Future,* op. cit..

[131] Cuppett, B. op. cit..

to the parties, giving them two weeks to comment. The panel then submits an interim report, including its findings and conclusions, to the parties, giving them one week to request a review. The period of review is not to exceed two weeks, during which the panel may hold additional meetings with the parties. A panel final report is then submitted to the parties and three weeks later, it is circulated to all WTO Members. If the panel finds that the measure in question is inconsistent with the terms of the relevant WTO agreement, it recommends that the Member concerned bring the measure into conformity with that agreement. It may also suggest ways in which the Member could implement the recommendation. Panel reports are adopted by the DSB within 60 days of issuance, unless one party notifies its decision to appeal or a consensus emerges against the adoption of the report.[132]

The WTO dispute settlement mechanism gives the possibility of appeal to either party in a panel proceeding. However, any such appeal must be limited to issues of law covered in the panel report and the legal interpretation developed by the panel. Appeals are heard by a standing Appellate Body established by the DSB. This Appeal Body is composed of seven persons, broadly representative of WTO Membership, who will serve four-year terms. They are required to be persons of recognized standing in the field of law and international trade, and not affiliated with any government. The appeal panel is comprised of three Members of the seven composing the Appellate Body. The Appellate Body can uphold, modify or reverse the legal findings and conclusions of the panel, but it is not allowed to re-examine existing evidence or examine new evidence. As a general rule, the appeal proceedings are not to exceed 60 days but in no case shall they exceed 90 days. Thirty days after it is issued, the DSB adopts the decision of the Appellate Body which is unconditionally accepted by the parties to the dispute, unless there is a consensus by the DSB against its adoption.[133]

At this point in the process, the parties have received the rulings and the dispute should be brought to its planned conclusion. At a DSB meeting held within 30 days of the adoption of the panel or appellate report, the party concerned must state its intentions in respect of the implementation of the recommendations. If it is impractical to comply immediately, the Member will be given a "reasonable period of time", to be

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[132] Ibid.

[133] *About The WTO Trading Into Future,* op. cit..

set by the DSB, to do so.[134] If it fails to act within this period, it is obliged to enter into negotiations with the complainant in order to determine a mutually acceptable compensation, for instance, tariff reductions in areas of particular interest to the complainant. If after 20 days, no satisfactory compensation is agreed, the complainant may request authorization from the DSB to suspend concessions or obligations against the other party. The DSB should grant this authorization within 30 days of the expiry of the "reasonable period of time" unless there is a consensus against the request.[135] In principle, concessions should be suspended in the same sector as that in issue in the panel case. If this is not practicable or effective, the suspension can be made in a different sector of the same agreement. In turn, if this is not effective or practicable and if the circumstances are serious enough, the suspension of concessions may be made under another agreement. In any case, the DSB will keep under surveillance the implementation of adopted recommendations or rulings, and any outstanding case will remain on its agenda until the issue is resolved.[136]

The WTO Dispute Settlement procedures have now been in use for a sufficient time to enable the impact of this development to be analysed. In the view of the WTO, the fact that the DSB is handling an increasing number of cases does not mean that respect for international law is breaking down, but rather, that states have greater faith in the legal system and are turning to the DSB instead of taking matters into their own hands. Since it is inevitable that, from time to time, trade disputes will occur, it is surely preferable that they should be dealt with under internationally agreed rules. The increasing number of disputes brought to the DSU may also simply reflect the expansion of global trade and the stricter rules applicable since the Uruguay Round.[137]

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[134] The WTO Arbitrator has decided that Chile should be given 14 months to implement the dispute ruling in the dispute over Chile's Price Band System and Safeguard Measures relating to certain agricultural products (dispute number 207). The period began on 23 October 2002 when the DSB adopted the Panel and Appellate Body Report and expires on 23 December 2003. For more information see the WTO Website on http://www.WTO.org

[135] The WTO on 17 February 2003 released the decision by the arbitrate (WT/DS222/ARB) in the case *Canada export credits and loan guarantees for regional aircraft.* The arbitrator determined that the appropriate amount of countermeasures that Brazil could apply pursuant to Article 4.10 of the Subsidies Agreement was $248 Million, nothing ongoing consultation, the arbitrator gave the opinion that a mutually Satisfactory Agreement between the two parties addressing the issues dealt with in this case in their broader context would be the most appropriate solution in the dispute. For more information see the WTO Website on http://www.WTO.org

[136] *About The WTO Trading Into The Future,* op. cit..

[137] *Dispute Chronologically,* consulted on 18 March 2003 from, http://www.WTO.org/english/tratope/dispue/dispu status e.htm

A considerable range of disputes have been addressed by the WTO dispute settlement procedures.[138] Complaints have been brought against countries of very differing economic size, such as Guatemala and the European Union, and countries at very different stages of economic development, from India at one end extreme to the United States and Japan at the other.[139] More cases have been brought in the first eight years of the WTO then in the entire history of the GATT: 276 and 200 respectively. The growing trend of recourse to the dispute settlement procedures under the WTO can be seen as evidence of states satisfaction with the reforms and confidence in the effectiveness of the procedure.[140] On the other hand there have been several criticisms of the DSU. For example, according to Kara and Simon, the dispute settlement mechanism is still dominated by the rich, industrialized countries. While developing countries have made some use of the DSB, their participation is much less than that of developed countries. However, there is a recent trend for more prosperous developing countries such as Brazil to play a larger role.[141] Moreover, according to John, that although, the majority view of the WTO dispute settlement process is that it is working well, with WTO panels and the Appellate Body interpreting the WTO agreements in a strict, but even-handed, way, there are those who perceive the WTO dispute settlement system as an exercise in policy-making, rather than in even-handed interpretation of the carefully negotiated language of WTO agreements (especially in cases challenging anti-dumping, countervailing, and safeguard measures).[142] Another criticism, raised by Professor Davey, concerns the loss of panel expertise. There are fears that the relatively small standing panel body contemplated would not be able to provide all the expertise relevant to the various covered agreements. Against this criticism, however, it may be argued that panelists do not need to have specific expertise, since the panel's task is not to reassess economic, social, or technical merits of the measures in dispute. In most countries with having courts of general jurisdiction, generalist judges are capable of dealing with a wide range of legal issues, notwithstanding a lack of specific expertise.[143]

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[138] For more information about the variety of the cases see Ibid.

[139] For more information about the complaints of the countries see Ibid.

[140] Atkinson, D. et al., op. cit..

[141] Kara, L. & Simon, L., op. cit., 2003, pp 259-260.

[142] John, G., "WTO Dispute Settlement: An Exercise In Trade Law Legislation", *Journal of International Economic Law,* 2003, Vol 5, Issue 3, 2003, pp 113-124 at p 113.

[143] Bourgeois, J., "Comment On A WTO Permanent Panel Body", *Journal of International Economic Law,* Vol 6, Issue 1, 2003, pp 211-235 at p 213.

Moreover, if panels need technical advice, they may consult experts, or request an advisory report from an expert review group (DSU Article 13.2).[144] A more relevant criticism may be that raised by Bhagirath concerning the prohibitive cost of the DSU process for the developing countries. This, he ascribes to the increasingly technical work of the panels, such that a high level of legal training and experience is needed to prepare a case and present it before the panel and respond to the queries of the panel. "Generally the officials of the developing countries handling the subject of foreign trade in their countries or their diplomats do not have enough background, training and experience to handle all this on their own. Even the legal experts of developing countries do not have enough knowledge and experience of handling cases at the international level".[145]

It seems that not everything in the DSU is perfect; otherwise there would be no need for further negotiations to review it. It may be recalled that the WTO Ministerial Decision (1994) on the application and review of the DSU, had mandated the Ministerial Conference to: "Complete a full review of dispute settlement rules and procedures under the WTO, within four years after the entry into force of the agreement establishing the WTO, and to take a decision on the occasion of its first meeting after the completion of the review, whether to continue, modify or terminate such dispute settlement rules and procedures". Accordingly, the review process of the WTO's DSU commenced in 1998. The exercise involved WTO Members discussing a wide gamut of issues. Recently, Japan on behalf of co-sponsors Canada, Colombia, Costa Rica, Ecuador, Korea, New Zealand, Norway, Peru, Switzerland and Venezuela, has presented a proposal to amend the DSU with a view to its improvement. Other proposals to review and amend the DSU have been submitted by Thailand and Philippines. Nevertheless, there is no clear progress leading to the completion of the WTO's review process on DSU.[146] However, through the Ministerial Declaration adopted at Doha, and then at Cancun, WTO Members have agreed to negotiations on

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[144] Article 13.2 of the DSU states: "2. Panels may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter. With respect to a factual issue concerning a scientific or other technical matter raised by a party to a dispute, a panel may request an advisory report in writing from an expert review group. Rules for the establishment of such a group and its procedures are set forth in Appendix 4."

[145] Bhagirath, L., *The WTO Agreements: Deficiencies, Imbalances And Required Changes*, Zed Book Ltd, London, 1998 at p 17.

[146] *WTO As A Framework Agreement And Code Of Conduct For World Trade,* Asian-African Legal Consultative Organization, Document Number AALCO/XLI/ABUJA/2002/S.14.

improvements and clarifications of the DSU, with the aim of completing them not later than end of 2004. The negotiations based on the work done thus far, as well as additional proposals submitted by Members. It is therefore was expected that the ongoing review process merge with the proposed negotiations on the DSU, culminating in a comprehensive examination and fresh proposals towards re-orienting the system to match the requirements of the WTO Members.[147] In this context, various Members and groups of Members have put a number of contributions forward. Specifically, contributions relating to remand, sequencing, post-retaliation, third-party rights, flexibility and Member control, panel composition, timesaving and transparency have been put forward and discussed in this period. The discussion at the Special Session,which has been based primarily on initiatives by Members to work among themselves in an effort to develop areas of convergence to present to the Special Session as a whole, allowed a very constructive exchange of views and led to a clarification of many aspects of the proposed text.[148] However, in the future work of the Special Session, the onus will remain on participants in the negotiations to continue to develop areas of convergence to lay the basis for a final agreement to improve and clarify the DSU. In fact, the negotiations on DSU review are effectively on hold, because of the pressing areas of the ongoing talks such as Agriculture, Non-Agriculture Market Access and services. At the Hong Kong Ministerial Declaration, the ministers took note of the progress made in the DSU negotiations as reflected in the report by the Chairman of the Special Session of the DSB to the Trade Negotiations Committee and direct the Special Session to continue to work towards a rapid conclusion of the negotiations.[149]

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[147] For more information in this respect see WTO Website on http://www.WTO.org.

[148] Report by the Chairman to the Trade Negotiations Committee, numbers TN/DS/10 and TN/DS/11, available from the WTO Website on http://www.WTO.org

[149] For more information on the Dispute Settlement Understanding see generally: Oesch, M., "Standards Of Review In WTO Dispute Resolution", *Journal of International Economic Law,* Vol, 6, 2003, p635; Cutler, W. & Pickering., "Reflections On The Appellate Body Of The WTO", *Journal of International Economic Law,* Vol, 6, 2003, P695; Mcrae, D., Clause "Dueter Ehlermann's Presentation On The Role And Record Of Dispute Settlement Panels And The Appellate Body Of The WTO", *Journal of International Economic Law,* Vol, 6, 2003, P709; Ridley Monroe, B., "WTO Dispute Settlement Procedure Bibliography", *Journal of International Economic Law,* Vol, 6, 2003, P745; Greenwald, J., "WTO Dispute Settlement: An Exercise In Trade Law Legislation?", *Journal of International Economic Law,* Vol, 6, 2003, P113; Tiago, J. B., "List Of WTO Dispute Settlement Cases On Trade Remedies' USA As Respondent", *Journal of International Economic Law,* Vol, 6, 2003, P171; Davies, P., "Criminal Evidence And Procedure, Review: International Trade Law And The GATT/WTO Dispute Settlement System", *International Journal of Evidence And Proof,* Vol, 5, 2001, P211; Fukunaga, Y., "Securing Compliance Through The WTO Dispute Settlement System: Implementation Of DSB Recommendations", *Journal of International Economic Law,* Vol, 9, Issue 2, P383; Spamann, H., "The Myth Of 'Rebalancing' Retaliation In

2.3.3. Decision-Making Procedures In The WTO

The WTO's decision-making mechanism includes a complex array of procedures to guarantee consistency in the implementation of WTO rules. In general, the WTO, like its predecessor the GATT, operates on a basis of consensus in making the decisions of the Ministerial Conference and General Council. However, the term consensus was not defined in the GATT, nor was the word itself used. Jackson notes that "The practice of consensus voting developed partly because of the uneasiness of governments about the loose wording of GATT decision-making powers, particularly that in GATT Article 25."[150] The WTO Agreement, however, contains a definition of consensus as the situation when no state formally objects to the proposed decision (Article 9.1). A distinction should be made between consensus and unanimity, as the former does not need to take into account the views of those absent, which Hu argues promotes efficiency.[151] Nevertheless, the attainment of consensus can be a difficult process, in part because it may require issue linkages and logrolling. A disadvantage of consensus is that it reinforces conservative tendencies in the system, because change can be implemented only if proposals are unopposed, so stagnation can easily occur. On the other hand, decisions that are taken collectively may be perceived as more legitimate.[152] Any consensus-based institution such as the WTO (and prior to that, GATT), must develop a variety of decision-making processes of varying degrees of formality. Theoretically, any one Member can block a decision by registering opposition. However, even in the context of GATT, where the developing countries had a majority of the votes but had a markedly weaker role, the futility of trying to exercise voting strength to block major progress or to force developed countries to implement obligations they had not freely accepted became apparent. In practice, voting rarely takes place. This increases the importance of formal and informal consensus building consultations.[153]

WTO Dispute Settlement Practice, *Journal of International Economic Law",* Vol 9, Issue 1, 2006 at p 31.

[150] Jackson, J. op. cit., 1998, p46.

[151] Hu, J., "The Role Of International Law In The Development Of WTO Law", *Journal of International Economic Law,* Vol 7, Issue 1, 2004, pp 143-167 at p 162.

[152] Hoekman, B. M. & Kostecki, M. M., *The Political Economy Of The World Trading System: The WTO And Beyond,* Oxford University Press, Oxford, 2001, p 57.

[153] Evans, J. W., "The General Agreement In Tariffs And Trade", *International Organization,* Vol 22, Issue 1, 1968, pp 72-98 at p 81.

The WTO Agreement provides for decision-making by consensus, a practice in which the WTO follows the GATT tradition. The consensus is the basic method of decision-making in the WTO, which shapes the manner of functioning of the organization. The procedure enables Members to have their interests properly taken into account, although, on occasion, they may decide to reach an agreement in the overall interests of the multilateral trading system. Where consensus cannot be achieved, the WTO agreement allows for voting. When that happens, decisions are taken by majority of the votes cast and on the basis of *"one country, one vote"* (Article 9 of the WTO Agreement).[154] Four specific voting situations are provided for in the WTO Agreement: adoption of an interpretation of multilateral trade agreements (paragraph 2 of Article 9);[155] waiver of obligations under such an agreements (paragraph 3 and 4 of Article 9);[156] amendment to treaty provisions (Article 10),[157] and applications for admission of

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[154] This could be advantageous to many small countries, particularly developing ones, as in combination they could gain the power to achieve goals, which they could not achieve individually. However, is questionable whether the result will really benefit the developing countries. The Cancun Ministerial Conference has shown that developing countries are starting to assert themselves collectively in the WTO, to press their interests with the developed countries.

[155] This Article states: "The Ministerial Conference and the General Council shall have the exclusive authority to adopt interpretations of this agreement and the Multilateral Trade Agreements. In the case of an interpretation of Multilateral Trade agreement in Annex 1, they shall exercise their authority on the basis of recommendation by the Council overseeing the functioning of that agreement. The decision to adopt an interpretation shall be taken by a three-fourths majority of the Members. This paragraph shall not be used in a manner that would undermine the amendment provisions in Article 10."

[156] Article 9.3 states: "The ministerial Conference may decide to waive an obligation imposed on Member by this agreement or any of the multilateral trade agreements, provided that any such decision shall be taken by three-fourths of the Members unless otherwise provided for in this paragraph. A. A request for a waiver concerning this agreement shall be submitted to the Ministerial Conference for consideration pursuant to the practice of decision-making by consensus. The Ministerial Conference shall establish a time-period, which shall not exceed 90 days, to consider the request. If consensus is not reached during the time-period, any decision to grant a waiver shall be taken by three-fourths of the Members. B. A request for waiver concerning the multilateral Trade agreements in a Annexes 1A or 1B or 1C and their annexes shall be submitted initially to the Council for Trade in Goods, the Council for Trade in Services or the Council for TRIPs, respectively, for consideration during a time-period, which shall not exceed 90 days. At the end of the time-period, the relevant council shall submit a report to the Ministerial Conference." On the other hand, according to Article 9.4 the waivers are subject to annual review, after which they may be extended, modified or terminated.

[157] Article 10.1 states: "Member of the WTO may initiate a proposal to amend the provisions of this agreement or the Multilateral Trade Agreements in Annex 1 by submitting such proposal to the Ministerial Conference. The council listed in paragraph 5 of Article 4 may also submit to the Ministerial Conference proposals to amend the provisions of the corresponding Multilateral Trade Agreements in Annex 1 the functioning of which they oversee. Unless the Ministerial Conference decides on a longer period, for a period of 90 days after the proposal has been tabled formally at the Ministerial Conference any decision by the Ministerial Conference to submit the proposal amendment to the Member for acceptance shall be taken by consensus...If consensus is reached, the Ministerial Conference shall forthwith submit the proposed amendment to the Members to acceptance. If consensus is not reached at a meeting of the Ministerial Conference within the

new Members (Article 12). The first two situations require a three-quarters majority; the third, either approval by all Members or a two-thirds majority, depending on the nature of the provision concerned, such amendments to be effective only for those WTO Members who accept them; and the fourth requires a two-thirds majority decision in the Ministerial Conference.[158]

These days, voting has come to be viewed as a failure in the decision-making process and consensus is the preferred mode of decision-making in most international bodies. In practical terms, consensus means that no decision is formally objected to by any Member present at the meeting. However, while sovereign equality decision-making rules are used widely in international organizations, the question is, how do countries behave in practice under them, and with what consequences? Consensus decision-making at the WTO and related procedural rules, which are based on the sovereign equality of countries, also raises many questions about the relationship between state power and international law. Writers like Steinberg questioned why powerful entities, such as the EC and the United States, would support a consensus decision-making rule in an international organization.[159] In other words, does the WTO decision-making mechanism achieve equality for the weaker countries, or does it allow the powerful countries to obtain decisions, and to execute important policies at the expense of the weaker countries?

The WTO strongly asserts that decisions in it are made democratically and by consensus. The WTO is run by its Member governments, and all important decisions are made by the ministers or officials. Most decisions are made by consensus, which may be difficult with an expanding Membership, but tends to increase the acceptability of decisions to Members. In contrast to some other international organizations such as the World Bank and International Monetary Fund, in the WTO, power is not delegated to a

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established period, the Ministerial Conference shall decide by a two-thirds majority of the Members whether to submit the proposal amendment to the Members for acceptance..."

[158] Matsushita, M. et al., *The World Trade Organization: Law, Practice, And Policy,* Oxford University Press, Oxford, 2003, pp 12-14.

To know more on the WTO decision-making see generally: *The Structure of the WTO*, consulted on 13 Mar 2003 from, http://www.econ.iastate.edu/classes/econ355/choi/WTOworks.htm; Krajewski, M., *From "green room" to "class room" participation of developing countries and internal transparency in the WTO decision-making process,* A Trade Watch Paper, Bonn, 2000, pp16-18; Schott, J. & Watal, J., *Decision-making in the WTO,* Institute of International Economics, policy brief No. 00-2, £0 march 2000, consulted on 8 March 2004 from, http://www.iie.com

[159] Steinberg, H., "In The Shadaw Of Law Or Power? Consensus-Based Bargaining And Outcomes In The GATT/WTO", *International Organization,* Vol 56, Issue 2, 2000, pp 339-374 at p 340.

board of directors, and the bureaucracy does not intervene in individual countries' policies, although some analysis may be offered in the regular trade policy reviews. Any obligations imposed on Member countries' policies by the WTO rules are the result of negotiations among WTO Members. Enforcement of the rules is by the Members themselves, under procedures that they negotiated and agreed. Although enforcement may include the threat of trade sanctions, such sanctions are imposed by state Members, not by the WTO itself.[160]

On the other hand, the current question is whether the WTO is as democratic as it would like to believe. The evidence from the very process of its establishment to its current rules of operation shows that the WTO is functionally not entirely democratic. Internally, Members do not enjoy equal opportunity to represent, negotiate and defend their trade and development interests, since decision-making within is dominated by the "quad", the United States, the European Union, Canada and Japan.[161] It is also alleged that, although theoretically consensus appears to be a democratic and transparent form of decision-making, in practice it allows scope for influence to be exerted by non-transparent and informal procedures (threats and inducement). While the decision-making mechanism is highly flexible, the main beneficiates are the more economically powerful countries which are better placed to turn the negotiations to their advantage. It can also be suggested that consensus in the WTO is a passive form of decision-making; it simply means the absence of explicit disagreement. Moreover, the fact that not all Members are required to be present excludes from an active decision-making role some twenty non-resident developing countries, and there is no scope for a Member to enter negotiations at a later stage. This, in effect, means that consensus in the WTO is distorted by the imbalance in power relations between developed and developing countries.[162] Deardorff and Stern point to a long- standing concern that a few rich countries dominate the WTO, while developing countries are relatively lacking in influence, despite or even because of the formal reliance on consensus. The large number of Members makes achieving consensus difficult and, in practice, it has often been the case that a smaller group has sought agreement among themselves, and then come to the larger group for approval. This smaller group, named the "green room

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[160] *About The WTO Trading Into Future*, op. cit..

[161] *The World Trade Organization (WTO)*, consulted on 12 October 2002 from, http://www.ccjp.org.zm/WTO.htm

[162] Kwa, A., *WTO And Developing Countries*, consulted on 27 July 2003 from, http://www.focusweb.org

group" after their usual meeting-place at WTO headquarters in Geneva, has been assembled on an ad hoc basis by the Director General with Members drawn from both developed and developing countries, according to their interest in the issues under consideration. However, many DCs, especially smaller ones, have been excluded and not formally represented, not deliberately, but by default. Deardorff and Stern argue that this situation must be changed.[163] On the other hand, Georgiev points out the benefit of discussions in restricted small group meetings, given the difficulty of negotiating with over 140 participants in the same room. Indeed, he notes that in all-Members meetings, there has been unwillingness to compromise an entrenchment of positions and a tendency to maintain the status quo. Therefore, some have argued that decision-making effectiveness would be improved by institutionalising the small-group discussions in a specially created body, as happens in other international organizations. The participation in such a body could be based on share of world trade, or on criteria for regional or other representation.[164] An opposing view, however, is put forward by Bhagirath, who claims that small-group discussions are dominated by the developed countries, which use them to exert strong pressures on DCs that oppose proposals they favour. Proposals and texts are introduced at short notice in important meetings, and those present put under pressure to accept them, without the opportunity for examination and discussion by the full Membership. Another criticism of the small group negotiations in the Ministerial Conferences is that the ministers cannot be accompanied by the full complement of their advisors, which seriously disadvantages them in decision-making.[165] As Krajewski points out, a number of DCs have challenged the legitimacy of decisions made in this way, by informal negotiations among delegates from a small group of countries, without wider consultation. He asserts that legitimate results can only be derived if informal negotiations are governed by clear and transparent rules about how and when they are to be used.[166]

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[163] Deardorff, A. V. And Stern, R., "What You Should Know About Globalization And The World Trade Organization", *Review Of International Economics,* Vol 10, Issue 3, 2002, pp 404-423 at p 417.

[164] Georgiev, D. "The Decision-Making Process", in Van Der Borght, K. (ed), *The World Trade Organization, Essays On The Future Of The WTO: Finding A New Balance*, Cameron May, London, 2003, p 40.

[165] Bhagirath, L. D., *The WTO And Multilateral Trading System: Past, Present, And Future,* Third World Network, Malaysia, 2003, p 198.

[166] Krajewski, M., 'Democratic Legitimacy And Constitutional Perspectives Of WTO Law', *Journal of World Trade,* Vol 35, Issue 1, 2001, pp 167-186 at p 169.

Indeed, the previous Director General of the WTO Dr Sobaci has said that "*the rule of consensus is the democratic guarantee of the WTO, since everyone in theory has a voice; however the reality is quite different. How democratic decision-making is by consensus, depends on the ability of countries to voice their dissent. The power politics within the institution means that dissent by any country in a formal meeting, which goes to the extent of blocking consensus, is rare.*"[167] Jackson points out the existence of a continuing risk in the voting system and practice under the WTO, for example the potential for bloc voting. It has been suggested, for instance, that the EU, which commands a large number of votes, due to the number of its Members who are also Members of the WTO, and the number of Members with whom it has association and affiliation agreements, could be tempted to use this voting strength in order to pursue its own policy interests.[168]

To sum up, the decision-making procedures of the WTO are detailed and elaborate. The Articles of the WTO Agreement cover all possible situations of decision-making. Decision-making is based, ideally, on consensus or, where consensus is impossible, on voting. Each WTO Member has one vote, and decisions are taken by a majority vote. In addition, in certain specific situations, decisions can be taken by two thirds majority of Members or by a three-fourths majority. These procedures reduce the likelihood of hasty, inappropriate decisions, but can act as obstacles to decision-making.[169]

The question that now arises is: Why is the principle of consensus so important and what are the future prospects for maintaining or, conversely for modifying this practice? Some developing countries - who, as a group, constitute the majority in the WTO - have on various occasions asserted that if consensus cannot be reached, the matter at issue should be decided by voting, although in general they favour consensus and accord voting only a subsidiary function. Some developed countries, also, are not opposed to voting in specific cases if consensus cannot be reached. The main concern for the great majority of Members seems to be the reluctance to abandon a mechanism which gives them the opportunity to prevent the adoption of a decision which could be

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[167] Kwa, A., op. cit..

[168] Jackson, J., op. cit., 1998, p 47.

[169] Rasheed, K. et al, *The World Trade Organization And Developing Countries,* The OPEC Fund For International Development, Pamphlet Series 31, 1999 at p 27.

contrary to their own interests.[170] It might be expected that the smaller and economically weaker countries would have an interest in establishing effective rules and strong institutions in international trade, that would protect them from one-sided actions by larger and more powerful states, and that from this perspective the smaller and weaker Members would favour more effective forms of decision-making and in particular would prefer voting rather than consensus. None of these countries, however, have actually expressed such views; probably because the development of such a system would imply greater degrees of institutionalisation and solidarity than those that currently characterise the WTO.[171]

So what can the developing countries do in this context? Can they keep on doing the same things and expect different outcomes? The developed countries are not going to change; it is ultimately developing countries that have to change. For example, it may be true that the participation of developing countries in the Doha and Cancun Ministerial Conference was better than their previous participations; as they contributed most of the proposals posed in the provisional meetings. However, as noted by the authors of *Developing Countries and the WTO,* the submission of proposals is not enough and these countries need to exert much more effort. They should come to meetings armed with intensive summary reports and accurate analysis prepared by well informed personnel in their home headquarters.[172] Furthermore, they have to change their strategy in the representation in the WTO, working as groups and acting together with a single spokesperson in meetings and negotiations. This is what most developed countries do. For example the EU has a number of votes equal to the number of its Member States, but because their strategy is the same on most policies, it makes the votes look like one. In addition, Maclean argues, that it is also important that the decision-making processes of the WTO should accommodate the wide range of interests of its increasingly large and diverse Membership. One priority should be to remove institutionalized obstacles to achieving consensus on new measures of trade liberalization. There is also a need to simplify the WTO decision-making processes and make them both internally and externally transparent. Furthermore, the inter-

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[170] Georgiev, D., op. cit., 2003, p 33.

[171] Ibid.

[172] Al- Jahwari, M, 'Book Review Of *Hoekman, B. And Martin, W. (eds), Developing Countries And The WTO*', *Al-Markazi,* Vol 26, Issue 4, 2001, pp 33-37 at p 34.

governmental workings of the WTO must be conducted in such a way that is not allowed to have a damaging effect on national self-interest.[173]

Given the concerns voiced about the role of developing countries in the WTO, some pertinent questions which need to be answered are: why is Membership of the WTO important, and what are the challenges that face developing countries such as Oman, from accession to the WTO? This is what the next part tries to explain.

2.4. CONCLUSION

This chapter contains discussion on the importance of WTO Membership, an explanation of the legal personality of the WTO and its effects; the primary goals and the principles on which it operates. In addition, the chapter also discusses the legal and organizational framework of the WTO, contains the political bodies, DSU, and the decision-making procedures in the organization.

Developing countries in general, and especially the Sultanate of Oman, concerning their relation with the international commercial system, had not participated in this system in an active manner during the second half of the last century during the process for the establishment of the WTO. The reason behind this could be associated with the global lack of attention, in the GATT domain, for the benefit of developing nations, in addition to the lack of understanding by this group to the development difficulties faced by the developing nations upon their independence at the start of the second half of the 20th century.[174] The accelerated international events that occurred in various fields at the middle of the 80s led to the creation of a new reality for an international domain that no longer had significant barriers between its states. That caused the globalisation of the economic system and the transformation of locality into internationality, and that is how the international economic system was created by the birth of the third international being at January 1995, the WTO. In the same manner, the Member States repelled each other from the pre 1995 international trade system; they all were attracted to the WTO as it became clear that those countries that did not join the organisation would be left out in a way that would eventually negatively affect their economic and social development. That is how countries raced in the process of

[173] Maclean, M., *The Lessons Of Seattle And The Need For WTO Institutional Reform (Editorial),* Sweet & Maxwell, London, 2000 at p 3.

[174] Mohamed, A., *Al Athar Al Eqtesadia Le Etefaqyet A GATT,* (The Economic Effect Of The GATT Agreement), Egypt, 2003 at p 297.

restructuring their economy in order to prepare themselves for the Membership of the WTO, that became apparent after the establishment of the WTO as the majority of countries applied to the organisation, some of which got accepted, like Oman, while others remain waiting.[175] Thus, while the question of what the benefit is from the Membership to the WTO is no longer common, many still wonder about the time at which their country will get accepted. We shall illustrate the common concepts of the organisation without deep discussion on the expected effects of the WTO on developing nations.[176]

On the other side, the growth of non-governmental bodies that are capable of significantly affecting international trading could weaken local administrative bodies and lower their ability to control their own economies. This directly applies to growing markets such as those present in the Arab world, as the lack of effective economic convergence in a unified Arab market will make the Arab world at a weaker position in comparison to others in regard to market protection from giant international trading groups which work within a strong cumulative trading framework such as the European Union. The eventual Membership of Arab countries to the WTO shall uncover the past nature at which economic fields were governed by the legal systems of the country to encourage local companies, and they could be threatened at the first instance by the request of strong foreign companies for the entry to their local markets. The failure of certain organisations such as the League of Arab Stats and the Gulf Cooperation Council, in resolving simple regional conflicts has contributed to the failure to create any solid economic cooperation that is able to sufficiently protect the interests of the Arab world in an international domain governed by the WTO. Rising economies must be conscious of the fact that that WTO was born as a result of talks that occurred during the Uruguay Rounds in regard to GATT agreements under the pressure of rich industrial countries that host the offices of major international corporations which have outlined for developed countries the warranty to fulfil their interests within the framework of the WTO, especially in regard to issue of market entry and intellectual property. While GATT had control over the trading of manufactured products only, the WTO has control over various new trading fields such as agriculture, services,

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[175] Redah, A., *Nehayet Altareek Am Nehayet Al Awlamah,* (The End Of The History Or The End Of Globalization, Saudi Arabia, 2005 at p 139.

[176] In this respect see generally: Mcrae, D., "Developing Countries And The Future Of The WTO", *Journal of International Economic Law,* Vol, 8, Issue 3, 2005, pp 603-610.

investments, and laws for market entry, investment of foreign capital, and the project for ownership rights in all Member States.[177]

The majority of governments accept the necessity for having a free trade system that is based on poly consensual trading system that is governed by law along with a unified dispute resolution scheme that informs all Members of their obligations. This does not change the fact that certain countries will gain a greater benefit than others, as developed industrial countries are much more experienced and have the greatest 'free trade' as it is clear that their large companies are among the greatest beneficiaries, and at the same time, we find that the governments of developing nations have less controls and that could slow down their operations. The WTO has succeeded through its general agreements for trading and customs (GATT?), and trading related intellectual property (TRIPs), and trading related investment mechanism (TRIMS) have all managed to establish obligations capable of being enforced legally, and that means that a great number of countries, and Oman is one of them, will have to amend their laws and legislations to be able to allow international companies to have the right to compete against local companies in all economic fiends, grant them the right to undertake any commercial activity or ownership including natural resources such as oil, and the right to control strategic service industries such as banking and insurance in the local market. While taking in consideration the fact that those international companies have an income greater than that of many Arab countries. This makes it probable for international companies to impose their control over the local market here in Oman, and the same could happen with the other Arab countries in the upcoming years, to negatively affect Arabic commercial corporations and institutes which were previous protected through the government system and property rights.[178]

One of the most important effects of enjoying legal personality is the necessity to attribute to and accord the organization the required privileges and immunities to achieve its objectives for which the organization is established an example of such privileges and immunities is the immunity from appearing before court's respecting its documents sanctity of its offices. In this respect, it has shown earlier that the WTO Agreement has referred this issue to the Agreement for the Benefits & Immunities of

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[177] Hasnan, T., *Al Eqtesad Al Seyasy Le Eslah Al Seyasy,* (The Political Repair For Economic Repair), Cairo, 1999, p 150.

[178] Ibid, p 165.

the Specialized Agencies approved by the United Nations General Assembly in November 1947. On the other hand, the absolute compliance if ascertained, will leave no way to recourse to the principles of interpretation, as no conflict will result. At the same time, the state Member will be responsible to the WTO if any of its obligations has been breached. An important thing will be achieved which is to have a reliable legislative control because of respecting the WTO agreements. Such control is reflected by ensuring that Member States will not enter into international agreements that contradict with WTO provisions, and will not legislate internally to contradict the WTO provisions and lastly will effect all amendments to all legislations contradicting these provisions.

The new world trading system resulting from the conclusion of the Uruguay Round and the WTO agreements or rules, together with further liberalization, will strengthen the integration of the world economy. For example, it is said that the new system will help promote peace by helping trade to flow smoothly, and providing countries with a constructive and fair outlet for dealing with disputes over trade issues. Also, free trade will cut the cost of living, because the WTO's global system lowers trade barriers through negotiation and applies the principle of non-discrimination, leading to reduced costs of production and reduced prices of finished goods and services. Furthermore, the system provides more choice of products and qualities. Finally, the system will help governments take a more balanced view of trade policy and they will be better placed to defend themselves against lobbying from interest groups by focusing on trade- offs that are made in the interests of everyone in the economy.[179]

However, the new WTO rules have major implications for national economic and social policy, development options, national culture and sovereignty, and in particular there is concern over equity and marginalization in the global economy.[180] Theoretically, international trade should be beneficial to everybody if a level playing field is created, but this will only happen if rules are established and accepted (not

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[179] *Benefits Of The WTO Trading System*: consulted on 12 October 2002, from, http://www1.chinadaily.com.cn/highlights/docs/2001-11-27/45611.html

[180] Assaf, G., *World Trade And The Poor Countries In The WTO: Implications Of WTO Rules For Ldcs And The Role Of UNIDO,* consulted on 16 October 2002 from, http://www.euforic.org/dandc/98e_ass.htm

presumed) by all the Member States at the WTO.[181] Others have claimed that the WTO was a step in the right direction, and asserted that, now the multilateral treaty has been agreed upon, the focus must be on the fair and non-discriminatory implementation of the rules. In this regard, the new dispute settlement understanding has been hailed as an important step forward, in that it established a body to oversee enforcement of the new system. The WTO has also been welcomed as an important forum for deliberations and further negotiations on trade, especially for developing countries.[182]

The failure of the WTO ministerial meeting which was held in Cancun (Mexico) on September 14th 2003, has delayed progress towards concluding a trade round that would have benefited poor countries. The Cancun collapse, coming as it does less than four years after a similar failure in Seattle in 1999, raises questions about the future of the system, and leaves the parties blaming each other. However, no country or group is without some blame for the failure. Rich countries prioritized their own farmers. America was not prepared to curb its cotton subsidies, which are especially detrimental to poor-country producers, while Japan took a similar stance in protecting its rice farmers. And despite the rhetoric of reform, the EU in particular holds to its farm subsidies. Moreover, if for trying to push poor countries into negotiating new rules on investment, competition, government procurement and trade facilitation, clearly against their will. The ineffectiveness of the WTO not only worsens economic prospects for the developing countries (as well as for the rest of the world) but also shifts the balance of global political power from poor to rich, perhaps decisively, and for an indeterminate period.[183]

However, the question which still needs to be answered is: what are the possible next steps for those who support the WTO? What can they do? The most obvious option is simply to continue along the path already laid out in the Uruguay Round negotiations. Perhaps most important for WTO supporters, however, would be to pursue any changes on which they and opponents can agree.[184] Thus, as a conclusion

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[181] *Opinion Of The Economic And Social Committee On The Global Challenge Of International Trade: A Market Access Strategy For The European Union,* Economic And Social Committee (EU), *Official Journal,* 24/02/1997, p 47.

[182] *Implications Of The Uruguay Round Agreements For The Asian And Pacific Region,* Economic And Social Commission For Asia And The Pacific, United Nations, New York, 1995, pp 3-4.

[183] "Cancun's Charming Outcome", *Economist,* 20/09/2003, Vol 368, Issue 8342 at p 11.

[184] Deardorff, V. & Stern, R., "What You Should Know About Globalization And The World Trade Organization", *Review Of International Economics,* Vol 10, Issue 3, 2002, pp 404-423 at p 420.

the above question can be answered by presenting some suggestions to improve the role of the WTO. The WTO has had considerable success, since it was established, in promoting trade liberalization. The broad substantive scope of the WTO agreements gives the WTO influence over many laws and policies of Members. Members have generally shown a willingness to assert their WTO rights and comply with their obligations. However, a number of institutional issues that need to be reviewed in the WTO have been highlighted. These include increasing transparency, revising dispute settlement procedures, and simplifying WTO working methods and notification requirements. This is not necessarily a comprehensive list, nor is it intended to be such. The aim here is to highlight selected issues, which are important but perhaps neglected.[185]

A number of steps could be taken to improve the function and role of WTO in those issues. To enhance transparency, there is a need for a more regular organization of symposia and other forms of informal dialogue with civil society on a broader range of WTO issues. Such a step would provide an opportunity for the WTO to be better aware of other countries concerns in relation to trade issues, and take them into account in its decisions regarding these issues.[186] It is also important that the decision-making processes of the WTO should accommodate the wide range of interests of its increasingly large and diverse Membership. One priority should be to remove institutionalized obstacles to achieving consensus on new measures of trade liberalization. There is also a need to simplify the WTO decision-making processes and make them both internally and externally transparent. Furthermore, the inter-governmental workings of the WTO must be conducted in such a way that is not allowed to have a damaging effect national self-interest.[187] It has been indicated in this chapter that the WTO Members have agreed to negotiations on improvements and clarifications of the DSU, to re-orient the system to match the requirements of the WTO Members. In this context, former Director General Dr Supachi urged WTO Member governments on May 2003 to find a pragmatic way forward in their negotiations on

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[185] Hainsworth, S., op. cit., p8.

[186] *Improving The Functioning Of The WTO: Suggestions For A Way Forward,* consulted on 20 may 2003 from, http://www.globalsolidarity.org/Articles/ecimprove.html

[187] Maclean, M., *The Lessons Of Seattle And The Need For WTO Institutional Reform,* Editorial Sweet & Maxwell Limited, London, 2000, p3.

improvements and clarifications to the DSU.[188] However, in any such efforts, certain matters should be given consideration, such as the absence of relief against delays by panels and the Appellate Body, and the high cost of the DSU process for developing countries. It can therefore be proposed that the time limit allowed to the panel and Appellate Body should be halved. There should be a provision for a developed country party to pay the costs of a developing country party, if the complaint or defence of the latter is upheld and if the stand of the former is found to be wrong.[189] The final point raised concerns simplification of the WTO's working methods and notification requirements. One possibility would be for the Director General to be asked to present specific proposals with the aim of simplifying existing notification requirements without sacrificing transparency, and enhancing the role of the General Council as a forum for policy dialogue and to maintain overall control of WTO activities. The aim should be to make the administration of existing WTO agreements less costly and burdensome for delegations, for example by reducing the number of WTO meetings. Such measures are of particular importance, with the prospect of a new round of trade negotiations.[190]

A criticism can be raised regarding the efficiency and effectiveness of decision-making procedures under the WTO system, given the length of time needed to secure a decision with such a large Membership. This does not necessarily mean a major constitutional change, such as simple majority voting, but perhaps some institutional change is needed, beyond the current system of using " friends of the chair" or "facilitators," to strike a balance between the unrepresentativeness of the "green room" and the cumbersome process of obtaining consensus among 150 Members. As the former Director General Supachai once proposed, a useful lesson may be learned from the Development Committee and the Interim Committee (now the International Monetary and Financial Committee) in the World Bank and the International Monetary Fund. Drawing on these examples, consideration might be given to establishing some

[188] Consulted on 23 of May 2003 from WTO Website http://www.WTO.org

[189] Bhagirath, L. op. cit., 1998, pp105-106.

[190] *Improving The Functioning Of The WTO: Suggestions For A Way Forward,* op. cit..

sort of "intermediate committee" with a view to facilitating intergovernmental consensus-making.[191]

The efforts at analyzing and explaining the state of hopelessness the WTO is facing should be looked at in detail and from different aspects; between the role of local policy-makers and the role of the system of international trade. The states should be responsible for the extent to which they benefit from the increase in trade to serve long-term development. However, a multi-party system may, in fact must, be responsible for the effect on the environment where the selections relating to the countries take place. Despite the undisputable need for a multi-party trade system based on equity and the rule of law, the question is: can the current system enable developing countries such as Oman to put in place policies that support economic development? Here, the challenges with the Sultanate of Oman will face on a legal and economic level will be discussed in the next chapter by trying to understand the pillars on which the accession of Oman to the WTO is based.

[191] Cho, S., "A Bridge Too Far: The Fall Of The Fifth WTO Ministerial Conference In Cancun And The Future Of Trade Constitution", *Journal of International Economic Law,* Vol 7, Issue 2, 2004, pp 219-244 at p 241.

CHAPTER THREE: UNDERSTANDING OF THE PILLARS ON WHICH THE ACCESSION OF OMAN TO WTO IS BASED

3.1. INTRODUCTION:

In a world where states are inevitably interdependent world, the national interests of any country within the integrated global economic system are affected by international economic rules, which have determinative impact on the structure of international relations. For this reason, after accession to the WTO, it will be in Oman's interest to have a regional economic co-operation organization on its side, to enable it to exert a stronger influence over the making of such rules. In the process of formulating international economic rules, market size carries weight Oman by herself lacks sufficient market power to influence significantly the making of international economic rules. Indeed, even the United States despite having the largest market in the world, cannot decide on the rules because its power is countered by the combined force of a unified European market. This is why it has formulated the NAFTA and initiated a broader American Free Trade Area, which will encompass all the Latin American countries, with the exception, for political reasons of Cuba. The second largest economy, Japan is also constrained by the lack of a regional economic co-operation organization.[192]

Recent years have brought changes in the world political map as a result of the formation of economic and political unions (such as the European Union, NAFTA and Germany's reunification) alongside the break-up of former nations (such as the Soviet Union and Yugoslavia). The case of the EU, where a number of national policies have been centralized, illustrates the significance of such changes.[193] There has been considerable debate over the benefits of regional agreements versus multilateral free trade, much of which has focused on welfare effects resulting from the trade creation and trade diversion impacts of such agreements. There are some, such Bhagwati and Krueger, who criticize such agreements, claiming that they reduce welfare for their Members and for the world. Such critics, instead, advocate multilateralism.[194] On the other hand, Robinson and Thierfelder are among those who view regional agreements

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[192] Heribert, D., "East Asia's Puzzling Regionalism", *Far Eastern Economic Review,* 12 July 2001, p 29.

[193] Leite-Monteriro, M., "Economic Integration And Fiscal Devolution", *Journal of Public Economics,* Vol 87, 2003, pp 2507-2508 at p 2507.

[194] Bhagwati, J. & Krueger, A., *The Dangerous Drift To Preferential Trade Agreements,* AEI Press, Washington DC, 1995, p 70.

more favourably, suggesting that their welfare impact is mostly an empirical issue, which depends on a number of factors.[195] It is increasingly evident that a combination of close market integration and effective legal institutions confers economic, social, and political advantages, compared with more diffuse market integration. Although the regionalization of the world economy brings certain risks, the success of regional integration relative to the world economy as a whole, suggests that on the whole, the process is beneficial.[196]

The benefits of economic integration are traditionally evaluated based on the effect on trade. The theory is that the trade impact is the result of comparative advantages derived from differences in productivity or factor endowments, and that firms take prices as given and produce homogenous goods. Venables argues that integration is more favourable to low-income countries with higher ratio of unskilled labour, than to higher income countries, due to income convergence. In other words, the way the effects of integration are distributed depends on the country's initial conditions. Because integration maximizes trade creation, low-income countries therefore benefit from an improvement in their terms of trade and exports.[197]

International economic integration, however, is not an end in itself, but a means of pursuing other objectives. Economic groupings are usually established or advocated partly for political reasons, and it is important to understand their impact on the actual progress of economic integration. At the same time, economic analysis is needed to identify and, if possible, to quantify the economic effects and issues, so that policy makers and others can assess whether and to what extent the economic considerations support or offset the political issues.[198] Thus, regional integration is based on analysis of the costs and benefits of the decision. The former include heterogeneity of preferences and political risks from key voters, whereas the latter include sharing the risk of regional economic shocks, internalisation of spillovers of public good provision and economies of scale in public good production and delivery. There are significant

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[195] Robinson, N. & Thierfekder, K., *Trade Liberalization And Regional Integration: The Search For Large Numbers,* Trade And Macroeconomics Division Working Paper No. 34, International Food Policy Research Institute, Washington, DC, 1999 at p 32.

[196] Abbott, F. M., "The North American Integration Regime And Its Implications For The World Trading System", in Weller, J. H. H. (eds), *The EU, The WTO, And The NAFTA: Towards A Common Law Of International Trade*, Oxford University Press, Oxford, 2000 at p 20.

[197] Chami, S. et al., *What Are The Potential Economic Benefits Of Enlarging The Gulf Cooperation Council?* International Monetary Fund, Working Paper Number WP/04/152, 2004 at p 4.

[198] Robson, P., *The Economics Of International Integration,* Allen & Unwin, London, 1987 at p 2.

benefits from risk sharing when economic shocks are regionally independent and the central government is able to make inter-regional transfers, providing an insurance device against such shocks.[199]

Certainly, economic integration may go hand in hand with political separation/integration, but the issue of concern here is the importance of economic integration and the way it changes as the national economy opens itself to the rest of the world. The key principle is the need for cooperation to promote a supportive and open international economic system conducive to economic growth and sustainable development in all countries and this is best achieved by economic integration. From a theoretical standpoint, economic integration is the elimination of all trade barriers which exist among the Members of the bloc in question, such as tariffs, subsidies, quotas, exchange controls, and so on. However, economists have not succeeded in producing an agreed definition of the term "economic integration". This is a result of differences in perspectives on the degree and kind of economic cooperation that must exist between independent economic units to constitute integration.[200] Several forms of economic integration can be found in the literature, ranging from lower to higher degrees of integration as follows: Preferential Trading Club; Free-Trade Area; Customs Union, and Common Market.[201]

The importance of international economic integration is now widely acknowledged. It affects most of the countries in the world and has become an essential consideration in most economic policy decisions. In fact, most of the countries throughout the world have sought some degree of integration with others. The greatest strides in this respect, however, have been made by the developed countries, especially the EU, where integration has been both deepened and widened, setting an example which other areas of the world have tried to imitate, with varying degrees of success, in an effort to secure access to a wider market and reinforce growth in order, and so enhance national welfare.[202] Attempts to integrate markets and increase the economic liberalization through the "building blocks" such as free trade areas and customs unions,

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[199] Leite-Monteriro, M., 2003, op. cit., p 2508.

[200] Hatem, S., *The Possibilities Of Economic Cooperation And Integration Between The European Community And The Arab League*, Munchen, Florentz, 1981 at p 7.

[201] For more information about forms of economic integration, see Ibid, pp 10-16.

[202] Jovanovic, M. N., *International Economic Integration: Limits And Prospects*, Routledge, London, 1998 at p 1.

had been initiated during the GATT period. Article 24 of the GATT was designed to specifically address this issue.[203] In the GATT, the basic condition was that the objectives of such blocks "should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories."[204] These regional efforts have taken place alongside important international co-operative measures involving integration at the global level, represented by the successful outcome of the Uruguay Round GATT negotiations establishing the WTO. The new organization, with its considerably expanded jurisdictional coverage, was intended to liberalize trade in services and to regulate other aspects of global trade, beyond the traditional sphere of manufacturing and primary goods.[205] The participants in the General Agreement on Tariffs and Trade (GATT) recognized the importance of economic integration between countries, which has the same economic rationale as intra-regional integration within a single country. Hence, regional economic integration, in the view of the WTO, is not necessarily a threat to global integration.[206] The WTO has declared that *"the increasing integration of economies offers unprecedented opportunities for improved growth, job creation, and development. These developments require adjustment by economies and societies. They also pose challenges to the trading system. We commit ourselves to address these challenges.*[207] According to Bonilla et al., some regional agreements may, whether deliberately or otherwise, complicate advances within the WTO, if they lead to the emergence of constituencies in support of protected markets. Some of the current or prospective regional agreements involving the EU and smaller countries that give the latter a stake in the continuation of the common agriculture policy may be a case in point.[208]

Such integration is one of the key issues now facing Oman. Clearly, there are huge challenges to be addressed in the course of Oman's development, despite the not

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[203] Mukerji, A., "Developing Countries And The WTO: Issues Of Implementation", *Journal of World Trade,* Vol 34, Issue 6, 2000, pp 33-74 at p 37.

[204] Article 24.4 of The General Agreement on Tariffs and Trade.

[205] Coleman, W. D. and Underhill, G. R. D., *Regionalism & Global Economic Integration,* Routledge, London, 1998 at p 2.

[206] Jovanovic, M. N., 1998, op. cit., p 2.

[207] Singapore Ministerial Declaration, WTO Document WT/MIN (96)/DEC, dated 18 December 1996, para3, p 1.

[208] Bonilla, E. D. et al., "Regional Agreements And The World Trade Organization Negotiations", *American Journal of Agricultural Economics,* Vol 85, Issue 3, 2003, pp 679-683 at p 681.

inconsiderable achievements of the past three decades. In order to visualize the future and see the way ahead, Oman now needs to reflect on its past experience, but also have a vision, as well as the scientific tools and political will to implement it. This is no easy task, because it may require a departure from familiar paths, and require new instruments appropriate to the challenges of the modern environment. The government has already recognized that development will entail new challenges, and Vision 2020 is an important benchmark for evaluating progress, as well as a framework for developing an integrated strategy aimed at achieving economic balance and continued growth. Within this framework, the government has prioritised human resource development, a guiding rather than controlling role for itself and promotion of freer and competitive markets; in addition to the larger role accorded to the private sector in investment, output and employment. In addition, the vision for Oman's economy -Oman 2020- refers to strengthening of the Oman economy's integration into the regional and global economy as a major strategic goal. It notes, "*Recent developments in the global sphere have made the world economically and commercially linked. These developments offer wide opportunities for the Sultanate to overcome the limited domestic market, as well as enabling it to benefit from its distinct geographical location and to promote integration into the global economy*".[209] As Freeman notes, Oman until recently was virtually closed to the outside world. The decision to pursue economic integration with the rest of the world is a logical extension of the whole process of opening and modernization initiated by Sultan Qaboos.[210] However, the question arises how a country such as Oman, with a small domestic market, should act in the face of the challenges posed by the highly competitive world economic environment.[211] The answer to this question is found in the Omani policies, which highlight the importance of economic integration with other Arabic Countries and specifically with the GCC States and the accession to the WTO, which the government has listed as amongst the most important policies that can help the Sultanate to benefit from the conditions of the international environment.

At the regional level, The Arab countries have exceptional potential for cooperation and even integration, and yet to date, in contrast to the trend in much of the

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[209] For more information on the 2020 Vision for Oman's economy, see Oman's 5th five-year plan.

[210] Klein, C. et al., "Joining The Global Rules-Based Economy: Challenges And Opportunities For The Gcc", *Middle East Policy,* Vol 7, Issue 2, 2000 at p 4.

[211] Mchugo, J., "The Legal Structure For Investment In Oman In The 1990s: A Case Study Of An Arabian Gulf Oil Exporting Economy", *The International Lawyer,* Vol 24, Issue 4, 1990, pp 1059-1070 at p 1069.

rest of the world towards coming together in larger groupings, to face the competitive challenges of globalization, they have so far failed to take advantage of the benefits to be gained from close cooperation.[212] However, the economic conditions for integration in Arab countries, namely, in Middle East and North Africa (MENA) are becoming more conducive to integration. Much now will depend on efforts at national level. Some MENA countries have gone further than others in stabilizing, reforming, and opening up their economies. It seems likely that successful integration will come first among groups of countries within the region, rather than across the region as a whole.[213] As more MENA countries further deregulate and liberalize their economies, cross-links among these sub-sets of countries will strengthen economic integration within the region as a whole. In this context, the importance of economic integration between similar countries can be illustrated by the 2002 Arab Human Development report, reflecting a certain pan-Arab spirit that focuses on Arab economic integration as a major weapon against the problems of underdevelopment and the potential threats posed by globalization.[214] Steps towards sub-regional integration are already evident in the Gulf region and to a lesser extent in the Maghreb.

The Sultanate of Oman is a Member in the Gulf Cooperation Council (GCC). This organization was founded by Bahrain, Kuwait, Oman, Saudi Arabia, and the United Arab Emirates in May 1981. Looney argues that the establishment of the GCC was originally in order to strengthen the defence of the Arab Gulf region, and specifically, to counter the threat posed to regional security by the Iran-Iraq war. However, in recent years there has been an increased focus among the GCC States on the desirability of economic integration, although little tangible progress has been made so far. The Members of the GCC have, however, agreed to accelerate their plans for a GCC customs union, which was established on January 2003, and there are plans to introduce a single GCC currency by 2010.[215] A major concern of all the Gulf rulers, currently, is economic reform, specifically, how to increase the rate of return on investment and open up their economies. Accession to the WTO is viewed as an

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[212] See generally Arab Human Development Report 2002 at Chapter 8.

[213] The Great Arab Free Trade Area has been has established between these countries early this year.

[214] Baroudi, S. E., "The 2002 Arab Human Development Report: Implications For Democracy", *Middle East Policy,* Vol 11, Issue 1, 2004, pp 132-141 at p 132.

[215] Looney, R.E., "The Gulf Cooperation Council's Cautious Approach To Economic Integration", *Journal of Economic Cooperation*, Vol. 24, Issue 2, 2003 at p 137.

essential step in order to enable their economies to compete more effectively in the areas of foreign investment and trade.[216] The GCC is the most successful integration, perhaps the only one, in the region, both politically and economically. Politically, it works because the tiny emirates were forced to join together to balance the larger regional powers in the Gulf, Iraq and Iran, and economically, success can be seen in the removal of all tariff barriers.[217] In addition, Members of the GCC have many similar features, a special relationship, and to a great extent, similar legislations based on the teaching of Islam. In addition to the above links, the GCC States share a common destiny and identity of interests.[218] This is to a great extent attributable to their many shared economic characteristics. Oil is the major source of revenue for all of them, overall accounting for about one third of GDP and three quarters of government revenues and exports. Together, these countries possess about 45% of the world's proven oil reserves and provide a quarter of all crude oil exports (Saudi Arabia is the world's largest oil exporter). They also account for at least 17% of the proven global natural gas reserves (Qatar has become the fourth-largest exporter of liquefied natural gas).[219]

Despite these similarities, there are also important differences among the GCC States, for example considerable disparity in per capita income, from less than $8,000 in Oman to $28,400 in Qatar.[220] There are also variations in the structures of GCC economies and the composition of their exports. In Saudi Arabia, the manufacturing sector has rapidly grown in importance. In the UAE there has been major growth in entrepot trade and related activities. Bahrain has focused on the banking and insurance sector, becoming a financial centre for the region. Qatar is significantly exploiting

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[216] Klein, C. et al, "Joining The Global Rules-Based Economy: Challenges And Opportunities For The GCC", *Middle East Policy,* Vol 7, Issue 2, 2000, pp 1-20 at p 2.

[217] Suleiman, N. M.,(PhD student in Hungary researching economic integration in Arab countries) *Economic Integration Tendencies In The Middle East And North Africa,* consulted on 10 February 2004 from, http://www.al-bab.com/arab/econ/suleiman.htm

[218] Al-Eshiwy, M., "Arbitration Regulations In The Gulf Co-Operation Council (GCC) States: A Comparative Study", PhD Thesis, University of Exeter, 1997 at p 58.

[219] Fasano, U. and Iqbal, Z., *Gcc Countries: From Oil Dependence To Diversification,* International Monetary Fund (Imf), consulted on 28 November 2003 from, http://www.imf.org/external/pubs/ft/med/2003/eng/fasano/

[220] See Figure 3.1.

natural gas, which appears set to overtake oil as the key sector in the economy. In Oman, the growth strategy has focused on developing natural gas resources and tourism.[221]

More than two decades after the official establishment of the GCC in 1981, moves are accelerating towards the ultimate goal of creating an integrated common market. The importance of economic integration is strongly asserted in the Unified Economic Agreement (UEA), which replaced all previous bilateral and multilateral economic agreements among the Members on economic issues. The UEA calls for intra-GCC freedom of movement of all factors of production, freedom of trade between Member States and building of a common economic infrastructure. The Member States' common language, religion and many attributes of a shared history have often been cited by officials in these states as reasons behind this unity. Whilst some commentators have viewed the growth of the GCC, particularly in the economic field, as natural, others have attributed its foundation and continued survival to potential threats coming from Iran and Iraq.[222] The debate is, however, outside the scope of this study. What is important here is not so much the reason for the establishment of the GCC, as its current role in regional economic integration and its position in relation to the WTO, which could affect the way Oman copes with the consequences that could arise from its accession to the WTO. Thus, as developing countries Oman and its GCC neighbours have common interests in relation to the making of international economic rules, which they can better pursue by economic integration and co-ordination, particularly it the integration were able to operate like the EU in the WTO, GCC State's stake in rule-making in the WTO.

In short, the trend towards more wide-ranging regional agreements is beneficial for participants. By eliminating not only frontier barriers, but also technical barriers, for example, greater efficiency from economies of scale is possible, and regional industries are enabled to become more competitive internationally. This was for example, considered by Ceccini to be one of the most important potential gains from the establishment of the single market in Europe.[223] However, the increased popularity of regional trade agreements (RTAs) raises the question whether they are conducive or

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[221] Fasano, U. and Iqbal, Z., op. cit..

[222] Al-Murar, T., "The Gulf Cooperation Council: Measuring Past Performance And Future Prospects", PhD Thesis, University of North Umbria, 2001, p 8.

[223] Ceccini, P. et al., *The European Challenge 1992: The Benefits Of A Single Market*, Widwood House, Aldershot, 1988.

detrimental to multilateralism. This is still a controversial issue. Bhagwati, for example, expresses strong concerns about the negative consequences of growing regionalism, which he fears may divert attention from the multilateral trading system.[224] The economist Shiells, on the other hand, views the impact of RTAs on global free trade as a function of their structure and design, liberality of joining procedures, compliance with WTO rules, and extent of accompanying liberalization.[225] From this perspective, provided RTAs are committed to open regionalism, they can be seen as complementary to multilateralism. In this respect, WTO can and should play an important role, by examining all new RTAs carefully. In principle it does so; it requires that it be notified of all new arrangements, whereupon a working party will be set up to examine whether the provisions of the agreements are consistent with the relevant WTO obligations.[226]

This general introduction provides a basis for discussion of the issues relating to economic integration for Oman, such as the economic integration between the GCC States and its relationship with the WTO as instruments towards this integration. The aim of this chapter is to give a background overview of the Sultanate of Oman, in order to give the reader a full understanding of the legal and economic pillars on which the accession of Oman to the WTO is based. Thus, this chapter examines these issues under two section headings. The first one gives a brief statement on Oman's legal and economic system. The second section discusses the relationship between Oman and the GCC with particular reference to economic integration. The discussion in this chapter provides a foundation to the later discussions in the next chapters.

3.2. Brief Statement On Oman's Legal And Economic System

The Sultanate of Oman is situated in the southeast of the Arabian Peninsula. Its 3,000,000 km² area comprises the traditional heartland of the country, Muscat and Oman, the southern province of Dhofar, which was annexed in 1879, and the peninsula of Musandam, an exclave which is separated from the rest of Oman by the 90-km-wide

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[224] See generally Bhagwati, J., "Regionalism Versus Multilateralism", *The World Economy,* Vol 15, Issue 5, 1992, pp 535-555.

[225] Shuells, C., "Regional Trade Block: Trade Creating Or Diverting?", *Finance And Development,* Vol 32, Issue 1, 1995, pp 30-32 at p 32.

[226] Sampson, G. P., "Compatibility Of Regional And Multilateral Trading Agreements: Reforming The WTO Process", *The American Economic Review,* Vol 86, Issue 2, 1996, pp 88-92 at pp 89-90.

Emirate of Fujairah.[227] Administratively, Oman is divided into eight main regions, chief of which is Muscat Governorate, the main centre of population and administration, and the region entrusted with the preparation and execution of development projects for the country as a whole. The other regions are Al Batinah Region, Musandam Governorate, Al Dhairah Region, Al Dakhliyah Region, Al Sharqiyah Region, Al Wusta Region and finally Dhofar Governorate.[228] Despite these administrative divisions, there is no local government; all the authority rests with the central government in the capital, Muscat. In short, Oman is a country in which tradition and continuity have been challenged by unprecedentedly rapid change, transforming Oman into an active Member of the modern world community after little more than three decades of intensive socio-economic development.[229]

Because the domestic market of the Sultanate is limited in scope, export-led growth is encouraged, which means industries and businesses must achieve international competitiveness in order to become active participants in the global economy. With its policy of open and liberal trade and its emphasis on export-led growth, it is not surprising that the Sultanate has sought admission to the World Trade Organization.[230] An application for accession as mentioned before was made under Article 12 of the Agreement establishing the WTO. It can be argued that Membership of the WTO would provide access to world markets, but just how well Oman can capitalize on its WTO application will depend on the ability of its trading firms and industries to cope with the increased competition that can be expected as a result of entry.[231] In the same way, the external pressure of WTO obligations may accelerate Oman's process of legal reform. Thus, Oman proposed a plan of graduated steps to increase trade and investment with the GCC States and others in the world economy, thus she implement domestic reform agendas, institute the rule of law, protect property rights, and create a foundation for openness and economic growth tailored to their

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[227] See Specimen 3.1.

[228] *Statistical Yearbook*, Ministry of National Economy (Oman), Thirtieth Issue, August 2002, pp 8-18.

[229] Al-Zaabi, M., "An Investigation Into Infrastructure Privatisation Through The Build-Own/Operate-Transfer (BOT) Approach In The Sultanate Of Oman", MSc Thesis, University of Glamorgan, 1996 at p 7.

[230] Memorandum on the foreign trade regime of the Sultanate of Oman, op. cit., p 1

[231] Oman Review Meeting The Challenge, *Gulf Industry* Magazine, consulted online, July-August 2001 edition, Vol.10, Issue 4. on 31 October 2002 from, http://www.gulfindustryworldwide.com/bkArticlesF.asp?Article=1089&Section=133

individual level of development. This section discusses unparalleled legal, political and economic change that has confronted Oman during WTO accession. The section focuses on the relationship between Oman's WTO accession and Oman's reform over the past three decades, and explain the ways in which WTO accession has provided an impetus to legal and economic reform. Thus, this section contains two main sub-sections. The first one concerns the legal system of the Sultanate, whereas the second is devoted to the Sultanate's economic and development strategies.

3.2.1. Oman's Legal System

The difficult economic choices facing the GCC States necessitate far greater popular participation in decision-making, and that support must be actively enlisted from at least the most important and politically aware stratum of the population. This, it is argued, is necessary to ensure smooth implementation and avoid the risk of violent political opposition. To some extent this has happened. During the recent years of economic constraint, the elected Kuwait Parliament has been restored and al-Shura councils been appointed in Saudi Arabia, Oman and Bahrain. Nevertheless, in the GCC States, a high level of ruling power is retained by the monarch; to a degree comparable only with Bhutan and Swaziland, and in sharp contrast to the neighbouring Middle Eastern countries of Egypt, Iraq, Yemen, Lebanon, and Iran, where monarchies have collapsed.[232]

By comparison with other Gulf States, Oman was late in developing its legal structure because until 1970 the former sultan maintained the state in absolute isolation from the modern world. A few moves in the first half of the twentieth century to modernise the Omani legal system by introducing civil and commercial courts came to nothing. The commercial court (set up in 1920) was abandoned almost immediately and the civil court (set up in the same year) lasted for almost twenty years, but did not survive the appointment of the chief justice as Governor of Muttrah in 1939.[233] Moreover, as Oman is an Arab and Islamic country, its legal system is a combination of the Islamic system with the Arabian traditions of the region. Before 1970, the shariah (Islamic law) was applied in cases involving personal status, crime, and some other

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[232] Lucas, R. E., "Monarchical Authoritarianism: Survival And Political Liberalization In A Middle Eastern Regime Type", *International Journal of Middle East Studies,* Vol 36, Issue 1, pp 103-119 at p 104.

[233] Amin, S. H., *Middle East Legal Systems,* Royston Limited, Glasgow, 1985, pp 286-287.

matters, and was implemented by tribal leaders, each of whom acted as a judge of his community.

When the present sultan came to the throne in 1970, Oman had no experience in the field of secular legislation. In the effort to develop a modern legal system, advice was sought from experienced Arab countries, especially Egypt, whose legal system was more highly developed than any other in the Arab world. This accounts for similarities between Omani Laws and Egyptian Laws, on which they are based. In the early days, Omani citizens were awarded scholarships to go to Egypt to study the Egyptian legal system, which was based on French Law, in order to apply this knowledge to the legal system of their county on return.[234] Subsequently, Oman has adopted a number of law reforms which provide internationally acceptable legal frameworks. Examples include the Income Tax Decree 1971, the Labour Law of 1973, the Criminal Law 1974, The Banking Law 1974 (as amended in 2000), the Foreign Business and Investment Law 1977 (as amended in 1978), the Commercial Register Law 1974, the Commercial Companies Law 1974 (as amended in 1975), the commercial Agencies Law 1977 and the Insurance Companies Law 1979. The intention underlying the introduction of these laws was to pave the way for modern institutionalised government in general and open up the economy to international commerce in particular.

While Oman has undergone dramatic legal changes in the process of joining the WTO, it is impossible to predict the future path of political reform in Oman. There are some encouraging signs that Oman's integration with the world market might, over time, lead to political and social liberalization as well. The WTO accession presents a more difficult stage for Oman. As a result, Omani ministers will be wary of loosening their grip on power, and at the same time, the government recognizes the need to build political institutions sufficient to support a market economy and thus is introducing some important changes, such as the legal reforms describing below.

However, Amin argues that compared with the laws of other countries in the region, the substantive laws of Oman are less detailed or sophisticated than those of Saudi Arabia but not as straightforward and general as those of the United Arab Emirates.[235] The legal reform has continued to develop, the biggest step in this process

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[234] Al-Eshiwy, M, "Arbitration Regulations In The Gulf Co-Operation Council (GCC) States: A Comparative Study", PhD Thesis, University of Exeter, 1997, pp 69-70.

[235] Amin, S. H., op. cit., 1985, p 287.

being the Basic Statute of the State (Constitution), enacted in 1996 by the Royal Decree number 101/96. This was the first written expression of constitutional law in the country's history. The intention underlying the Basic Statute of the State is to ensure political and social stability, while also guaranteeing individual rights and freedom (Articles 15 to 40). In addition to laying down a procedure for the succession to the throne (Articles 6 to 9), the statute provided for the formation of a Council of State, which now forms the Council of Oman, along with the Majlis Al-Shura (Article 58). It defines the role of the Government (Articles 44 to 55), and the Judiciary (Articles 59 to 71), as well as setting out national policy on the economy, security, education and social development (Articles 10 to 14).[236]

Legal theory makes a clear distinction between the judicial and political, the two spheres of power being separated in government: on the one side, there is the judicial branch; and on the other, the legislative and executive branches, which themselves are clearly separated from each other. In practice, however, these lines of demarcation are not always clear, and their exact position may change from time to time or vary from one legal system to another.[237] In general, there are few different types of constitutional frameworks in the world's long-standing democracies. With the exception of Switzerland, every existing government today is either presidential (as in the United States), parliamentary (as in most of Europe) or a semi-presidential hybrid of the two (as in France and Portugal, where there is a directly elected president and a prime minister who must have the majority in the legislature). Whereas, in the traditional parliamentary system, balance is maintained between the executive and legislative branches through co-operation between the two institutions, in the traditional presidential system there is a clear separation between the two institutions. Ministers under this system are not Members of the legislature and they are responsible to the president.[238]

When the Omani system is viewed in light of the above principles, it might be argued that the constitutional system does not fit exactly into either the presidential or the parliamentary category, since family rule continues on a hereditary basis, and while

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[236] *Oman's Political System,* consulted on 22 October 2003 from, http://www.sgsa.com

[237] Ehlerman, C. D. & Lockhart, N., "Standard Of Review In WTO Law", *Journal of International Economic Law,* Vol 7, Issue 3, 2004, pp 491-521 at p 493.

[238] Al-Hosni, T, "The Parliamentary Experience In The Arab Gulf Cooperation Council (GCC) States: A Step Towards Democracy; Facts And Ambitions", PhD Thesis, University of Hull, 2000, pp 80-81.

theoretically, government in Oman is divided into the executive, legislative and judicial branches, the ruler is chief executive and remains the source of legitimacy and authority.[239] Despite the above considerations, and without presenting a detailed argument here, it is probably fair to claim that the Basic Statute of Oman, as fundamental law, generally compares with other modern constitutions, since it covers the fundamental affairs that are usually included in any constitution, such as the nature of government; the country's official name; the relationship between the legislative, administrative, and judicial powers; and the people's rights and duties.[240]

Someone may argue that the trajectory of Oman's reform process over the past three decades mirrors shortens process of joining the WTO. The new constitution which adopted by the sultan reflecting ideas for modernization and market reform, and since that time, Oman's reform effort has continued at an extraordinary pace, and as a result of that reforms, Oman has largely transformed its economy. However, it remains under the control of a government apparatus that struggles to maintain dominance even as it embraces modernization. There are four agencies that contribute in the operation of planning and decision making in Oman, in everything related to the public policies, political, economical or sociological. Those agencies are as below.

The first one is His Majesty the Sultan. Article 41 of the Basic Statute dictates that *"The Sultan is the head of the state and the supreme commander of the Armed Forces. His person is inviolable. Respect of him is a duty and his command must be obeyed. He is the symbol of national unity and the guardian of its preservation and protection."* In addition, Article 42 dictates also that *"The Sultan discharges the following functions: ..... Presiding over the Council of Ministers or appointing a person to preside; Appointing Deputies Chairman of the Council of Ministers, Ministers and those of similar rank and relieving them of their posts; Appointing senior judges and relieving them of their posts; Promulgating laws and ratifying them; Signing international treaties and agreements according to the provisions of the law or authorizing their signature and issuing Decrees ratifying the same....."*

Oman is a dynastic state, with hereditary power vested in the Al Said branch of the Al Busaidi royal family, which has ruled Oman since 1749. Contemporary Middle Eastern monarchs, including that of Oman, still rule in traditional ways and popular

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[239] See id, p 81.

[240] Al-Eshiwy, M., op. cit., 1997, p 71.

participation in decision-making and in the exercise of authority is limited. In this sense it can be said that the monarch is the state.[241] Oman's ruling family, however, differs from those of the other GCC States in being small and relatively weak, as the Sultan has no strong son or brother able to take over the day-to-day reins of the state. Moreover, for historical reasons, there is no influential inner circle of family Members required to be consulted on significant decisions.[242] The Sultan is the head of the state and the head of the government and is the highest and final authority. Thus, the legal system in Oman is based on laws and Royal Decrees issued by His Majesty, which constitute the law of the land and are valid from the date of publication in the Official Gazette or from any other determined date.[243] Moreover, international treaties, conventions and charters are also signed by His Majesty, or if signed by his representative, are submitted to His Majesty for ratification. The sultan's signature or ratification of a treaty, convention or charter bring it into force as part of the law of the land, effective from publication in the Official Gazette (Article 74 of the Basic Statute).[244] Thus, it seems that all authority and power including the executive, the legislative, the military and the judicial to some degree, is vested in His Majesty. Various interest groups such as the royal family, the leading merchants, notables and tribal leaders, top government officials and the mutawwas (religious scholars), can influence the sultan, but their contribution has no legal authority. Graz argues that "*the Sultanate as a nation-state, is not a democracy, and no one pretends otherwise. The Sultan is an absolute monarch. The fundamental decisions are his, and are taken by him, perhaps assisted by his advisers and his ministers. Even on a slightly wider scale, responsibility rests with a small group of people in Oman, not necessarily the group of the royal family; some Members of the Al Bu Said family are politically influential, others take no part in public life.*[245]

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[241] Al-Muharami, S., "The Reform And Development Of The Civil Service In The Sultanate Of Oman", PhD Thesis, University of Exeter, 1993, p 135.

[242] Peterson, J. E., "Succession In The State Of The Gulf Cooperation Council", *The Washington Quarterly,* Vol 24, Issue 4, 2001, pp 173-186 at p 179.

[243] Article 74 of the Basic Statute dictates that "The law shall be published in the Official Gazette within two weeks from the day of their issue. They shall come into force on the date of their publication, unless another date is specified there in". This Article comports with the WTO rules (Transparency Principle), which require that Members' laws should be published.

[244] Memorandum On The Foreign Trade Regime Of The Sultanate Of Oman, WTO Document Number WT/ACC/OMN/2. pp 34-35.

[245] Al-Muharami, S., op. cit., 1993, p 135.

The second agency is the Council of Ministers and specialized councils. Until the mid 1970s, no laws or regulatory systems existed to specify the functioning, principles and goals of institutions or the rights and duties of employees. The codification of government began in July 1975, when Royal Decree 26/75 was enacted, to regulate the administration. It set out the powers and duties of the Council of Ministers and other government bodies in tandem with the Civil Service Law of Royal Decree 27/75.[246] Over the next few years, Sultan Qaboos created various Ministries, although he took personal control over the structure and function of internal security, finance, defense and oil affairs. By the end of his first decade on the throne, the council of ministers had grown from 8 Members to 23. Other institutions created included the National Defence Council, the Interim Planning Council and the Central Bank. The function of the Council of Ministers is to assist His Majesty the sultan in formulating and executing general state policy.[247] According to Article 44 of the Basic Statute of the State, the Cabinet is the body entrusted with the implementation of general state policy; more specifically, it *"submits recommendations to the Sultan on economic, political, social, executive and administrative matters that are of concern to the government. Its responsibilities include proposing draft laws and decrees; looking after citizens' interests, ensuring that citizens are provided with essential services; improving their economic, health and cultural standards, defining general economic, social and administrative development goals and policies; proposing the means and measures required for their implementation in such a way as to ensure good use is made of the available financial, economic and human resources; discussing development plans prepared by the competent authorities and submitting them to the Sultan for approval and following up their implementation; discussing ministries' proposals on carrying out their functions within their own areas of competence and adopting appropriate recommendations and decisions on them; overseeing the administrative apparatus of state and monitoring the performance of its duties; liaising between government departments and units, and generally overseeing the implementation of laws, decrees, regulations, decisions, treaties, agreements and court rulings, in such a manner as to ensure that they are complied with, in addition to any other responsibilities assigned to*

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[246] *Oman 2002-2003,* Ministry of Information (Oman) October 2002, p 34.

[247] *The Administrative System,* consulted on 21 October 2003 from, http://www.omanet.com/english/oman2000/sec3/1.asp?cat=oy2k

it by the Sultan or in accordance with the provisions of the law". The work of the Council of Ministers is facilitated by a Secretariat-General. According to Article 53 of the Basic Law of the State, "Members of the Cabinet of Ministers may not combine their ministerial posts with the chairmanship or Membership of any public joint stock company". The Cabinet of Ministers is headed by His Majesty the Sultan and has 29 Members, as a result of Royal Decree No. 85/97 and Royal Decree No. 10/2000, issued on 25/1/2000, which amend certain ministerial portfolios.[248]

Although the letter of the law implies that the Sultan controls all action by the government, according to Al-Muharami, in practice, wide discretion is left to ministers in the performance of their duties and the outcome has been the occurrence of abuses of office.[249] Moreover, Skeet argues, "*Qaboos himself is unlikely to be sufficiently aware of the way in which a ministry is being managed; his information is likely to be skewed in favour of third-party sources and away from direct ministry. Therefore, in formal meetings with the Sultan, the opportunity for open discussion and criticism is reduced. These dangers vary, of course, with the strength of character and influence of individual ministers. But in a society whish is by nature and design autocratic, the autocrat is perceived as becoming more detached and less approachable".*[250] Another major problem that has recently occurred with Omani ministers is the nomination of some who have a PhD degree but whose specializations are not suitable to their ministerial responsibilities. Moreover, most of these educated ministers are lecturers in Sultan Qaboos University and lack administrative experience. However, most Omani ministers are still less educated compared with the ministers in the other Arab governments, and some of them do not have an academic qualification. This raises the question whether they are equipped to draw the future strategy of the country in a world where everything is based upon knowledge. Experience shows that much is left to foreign firms and experts.

The main responsibility for setting and implementing policies affecting foreign trade lies with the Ministry of Commerce and Industry (Royal Decree 26/75). It implements laws and regulations relating to importation and exportation of goods, concludes bilateral trade agreements, conducts multilateral trade negotiations,

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[248] Ibid

[249] Al-Muharami, S., op. cit., 1993, p 138.

[250] Ibid

implements export promotion measures and policies, sets policy on industrial incentives, and deals with matters relating to foreign investment. It also has duties in respect of insurance matters and for patents, copyrights and trade marks. The Ministry of Commerce and Industry (Directorate General for Specifications and Measurements) is also the government body responsible for establishing and approving standards for different goods sold in Oman, and for ensuring testing and compliance with standards for imported and domestically produced goods.

The second ministry whose role has relevance for foreign trade is the Ministry of Finance (Royal Decree 39/96), which in conjunction with Central Bank draws up and executes policies relating to banking and other financial services. The Ministry of Finance also handles matters relating to customs tariffs. Matters relating to agriculture, animal wealth and fisheries, including domestic support for these activities, are overseen by the Ministry of Agriculture and Fisheries (Royal Decree 83/99). The Royal Oman Police (Royal Decree 35/90), Directorate General of Customs, is responsible for administering and implementing customs law and procedures and for levy and collection of customs duties.[251] The responsibility for ensuring that the legal framework of the state is developed in line with progress seen throughout the Sultanate is the Ministry of Legal Affairs. This Ministry is responsible for drawing up Royal Decrees and for reviewing all draft laws, regulations and ministerial decisions, prior to their enactment and publication in the Official Gazette. It publishes an annual Legislative Volume, containing all royal decrees, ministerial decisions and government circulars issued during that year, and issues the Official Gazette twice-monthly. The ministry gives legal opinions and advice to the Government on the interpretation of royal decrees and Laws and any other matter referred to it by His Majesty the Sultan and its opinions are applicable to the whole government. Another important responsibility is the scrutiny of any contract committing the Government to expenditure of over RO500, 000.[252]

As the bureaucratic system developed and grew to respond to rapid modernization, the need was recognized for specialized bodies to be set up, to ensure that social and economic goals were pursued efficiently and effectively.[253] To meet this need, a number of specialized councils were set up to contribute in planning, study and

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[251] Memorandum On The Foreign Trade Regime Of The Sultanate Of Oman, op. cit., pp 35-36.

[252] See Royal Decree number 14/94 issuing the competences of the Ministry of Legal Affairs.

[253] Al-Muharami, S., op. cit., 1993, p 138.

formulation of proposals and plans in specific areas of development. Some of these councils, e.g. the Financial and Energy Resources Council, are headed by His Majesty the Sultan, and their Membership includes some Members of the cabinet and other senior officials.[254]

Oman's government is a bicameral system. Article 58 of the Basic Statute of the State dictates that "The Oman Council shall consist of: 1-The Shura Council; 2- The State Council. The law shall specify the jurisdiction of each, its term, sessions, and rules of procedure. Also the law shall determine the number of its Members, the conditions they should satisfy, the way they are selected or appointed, the reasons for their dismissal and other regulatory provisions." The Council was created by a Royal Decree in 1997.

Thus, the third agency involved in policy-making is the State Council. Sultan Qaboos has described the State Council as "another powerful building block in the Omani social edifice, which reinforces its achievements and reaffirms the principles we have laid out." These principles referred to include the initiation of a Shura (consultation) process, guided by Oman's traditional heritage and values and the Islamic Sharia, yet also manifesting features of the modern age. The State Council acts as an upper chamber similar to the House of Lords in the UK. It used to be dominated by tribal leaders and dignitaries, and is now made up of Members of acknowledged expertise in a number of fields. They may include former ministers; under-secretaries and those of equivalent rank; former ambassadors; former senior judges; retired senior officers; those noted for their expertise in science, literature and culture; academic staff of universities, colleges and higher institutes; dignitaries and businessmen; and people who have given distinguished service to the nation.[255] The Council's function is to consider issues presented to it, conduct research on development issues, and promote cohesion and unity. Its president and Members, all prominent Members of the Omani community, are appointed by royal decree. Eligibility criteria include Omani nationality; age 40 years and above, high status and reputation and with appropriate practical experience. As a rule, persons holding public office, apart from Members working in science, literature and culture, or as academic staff, are not eligible to be Members of the State Council, although exceptions can be made by the Sultan. The term of office is

[254] Memorandum On The Foreign Trade Regime Of The Sultanate Of Oman, op. cit., pp 35-36.

[255] *Oman 1999,* Ministry of Information, Oman, pp 38-39.

three years, renewable. The size of Council Membership does not exceed that of the Majlis a'Shura. Members of the State Council cannot be elected to the Majlis a'Shura. The State Council holds four ordinary sessions a year, although the president can convene extraordinary sessions if necessary.[256] The powers of the Council include "preparing studies to help to implement development plans and programmes, finding solutions to economic and social problems and proposing ways to encouraging investment, reforming the administration and improving performance.[257] The Council is also empowered to review and revise draft laws prepared by ministries and government departments, and to propose draft amendments. It submits proposals and recommendations to His Majesty the Sultan or the Council of Ministers. The council president reports annually to the Sultan on the Council's activities and deliberations. The current Membership is 53, including five women, reflecting Sultan Qaboos' "commitment to promoting Omani women to senior institutions, and his belief that women can and will contribute to the welfare of the nation,"[258] as he demonstrated recently when he nominated four women as ministers.

The fourth agency is the al-Shura Council. This body was established in December 1991, as a replacement for the State Consultative Council which had been formed in 1981.[259] Unlike its predecessor, which was a nominated body, the al-Shura Council is a wholly elected body with the exception of the President, who is appointed by a royal decree. Two deputy-presidents are elected by the Membership of the Council in a secret ballot. Members hold office for a term of three years, which may be extended. Candidates must be at least 30 years old, of good reputation and be reasonably well educated. On election, they must withdraw from any other official post held.[260] Oman held its fifth council election in early October 2003. Despite a large effort by the government to encourage voter participation, the voter turnout was low. Out of a total of 822,000 eligible voters, only 262,000 participated in this election. In addition, the government campaigned hard in support of the female candidates; however, only two of

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[256] *Oman 2002-2003,* op. cit., 2002, p 37.

[257] The powers of the Council are defined in Royal Decree number 86/97.

[258] *Oman 2002-2003,* op. cit., 2002, p 37.

[259] Deeb, M. J., "Oman: Political Development In A Changing World", *The American Political Science Review,* Vol 95, Issue 4, 2001, pp 1022-1024, at p 1021.

[260] Oman's Political System, op. cit..

the 15 female candidates were elected.[261] The number of Members elected from each Wilayat depends on population- one Member for populations up to 30,000 and two Members for Wilaya with populations in excess of this figure.[262] This level of participation may appear small by comparison with the legislatures of western democratic states, but the establishment of these bodies reflects recognition of the need for institutional mechanisms for political representation and the importance of ruler and government being accountable to society, and can be seen as a small but vital step in this direction. According to Riphemburg, the establishment of legislatures, or the enhancing and reform of existing ones, helps to give a regime legitimacy in the eyes of its neighbours and the international community. Oman's assembly can act as a safety valve to dissipate pressure building up in the system.[263]

One of the main differences between the al-Shura Council and its predecessor is that the government officials and civil servants are no longer eligible to participate in the new council in an official capacity. In addition, the Council has greater power compared with its predecessor and its functions include *"reviewing and offering consultative opinions on legislation related to social and economic affairs, giving opinions on general policies presented by the Council of Ministers, making proposals on new social and economic legislation, participating in the preparation and implementation of government plans, reviewing public services and utilities and making recommendations concerning their modification and development, identifying obstacles to economic development and recommending methods to solve them, and taking part in efforts to protect the environment.*[264] However, despite the liberalization of the Council, it remains far from being a representative legislative body. Its purview remains limited to social and economic matters, and it can only review government policies and not initiate legislation. Much of the Council's work is done in committees. There are now seven permanent committees: Legal; Economic; Health & Social Affairs; Education & Culture; Services & Development of Local Communities; Environment & Human Resources; Follow-up & Implementation. The meetings are held in camera and Members are forbidden to disclose any of the proceedings of the Council, which are

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[261] Habibi, N., Oman, *Oman Country Monitor,* March 2004, pp 1-6 at p 2.

[262] Oman is divided into eight administrative regions, which are further subdivided into 59 districts (wilayats). Each wilaya is governed by a wali who is responsible to the Ministry of Interior.

[263] Riphemburg, C.J., *Oman Political Development In A Changing World*, Praeger, London, 1998, p 82.

[264] The functions of the Council are defined in Royal Decree number 86/97.

kept confidential. However, the constitution of the Council requires public service ministers to present reports and answer questions on their ministries' performance, plans and achievements, which are publicized through the media. Ministers' responses to questions in plenary sessions of the Council have been televised.[265]

Although both councils' role is still merely consultative, the changes of the past three decades have been characterised by many positive socio-economic and political features which have encouraged greater political participation within the Omani society. The most important of these developments has been the withdrawal from formal political life of economic elites who had previous wielded political influence. Oil allowed the rulers to force the merchants to choose between wealth and formal politics in an unprecedented manner.[266] The ending of the merchants' role in formal politics was accompanied by the development of new alliances: first between the rulers and their ruling families, who acquired a more prominent political role as rulers sought loyal allies; and second between the rulers and the citizen population, through development and welfare programmes and state employment. The expansion of bureaucracy brought new recruits into the decision-making elite, including many from the ranks of the middle class. These educated younger people acquired a sense of political importance, and have sought a greater role in decision-making and in the political system in general. They realized that they could not fulfil these goals within the traditional structure, and recognized the need for a modern institutionalized framework for participation. Nevertheless, despite the creation of a modern structure of government, authority is still strongly concentrated in the person of the ruler and his family. Moves towards constitutional monarchy have done little to erode, still less eliminate, the traditional emphasis on dynastic legitimacy.[267]

To get a complete picture of the Omani legal system, it is helpful to have also a brief background about the judicial system, which is considered in any system as the body that protect freedoms and rights. In August 1970, Tariq bin Taimour (Sultan Qaboos' uncle) was called upon by Sultan Qaboos, who had seized the throne a month before, to form a cabinet. This cabinet, the first in Oman's long history, included a Ministry of Justice. However, in the reshuffling that followed the resignation of Tariq

[265] Oman's Political System, op. cit..

[266] Al-Hosni, T., op. cit., 2000, pp 46-47.

[267] Ibid, p 47.

bin Taimour in January 1972, the Ministry of Justice was merged with the Home Office, to form a new authority called the Ministry of Interior and Justice. This was subsequently merged with *awqaf* and Islamic affairs, under the name of Ministry of Justice and Islamic Affairs.[268] The judiciary in Oman consists of Shari'a courts, magistrate courts, and several specialised courts and tribunals. Shari'a courts hear civil and minor criminal cases, according to Ibadi (an Islamic sect) doctrine. The Court of Appeal in the capital, Muscat, is staffed by three judges who hear appeals from first instance Shari'a Courts. The highest level of the judiciary is the Complaints Committee. However, since the 1970s, the jurisdiction of Shari'a Courts has been increasingly limited. Magistrates Courts hear misdemeanor cases. The Criminal Court in Muscat hears cases involving felonious and also acts a court of appeal. Specialised Courts and quasi-judicial tribunals have been set up in various areas of land, commercial, labour and tax law to implement state-issued legislation.[269] However, the government has made remarkable progress since that time in creating a practicing bar and judiciary. The government officials in Oman's bureaucracy are very powerful and, in particular, are vested with authority to implement WTO-related law. A key question from a legal standpoint is the extent to which Oman's judges have the authority to review and correct administrative decisions. The laws on judicial authority and independence of the judiciary are set out in series of royal decrees.[270]

During the accession process of Oman to the WTO, and as a reflect of access negotiations, four new royal decrees introduced a radical reform of the judicial system of the Sultanate of Oman. Until comparatively recently, courts established for different purposes (e.g., tenancy disputes, employment disputes, etc.) were under the authority of different administrative bodies. In line with the Basic Statute, responsibility for all courts was brought under a single authority, namely, the Ministry of Justice (the sole exception being the Administrative Court). These new royal decrees represent successive moves towards achieving the harmonisation of courts and defining their

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[268] Amin, S. H., op. cit., 1985, p 294.

[269] *Sultanate Of Oman,* Consulted on 22 October 2003 from, http://www.law.emory.edu/IFL/legal/oman.htm

[270] Article 60 of the Basic Statute dictates that "The judiciary is independent and its functions are exercised by the different types and grades of courts which issue judgements in accordance with the law", and Article 61 dictates also that "Judges are subject only to the law and cannot be removed except in cases determined by the law. No party can interfere in law suit or matters of justice, such interference shall be considered a crime punishable by law....."

hierarchy and jurisdiction. The first such decree, number 90/1999, issuing the judicial Authority Law, effective from June 2000, sets out the different levels of courts in Oman as follows: the Supreme Court; the Appellate Courts; the Preliminary Courts; and the Courts of Summery Jurisdiction. These courts are competent to hear civil and commercial matters (including labour, tax, tenancy disputes, etc.), in addition to applications for arbitration. Personal matters remain under the jurisdiction of the Shari'a Court. The law contains provisions to ensure that cases already initiated in the Shari'a, Commercial and Penal Courts will be referred, without additional court fees, to the relevant court in the new structure. There are also provisions for the publication of legal precedents and a system for the automatic review, by the Supreme Court, of any judgment which contradicts an earlier legal precedent. However, this is not to say that a system of precedent law akin to that found to common law jurisdictions has been established, since the model for Omani Law was Egyptian Law, which was in turn based on French Law, a code law system. The second measure in overhauling the judiciary was Royal Decree number 91/1999, which established the Administrative Court and issued its law. The Administrative Court is an independent judicial body set up specifically to review decisions issued by government bodies on such issues as lack of competence, erroneous perception, violation of laws or regulations and misapplication, misinterpretation or misuse of authority. Under Article 8 of this law, the Administrative Court is not competent to decide on matters of royal decrees or majesty orders. Administration of the Administrative Court falls under the Minister of the Diwan. The third Royal Decree number 92/1999 set up the Public Prosecution Authority as an independent body under the supervision of the Inspector General of Police and customs. Its role is to enter in criminal cases on behalf of the public, monitor the enforcement of penal laws, carry out surveillance of culprits and enforce judgments. Under the fourth Royal Decree number 93/1999, the Supreme Judicial Council was established, tasked to formulate the general policy of the judiciary and to ensure its independence and continued development.[271] These four new royal decrees can be seen as a reflection of the sultan's commitment to attaining and maintaining the independence of the judiciary, and are also expected to ensure that laws are interpreted and in a consistent manner. These laws, together with the principles established by the

[271] Trowers and Hamlins Consultation Firm, "Oman's Recent Development, Further Development Of Oman's Legal System", *Arab Law Quarterly,* Vol 15, Issue 1, 2000, pp 112-114.

Basic Statute, demonstrate the progressive approach of the Sultanate to the development and maintenance of a sophisticated and reliable legal system, which is likely to be viewed favourably by foreign investors.[272]

In short, Oman is certainly not the only WTO Member that faces institutional barriers to promoting transparency, however, what is important about Oman as a WTO Member is the degree to which the existence of "rule of law" in Oman. Thus, it is important to recognize the political constraints in order to understand the extent to which legal reform is feasible. The concept of "rule of law" encompasses not only transparency but also judicial independence and the notion that no person, including a government official, is above the law. Notwithstanding the progress that has been achieved by the Omani government with institutional reform, there remain a number of institutional factors that weaken the judiciary and impede judicial independence in Oman. The factors that undermine the neutrality of Omani judges include: political influence and the continued involvement of government, the lower status of judges vis-à-vis government official. Since these impediments to judicial independence are rooted in social and political conditions in Oman, making progress in these areas can only be achieved over time. However, any assessment of Oman's effort towards establishing transparency, uniform application of law, and judicial review should be mindful of the huge task that the regime faced when the present sultan came to the throne, when Oman's wrecked legal and political system had to be rebuilt from scratch. Viewed from this perspective, the progresses that Oman has made in establishing a judiciary bar are incomplete but nonetheless substantial. In addition, it can be argue that the WTO accession has and will continue to further legal reform by enhancing the professionalism of the courts and reducing the government influence.

3.2.2. Oman's Economic Status And Development Strategies

The accession to the WTO is directly linked to a sound process of domestic economic reform. This could be a natural result of the need to bring the internal economic and legal structures of the country into line with fundamental international norms, of which the WTO Agreement is the expression. Developments on the domestic reform front play an important part in determining the pace of it is clear that the process of domestic reform and accession will have wide-ranging economic, political and social

[272] Ibid.

implications changes of this kind consequently require vision, courage and determination. They also require the building of consensus among domestic interest groups to sustain the changes, notwithstanding inevitable difficulties. The benefits of being in the WTO need to be communicated effectively to secure the support of key sectors of society. Thus, however, Oman's terms of accession to the WTO required some concessions it could afford Oman full participation as a WTO Member and participant in the international market system, which was until recently too limited.

The economic principles which govern Oman's economy are set out in Article 11 of the Basic Statute of the State which provides that "*The national economy is based on justice and the principles of free economy. Its essence is the constructive and fruitful co-operation between public and private activity. Its objective is the achievement of economic and social development in order to increase production and raise the standard of living of the citizens according to the State's general plan and within the limits of the law...*"[273] From the principles of this Article are derived the main elements of Oman's economic policies: liberalization of the economy and trade; reduction of tariffs and removing restrictions in line with its commitment to WTO, increasing and diversifying exports; creating better access to world markets, enhancing trade cooperation by signing bilateral economic, commercial and technical co-operation agreements; establishing free trade areas, customs union with GCC States and negotiating free trade agreements.

In many ways, Oman is a typical Arab Gulf oil producer. However, its oil fields are generally smaller, more widely scattered, and less productive, and so the oil is more costly per barrel than in other Arab Gulf countries. The average well in Oman produces only one-tenth as much oil as those in neighbouring countries. This means that for Oman, sooner than for its neighbours, it will be necessary to adjust to life without oil. In 2003, Oman's proven oil reserves were estimated at 5.7 billion barrels.[274] However, while Oman's oil reserves were reportedly rising, its production was declining from a high of 960,000 barrels day (bpd) in 2000 to about 700,000 bpd by early 2004.[275] More seriously, it emerged in early 2004 that Royal Dutch/Shell had overstated its Omani

[273] The Basic Statute of the State is the most important piece of legislation in Oman enacted by Royal Decree number 101/96, and it is equivalent to the regulation.

[274] *The World Factbook 2004, Oman,* consulted on 15 February 2005 from, http://www.cia.gov/cia/publications/factbook/print/mu.html

[275] Gasim, A., "GCC Insights: Oman's Budget Shows A Determination To Grow", *Gulf News,* 12 January 2004.

reserves by as much as 40%.[276] Over 90% of the country's oil reserves and about 94% of production are accounted for by Petroleum Development Oman (PDO), a consortium composed of the Oman government (60%), Shell (34%), Total (4%), and Partex (2%). PDO is the Sultanate's second largest employer after the government.[277] Since it is unlikely that the Omani government's estimate of PDO's oil reserves would be more accurate that of Royal Dutch/Shell, the 40% overstatement can be assumed to affect all of PDO's proven reserves estimates. If this is indeed the case, and assuming that the 10% of Omani oil reserves not accounted for by PDO has been accurately stated, this would mean that Oman's total proven oil reserves are not 5.7 billion barrels, but closer to 4.2 billion barrels. Assuming that production continues at current rates, this level of reserves would be exhausted within 16 to 20 years.[278]

His Majesty Qaboos bin Said, quoted by Al-Busaidi, said in November 1995, "*Oil is a finite resource and its time is limited. Therefore, it is essential not to depend on it solely to finance the development. From the beginning, we have stressed this truth, and our efforts have been notably successful. However, oil is still the main resource, and the fluctuation of its price is of great concern to everyone. Thus, there is no other course but to diversify the sources of our national income more widely, in order to make oil revenues only a minor element of this income.*"[279] Because of the danger of the economy's heavy dependence on oil products,[280] a major focus of government economic policy is to reduce dependency and at the same time to reduce the oil sector's contribution in the total GDP, thereby limiting the impact of price fluctuations. To achieve this goal, the government has embarked on an economic diversification policy and is seeking to attract local and foreign investors to participate in the development of the country.[281] For Oman, as for most of its neighbours, industrial development

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[276] Gerth, J. & Labaton, S., "Oman Oil Yield In Long Decline, Despite Shell's Claims", *International Herald Tribune,* 9 April 2004.

[277] *The Sultanate Of Oman, An Overview Of The Managerial Concerns In International Trade and Economic And Trade Policy Issues*, A Background Not, Meeting 2-3 October 2001, Muscat, consulted on 15 December 2003 from, http://www.intracen.org/worldtradenet/docs/networking/country_papers/paper_oman.pdf

[278] Katz, M. N., "Assessing The Political Stability Of Oman", *Middle East Review Of International Affairs,* Vol 8, Issue 3, 2004, pp 1-10 at p 2.

[279] Al-Busaidi, Z., "Privatisation In The Sultanate Of Oman", LLM Thesis, University of Exeter, 2000 at p 39.

[280] See Table 3.1

[281] Al-Abri, Z., "Restructuring And Privatizing The Electricity Supply Industry (ESI), A Model For The Omani ESI", LLM Thesis, University of Dundee, Session 1996/97, p 72.

(especially the petrochemical industries), is the cornerstone of successful economic diversification and the main hope for the country's continued growth.[282] Oman is one of the most progressive countries in the region, and has consciously striven to create a climate conducive to new investments by developing a free, competitive economy with equal opportunities for all, and enacting laws and regulations designed to encourage enterprise.[283] The careful economic planning which has guided the achievement of the past three decades is now reflected in the government's Vision 2020 principles, set out at a conference in 1995. These guidelines for planning over the next 15 years lay more emphasis than ever before on private investment and the use of workers to achieve long-term sustainable growth and a more diversified economy.[284] In other words, the vision is a "disguised form of privatization" and offers inducements to private enterprise to achieve the nation's development goals. The intention is that the population as a whole should participate in and benefit from economic growth and profit. Oman is the first country in the Arab World to set a long term economic vision for its growth and development.[285]

The vision is the latest feature in a process that can be traced to the accession of the present Sultan in 1970, when "Oman has set the path to progress, construction and achievement to proclaim the birth of a modern state full of aspiration and hope for the present and future generations".[286] Development efforts were initiated with the first of a series of five-year development plan (1976-1980), in which one of the most important principles set out as a foundation for Oman's development strategy was the need to develop new sources of national income to complement and, eventually, replace oil revenues.[287]

The five-year development plans that guide Oman's economic strategy are drafted by Oman's Development Council, later renamed the Ministry of National Economy, with input from government and non-government bodies. By 1995, with the

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[282] Looney, R. E., and Winterford., D., "Patterns Of Arab Gulf Exports: Implications For Industrial Diversification Of Increased Inter-Arab Trade", *Orient,* Vol 33, Issue 4, 1992, p 579-590 at p 579.

[283] *Better Your Business,* consulted on 2 August 2001 from, http://www.ociped.com/invest.htm

[284] *Life After Oil,* consulted on 31 October 2002 from, http://backissues.worldlink.co.uk/ILink/1206/18.htm

[285] Al-Bulushi, H, "The Economic Potential Of Privatization For The Development Of Public Utilities In The Sultanate Of Oman", MBA Thesis, University of Lincolnshire & Humberside, 2000, p 18.

[286] Memorandum On The Foreign Trade Regime Of The Sultanate Of Oman, op. cit., p 3

[287] Ibid.

completion of four five-year plans, a need was felt to pause to reflect on past experience to produce a new vision of Oman's economic future. Oman 2020 sets the course for the Sultanate's development over twenty-five years to 2020, in light of changes in the world economy, the revolution in telecommunications and information, and the consequent impact on global production and services. Oman 2020 represents a watershed between two stages of the Sultanate's economic and social development, marking "the end of initial development up to the country's Silver Jubilee celebrations in 2000, and a new journey into the third millennium."[288]

Oman has trade links with most countries of the world. Oman's free and flexible trade regime involves no licensing or other specific requirements for engaging in importation other than registration with the Ministry of Commerce and Industry under the relevant laws. Nor are there any registrations, licensing or other requirements for engaging in export trade, except for two types of export restrictions which could affect very few products. The first is the requirement of approval of the Ministry of Agriculture and Fisheries for export of date seedlings and certain species of fish. The other is the prohibition on export of antiques, ancient manuscripts and Marie Teresa Riyals. In this climate, Oman has undergone continuing change in its export structure, with a planned gradual increase in the proportion of non-oil exports and re-exports.[289] At the same time, the diversification of the economy is being pursued through strengthening, promoting and developing the sectors of manufacturing, services, agriculture, and petrochemicals. A key policy in this respect is openness to foreign investment and sustaining a favourable investment climate.[290]

Overly stringent regulation can slow business expansion and weaken profits, which are both the means of further investment and the motivation for further investment. Thus, today, every government wants FDI is now recognizing that the way to attract FDI is to demonstrate that its trade regime is stable and credible. One important way in country can demonstrate its commitment to policy stability, predictability and good governance is through Membership of the WTO. This shows potential investors, both domestic and foreign-based, that the country prepared to abide

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[288] *Oman 2002-2003,* Ministry of Information (Oman) October 2002, pp 94-95

[289] Memorandum On The Foreign Trade Regime Of The Sultanate Of Oman, op. cit., p 29 & 49.

[290] For example, the industrial policy of Oman envisages that the manufacturing sector which at present contributes a little over 5% to the GDP of Oman should be strengthened and expanded so as to contribute 15% to the GDP by the Year 2020.

by an agreed set of rules and understandings. In this respect, Oman's laws and regulations governing foreign investment are quite liberal. The repatriation of capital and profits is unrestricted. The law explicitly guarantees that projects having foreign investment will not be subject to confiscation or expropriation except in public interest, in which case compensation will be paid. In addition, there is no specific law on competition policy. Oman's economic policy is thus, generally in line with the principles of free market economy. The formation and operation of companies is governed by the Commercial Companies Law which provides for six kinds of companies, namely general partnerships, limited partnerships, joint stock companies, limited liability companies, joint ventures and holding companies.[291] Foreign investors may form or participate in each of these forms of companies, subject to the Foreign Investment Law.[292] An obstacle to investment, however, is the law on foreign business ownership, which requires a local sponsor or partner for any foreign investment in Oman. Analysts have criticized such restrictions and suggested that their removal would facilitate freer trade. "Why should not a foreigner have 100% ownership? These are the kinds of reforms Oman needs to put in place to attract foreign investment in a big way," one economic analyst said.[293] In its efforts to encourage investment, the Omani government has taken several steps, among them a revision of the Foreign Investment Law with a view to integrate the requirements following Oman's accession to the WTO. The aim was to improve transparency for the investor regarding remaining restrictions and procedural requirements and further define concepts like economic value of the investment. Assessment of the current implementation phase of the establishing the Omani Centre for Investment Promotion and Export Development, which acts as a one-stop facility to finalize the procedures involved in foreign investment.[294] Moreover, the Foreign Capital Investment Law now allows foreign holdings up to 100% in industrial

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[291] Oman Commercial Companies Law 1974.

[292] It is worth noting that before the accession of Oman to the WTO, in the case of accounting and auditing companies, foreign companies were required to have a local Omani partner and the share of the Omani partner had to be less than 35% of the total capital. However, after the accession Oman has given a commitment to open this sector to foreign suppliers.

[293] *Oman Economic Review*, Trading Views, 25 February 2005.

[294] However, the procedures are still too long and complecate. For example, according to the World Bank (2005) Doing Business Database it need 9 procedures to start a business in Oman compared to 2.9 in the top ten countries, which mean 34 days compared to 6 days in those countries. In addition, according to the database it need 7 years to close a business in Oman compared to less than a year in the top ten countries. The World Bank Database available online from, http://rru.worldbank.org/DoingBusiness/

projects found to be of added value to the national economy; and the Law of Taxation gives companies in which foreigners hold not more than 49% of its capital, equal treatment to those wholly owned by Omanis.[295] In addition, as an efficient market economy is not possible without a sound and predictable legal structure that protects property rights and contracting, thus, Oman is committed to protection of intellectual property rights within its jurisdiction and to meeting its international obligations in this area. To this end, Oman has become a Member of the World Intellectual Property Organization (WIPO), and has issued the necessary laws. In this context, Oman extends national treatment and MFN treatment to foreign nationals in respect of patents, trade market and copyright and related rights.

On the other hand, the discovery of huge natural gas resources in the nineties[296] enabled the Sultanate's industrialization strategy, which had been concentrated on small and medium scale industries in the capital, Muscat, to be expanded to other regions. Natural gas is now seen as the basis of plans to reduce dependence on oil.[297] The aim is that, by 2020, reliance on oil will have been ended in favour of non-oil sectors, raising levels of savings. The crude oil sector's share of Gross Domestic Product (GDP) is estimated to drop to 9% in 2020 compared with 33.5% in 1995, while the gas sector's share of GDP is expected to rise from 1.5% in 1995 to 10% in 2020.[298]

Under its pre-WTO central planning, trade was subject to government control through ministries and state trading enterprises, as well as institutions governing other aspects of international exchange of goods and services. Thus, there were divisions among different political factions within the government; some are convinced of the need to aggressively pursue market reform, while others are more reluctant. However, the application to join the WTO necessitated action to bring those policies and institutions in line with the provisions of the WTO agreements regarding trade in goods (GATT), trade in services (GATS). This called for sweeping changes in the country's manner of conducting trade, notably the need to introduce laws and institutions to allow private enterprises and market to operate without government interference. Although

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[295] Najjar, M. J. and Roufca. P., "A Breeze Of Change: Joint Venture Laws In The Gulf", *International Company And Commercial Law Review,* Vol 9, Issue 12, 1998, pp 326-349 at p 348.

[296] Oman's natural gas reserves reportedly went from 12.3 trillion cubic feet (tcf) in 1992 to almost 30 tcf in 2003, with as much as another 2 tcf expected.

[297] Mohammed, R., "Challenges Ahead For Oman's Economic Policy Makers", *Al-Markazi,* Vol 24, Issue 5, 1999, pp 4-7 at p 8.

[298] For more information in this context see Table 3.2.A & 3.2.B.

far-reaching and potentially onerous, the commitments that Oman has undertaken in its protocol of accession will open the Omani market to competition and pressure the government to end its practice of protecting inefficient state-owned enterprises, a practice that is a drag on the economy and threatens the continued stability of private sector. As a result, since 1999, an emerging private sector has participated alongside government bodies, in drafting the five-year plan. The latest plan sets out general aims and a basic financial framework, and estimates the government revenues and expenditure needed to achieve its aims between 2005-2010. It sets out three core goals for this period: developing human resources and basic structures, economic diversification and encouraging private sector growth.[299]

According to Al Manthari, the encouragement given to the private sector is not a new phenomenon, as the sector is expected to be a major driver of the country's socio-economic development. With this in mind, the government has introduced numerous measures to encourage the private sector, such as offering incentives to entrepreneurs whose projects fulfil certain requirements with regard to production for export, import substitution, use of local materials, and employment of Omani labour. In this respect, although the Labour Law governs the employment of Omanis and non-Omanis,[300] companies are asked to give priority Omanis wherever possible, and the Ministry of Labour Forces has set percentages quotas for Omanization. Other requirements concern contribution to domestic value-added, production of inputs for other domestic firms and responsiveness to the needs of a broad spectrum of the population.[301] Entrepreneurs have also been offered technical help in project preparation, market assessment and product marketing as well as concessional loans, and tax exemptions. Under this climate, the private sector has flourished. The government sees itself as a promoter rather than competitor to the sector, and has an established policy of confining its own activities to the areas that the private sector is unable to undertake.[302] Moreover, to strengthen the contribution of the private sector to economic growth, the government is committed to

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[299] *Oman 2002-2003,* op. cit., 2002, pp 95-96. In this respect, until now there is no publications data show to what extent that the government achieved these goals.

[300] Foreign workers are required to obtain work permits from the Ministry of Labour Forces. However, as an exception to MFN, under Article 8 of the UEA the GCC States implement rules ensure national treatment for GCC nationals as regards freedom of movement, work and residence, right of ownership and freedom of exercising economic activity, including service activities.

[301] Al Manthari, F (1)., "Towards Excellence In The Private Sector", *Al- Markazi,* Vol 24, Issue 3, 1999, pp 20-22 at p 20.

[302] Ibid.

privatising key sectors. Moves towards this goal were announced in Royal Decree number 42/96. Since 1996, the government has gradually withdrawn its involvement in industry and services, in favour of the private sector.

The government's privatisation intention is to extend market forces into enterprises currently run by the public sector, in order to enhance the efficiency and productivity of the economy as well as to diversify the economic base. It also aims to reduce the cost of supplying public services, by encouraging more efficient production and delivery, thereby reducing the need for subsidies, by using market pricing mechanisms to rationalise the consumption of certain services. Privatisation is intended to increase the contribution of Oman's dynamic private sector to the economy, in terms of medium and long term job creation through the free market's allocation of resources, and through provision of opportunities for wealth distribution. Simultaneously with creating good local investment opportunities, privatisation in Oman aims to encourage the participation of foreign investors in partnership with the government and the private sector, with a view to the transfer of technology and the introduction of more modern management techniques.[303] The Minister of National Economy, Ahmed Bin Abdulnabi Makki, stated that "*privatisation is a method of assuaging the deficit in the revenues of the government, in addition to transferring some of the burden of development to the private sector and attracting foreign investment*".[304]

Privatisation takes many forms in Oman: selling government assets, inviting the private sector to run services previously provided by government, or appointing private firms to provide or manage services for the government. Other options include renting public enterprises to the private sector for a fixed sum, and awarding management contracts for public enterprises, dividing net profit between the private sector and the state on a pre-agreed basis. In other cases, the private sector is invited to provide services such as hospital supplies, or cleaning and maintenance of government utilities.[305]

Supervisory organizations have commended Oman for its comprehensive economic policies aimed at achieving economic stability and sustainable development, and the International Creditworthiness Classification Organization has awarded Oman a

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[303] Al-Busaidi, Z, op. cit., 2000, pp 58-59.

[304] Al Maawli, A., "The Privatisation And Its Impact On The Economic Development Of The Sultanate Of Oman", PhD Thesis, Manchester Metropolitan University, 2000 at p 127.

[305] *Oman 2002-2003,* op. cit., 2002, pp 95-96.

high credit classification. Nevertheless, various economic institutions have asserted the need for the Omani government to continue and increase its efforts to diversify the sources of revenue and achieve financial balance, as well as promoting the private sector. They have expressed confidence in the ability of the Sultanate to continue its present prosperity, provided it manages to address the challenges being faced by different sectors. For example, concern has been expressed that despite earnest efforts of the government to diversify the sources of national income, export of crude oil continues to be the country's main source of revenue. Moreover, international organizations have drawn attention to a number of problems facing the banking and financial sector, in particular, increasing competition in the banking and financial sector, due to the high concentration in this sector; the relationship between the operation of the banking sector and the level of performance of Muscat Securities Market; a narrow deposit base and dependence on personal loans.[306] Furthermore, according to Al-Maawli, the privatisation process in Oman faces a number of challenges. A crucial issue is the problem of finding a sufficient number of competent entrepreneurs (rather than just merchants or speculators) to initiate and implement development projects after the completion and preparation of the government's privatisation plans. Second, the current government practices of subsidies and protection are not wholly conducive to the building of an efficient free enterprise system. Newly privatised companies, especially those privatised by means of direct sales, often keep the privileges they were granted previously, such as special licences for imports and tax exemptions, which may encourage the rent-seeking behaviour, which is common in a heavily regulated environment such as Oman's. A third challenge is the tendency for equity in privatised companies to be dominated by particular groups who are connected to the elite, so that the advantages of privatisation are reaped only by a few well-connected individuals, contrary to the spirit of general free enterprise. Lastly, in a market as small as Oman's, even under privatisation, many monopolies will remain, a situation which is not conducive to competitiveness and efficiency. This raises the issue of the need for a new regulatory framework and the establishment of appropriate supervisory agencies to guarantee that such privatised monopolies do not operate at the expense of consumer rights.[307] In this respect, there are two aspects of the WTO rules that could leverage to

[306] Mohammed, R, op. cit., 1999, pp 4-7.

[307] Al Maawli, A, op. cit., 2000, p 127.

Oman's government authorities in facing the above challenges: first, Oman's commitment under the GATS to open its banking sector to foreign competition; and second, WTO restrictions on industrial subsidies. Oman's GATS commitments should encourage reform of banking system through competition from foreign banks. While some observers have expressed concern that the competition from foreign banks could divert sufficiently large amounts of domestic deposits out of the country to threaten the collapse of Oman's domestic banking system, others predict that foreign participation will force Omani banks to more effectively compete and their extent will not be jeopardized.[308] On the other side the SCM Agreement discourages and, to some extent, prohibits Oman's government from providing financial support to the enterprises. The general approach of the SCM Agreement is to prohibit a limited range of subsidies while allowing other subsidies to be the basis for imposing countervailing duties.[309]

There is another challenge facing the Omani government, which is productivity. This is a key concept that explains the economic success of countries like Japan since the post Second World War, despite a lack of natural resources. Improved productivity is a fundamental prerequisite for achieving sustainable prosperity and ensuring that the private sector can compete successfully in the international arena. Oman has ample natural resources which have contributed significantly to the development achievements of the past 30 years, but these natural advantages, which in themselves generate considerable added value, should not be allowed to blind planners to the need for value creation in order to sustain prosperity when the revenue from these resources declines. Therefore, to secure the viability and prosperity of the Sultanate towards the next centuries, it is critical that enough attention is paid to efforts to harness productivity in Oman.[310] Mr Seki[311] expressed the opinion that the speed with which Oman has caught up after its late start in socio-economic development, and the general trend of the policies set out in Vision 2020, invite optimism as to the potential for further

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[308] More discussion on the impact of opening the banking sector to foreign banks is found in Chapter Five of the thesis.

[309] Also more discussion on the impose of this Agreement is found in Chapter Five of the thesis.

[310] Al-Mandhary, F. (2), Promoting productivity in the Sultanate, *Al-Markazi,* Vol 24, Issue 5, 1999, pp 24-29 at p 26.

[311] Mr Seki is one of the Japanese experts who came to Oman to propose comprehensive standards to measure productivity and with a possible mandate, activities and institutional framework and organization in charges of productivity promotion in Oman. This was an outcome of an agreement in March 1997, between the Ministry of Commerce and Industry and Japanese Productivity Centre for Socio-Economic Development (JPC-SED).

development. Nevertheless, he argues that, while the need for Oman to transform her economy to reduce dependence on energy is well promoted and understood, the competition likely to be faced by Omani companies as a result of accelerated globalization and associated social and technical change, is less well understood, and Oman needs to become more aware of this situation. Moreover, attention has been drawn to the reliance on expatriate experts and engineers in certain high value added sectors, and underutilization of young Omanis, even though the population structure of Oman is such that as many as 30,000 new workers enter the market every year. To secure employment for these people, a policy of Omanization has been introduced, whereby the issue of work permits has been slowed down and mandatory quotas set for the proportion of Omani workers to be employed in each sector. However, in some sectors, the level of indigenous skills and training is not sufficient to enable competitiveness to be sustained if Omanization is pursued rapidly. There are also problems related to the high turnover rate of newly recruited Omanis and related lack of practical training.[312] To overcome these obstacles to national productivity, Seki suggests the setting up of a National Productivity Organization, as has been done in several countries. He proposes that such an organization could take the form of a government branch, an independent governmental organization, or a non-profit institution. Another possibility would be for the organization to be set up initially as a government organization and, as its activities and contribution are established and recognized, acquire independent status, until a time when productivity promotion is no longer a government priority and the organization is offering such high value services that customers are ready to pay for services.[313]

Since Oman acceded to the WTO in 2000, the need for restructuring of its economy becomes more pressing.[314] The above are the sort of issues the Omani economy will need to address to face the future impacts which could arise from the accession of the Sultanate to the WTO. Another important consideration, however, will be Oman's relations with neighburing states with which it shares a common culture and interest, the GCC, as explained below.

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[312] Al-Mandhary, F (2), op. cit., 1999, pp 24-29.

[313] Ibid.

[314] Ng, L.F.Y., et al., "China And East Asia After The WTO Accession: Introduction", *The World Economy,* Vol 27, Issue 10, 2004, pp 1499-1500 at p 1499.

3.3. THE GCC STATES' APPROACH TO ECONOMIC INTEGRATION

GCC States are the only ones in the Arab world to be accorded an "investment-grade" status from global credit-ratings agencies Moody's Investors Service, Standard & Poor's and Fitch Ratings, in recognition of their solid fundamentals. As globalization proceeds, changes are tasking place in the business practices of these states, the GCC governments are undertaking structural reform measures as protection against external shocks, and their strategy in this respect includes closer economic integration among them.[315]

The people of the Arab Gulf have, for many centuries, shared a common language, culture and religion. The similar political, social and economic pressures experienced by the states of the region have further contributed in creating a distinctive Gulf community and culture.[316] The Arab Gulf States occupy most of the Arabian Peninsula. It is an important region for two main reasons. First, before oil was discovered in the region in the 1930s, it was important for its strategic and geographical location at the crossroads between Asia and Africa, and with control over the goods traffic via the Arabian Gulf, the Gulf of Oman, the Arabian Sea, and the Red Sea. Links to Europe are provided via the Suez Canal and the Mediterranean Sea. The second factor is the huge oil wealth that is possessed by the Arab Gulf States,[317] which hold about 43% of the world's reserves of crude oil and supplies 20% of global crude production. They are all Members of OPEC, except Bahrain and Oman.[318]

The GCC charter in Article 4 states that the GCC was established to achieve specific objectives, which are: *(1) Effect coordination, integration and interconnection between Member States in all fields in order to achieve unity between them. (2) Deepen and strengthen relations, links and scopes of cooperation now prevailing between their peoples in various fields. (3) Formulate similar regulations in various fields including the following: Economic and financial affairs; Commerce, Customs and*

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[315] Siddiqi, M.A., "GCC: A Force To Be Reckoned With: The Six Gulf Cooperation Council (GCC) State, Comprising Bahrain, Kuwait, Oman, Qatar, Saudi Arabia And The UAE, Have Emerged Into A Powerful Regional Economic Bloc" (Business & Finance), *The Middle East,* 12 January 2003.

[316] Ateeq, K.A., "The Applicability Of A Uniform Accounting System In The GCC Countries", PhD Thesis, University of Hull, 1992 at p 26.

[317] Al-Eshiwy, M., "Arbitration Regulations In The Gulf Co-Operation Council (GCC) States: A Comparative Study", PhD Thesis, University of Exeter, 1997 at p 59.

[318] *The EU & The Gulf Cooperation Council (GCC),* consulted on 20 January 2004 from, http://europa.eu.int/comm/external_relations/gulf_cooperation/intro/

Communications; Education and Culture; Social and Health Affairs; Information and Tourism; and Legislation and Administrative Affairs. (4) Stimulate scientific and technological progress in the field of industry, mineralogy, agricultural, water, and animal resources; the establishment of scientific research centres, implementation of common projects, and encourage cooperation by the private sector for good of their peoples.

Hence economic integration, not military unification, has been the primary focus of the Council. On 8 June 1981, within two weeks from the date of establishment of the GCC, the Unified Economic Agreement of the Council was announced.[319] The GCC States are now at a critical juncture, with an increasing need for funds to maintain the existing welfare system and other expenditures, but revenue is still largely dependent on a single asset, oil. Moreover, there are serious constraints on their ability to transform this asset into a steady supply of income.[320]

To overcome the risks inherent in excessive reliance on a single commodity and its industries, the GCC Members have come to attach major importance to industrial diversification. In this respect, regional integration was offered protection against external vulnerability, as coordination of their investment and development strategies would help them counter the increasing international competition in many product markets targeted by the GCC States and overcome the problem of the limited domestic absorptive capacities of the states individually. Thus, although it would be fair to say that military considerations were an important factor for the organization's initial formation, awareness of the need for mutual support to withstand the vagaries of the international economy has been a powerful motivator for its continued existence.[321]

It is widely held by economists that economic integration among nations necessitates a certain degree of complementarity; it depends on division of labour, mobilization of factors of production and facilitation of movements across borders. El Kuwaiz, however, questions the validity of this model in the GCC context. The GCC States, more or less, are trading in a single area, i.e., the export of oil and petroleum products. They all import their consumer, industrial and other required goods from

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[319] Rizvi, S.N.A., "The Gulf Cooperation Council: United Thoughts And Equal Hopes", *India Quarterly,* Vol 53, Issue 3/4, 1997, pp 125-148 at p 127.

[320] Al-Ebraheem, Y. H., "Kuwait's Economic Travails", *The Middle East Quarterly,* Vol 3, Issue 3, 1996, pp 17-23 at p 3.

[321] Cammett, M., "Defensive Integration And Late Developers: The Gulf Cooperation Council And The Arab Maghreb Union", *Global Governance,* Vol 5, Issue 3, 1999, pp 379-403 at p 383.

major industrial areas. Consequently, there is no significant interstate trade in the Gulf. For this reason, liberalization of trade per se would not result in economic integration of the kind experienced in, for example, the European Economic Community, as envisaged in both the GCC charter and the Unified Economic Agreement.[322] A major role in the joint work of GCC Members is economic cooperation, the intention being that this will be a precursor of, and stepping stone towards full economic integration. With this in mind, the GCC States have set a comprehensive policy of economic cooperation, laid down in the UEA. In addition, they have established a free trade zone, within which goods originating from Member States are exempt from customs duties.[323] Although initially establishment of a common market in the region was beyond their reach, the GCC States hope to make progress in that direction, and they are generally agreed on the desire to develop a policy of regional.[324] However, movement towards integration among the GCC States has proceeded very slowly and until fairly recently, there seemed little prospect of any significant advance in this area. Recently, however, political and economic circumstances have highlighted the importance of the union. It seems to be increasingly recognized by the GCC States that their long-run economic viability, and hence their security, depends heavily on their success in diversifying their economies away from oil; and progress in this area will be determined by the effectiveness of the states concerned in overcoming existing obstacles to establishment of a customs union to promote efficient industrialisation. In the view of some commentators, economic integration among the Gulf States at last seems a feasible prospect.[325]

In recent years, the GCC States have begun to recognize the importance of Membership in the WTO. Kuwait, Bahrain, Qatar, United Arab Emirates (UAE), Oman, and Saudi Arabia have become Members of the WTO. The states have not all been equally fortunate in the terms and conditions of Membership. The first, Kuwait, joined

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[322] El Kuwaiz, A. I., "Economic Integration Of The Cooperation Council Of The Arab States Of The Gulf: Challenges, Achievements And Future Outlook", In Sandwick, J., (ed), *Gulf Cooperation Council: Moderation And Stability In An Interdependent World,* Westview Press, Colorado, 1987, pp 76-77.

[323] See generally Al-Fahad, M.H., "The Gulf Cooperation Council Structure, Operations And Legal Developments", PhD Thesis, University of London, 1995, pp 113-118.

[324] Al Mazidi, F., *The Future Of The Gulf: The Legacy Of The War And The Challenges Of The 1990s,* I.B.Tauris, London, 1993, p 47.

[325] Looney, R. E., "The Gulf Cooperation Council's Cautious Approach To Economic Ingratiation", *Journal of Economic Cooperation,* Vol 24, Issue 2, 2003, pp 137-138.

under relatively good conditions, followed by Bahrain, Qatar and UAE under different terms, Qatar and the UAE, whereas the next applicant, Oman, had to face obligations that are more complex. Finally, Saudi Arabia join the WTO just recently and that was due to the harsh conditions and endless demands of the influential developed countries and economic blocs in the WTO.[326]Kuwait, Bahrain, Qatar and UAE have acceded to GATT under Article 26:5 (c) GATT. Kuwait and Bahrain became original WTO Members under Article 11 WTO.[327] Qatar and UAE became GATT contracting parties during 1994, but did not complete GATT 1994 GATS schedules in time for original WTO Membership. Both these states acceded under Article 12 WTO. Oman and Saudi join under the same Article.[328]

Kuwait, which became a Member of GATT in 1963, is a founder Member of the WTO. At present, Kuwait is under surveillance by the WTO regarding its adherence to and adoption of the WTO guidelines; the WTO has implemented a supervising authority to monitor compliance. Kuwait has taken some steps to amend its laws to bring them into conformity with WTO standards and requirements.[329] On 31 December 1993, Bahrain became a GATT Member, and like Kuwait is a founder Member of the WTO. However, it has been lax with regard to the fulfilment of its WTO obligations, especially in the field of privatisation. Bahrain announced its expectation that compliance with all guidelines would be achieved by 1st January 2000; meanwhile it has applied for an extension of the period.[330] Qatar became an official Member of the WTO on 13 January 1996. Like Bahrain, it has done little to progress its compliance activity. On 15 April 1999, Qatar notified the WTO Council for Trade Related Aspects of Intellectual Property Rights, that nationals of other WTO Members enjoy non-

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[326] Jasim, A., 'GCC Insights: Saudi Arabia's Entry Into WTO All Set', *Gulf News,* 7 September 2003.

[327] See "WTO Membership Reaches 110", WTO Press Release No.28, 28 October 1995.

[328] See WT/L/100, 24 November 1995, Council Decision on the Accession of the State of Qatar; and WT/L/128, 13 February 1996, Council Decision on the Accession of the United Arab Emirates.

[329] For more information on the relation of Kuwait and WTO see generally: Meyer-Reumann, "Legal Consultancy, The Endeavours Of Gulf Countries To Meet WTO Requirements", *Arab Law Quarterly,* Vol 16, Issue 1, 2001, pp 49-54 at p 52; Khan, A.A., and Charles, S., "Kuwait: Recent Developments In Copyrights Law", *Arab Law Quarterly*, Vol 15, Issue 1, 2000, pp 107-108.

[330] For more information on the relation of Bahrain and WTO see generally: "New Patent And Utility Models Law Issued In Bahrain", *AGIP Bulletin,* April 2004, p2; Fasano, U. and Iqbal, Z., *Gcc Countries: From Oil Dependence To Diversification,* International Monetary Fund (Imf), op. cit.; Meyer-Reumann, Legal Consultancy, op. cit., 2001, p 51.

discriminatory treatment with respect to all IPR.[331] The UAE joined GATT in 1994 and then became a WTO Member on 10 April 1996. The UAE has made great efforts to adopt WTO guidelines, and at present, measures are underway to implement copyright and trademark protections.[332] Saudi Arabia expressed its interest in becoming a GATT Member during the 1980s; however, it remained no more than an observer until the establishment of the WTO. The Saudi application was received on 13 June 1993, and the working party on the accession of Saudi Arabia was set up on 21 July 1993. Bilateral market access negotiations on goods and services done based on revised offers. Topics has been considered in the working party include agriculture, preshipment inspection, SPS and TBT, TRIPs and services. Since Saudi Arabia first applied for GATT Membership, it has faced problems with key WTO Members (the United States, the European Union and Japan), due to their strong stance on a number of points, however, it became at the end a WTO Member on 2005.[333] According to Sen,[334] Oman in her accession has been coordinating her position with other GCC States, on the basis of their commonality of interest, especially with regard to agriculture and services. On most of the new non-trade issues, it may not be in the interests of GCC States to support them, although they may retain some flexibility on issues like investment (as they

[331] For more information on the relation of Qatar with the WTO see generally: The Middle East and the World Trade Organization, consulted on 31October 2002 from, http://www.mideastlaw.com/Middle_East_and_the_trade_.htm; Meyer-Reumann Legal Consultancy, op. cit., 2001, pp50-53; Fasano, U. and Iqbal, Z., *GCC Countries: From Oil Dependence To Diversification,* International Monetary Fund (IMF), op. cit..

[332] For more information on the relation of UAE with the WTO see generally: "New Decisions On Copyright Regulations In UAE", *AGIP Bulletin,* April 2004, p3; Fasano, U. and Iqbal, Z., *Gcc Countries: From Oil Dependence To Diversification,* International Monetary Fund (Imf), op. cit.; Meyer-Reumann, Legal Consultancy, op. cit., 2001, p 50.

[333] For more information on the negotiation process of the accession of Saudi Arabia to the WTO see generally: Meyer-Reumann, Legal Consultancy, op. cit., 2001, pp 50-51; *Globalization And The Gcc Member Countries: Opening Doors To The World,* Islamic Development Bank, October 1998, pp120-122, unpublished; obtainable from the bank; Broude, T., "Accession To The WTO Current Issues In The Arab World", *Journal of World Trade,* Vol 32, Issue 6, 1998, pp 146-166; Fandy, M., "Cyber Resistance: Saudi Opposition Between Globalization And Localization", *Comparative Study Of Society And History,* Vol 41, Issue 1, 1999, pp 124-147 at p 126; Kontorovich, E., "The Arab League Boycott And WTO Accession: Can Foreign Policy Excuse Discriminatory Sanctions?" *Chicago Journal of International Law,* Vol 4, Issue 2, 2003, pp 284-304 at p 284; Fasano, U. and Iqbal, Z., *GCC Countries: From Oil Dependence To Diversification,* International Monetary Fund (IMF), op. cit.; Matthews, S. P. & Issa, N. A., "Saudi Arabia Opens Banking Industry To GCC Banks", *International Financial Review,* Vol 21, Issue 1, 2002, p 64; Milner, M., "Saudi Pact Paves Way To WTO", *Guardian Newspapers Limited,* 1 September 2003, p 24.

[334] Mr Sen is an adviser at the Ministry of National Economy in Oman, and was former secretary to the government of India.

already have or have agreed very liberal investment regimes) and use it to enhance their bargaining strength.[335]

The World Trade Organization has a strong impact on the GCC States' systems, more so today than at any time in the history of the region. This process is not without objectors, who are trying to slow down global influences. Issues currently facing the GCC States systems include transparency, accountability, privatization, limiting the state, communications, open versus closed systems, participation, power sharing, and facing up to corruption. Thus, this is a time of change in the GCC States, and the recent new policies in these countries will no doubt be only the first of many.[336] In addition, Membership of the WTO has proved a divisive issue for the GCC States, which have negotiated accession arrangements individually, rather than as a group. Consequently, the speed with which entry has been negotiated and agreed has varied. This division within the GCC could potentially undermine the objective of economic co-operation amongst Members and harmonisation of external trade relations. In this respect, the GCC situation contrasts with that of other regional groupings such as the EU, NAFTA and Association of Southeast Asian Nations (ASEAN) where all Members are part of the WTO, rather than their being divided.[337] Moreover, some groups, such the European Union (known for legal reasons as the European Communities in WTO matters) act jointly. The EU has been a WTO Member since 1 January 1995. Although the fifteen Member States of the EU are all WTO Members in their own right, given their formation of a single customs union with a single trade policy and tariff, it is customary in WTO meetings for the European Commission to speak for all EU Member States.[338] Such integration could be a goal for all concerned about the GCC issues; however, it seems to be unattainable, at least in the medium term. GATT-WTO rules on regional arrangements are set out predominantly in Article 24 of GATT, which has attracted much criticism for its shortcomings in regulating various types of regional arrangements. However, there are inevitably difficulties in regulating arrangements which include more than two countries, creating complexity. Moreover, most of the current regional

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[335] Sen, A.C., *WTO Meeting At Doha In November 2001- Problems And Prospects,* 2001, p 5, unpublished, obtained by personal communication with the author.

[336] Klein, C. et al., 2000, op. cit., p 11.

[337] Wilson, R., *The Changing Composition And Direction Of GCC Trade,* The Emirates Center for Strategic Studies and Research, number 18, 1998, pp 22-23.

[338] WTO website from, www.WTO.org

integration schemes were not envisaged when the GATT was drafted. On the other hand, comprehensive amendment of Article 24 would be no easy task, given the absence of consensus about how best to regulate regional arrangements. In view of the inherent difficulty in regulating real economic activities, a relatively flexible regulation may be preferable.[339]

One issue to be scrutinised by the GCC States as a WTO Members is the impact of RATs on MFN as the main principle contained in the WTO agreements, particularly in the GATT and GATS.WTO Members are obliged to grant non-discriminatory treatment to companies of all the other Members. Any arrangements between certain WTO Members, that is, RTAs, intrinsically favour imports from Members of the grouping and discriminate against imports from other countries. The Agreement established between the GCC States, or any other RTA signed by these countries must work within the WTO framework, since the WTO sets the parameters for any RTAs among WTO Members. Indeed, the framers of the GATT 1947 and the Uruguay Round Agreements in 1994 envisaged certain kinds of RTAs.[340] Article 24 of the GATT 1947, authorized and, of course, circumscribed, customs unions and free-trade areas. The GATT contracting parties adopted a decision in 1979, allowing derogations to MFN treatment in favour of developing countries (Enabling Clause).[341] This provision has continued to apply as part of GATT1994 under the WTO. The Agreements established under the Enabling Clause, i.e., RTAs in the area of trade in goods between developing countries, may take the form of mutual reduction or elimination of tariffs on traded products (as the case of the GCC). According to Laird, essentially, this means that an RTA formed under the Enabling Clause need not cover substantially all the trade; does not require duty elimination; has no fixed timetable for implementation; and is not subject to periodic reporting requirements. The main obligations of states concluding such agreements are to notify the RTA and any subsequent modification to the WTO

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[339] Kodama, Y., *Asia Pacific Economic Integration And The GATT-WTO Regime,* PhD Thesis, University of London, 2000, pp 5-6.

[340] According to the Committee on Regional Trade Agreements (CRTA) annual report, 2000 (WT/REG/9), WTO has been informed of the conclusion of 220 RTA worldwide, among which over 1000 agreements covering trade in goods or services, or both, have been notified to the WTO since 1995. Of the RTAs notified to GATT/WTO, 121 agreements notified under GATT Article 24, 19 agreements under the Enabling Clause and 12 under GATS Article 5 are still in force today.

[341] Differential and more favourable treatment, reciprocity and fuller participation of developing countries, decision of 28 November 1979, see WTO Document number WT/L/127 of 7 February 1979.

Committee on Trade and Development, to provide required information and to cooperate in prompt consultations, should any difficulty or query be raised.[342] In this context, the GCC was notified to GATT/WTO on 11 October 1984 under the provision of the Enabling Clause as a preferential arrangement. In the Uruguay Round negotiations, the understanding on the interpretation of Article 24 of GATT1994 was formulated to address difficulties. Moreover, Article 5 of GATS provides for economic integration agreements in services. For example, two major principles are laid down in the Article 24 of GATT, namely, that the RTA must cover substantially all trade, and that others must not be worse off as a result of the RTA. The "substantially all trade" requirement ensures that an RTA is not abused as a cover for narrow sectoral discriminatory arrangement. The same condition is laid by GATS Article 5 which requires" substantial sectoral coverage" in services.[343] Unfortunately, there is no general agreement among Members on the meaning of these provisions, and in fact many agreements exclude major and sensitive areas such as agriculture and textiles. The "not worse off" requirement is intended to protect non-participating Members against harm by the RTAs. Thus, the relevant provisions of the WTO, allow Members to enter into RTAs among themselves to reduce trade barriers in products and services, provided such agreements do not create greater trade barriers for other WTO Member countries. In other words, the intention is to ensure that countries which form RTAs move to genuinely free trade among themselves.[344]

In order to monitor the compliance of RTAs with these conditions, the WTO agreements, as noted above, provide for a notification procedure. However, the wording of the provision is such that following such notification, unless the WTO [i.e. the Council for Trade in Goods (CTG), the Council for Trade in Services (CTS) and the Committee on Regional Trade Agreements (CRTA)] is able to formulate an agreed set of recommendations, the parties to the RTA can go ahead. Since it is difficult to reach agreement on the compliance of RTAs examined with WTO rules, in effect, entry into

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[342] Laird, S., "Regional Trade Agreements: Dangerous Liaisons?" *The World Economy,* Vol 22, Issue 9, 1999, pp 1179-1200 at pp 1285-1187.

[343] Kong, Q., "China's WTO Accession And The Asean-China Free Trade Area: The Perspective Of A Chinese Lawyer", *Journal of International Economic Law,* Vol 7, Issue 4, 2004, pp 839-861 at pp 848-850.

[344] Although free trade is the ultimate aim for many RTAs - in fact, Article 24:8(a)(i) and 8(b) of the GATT require a detailed plan and schedule to show how Members will move to free trade, the WTO allows for this to take place gradually, rather than from the beginning.

such agreements is usually unchecked. Nevertheless, an RTA is found to be inconsistent with the WTO provision, a recommendation is issued, in which the Members are asked to modify it, and if they are not willing to do so, they are forbidden to maintain or put into force such an agreement.[345] However, there is no provision regarding the consequences of failure to implement the recommendation. Nevertheless, any controversial provision in an RTA is likely to be brought before the Dispute Settlement Body or Appellate Body.[346] If such a case results in a judgement that the disputed provision is inconsistent with WTO provisions, the parties to the RTA must modify it or refrain from maintaining or put implementing it. Otherwise, they risk a compensation order or retaliation.[347] In short, the RTAs will likely provide leverage for Oman as well as the other GCC States and even the developing world as a whole in the WTO. Nevertheless, compatibility of RTAs (signed by the Oman and other GCC States) and the function of the WTO provide a guarantee that these countries will not deviate from their WTO obligations.

It is interesting to note, however, that according to International Chamber Commerce, of the RTAs officially notified to the WTO and in force today, only one -the customs union between the Czech and Slovak Republics formed in 1992- has been formally declared to be in conformity with GATT Article 24. All other RTAs scrutinized by the WTO have met with differing reactions from practitioners and examiners. Nevertheless, the strong political commitment to regional and bilateral agreements has led to few, if any; successful challenges to breaches GATT/WTO rules.[348] Although, as Grimwade points out, the new rules require the WTO to carry out an assessment of every RTA to ensure that its conformity with WTO rules, different interpretations of the legal criteria have impeded progress, promoting some Member countries to request further negotiations to clarify the rules. The Doha Declaration called for negotiations with a view to achieving this aim. However, there is to be no

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[345] Kong, Q., 2004, op. cit., p 850.

[346] The Article 24 of GATT 94 states that the provisions regarding dispute settlement may be invoked with respect to any matters arising from the application of these provisions of Article 24 relating to customs unions, free trade areas or interim agreements.

[347] Kong, Q., 2004, op. cit., pp 850-851.

[348] *Regional Trade Agreements And The Multilateral Trading System,* prepared by the Commission on Trade and Investment Policy in November 2000, International Chamber of Commerce, consulted on 25 February 2005 from, http://www.iccwbo.org/home/statements_rules/statements/2002/Regional%20trade%2

change of the rules. The development aspects of RTAs are to be a specific issue to be taken into account.[349]

In recent years, the Arab states have become more proactive in their attempts to develop an Arab common market, to reduce trade barriers and to attract investment. At the international level, they have been keen to join international trade agreements like the WTO, and sought involvement in influential private groups such as the world economic forum. These moves by the Arab States are complemented by the efforts of the international community to include the Arab world, such as the WTO's announcement of the creation of a new unit focusing on Arab countries, as part of a new strategy for the region, in 2003. The same year, the Arab League applied for WTO observer status and the Arab Monetary Fund signed a memorandum of understanding with the WTO both pioneering moves by a regional organization.[350] Moreover, Arab countries agreed to form a grouping in the WTO in order to improve the co-ordination of their positions in the Doha round of trade talks, which consist of the WTO's 12 Arab Members.[351] According to the Egyptian Trade Minister, six more countries with observer status will be included in the consultations.[352] He add, that "it may be difficult to find common ground, but there is a minimum of understanding. Previously there was no co-ordination, and we have to have a joint position in the WTO talks." The Arab bloc will be the latest of several WTO groupings giving a voice to developing countries such as the G-20 and G-90 in the battle with United States and European trading giants. "We are coming a bit late in the negotiations but it doesn't mean we will have no influence", the Egyptian minister said. "One of the most important things for Arab countries is keeping our preferential treatments, because we feel that this treatment is helping our development", he added.[353] On the other hand, the Arab League strongly support the beneficial and purposeful efforts of the Arab countries towards the

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[349] Grimwade, N., "The GATT, The Doha Round And Developing Countries", in Katrak, H. & Strange, R., *The WTO And Developing Countries,* Palgrave Macmillan, New York, 2004, p 30.

[350] Josh, M., "Arabs Seek Global Presence: Arab Governments Are Moving From Passive Players To Active Participants On The World Economic Stage, Proof Of This Is Their Willingness To Join The World Trade Organization (WTO) And Other Multilateral Organizations, But Critics Say This May Not Guarantee Success In The New Global Economic Order" (Business & Finance), *Middle East,* 3 January 2004.

[351] These include: Oman, Bahrain, Djibouti, Egypt, Jordan, Kuwait, Mauritania, Morocco, Qatar, Saudi Arabia, Tunisia and the United Arab Emirates.

[352] These include: Algeria, Iraq, Lebanon, Libya, Sudan and Yemen.

[353] Arabs Form Group In WTO Trade Talks, *Oman Daily Observer,* Wednesday 21 June 2006, p 4.

establishment of Grand Free Arab Trade Zone (GAFTA), launched in 2005, which has been brought forward from 2010. The UEA, which is intended to eliminate custom barriers and restrictions as well as to implement the applicable bases for the rules of origin, is considered to be the main foundation for achieving Arab economic integration. It will increase commercial exchange among Member States and widen the markets for Arab goods and services particularly those complying with Arab and international specifications and standards.[354]

In Al-Muslemani's view, despite the similar terms in which obligations included in the UEA and the Arab League economic agreements are formulated, they differ substantially in purpose and function.[355] In 2001 a report was published by the United Nations' Economic and Social Commission for Western Asia (ESCWA) entitled *Free Trade Areas In the Arab Region; Where Do We Go From Here?* Which outlined a number of benefits that could be anticipated as a result of GAFTA including facilitation of gradual integration into the international trading system and the adoption of a collective stance in negotiations with the WTO and other regional blocs. GAFTA could also promote industrial development, generate confidence among domestic and foreign investors, encourage investment flows between ESCWA Member countries and attract foreign direct investment and technology transfer. Nevertheless, these benefits could be undermined by GAFTA's weaknesses, notably a large list of exceptions for tariff removal, and lack of clarity in the rules of origin for goods little reform has as yet taken place on taxes and charges with similar effects as tariffs and much remains to be done in identifying and addressing non-tariff barriers (which can be administrative, quantitative and financial) according to ESCWA. There is also a problem in that, although GAFTA was intended to be compliant with WTO rules, some of its Members are not Members of WTO and are therefore not currently subject to the same rules.[356] Although, clearly, many issues remain to be addressed, the potential benefits of this free trade zone are substantial.[357] In this respect, the Omani Minister of Commerce and Industry said that the Sultanate has already begun reaping the benefits of GAFTA, thanks to the full

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[354] Al-Lawati, H., 'Efforts Towards The Establishment Of The Arab Trade Zone', *Al-Markazi,* Vol 27, Special Issue 2002/2003, pp 13-19 at p 13.

[355] Al-Muslemani, A.A., 1989, op. cit., p 272.

[356] *Middle East Economic Survey,* Arab States Embrace Free Trade Pacts, 1 April 2002.

[357] Oman joined the agreement for the facilitation and development of trade exchanges among Arab countries via the Royal Decree 72/97 issued on 29 October 1997.

exemption of customs duties. He add, that Oman's industrial exports to GAFTA amounted to 27,722,802 in 2005, in addition to fish and animal exports, he said "since GAFTA represents a promising market for the Omani products, the ministry is exerting determined efforts through its representative in the Technical Committees concerned with elimination of customs barriers for a smooth flow of goods".[358]

GCC countries seek to qualify and merge their economies globally by eliminating restrictions, formulating essential legislation and taking appropriate measures for supporting local and international trade competitions. Thus, the GCC States seem to be agreed on the need for some cooperation or coordination between them, to reduce as far as possible the costs of economic change. Two main forms of economic integration have been targeted: a more general one, namely the customs union, and a more specific one, namely, the joint product approach to sectoral integration. The former provides the economic rationale, whereas the latter provides the modality.[359] The goal of liberalising trade among the GCC States by abolishing internal customs on regional products and harmonising tariffs on non regional imports seems to have received more attention than did some other economic sectors.[360] Thus, a further step towards integration was the announcement by the summit of the Supreme Council of the GCC, in 1982, of the formation of a customs union, although it did not come into effect until 1St January 2003. A unified customs tariff was fixed at a rate of 5% on all foreign goods imported from outside the customs union. In addition, the Supreme Council ratified the unified "Customs Law" for all the GCC Members with its amended version, effective from January 2002.

The customs union is an arrangement whereby sovereign states undertake not to impose duties or comparable charges on imports of goods from one another as well as the free trade area. The difference between this and a free trade area is that it involves not only the elimination of internal trade barriers, as in a free trade area, but also the adoption of a common set of trade barriers to products from non-Member States.[361] An issue requiring attention in relation to the formation of a customs union is the

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[358] Interview with the minister in *Oman Observer* on 17 of May 2006.

[359] Looney, R., "An Assessment Of The Benefits Of Economic Integration For The Arabian Gulf States: The Effects Of Increased Size", *Journal of Economic Cooperation Among Islamic Countries,* Vol 10, Issue 2, 1989, pp 81-102 at p 82.

[360] The Secretariat General of the Gulf Cooperation Council in recognition of its vision of the GCC as an Arab Confederation, Rector and Visitors of the University of Virginia, 1988, p 102.

[361] Lowenfeld, A.F., *International Economic Law,* Oxford University Press, Oxford, 2002, p 39.

requirement under Article 24.5 of the WTO Agreement that "the general incidence of duties and other regulations of commerce," must not in general be higher or more restrictive against third parties as a result. The 1994 Understanding, clarifies how criterion is to be evaluated. It specifies that the evaluation of the general incidence of the duties and other regulations of commerce applicable before and after the formation of the customs union shall be based upon an overall assessment of weighted average tariff rates. The Understanding actually says "the weighted average tariff rates and customs duties collected," but since the duties cannot be known in advance and notifications are required prior to the formation of customs unions, the reference to customs duties collected is effectively redundant. The purpose calculation is based on the applied rates, not the bound rates, and is made by the WTO Secretariat, rather than the parties to themselves, the methodology to be used having been established in the Uruguay Round.[362] The customs tariffs fixed by the GCC customs union were not higher or more restrictive against third parties. On the contrary, the new tariffs are less than those in existence before the formation of the customs union in some countries and for some goods.

Another issue to be considered is whether further new Members of a GCC customs union (for example Yemen, should it join in the future) are allowed to implement quantitative restrictions or other measures already being applied by other Members, consistent with WTO obligations. In the dispute, Turkey restrictions on imports of Textile and Clothing products, the panel ruled that Article 24 does not provide ground for justification of any breach of WTO obligations, except for the MFN obligation. It acknowledged that constituent Members of a customs union must adopt substantially the same regulations of commerce, but argued that Turkey could have chosen alternative ways of fulfilling this obligation, compatible with WTO rules. This decision was referred to the WTO Appellate Body, which effectively upheld it by ruling that Article 24 may justify a measure which is inconsistent with certain other GATT provisions, but only if the measure at issue is introduced upon the formation of a customs union that fully meets the requirements of sub-paragraphs 8 (a) and 5 (a) of Article 24. Moreover, the state concerned must show that had it been prevented from

[362] Crawford, J.A. & Laird, S., *The Regional Trade Agreements And The WTO,* Credit Research Paper No. 00/3, Centre For Research In Economic Development And International Trade, University of Nottingham, 2000, p 11.

adopting the measure in question, the formation of that customs union would have been prevented.[363]

The establishment of the Gulf Customs union was a very important step, although it came somewhat late. Some argue that the GCC States lost a lot because of the delay in establishing the customs union, and that they could have gained considerable benefits if they had done so in the mid-eighties. It could have given these countries chance to acclimatize to the requirements of globalization and the World Trade Organization.[364] Al-Yousuf offers two theoretical reasons for asserting the benefits of a customs union, as follows: (1) the public good argument. The development of an industrial sector is seen as having a public good dimension, because it leads to the development of health, education and defence programmes for the industrial sector which in turn contribute to the economic development and security of the country. (2) The economy of scale argument. The establishment of a customs union creates an enlarged internal market which could be captured by the most efficient producer, leading to the possibility of larger scale, more economic production and, hence, lower prices.[365] These arguments appear to be applicable to integration among the GCC States, although the economies of scale accompanying the increased integration of the Member countries may be a crucial determinant of their success in achieving their main economic aim, industrial diversification.

The GCC's establishment of the customs union, albeit delayed, marks progress towards economic integration, in order to achieve a Gulf Common Market similar to the EU. Moreover, the execution of the customs union between the GCC States will lead to reinforcement of the negotiation centre, to defend the common economic aims of these states in their relationships with other large coalitions, especially the EU. It will facilitate free trade agreements with this coalition, and give the opportunity to open the European market to Gulf States' products.[366] This is important, given the EU's prominent role in the GATT both before and after the advent of the WTO. It was a key participant in the shaping of the GATT/WTO, appears frequently in dispute resolution,

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[363] See WTO Document Number WT/DS34/AB/R.

[364] Al- Lawati, H., "Kemet Muscat Wa Aletehad Aljumruky Byna Doul Mjles Altawun Alkaleejy [Muscat Summit And The Customs Union Between the GCC States]", *Al-Markazi*, Vol 26, Issue 4, 2001, pp 6-9 at pp 6-7.

[365] Al-Yousuf, A., "Industrialization And Economic Integration In The Arab Gulf', *The Arab Gulf Journal, April 1986*, pp 26-27.

[366] Al- Lawati, H., op. cit., 2001, pp 6-8.

as complainant, as a subject of complaints and as third party, and is one of the "Gang of four" in international trade law, alongside the USA, Japan, and Canada.[367] Thus, it is very important for the GCC as a bloc to enhance relations with the EU, in order to strengthen its participation in the WTO's activities. Such cooperation has three elements: political cooperation, free trade negotiations and economic cooperation. In the area of trade liberalization talks, in particular, progress has been slow, with the effect of impairing the relationship between the two blocs and frustrating the parties. A major obstacle has been the EU's insistence on a customs union, for which the absence of a common external tariff made negotiations difficult, as GCC Members lacked a common starting point.[368] However, the establishment of the customs union between the GCC States made a significant step forward in their relations with the EU with the creation of negotiations to sign a free trade agreement between the Gulf and Europe. Perhaps some people may not fully realise the implications of this significant transformation in trade relations and the extent of its economic effects. In simple terms, the signing of a free trade agreement, or FTA, means the scrapping of customs duties on national goods manufactured and produced in the two economic blocs. This measure can be expected to facilitate the flow of Gulf exports in general, especially aluminium and petrochemical exports, to the European markets that impose extra tariffs on imports from GCC States, thereby reducing the competitiveness of Gulf products in the EU markets. The GCC States succeeded in sustaining a strong and unified position in the complex and protracted negotiations with the EU, which European nations insisted on treating the GCC States as a single block instead of negotiating with each country individually.[369] On the other hand, on 6 July 2004, the GCC and China signed a framework agreement on economic, trade, investment, and technical cooperation. A possible free-trade agreement is also under discussion. Similarly, GCC-India FTA negotiations are expected to conclude by the end of 2007.[370]

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[367] Weiler, J.H.H., "Cain And Abel - Convergence And Divergence In International Trade Law", in Weiler. J.H.H., (ed) *The EU, The WTO, And The NAFTA: Towards A Common Law Of International Trade,* Oxford University Press, Oxford, 2000, p 2.

[368] Saleh, N., "The European Union And The Gulf States: A Growing Partnership", *Middle East Policy,* Vol 7, Issue 1, 1999, pp 50-71 at pp 53-56.

[369] Al Asoomi, M., "GCC Must Negotiate With Other Countries Collectively", *Gulf News,* 16 September 2003.

[370] Xinhua, *Financial Network*, 7 July 2004.

In addition, the customs union will undoubtedly promote internal trade among the GCC States, and facilitate the take-off of Gulf industry, which will be integrated, not competitive, and this in turn will promote their exordial strength in oil commodities. All this will stimulate local and foreign investment and technical advancement through the trade opportunities, which the customs union will offer.

Meanwhile, the GCC States have been working towards an Economic Integration Agreement on Services. The GCC Agreement provides the framework for liberalization of trade in services taking into account the general requirements of Article 5 of the GATS. Currently, the sectors of banking, health, education, professional services, computer and related services, construction and related engineering services, tourism and travel-related services were under the process of liberalization among the Members of the GCC. Oman and the other GCC Members intended to bring many other service sectors under the GCC framework within a reasonable period of time.

Another step towards economic integration among the countries of the region is the creation of a common currency. Article 22 of the GCC Economic Agreement stipulates that: *"Member countries shall co-ordinate their financial, monetary and banking policies and enhance the co-operation among their respective monetary institutions and central banks in order to accelerate the efforts towards unifying the currency as a step in finalizing the establishment of economic integration."* During the GCC summit in 2001 in Muscat, the six GCC States agreed to create a single currency; and also decided to have the American Dollar as a common peg for their currencies before the end of the year 2002. It was the view of the Members that their goal of complete integration of products and factor markets necessitated the elimination of the transaction costs and uncertainties which arise in a situation of separate currencies.[371]

Various economic analysts from all the GCC States, together with other Arab and foreign countries, have followed these economic decisions with great interest, as they have important implications for the political and economic progress of the Member States. Most experts expect these developments to prepare the economies of GCC States for a great leap forward, to make them more attractive to foreign investment and to facilitate the attraction of emigrant Gulf and Arab capital. They perceive the unanimity

[371] Laabas, B. and Limam, I., *Are GCC Countries Ready For Currency Union?* Economists At The Arab Planning Institute, Kuwait, 2002, pp 2-3.

of Member States on these issues as a foundation stone for the establishment of a strong Gulf Union that could play an important economic and political role in the future.

Various opinions have been expressed, regarding the establishment of the GCC monetary union. H.E Sultan Al-Swaidi (Governor of the Central Bank of the United Arab Emirates), suggested that the unification of Gulf currencies into one currency might proceed more quickly than that of the European currencies, due to the greater similarities among the Member States concerned. In his view, the only matter on which there are some observable differences between the GCC States is that of budget deficit, because most of the economies of the GCC States are largely dependent on oil revenue. Dr Said Al-Sheikh (Senior Economist and Head of the Research Department of Al Ahli Commercial Bank in Saudi Arabia) urged the early introduction of a common Gulf currency, and asserted that it should be preceded by the implementation of the necessary economic reforms required by the unification of the monetary policy, not only the unification of the currency. These, he suggested, would include the reduction of government debt, to a level not exceeding 66% in total with an annual deficit not exceeding 3% of GDP. He called for an increase in the pace of economic reform, the observance of transparency and prudent financial policy, based on the prevailing economic conditions and their impacts on Member countries, rather than copying the experiences of others. He expressed concern that in some Gulf countries, government debt was more than 100% of the national income. He pointed out that success in establishing and implementing a new monetary policy suitable to the conditions of each country required harmonisation of their financial policies and an attempt to approximate their financial positions; to eliminate, for example, huge disparities in the level of public debt. On the other hand, Dr Abdullah Al-Gwaiz (Former Assistant Secretary General for Economic Affairs of GCC and the Current Executive Director at the Islamic Development Bank), asserted that the fears felt by some people about the implementation of the common Gulf currency were false and argued that they were based on misunderstanding. In his view, there need be no difficulty in laying down the appropriate monetary policies for each individual country and no cause for concern about the impact on domestic inflation. These various comments have been and are still,

subject to intensive discussion by the responsible officials of the Gulf Central Banks and monetary institutions in the Council Member countries.[372]

Regarding the progress towards monetary unity among GCC Members, the technical committee set up to investigate the requirements necessary for monetary unity specified three main phases. [373] The first, finalizing the linkage of all Gulf currencies with the U.S dollar as a common peg by the end of 2002, has already been implemented. In fact, even before the formal decision of 1st January 2003, the GCC States' currencies were already effectively pegged to the U.S dollar. The Kuwaiti Dinar was the only exception, since it was pegged to a basket of major currencies; however, it was also effectively pegged to the dollar, since the dollar had the largest share in that basket.[374] The second, determining the economic convergence criteria necessary for the success of the monetary union including their ratios, components and the way they are computed is due to be completed by the end of 2007. The third and final step, the issue of a single Gulf currency, is planned for the beginning of January 2010.[375]

However, the GCC states cannot reap the benefits of a common currency, without, under certain circumstances, incurring some macroeconomic costs. This is because each country will have to follow the union's exchange rate and monetary policy for the unified currency. Individual states will no longer be able to make unilateral changes in currency value. In addition, the central banks in GCC State will have to surrender any actual or potential use of independent monetary policy.[376] Moreover, the question inevitably arises, who will control the proposed common currency. It is unlikely that a GCC central bank will be governed by a simple one country, one vote formula; thus, the need to negotiate an economically-- weighted vote formula arises.[377]

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[372] Al-Lawati, H., "Muscat Summit A New Phase In Support Of The Gcc Monetary Union", *Al-Markazi,* Vol 26, Special Issue 2001/2002, pp 16-22 at pp 18-21.

[373] It should be mentioned in this regard that by the end of the 1960's all GCC States, excluding the Kingdom of Saudi Arabia, were using only one currency, the Indian Rupee. This could be a positive factor as a foundation stone for arriving at a common currency for these countries.

[374] Abed, G. T. et al., *The GCC Monetary Union: Some Considerations For The Exchange Rate Regime,* International Monetary Fund Working Paper Number WP/03/66, 2003, p 3.

[375] Al-Balushi, Y., "The Single Gulf Currency Challenges And Prospects", *Al-Markazi,* Vol 27, Special Issue 2002/2003, pp 24-34 at p 29.

[376] Jadresic, E., *On A Common Currency For The GCC Countries,* International Monetary Fund Policy Discussion Paper Number PDP/02/12, 2002, pp 11-12.

[377] Josh, M., "Gulf States To Adopt A Single Currency", *Middle East,* Issue 323, 2002, pp 23-25.

Fasano and Schaechter discuss the conditions for creating a successful GCC monetary union in light of the experience of other monetary unions already in existence (for example, the Euro Zone). They highlight the importance of setting up an institutional framework and establishing some basic quantitative benchmarks like the European Union's Maastricht Agreement for the GCC. They recommend implementation of the following policies: "*(a) creation of a decentralized GCC central bank in charge of conducting monetary policy in coordination with the Central Bank of GCC States; (b) developing appropriate common monetary instruments in tandem with developing bond and equity markets; (c) creating a financial crisis management system; (d) ensuring fiscal sustainability through structural reforms and setting ceilings on non-oil budget deficits and government debt; (e) strengthening market competition with appropriate business laws, codes, and regulations; (f) ensuring free mobility of labour with the GCC and addressing the growing unemployment pressures through appropriate wage and employment policies; and (g) improving policy transparency especially, budgetary transparency, and timeliness and coverage of macroeconomic data*".[378]

From another perspective, moves towards the eventual goal of economic integration have been made by reduction of differences among Members in their regulations and laws. With this in mind, since 1982, they have agreed that Islamic Sharia is the only source for legislation and jurisprudence in Member States. They have also taken steps to consolidate relations between their legislative institutions and deepen links between their judicial bodies. In 1995, an agreement was reached on the execution of judgments, appointments of attorneys, and serving of legal notices. In the following year, the Muscat Instrument for a unified personal law for the GCC States was ratified, followed in 1997 by the Kuwait Instrument for the unified civil law and Doha Instrument of the unified penal code. The GCC States are not yet obligated to implement these laws and regulations, but they represent important indicators of the will towards integration.

In short, the GCC States will need to take important steps towards a full monetary union, such as achieving convergence criteria (e.g. price stability, sustainable fiscal position, and low interest rates); creating common institutions, notably the GCC central bank; and implementing regulatory and legislative reforms. The GCC customs

[378] Abed, G. T. et al., 2003, op. cit., pp 3-4.

union, together with an effective monetary union, is likely to enhance growth prospects for Oman and the other countries in the region through, *inter alia*, a more efficient allocation of resources; an increase in intra-GCC trade; strong boosts to FDI resulting from increased business opportunities; and higher productivity as a result of increased competition among Member States.

The interests of the GCC States are not confined to traditional market access issues but extend to new areas such as trade co-operation and facilitation measures. Agreements in these areas, including bilateral ones, may go beyond the current developments in the WTO, taking in new areas that would yield greater benefits. However, the GCC States must be careful that their free trade agreements are not allowed to become obstacles to multilateralism. A proliferation of preferential trading arrangements can create extensive technical problems such as disparities in the phasing of tariff reductions under overlapping arrangements and inconsistency in the different rules of origin applicable under separate free trade agreements. Care is needed in the drafting of agreements to ensure that they do not make business in the region more costly. Successful introduction and implementation of these free trade agreements will need strong political will and commitment to wards regional co-operation and trade liberalization on the part of the states concerned.[379] In this context, it is interesting to consider the implications and reactions to Bahrain's decision to sign a free trade agreement (FTA) with the United States, although the so-called "September pact" is not in force. Some of Bahrain's GCC neighbours, particularly Saudi Arabia, are calling for the agreement to be abandoned in order to "honor a regional agreement.[380] Saudi Arabia, the only Gulf country with a link to Bahrain, is concerned about the possibility that US goods, imported tariff-free into Bahrain, will be re-sold within its borders. The crux of the opposition from fellow Members of the GCC, however, is that the abolition of external tariffs will give Bahrain trade advantages over them, given that they are bound by the customs union agreement to tariffs at 5 percent. The U.S.-Bahrain FTA will give both parties immediate duty free access to 100 percent of bilateral trade in non-textiles industrial goods, 100 percent of Bahrain's agricultural exports and 98 percent of U.S.

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[379] Sellakumaran, M., "WTO At The Crossroads And The Road Ahead For ASEAN", *Regional Outlook,* Southeast Asia, Singapore, 2004/2005, pp 52-54 at p 54.

[380] The U.S. has recently shown its preference for negotiating bilateral trade agreements, as events at the WTO ministerial meeting in Cancun showed. Such an approach allows the U.S. to use its immense bargaining power and economic weight to extract more favourable trading terms from its partners and this tactic is being used in its trading relations with the GCC States.

agricultural exports. The US will gain not only preferential access to Bahrain's goods markets, but also the promise of increased access for U.S. firms in Bahrain's service sectors, including in finance, tourism and energy. The same thing can be say about the US-Oman FTA which, singed early last year 2006. [381] Such bilateral FTAs is incompatible with the key principle of the economic agreement between the GCC States, that "no Member state may grant to a non-Member state any preferential treatment exceeding that granted herein to Member States, nor conclude any agreement that violates provisions of this agreement."[382] Thus, while the U.S.-Bahrain and US. Oman agreements it could be beneficial for both the parties involved, it undermines the GCC as a collective body. To avoid this problem, the GCC States will need to delegate their negotiating powers to the GCC, at least in the agreed areas, in the same way that the EU Members have done, or to pay more attention is designing free trade agreements to ensure compatibility with the GCC economic agreement.[383]

As is well known, petroleum is one of the most important natural resources so far, and it competes with other sources such as natural gas, as they can satisfy the same needs, such as providing the source for energy generation. [384] Therefore, as oil dependent economies, the GCC States have common interests and concerns that have not been addressed in the WTO so far. Potential threats to future Arab oil emerge from the western powers' perception of the oil producing countries, particularly OPEC, as monopolistic institutions intent on strangling the west.[385] These perceptions have given rise to issues in the WTO regulations and the Kyoto Protocol, which could threaten Arab interests. The principles of the WTO prohibit quota limits (the price setting

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[381] For more information on US-Oman FTA, see generally *Highlights Of The Free Trade Agreement (FTA) Between The Sultanate Of Oman And The United States Of America,* Ministry of Commerce and Industry, Oman, January 2006.

[382] Janardhan, N. & Rutledge, E., "US-Bahrain Trade Deal Exposes GCC Chinks", *The Daily Star, 28 December 2004.*

[383] U.A.E. is in the advanced, and Kuwait in the preliminary, stages of negotiations with the U.S. for similar deals, although all the GCC countries claim to be committed to collective, rather than bilateral, negotiations with trade partners. The same is the case with ongoing trade negotiations with India, with whom the GCC signed a framework Agreement on Economic Co-operation last August. However, that deal has a clause stating that "individual Member States are free to undertake bilateral activities with India in various fields."

[384] Zarrili, S., "Domestic Taxation Of Energy Products And Multilateral Trade Rules: Is This A Case Of Unlawful Discrimination?" *Journal of World Trade,* Vol 37, Issue 2, 2003, pp 359-394 at p 359.

[385] To read about the importanance of oil in the developed countries' strategy, see for example, Aho. C. M., and Stokes, B., "The Year The World Economy Turned", *Foreign Affairs,* Vol 70, Issue 1, 1990/1991, pp 160-179.

techniques use by OPEC falls under this prohibition), unlike GATT 1947, which gave nations a degree of scope to choose or refuse some matters, and exceptionally allows Members to restrict exports on several specific grounds.[386] It could be argued that the oil producers (who are WTO Members) could impose quota limits and use their right to do so in accordance with Article 20 (g) of GATT, because, of the depletability of oil supplies.[387]

As Al-Lawati points out, neither the original GATT nor the subsequent agreements which led to the creation of the WTO agreement, contained any restrictions on trade in oil and its refined products. Nor were oil and its refined products considered during the GATT rounds of negotiations which dealt with custom tariffs. This is not to say provisions of the WTO agreements are inapplicable to oil, as several issues relating to oil trade have been submitted to the WTO dispute settlement body. Moreover, oil trade and relations were discussed during the negotiations to evaluate the applications for accession to the WTO by some of the oil producers. They also appeared in several cases of conflicting interests of Member countries who resorted to the WTO mechanism for dispute settlement.[388] The studies cited by Al-Lawati indicated that the introduction of oil transactions in the WTO negotiations was restrained by mutual understanding of Members, largely because of the strategic nature and the political role of oil, the fact that the international trade in oil was completely controlled by western monopolies, and the absence of producer countries from the negotiations during that period.[389] It was only when the western powers, facing serious oil difficulties, particularly after the October war in 1973, began to encourage the liberalization of oil prices to comply with the WTO agreements that some producers, including the GCC States, began to give the problem serious attention. A number of studies were initiated to assess the feasibility of

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[386] See generally Articles 11.2, 20 and 21.

[387] Article 20 states that "subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade, nothing in this agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:.....

(g) Relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption."

[388] See, e.g., *United States - Standards For Reformulated And Conventional Gasoline,* Panel Report WT/DS2/R, issued in 26 January 1996, paras 6.20, 6.31, 6.35; and Appellate Body Report WT/DS2/AB/R, adopted on 20 May 1996, pp 22-23.

[389] Al- Lawati, H., "Gcc Studying Advantages And Disadvantages Of Including Oil In The WTO Negotiations", *Al-Markazi,* Vol 26, Issue 2, 2001, pp 1-6 at p 4.

including oil in the WTO negotiations. For example, a British consultancy firm was engaged to prepare a study for the GCC Secretariat General. It posed three questions of great importance with regard to the inclusion of oil as one of the commodities regulated in accordance with the WTO principles. These questions are: *(1) do the regulations governing the export of oil, that is, the OPEC quota system, conflict with the WTO principles? If so, how can this be overcome? (2) Can the principles of the WTO be used to inflict punishments to stop imposing high taxes levied on oil in the consumer countries? (3)Is the supply of cheap energy in the local markets permissible in accordance with the principles of WTO*? Although the study did not envisage any direct effect of the Membership of the GCC States in the WTO on the export of oil, because oil exports are exempt from taxes, a clear answer to these questions can be deduced from the discussion on the challenges and opportunities of WTO Agreements on the petrochemicals industry in chapter five of this thesis. In general, accession to the WTO would result in the products of these countries enjoying the same custom advantages granted to the products of other WTO Members. It would also enable oil products to enter foreign markets at the custom rate of the most favoured nation which is applied by all WTO Members. However, the consultants indicated that one of the main problems which would face the GCC States would be the imposition of high taxes on oil products in many consumer countries, especially in Europe.[390]

The GCC States will need to collaborate with other oil producing countries, to find satisfactory answers to the above questions, before raising the issue of oil in WTO. With regard to this matter, a committee was formed by the GCC ministers of petroleum and commerce to study the possibility of including oil in the next WTO negotiations. The committee recommended that the GCC States should take their time before deciding a unified position on the issue. This delay was recommended for the following reasons: (a) when all the GCC States join the WTO, their role in the oil industry will expand and their ability to negotiate will improve to help them obtain better conditions of inclusion. (b) It is in line with the interest of the Gulf States to maintain the major role they are play in the international oil market. (c) Custom duties in the main oil consuming countries and some other countries are very low or non-existent at present, and are not likely to be increased in the foreseeable future. (d) It is difficult to reduce the taxes imposed by consumer countries on oil imports in accordance with the WTO

[390] Ibid, pp 4-5.

principles, because they constitute a main source of income for these countries. (e) The GCC States need more effort and time for consultation and co-ordination with other oil producing countries to form a unified policy for the inclusion of oil in the WTO negotiations.[391] Such a study would take time and the time is not yet opportune to raise the matter before the WTO.

However, Mendoza[392] argues that as a result of the special treatment given to petroleum due to its strategic role, the oil trade has not benefited from the liberalisation of other sectors. In his view, that situation should be changed, because business in oil is increasingly similar to that in other commodities, with fluctuations in trading and a very active futures market. Moreover, both producers and end users would benefit from the inclusion of oil in understandings reached by the globalised economy, in the view of the international consultant, Wolf Petzall.[393] This view is also taken by Walde and Gunst, who suggest that free cross-border trade in energy (in particular electricity and gas) over interconnections would be economically advantageous by promoting security, flexibility and quality of energy supply and greater competition, all of which would be conducive to greater national welfare through consumer price and service benefits.[394]

To understand how WTO disciplines could be extended to oil, it is useful to consider the record of other existing trade agreements on the subject of energy, as well as the likely impact of the proposed expansions of WTO's powers. A useful point of comparison is provided by the rules established by the United States for Canada under the existing North American Free Trade Agreement. NAFTA is widely seen as benchmark in trade deals, because of the depth of its treatment of the restriction of government powers.[395] WTO could extend its discipline to the energy sector either by creatively expanding existing agreements, or by introducing new subject areas for negotiation. Three current negotiating themes (Services, Investment, and Competition)

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[391] Ibid, p 3.

[392] Rodriguez Mendoza was a former Venezuelan energy minister, and is now a professor at Georgetown University in Washington.

[393] Commodities: Time For Oil Negotiations At WTO, Experts Say, *Suns,* Number 4310, 27/10/1998, consulted on 15 February 2004 from, http://www.sunsonline.org/trade/process/followup/1998/10270698.htm

[394] Walde, T.W., and Gunst. A.J., "International Energy Trade And Access To Energy Networks", *Journal of World Trade,* Vol 36, Issue 2, 2002, pp 191-218 at p 191.

[395] In this context and for more about the NAFTA rules relating to energy products, see Desta, M. G., "The Organization Of Petroleum Exporting Countries, The World Trade Organization, And Regional Trade Agreements", *Journal of World Trade,* Vol 37, Issue 3, 2003, pp 523-551 at p 541.

would lend themselves to new rules over energy and oil could expand to remove the ability of citizens to use their governments to control the oil and gas industry.[396]

Despite the potential risks in this area for the GCC States, accession to the WTO is now a reality, thus, these countries should deal with the new global economic system, which the WTO presents in a scientific and logical way, to enable them to make use of the advantageous opportunities provided by the WTO and encounter the new impacts which result. To do so, the GCC States should work to achieve the advancement and deepening of the economic integration between these countries, [397] and reappraisal of their economic bodies, which rely on oil, through diversification of their revenues. The contribution of oil and gas revenues to total government revenues generally remains very high,[398]leaving public revenues and government expenditures in the GCC States vulnerable to the vicissitudes of the world market. While the sharp rise in oil prices since 2000 has helped save public finances in the region from the crisis situation reached at the end of 1998, it also carries with it the risk that GCC Governments will become complacent over the pace of economic restructuring and will be lulled into avoiding the sometimes difficult decisions that have to be made in this regard. In any case, the evidence of the last 16 years shows that periods of rising oil prices and revenues have always been followed by equally sharp declines. Thus, continued economic diversification is essential. Current conditions in the oil market and concomitant boost to the economic situation in the GCC States can beneficially be used as a platform for continuation of this process.[399] The GCC States can also benefit from the exceptions contained in the WTO agreements for developing countries, as these exceptions will give the GCC States the opportunity to establish the necessary bases to protect their markets and consumers, and to safeguard national industries from unfair foreign competition. In addition, the GCC States should seek to benefit from the technical support which the WTO provides to the developing countries. There is also a need for coordination among the GCC States within the WTO framework. Although the

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[396] *The WTO And Oil,* consulted on 16 February 2004 from, http://www.ifg.org/analysis/WTO/cancun/usoilvm.htm

[397] To know more about the future strategy of the GCC States to deal with the WTO, see *Al Ektesad Al Kaleegy [The Gulf Economy],* Vol 97, March- April 2001, pp 6-7.

[398] See for example the oil revenue in figure 3.1.

[399] *Economic Diversification In The Oil-Producing Countries: The Case Of The Gulf Cooperation Council Economies*, Economic And Social Commission For Western Asia (ESCWA), United Nations, New York, 2001, p 47.

accession of the GCC States to the WTO was individual, with each country presenting its own obligations schedule, without looking at what the other GCC States had presented, the circumstances now require the GCC States to work as one group inside the WTO, through the complete coordination in the next negotiations or in the regular meetings of the WTO competent committees and bodies. In this context, according to Al Shebely, the GCC States should think seriously -after the accession of the Saudi Arabia- of acting as a bloc within the WTO, like the EU.[400] Moreover, the GCC States should coordinate their position on the extent to which the other WTO Members execute their obligations, especially those which have direct effects on their economies, such as subsidies, anti dumping, and putting distinction customs upon the Gulf exports generally and petrochemicals especially, and other issues which some countries may take as a pretext to hurt GCC States' economies under cover of WTO obligations. There is also a need for expert study of the WTO's principles and working instruments, whether the goods, services and intellectual property rights or other fields.[401]

3.4. CONCLUSION

The chapter has discussed two main areas related to the pillars on which the accession of Oman to WTO is based. The discussion began with the legal system and economic status and development strategies of Oman. The second topic was economic integration between Oman and other GCC States through the GCC. The discussion involved the importance of the GCC to Oman in its relationship with the WTO. It involved also various issues such as the effort of the Arab countries towards the establishment of an Arab Free Trade Area, and the various opinions that have been expressed regarding the steps towards economic integration among the GCC States. In addition, the discussion pointed out the impact on the GCC States of the WTO, and the situations of these States in relation to the accession to the WTO. Moreover, because the GCC States are oil economies, consideration was given to the possibility of including oil in the WTO negotiations, an issue which has not been addressed so far.

Because the legal system is alive in that it reflects the tendencies, directions and needs of the society as well as its conflicts in its organization of an authority for the

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[400] Interview conducted by the researcher with Abdullah Al Shebely the director of GCC Department in the Ministry of Commerce and Industry in Oman on 16 March 2005.

[401] Al Ektesad Al Kaleegy [The Gulf Economy], op. cit., 2001, pp 6-7.

protection of individual and group rights through the legislative principles in its various aspects, it is natural that its relationships and legislative principles and foundations are affected as a result of the developments in international trade and technology or the high-tech instruments of the modern world and what they produced in new patterns for legal relationships in the new and emerging field of trade and economy.[402] The Sultanate of Oman responded somehow with the requirements of accession to the WTO. This response was an acquiescence to the legislative conditions imposed by the WTO, a reality that must be adjusted to, worked with and accepted as staying in is better considering the policy of the free economic market on both the local and foreign levels. Without a doubt, the Sultanate of Oman's accession procedure has many reflections. On a local level, many systems were issued and amended and with more transparency, not just in their subjects but also in their implementation procedures parallel to new pieces of legislation in the WTO. In this respect, the businessmen and companies of Oman will familiarize themselves with legal systems prior to entering external economic activities. As for Omani exports, there must be awareness of the frameworks and organizations that govern the international market. In return, foreign companies will not embark on any economic steps if it is felt that there is a lack of clarity as to their rights, a matter that will push them towards acquainting themselves with the national organizations, either in the stage prior to entering contractual obligations of when a commercial dispute arises. This is because of their keenness at gaining the Omani market and increasing the economic activity within it as well as revitalizing issues such as international arbitration and issues relating to intellectual property. Despite Oman having taken many legal steps in issuing many systems, its step towards accession, albeit one of the positive ones for it, presents many challenges and negative effects that many have consequences of many different levels. The economies of the free market and their applications have urgent legal implications on issues such as recruitment. Then there are commercial disputes that may arise between national and international companies. Also, the implementation of trademark systems will lead to the increase in price of literary and technical products. In addition, the application of anti-dumping policies and the removal of subsidies on commodities will increase the price of these

[402] Yuones, A., *Ategarah Al Electronyah,* (Electronic Trade), consulted on 13 March 2005 from, http://www.arablaw.com

commodities. Consequently, this will lead to many disputes, especially between the individuals and companies that do not have enough flexibility to accommodate these changes and cope with them, which will result in these bodies not meeting their obligations towards others or those working within them.

However, Oman agreed in its protocol to apply and administer all WTO-related laws, regulations, and other measures there is skepticism regarding Oman's ability to meet this obligation, which assumes the existence of enforcement institutions with clear lines of authority and the capacity to render neutral decisions. There are a number of reasons that could impede the impartiality and predictability of those who administer the law. Essentially, although constitutional reforms have taken place, they have not fundamentally changed the nature of decision-making in Oman, or eroded the power of the Sultan. Although, as Uzi says, some analysts have interpreted the reforms as signs of Oman's move towards a European style constitutional monarchy, they were not. They did, however, reflect a more serious addressing of reform issues than in the past, and can be expected to increase the responsiveness of the state at a time when societal demands increasingly outstrip the government's capacity to address them. The changes currently taking place in Oman represent an integration of traditional practices and new realities to develop a system that could ensure the future stability and prosperity of the country.[403] In this context, WTO accession is providing Oman's decision-makers additional leverage to push for more reform, although, because of the reasons mentioned above, it is unrealistic to expect that these reforms will be immediately realized.

On the economic level, oil has played various roles in the life of the Omani society except that of creating an economy based on production and its returns, diversifying the sources of income and achieving self-sufficiency with regards to important commodities as well as workforce. Oil led to the creation and consolidation of a leaping culture comparable to the leap in oil prices that took place at the beginning of the '70s. With time, this culture became a coordinated protector guiding the behaviour of individuals and institutions, particularly government ones, as they spend on huge public projects irrationally. This resulted in a great growth in the public sector that is generally characterized in developing countries as lacking competence, low

[403] Uzi, R., "Majilis Al-Shura And Majilis Al-Dawla: Weaving Old Practices And New Realities In The Process Of State Formation In Oman", *Middle Eastern Studies,* Vol 38, Issue 4, 2002, pp 41-50 at pp 46-49.

production and being overly bureaucratic. Another result was a recession in the private sector and its complete reliance on the public sector and government subsidies. This led to a serious deterioration in the competence and productivity of employees in all the economic sectors in addition to the emergence of a new generation and culture of dependency, lack of incentive and the society becoming a non-producing consumer society exporting nothing but oil. On the other hand, Oman's economy is still dominated by large state-owned enterprises, the rule of law remains problematic and administrators seldom feel compelled to explain their decisions.[404]

In its favour, Oman has enjoyed huge advantages from oil revenues and the benefits have been passed on to its citizens through a welfare state, modern infrastructure, and educational facilities. The country, with its small size, latently diverse population, and significant wealth, has enjoyed greater stability than other larger, more populated, and heterogeneous Arab countries. It is not in the position of a corrupt and inefficient regime, in which the sudden introduction of reforms after a long period of repression would unleash suppressed tensions, with explosive result. However, the time for reform has arrived. Although Omanis enjoyed a higher standard of living during the oil boom, they have subsequently suffered a degree of economic decline which is likely to stimulate political demands. Today, Oman faces the challenge of change. The small scale traditional institutions based on informal, personalistic, and behind-the-scenes planning and negotiation cannot cope adequately with the demands imposed by population growth, social mobilization, and technological advances. Modernization requires the fundamental transformation of traditional political systems. As Omanis become more educated and open to influences from the outside world, they will increasingly demand more participation in the decision-making process, which in modern countries is an essential feature of nation legitimacy. In Oman, as elsewhere in the world, forces for democratization and liberalization are gathering momentum and importance.[405] Oman faces a number of problems, but what is of concern in this context is the wide gap between economic modernization and political development, and this is clear from the way economic policies are set and the important decisions taken on economic issues. This used to be done without any participation from the citizens or at

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[404] Alexandroff, A. S. and Gomez, R., "Where Do We Go From Here?" in Ostry, S. et al. (eds), *China And The Long March To Global Trade, The Accession Of China To The World Trade Organization*, Routledge, London and New York, 2002, p 231.

[405] Riphemburg, C.J., 1998, op. cit.. pp 86-87.

least the council as their representative, even if the decision would affect them directly. The best example here was the decision to join the WTO, which was taken by the government without any role of the citizens, or even the Al-Shura Council.[406] However, yet it is increasingly apparent that WTO accession has provided a catalyst for Oman's evolution away from a legal system driven by power relationship and towards a rule-based legal system, thus, the difficult question that could face any researcher here is: what kind of reform will be needed, and how fast?

Undoubtedly, the integration and cooperation within the economies of GCC States will widen the Omani market. Efforts to make combined purchases of foreign - origin commodities and thus obtain more favourable prices should be generally advantageous. Moreover, producers and distributors will achieve economies of scale which will reduce costs. This in turn would reduce prices, enabling the consumer to buy more at lower prices. However, the government will eventually be compelled by market forces to adhere to the integration process, because it tends, like any government, to take the economy towards a position of equilibrium. However, a challenge will face the government that of egalitarian economic management. This would require the creation of sufficient investment channels by facilitating diversification of the economy.[407] Basically, it remains to be seen whether the GCC will loop in a circular process which benefits both larger and smaller states and cements economic integration or whether it will split into two groups set at variance.[408]

As the discussion has shown, the GCC States are undergoing changes in the economic structure. Although still heavily dependent on the oil sector, they are making efforts to diversify their economies.[409] Although the original impetus to formation of the GCC was political, it confers considerable economic benefits in terms of trade creation, a main determinant of economic growth. GCC States are in the process of liberalizing their markets and the greater openness of their trade policies is conducive to economic growth. Also, in view of their similarities in per capita incomes and demand structures for quality goods, there is potential for enhanced intra-trade. Hassan and

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[406] The council is a wholly elected body and its functions are defined in Royal Decree number 86/97.

[407] Dr. Rizvi. S.N.A., 1997, op. cit., p 132.

[408] Twinam. J. W., "Reflection On Gulf Cooperation With Focus On Bahrain, Qatar and Oman", in John. A. (ed), *The Gulf Cooperation Council: Moderation And Stability In An Interdependent World,* Westview Press, Boulder, 1987, p 33.

[409] Haji, J. A. et al., "Comparative Analysis Of The GCC Economies: A Linkage Structure Approach", *The Middle East Business and Economic Review,* Vol 7, Issue 1, 1995, pp 41-56 at p 46.

Mehanna argue that the GCC States are ahead of their Middle East neighbours (excluding Lebanon and Jordan), in trade liberalization policies. Economic integration would enable the GCC States to benefit from greater economies of scale, deeper capital markets, a better environment for direct foreign investments, reduction in administrative costs among Member countries, a wider variety of products, lower prices for ultimate consumers, and higher economic growth capital. However, widening the GCC into a large Middle East bloc would be difficult, given the still prevalent restrictions on the movement of people and labour in the region, which may be attributable to the wide income disparities between countries. The GCC States may also fear that a free movement of labour could threaten their monarchical regimes.[410] Moreover, GCC States are still facing several obstacles to trade, in terms of the similarity of their factor endowments, small market size, and similar areas of comparative advantage. Based on the pros and cons of patterns of GCC trade, it may be suggested that policy should favour deeper integration and eventual expansion of the GCC trading bloc to include other Middle Eastern countries, in order to bring relatively different factors and resource endowments into the bloc, as well as a greater variety of production and cost structures. Such an enlarged integration model would be facilitated by greater horizontal and vertical integration between their economies. For example, GCC States should widen exports to encompass different petrochemical products and other oil, energy and gas complementary by-products, so that an export bundling marketing strategy can be pursued.[411]

In short, Oman legislation demonstrates that Oman has in place a legal framework for promulgating and publishing WTO-related law, uniformly administering such law, and reviewing administrative decision that implement such law. In other wards, Oman has laws in place that comport with the WTO's basic obligations. Of course, there is often a gap between creating laws and institutions on the one hand and implementing and enforcing the law on the other. In this context, the question here is whether the judiciary will play a meaningful role in correcting abuses of discretion or WTO inconsistent rulemaking by the administrative branch. While it is still rather early to judge, anecdotal evidence suggests that WTO accession has already influenced some

[410] Hassan, M.K. and Mehanna, R.A., "Is The Gulf Cooperation Council (GCC) A Successful Trading Bloc?: A Middle Eastern Framework", *Middle East Business and Economic Review,* Vol 14, Issue 1, 2002, pp 18-28 at pp 21-24.

[411] Ibid, pp 24-25.

Omani judges towards greater professionalism and neutrality, at least with respect to trade related matters. On the other side, as the rules of the game in the new international trading system are that each country tries to protect its aims and safeguard its interest. Therefore, the GCC States must stop acting individually in their interaction with the WTO, and start to work and negotiate as a bloc, if they want to benefit from the new trading rules. This is important for Oman, since the only way for it to minimize the costs is by accession to the WTO. However, WTO accession encompasses not only commitment to eliminate tariff and non-tariff barriers to trade in goods but also a range of related commitments, including commitments to eliminate subsidies and to open service sectors to foreign participation. In addition to trade liberalization commitments, the WTO agreements include a special set of obligations that aim to promote transparency and predictability in the implementation of Oman's WTO obligations. Thus, the questions which still need to be answered are: how did the accession of Oman take place? And what were the commitments resulting from that accession? The answers to these questions are found in the next chapter.

CHAPTER FOUR: ACCESSION OF OMAN TO THE WTO

4.1. INTRODUCTION

Theoretically, the GATT was not an 'organization'; and so did not have 'Members'. The terminology used to emphasize this theory in the agreement was 'contract party'. However, it is fair to speak of 'Membership', in the light of the evolution of the GATT into a *de facto* organization.[412] Most WTO Members are former GATT Members who signed the final act of the Uruguay Round and concluded their market access negotiations on goods and services at the Marrakech meeting in 1994. A few countries which joined the GATT later in 1994, signed the final act and concluded negotiations on their goods and services schedules also became early WTO Members. Other countries that had participated in the Uruguay Round negotiations concluded their domestic ratification procedures only during the course of 1995, and became Members thereafter. [413] Aside from these arrangements which relate to "original" WTO Membership, other countries can be Members in the WTO also. Membership in the WTO is open to any country or customs territory which has full autonomy in the conduct of its trade policies. Accession must be approved by a two thirds majority of the existing Members, but before this, prolonged accession negotiations take place.

The increasing strictness of the conditions imposed by Members for accession has resulted in drawing out accession negotiations, such that some of those currently in progress have been going on for several years.[414] As of October 2004, the WTO had 148 Members with a round 33 applicants negotiating Membership.[415] Those applicants are WTO observers.[416]

With the intention of pursuing Vision 2020, Oman applied to join the WTO on 22 April 1996, under Article 12 of the WTO Agreement. In fact, the application was a further step in a process dating to the mid nineties, when the Council of Ministers decided in December 1994 that Oman should seek participation as an observer. An

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[412] Jackson, J., *The World Trade Organization Constitution And Jurisprudence,* The Royal Institute of International Affairs, London, 1998, p 47.

[413] *About The WTO Trading Into Future,* consulted on 21 January 2003 from, http://www.WTO.org/english/res_e/tif.pdf

[414] Lloyd, P. J., "Symposium: Economic Dynamics And The New Millennium The Architecture Of The Multilateral Organizations", *Journal of Asian Economics,* Vol 10, Issue 2, 1999, pp 211-227 at p 216.

[415] See the WTO website on www.WTO.org

[416] Observers must start accession negotiations within five years of becoming observers.

application to participate on this basis was submitted to this end by January 1995 and acceptance received in October 1995. Subsequently, the Cabinet set up a committee with the Minister of Commerce and Industry as chairman, to prepare the case for accession to the WTO. The committee consisted of representatives of the Ministries of National Economy, Agriculture and Fisheries, Post, Telegraphs and Telephones (now renamed Communications), Health, Foreign Affairs, and Legal Affairs; the Central Bank of Oman; the Directorate General of Customs; and the Chamber of Commerce and Industry.[417] Oman joined the WTO on the 9th November 2000, one month after Maqbool bin Ali Sultan, Minister of Commerce and Industry, signed the Protocol of Accession to WTO. This was done following the ratification of the Omani Memorandum by the General Council of the WTO during their meeting dated 10th October 2000. In this way, Oman became Member No. 139 in the WTO, fifth in the GCC States, and eleventh among the Arab countries, to join the WTO, its predecessors being Morocco, Jordan, Egypt, Mauritania, Tunisia, Djibouti and the other four GCC States.[418] Accession to the WTO is a significant turning-point in Oman's approach to international issues. By deciding to join the WTO, and to be bound by its underlying principles and rules, Oman not only enhanced its ability to cope with globalization, but also demonstrated its new understanding of the international order. For Oman's policy makers, accession offers the opportunity to exploit international obligations to drive forward much-needed domestic reform and to benefit from the discipline of a competitive international market through the pressure on domestic firms to improve their efficiency.

The question now arises, as to the legal system of procedures for Oman's adoption of the WTO Agreement and the Multilateral Trade Agreement of WTO. According to Article 42 of the Basic Statute, international treaties and agreements are to be signed by the Sultan, or by a person designated by him, in which case such treaties and agreements are submitted to the Sultan for ratification. In the case of the documents constituting Oman's accession to the WTO, these were forwarded by the Minister of Commerce and Industry to the cabinet, which passed its recommendations together with the package to the Sultan for ratification. The State Council and Al-Shura Council had no role in the approval or ratification of Oman's accession package.[419] After ratification,

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[417] Al-Lawati, H., "Oman and WTO", *Al-Markazi,* Vol 26, Issue 1, 2001, pp 6-10 at p 6.

[418] Ibid. p 6.

[419] Report of the working party on the accession of Oman, WTO Document Number, WT/ACC/OMN/26, 2000, p 6.

a Royal Decree was issued and published in the Official Gazette (Article 76 of the Basic Statue). Treaties like the WTO rank with Royal Decrees, because after signature or ratification by the Sultan, they become part of the law of the land from the date of publication in the Official Gazette, unless His Majesty has set a different date in the Decree, and no authority in the state may issue regulations, statutes, decisions or directives that contradict the provisions of these treaties (Articles 74 and 80 of the Basic Statute). Thus, implementing legislation could be required to complete national procedures relating to Oman's accession to WTO, to revise any regulations which are contrary to the WTO Agreements. However, Ganesan argues that, apart from the last item, the existing procedures give the impression that the WTO Agreements are "self executing" in nature in Oman; that is to say, that by ratification per se, all the WTO agreements will automatically become directly applicable and enforceable in Oman. He remarks that, at least in the countries following the Anglo-Saxon tradition or one similar to it, ratification merely signifies the commitment to abide by the treaty or covenant ratified, whereas actual process compliance will be secured through the enactment of national laws, regulations and administrative procedures consistent with the provisions of the international agreements. Therefore, he urges the importance of Oman paying attention to this legal issue by keeping the ratification and implementation issues separate.[420] Basically, it is true that the Sultanate will be committed to adhere to all the agreement provisions which it has agreed to accept, after signature or ratification by his Majesty. However, the agreement will be enforceable only under the provisions and terms which Oman has accepted and that could be why it is directly applicable and enforceable. Furthermore, it is not feasible to separate the ratification and implementation, because one simply cannot implement agreement provisions until ratification (acceptance), and if one ratifies, it is obligatory to implement. On the other hand, some pertinent questions which need to be answered are: what are the potential benefits and costs of Oman's accession to the WTO? In addition, what do countries have to do to join? In other words, what are the accession terms and process in the WTO, and how did the accession of Oman take place? Finally, what were the commitments resulting from that accession, and what it is exactly the commitments of Oman. This chapter, in successive sections, discusses these questions and tries to look

[420] Ganesan, A.V., *Oman's Membership Of WTO, A Study On Potential Benefits And Obligations,* July 1997, pp 79-80, unpublished; obtainable from the Sultanate of Oman EMbassy (Geneva).

for answers to them, in preparation for the next chapter which considers the sectors that stand to be affected by the accession of the Sultanate of Oman to the WTO.

4.2. Potential Benefits And Costs Of The Accession Of Oman To The WTO

Citizens have raised many questions about the benefits and risks of Oman's accession to the WTO. The latter include the various economic, social and cultural impacts of globalization, as well as their effects on institutions and individuals. According to Al-Lawati, concern about these matters was manifested in the questions raised in all meetings and symposiums held to discuss such subjects, and especially those raised during the lecture by the Minister of Commerce and Industry on the impact of WTO and globalization on the Sultanate's economy.[421] The WTO agreement is a wide-reaching one which brought changes to global commerce which will affect all countries around the world. Immediately after the establishment of the WTO, countries began to study the new international economic situation. Thus, it is natural that Oman should consider this development, to assess how it will affect its trade, development programmes, policies and its economic future. It can be argued that accession to the WTO is not solely a political issue for the applicant country, as application implies a desire to access a broader international market as a result of WTO Membership. From this perspective, accession to the WTO is an opportunity for Oman to tackle the economic issues it currently faces, with the prospect of deriving tangible benefits such as MFN treatment from its trading partners and access to the WTO dispute settlement machinery.[422] The decision to accede to the WTO was seen as necessary for Oman's national advantage. Nevertheless, there were some reservations towards the inclusion of Oman and other GCC States (except Kuwait), leading to delay in their accession. The technical committee which took this decision did so on the basis that domestic legislation and regulations were not complete yet in most GCC States, especially those regarding trade. In addition, the GCC States sought to adjust and develop their trade regulations and laws, in order to harmonize them. In particular, they aimed to harmonize customs duties upon foreign goods seeking a common market, so the committee saw a delay in access to the GATT. Furthermore, another reason which led to the GCC States

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[421] Al-Lawati, H., "WTO And Globalization And Their Impact On The Omani Economy", *Al-Markazi,* Vol 25, Issue 1, 2000, p 8.

[422] Kong, Q., "China's WTO Accession: Commitments And Implications", *Journal of International Economic Law,* Vol 3, Issue 4, 2000, pp 655-690 at p 661.

taking this position was apprehension that as a result of accession, they would lose freedom in foreign trade policies, which would have to be discussed and agreed with other contracting parties.[423]

However, many changes took place which made it necessary to review Oman's previous position on accession to the GATT and, as a result, to the WTO. Some of these changes concern foreign trade and some concern the economics of GCC States, whereas others concern the global economy and GATT itself. Oman and the GCC States relied fundamentally upon the complementary agreements and making use of the generalized system of preferences (GSP), and keeping far from the GATT. The GCC States reaped huge benefits from the growth of their economic power after the increase of oil prices. Nevertheless, the GCC States had difficulty in continuing with the same policies after the fall of oil prices and concomitant economic downslide. In addition, the inappropriateness of foreign trade counting on GSP, due to the sensitivity of political and economic change in the donor countries, contributed to this pressure. Moreover, the position of other GCC States towards accession changed, so after Kuwait, Bahrain, Qatar and the United Arab Emirates became Members in the WTO, Saudi Arabia participated in the final meeting of the Uruguay Round and applied formally to accede to the WTO. That meant that Oman was the only country from the GCC States that had still not taken its decision to accede and in the meantime the capital trade partners to the GCC States (USA and EU) continued to urge the GCC States to accede to the WTO.[424]

In this context, the report, prepared by the technical department for Middle East and North Africa in the Ministry of Development (now National Economy) in January 1994, contained a recommendation that Oman should accede to the WTO, since non-Membership would cost a lot more than in the past, during the GATT. Moreover, the accession cost in the future would be bigger. Some important economic issues for the developed countries, such as investment measures and intellectual property rights, were discussed on the bilateral level between the Government of Oman and the Government of the United States, and the USA urged the Sultanate to sign bilateral agreements or to

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[423] Mothkerah Rasmeyah Aedat bwasetat wazaret ategarah wa asenah (maktab alwazer) maskat bshan endemam oman ila mjmoet etfakyat al GATT 1994 wa monatamet altegarah alalameyah [Official Memorandum Prepared by the Ministry of Commerce And Industry (Minister's Office) Muscat Concerning The Accession Of Oman To The Collection Agreements Of GATT 1994 And To The WTO], 1996, pp 1-2. The researcher obtained this as a Member of the national committee which was responsible for preparing for the accession of Oman to the WTO.

[424] Ibid, p 3.

make huge changes in its laws and regulations in these fields. These fields are included now in the WTO agreements. Thus, accession to the WTO will remove the need for Oman to sign bilateral agreements with specific countries. Moreover, the Sultanate as a developing country will be given a transitional period to prepare the necessary legislations (in the field of intellectual property rights) and to delete contravening measures (in the field of investments). Moreover, huge changes were made to the GATT 1947 after the Uruguay Round, which attempted to correct the failures of the GATT by introducing further reductions in custom duty; reforming GATT as an institution; removing the exceptions which prejudiced the comprehensive application of GATT to goods; and addition of new fields. All these new conditions encouraged the Sultanate to change its position on accession to the WTO.[425]

For a typical GCC State like Oman, the direct benefit to be expected from WTO Membership will probably not be large. The GCC States already had low tariffs before accession, meaning that barriers to trade are already relatively low. Their removal is therefore unlikely to generate much new trade, which is the main determinant of benefits. Complying with WTO regulations will therefore probably not involve very large direct benefits, or for that matter, large costs for domestic firms and workers. The second factor which, according to Professor Denzau, would affect the size of the benefits gained by Oman from trade liberalization is the nature of much of the trade. The trade within the GCC region is for the most part trade with countries whose comparative advantages and economic structures are very similar. Consequently, trade is likely to yield relatively small benefits, and freer trade is unlikely to be significantly more costly for initially protected industries and workers. On the other hand, the energy trade with the rest of the world (outside the GCC) has yielded large benefits for the trading partners, and its liberalization would increase these benefits. Unfortunately, in this respect, WTO Membership is unlikely to have much direct result, since the WTO does not mandate freer trade in energy resources, and does not prevent very high taxation by many nations, such as the EU and Japan.[426] However, the major part of the potential benefits of the WTO Membership is largely to be in the future. So what are the potential benefits to Oman of joining the WTO? The formal director-general of the

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[425] Ibid, pp 3-5.

[426] Denzau, A., (Chair and Professor Claremont Graduate University), *WTO Membership - Costs And Benefits For GCC Countries,* 1999. p 2, unpublished, obtained from the Ministry of Commerce and Industry (Oman).

WTO, Mike Moore during Oman's accession negotiations, argued that Oman, as a relatively open and small economy, stood to benefit considerably by conducting its commercial trade, technological and investment relations within a non-discriminatory and liberal rules- based system, such as would be afforded by the WTO. Accession would give Oman the opportunity of participating, on an equal basis, in the further elaboration of such rules in future multilateral trade negotiations. WTO Membership also offers Oman access to the markets of other Members on MFN terms, and the possibility of improving these terms through multilateral negotiations in the future. Above all, by affording access to the WTO's dispute settlement procedures, Membership will protect Oman against damage arising as a result of unjustified actions by its trading partners, big or small.[427]

However, the benefits need to be seen in relation to the obligations or commitments incurred with them, just as a risk-reward ratio is considered in an investment decision or a cost-benefit analysis is made in a developmental project. It must also be recognized that, whereas the obligations and commitments are specific and quantified (under the WTO agreement) to enable legal enforcement, what benefits are obtained will depend on how a country exploits the opportunities created by the WTO. Stated in simple terms, one Member's obligation in the WTO is another Member's opportunity. Thus, the answer to the question of the potential benefits to Oman depends on Oman's capacity to exploit the market access opportunities that will be created by the new rule-based multilateral trading system of WTO. Whereas Oman's own market may be open and free of restrictions to imports of goods and services, the same does not apply in the markets of many countries around the world, developing and developed (as evidenced by the restrictions and tariffs employed by industrialised countries in textiles and clothing, agricultural products and labour intensive manufactures; as well as their non-tariff barriers). The WTO is intended to enforce a transparent and rule-based multilateral trading system to ensure fair competition, but the WTO system can do no more than enhance opportunity, and the ability to take advantage of those opportunities depends on the competitive strength of individual economies, since the system benefits only efficient and competitive producers, not producers per se.[428]

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[427] 'Oman And The WTO - The Real Impact', *Oman Economic Review,* March-April 2000.

[428] Ganesan, A.V., 1997, pp 68-73.

Taking a pessimistic view, it could be argued that since Oman lacks a diversified industrial base and has few non-oil sector exports, its potential ability to benefit from market opportunities abroad is limited. There may be some truth in this argument, but Oman could investigate the exploitation of additional market opportunities in terms of specific products that are important currently or likely to become so and adopt strategies gradually to increase exports of those items. The pressure brought by the new multilateral trading system of the WTO for Oman (and indeed all countries), to make progressive improvement in the efficiency and competitiveness of its economy, will encourage producers not only to be competitive vis-à-vis imports in the domestic markets, but also to take advantage of the opportunities available in overseas markets. Economists argue that countries that liberalise autonomously can better exploit market access opportunities abroad, because their liberalisation in the domestic market helps to generate internationally competitive production strengths. Thus, in Ganesan's view, Oman will be well placed to enhance its international competitiveness in specific products, albeit within a narrow range.[429]

As regards the service sector, where Oman is a net importer, here too, there is substantial scope for benefits. Ganesan suggests that Oman's approach should be to use its binding commitments under GATS to attract the most competitive and efficient service providers of the world to Oman, and thereby raise the service economy of Oman to the most modern standards, given the increasing importance of services as infrastructure for the manufacturing sector. He suggests that the government's privatisation will also be boosted in this process. The GATS regime should therefore be viewed from the perspective of a strong, modern and competitive service industry, rather than in light of Oman's current potentially negligible exports in this area.[430]

Despite the potential long-term benefits, there are also some possible immediate and short term adverse effects from accession. For example, the global enforcement of IPR laws under TRIPs could result in increases in the prices of some products like computer software, pharmaceuticals etc. Moreover, Oman depends heavily on imports of food produce and the prices of such food items may increase with the gradual removal of agricultural subsidies in EU, USA, Canada, and other food exporting countries. In addition, phasing-out of multifibre quotas in USA and Canada, and also

[429] Ibid., pp 73-74.

[430] Ibid., pp 74-75.

reduction in the preference margin of tariff for entry into EU, may lead to the prospect of a drop in output and employment (mostly expatriate) that Oman needs for restructuring of its textiles and garments industry, in which many units not sufficiently efficient or competitive by global standards, had grown and survived largely on the strength of export quotas and preferences under the Multifibre Textile Agreement. The gradual phasing out of quotas and reduction of preferential tariffs in the EU as a result of Oman's accession will adversely affect Oman's industry and there may be a set back in production and employment. However, the most serious and immediate threat under the new regime of WTO is to Oman Refinery Company (ORC). Oman has agreed to annul the Decree banning import of petroleum products and introduce an import duty of 2%, although it had hoped for an import duty of 5%. The old monopoly sale and special pricing of PDO to ORC will end after the entry into the WTO. In contrast to the situation in other GCC States, distribution companies for petro- products in Oman are not wholly government controlled. In addition, the competitive strength of ORC in relation to other GCC refineries is weak because of its small size - 85,000 b.p.d, the fact that only 45% of its output is light products and there is a need for modernisation. ORC is now preparing a detailed analytical study of the matter, to appraise the government of the situation on an urgent basis.[431] In addition, some administrative costs will appear as a result of accession, including that of maintaining an ambassador and his staff at WTO headquarters in Geneva (Oman currently has an office with a small staff, but no ambassador), the need to amend existing laws to make them compatible with WTO laws and to make new laws (and translate them into English), training of personnel in TRIPs custom valuation, and preparation of a large number of notifications and documents.

Although Oman is attracting increased interest from foreign investors, the main challenge facing the Sultanate has been marketing, perhaps because Oman is off the map to many countries. In this respect, the accession of Oman to the WTO may be advantageous by helping to raise its profile in the global marketplace. Thus, although Membership of the WTO has raised concern from some quarters, [432] ministers take a more optimistic view. Rashid Salim Al-Masroori,[433] argues that of course it cannot be

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[431] Sen, A.C., *Oman & WTO,* 2000, pp 9-10, unpublished, obtained by personal communication with the author.

[432] Reyes, B., "Special Report On Oman: Doors Open Wide To The World", *Lloyd's List International,* August 2, 2000, p 14.

[433] Director General of Commerce at the Ministry of Commerce and Industry (Oman).

claimed that there are 100% advantages for the economy through the WTO Membership, but there is always an exchange of benefits between countries. *"If we talk about globalisation we are part of the global economy and we cannot be isolated, we have to react to it in good or bad things".*[434] Moreover, the Minister of Commerce and Industries, quoted by Mathai, argues that the impact of the WTO may not be as profound as some pessimists are predicting, because Oman has its own autonomous liberalization policies. For example, *"for a majority of industries products the bound rates are higher than the current applied rates. This will give Oman the freedom to protect industries where needed. Where the rates are equal to or lower than the current rates, it has negotiated a five years transition period for domestic industries to prepare themselves".*[435] Despite the positive position of the government towards the accession to the WTO, the question which could be asked here is what is the position of other non-governmental groups towards this accession? Generally, while the business community agree that joining the WTO was a necessity, they perceive that to begin with, there are likely to be some negative repercussions. For example, according to Natasha Nasib, of Muscat Chemicals, quoted also by Mathai, the domestic industries will be badly affected initially and the pressure on manufacturers to focus on exports will be intensified. Moreover, the Omani industries are young and they are really not ready for the WTO. On the contrary, Anwar Ali Sultan of W J Towell[436] argues that the way will be smoothed for Omani products to compete and enter different markets enabling manufacturers to expand their business outside the country.[437] Another commentator who takes an optimistic view is Abdul Razak Ali,[438] who expects Oman's entry into the WTO to bring several advantages, the main one being that Oman will be part of a global system which is working towards a common approach to trade and economic policy issues. For a country that is seeking to diversify its economy by seeking investments and joint venture partners for promoting industry, WTO Membership gives a positive message likely to encourage foreign investment and technology transfer. There is also the important consideration that not being part of the WTO could lead to alienation

[434] Reyes, B., op. cit., 2000, p 14.

[435] Mathai, S., 'Impact Of The WTO On Oman', *Middle East,* Issue 307, 2000, pp 23-24 at p 23.

[436] Well-diversified Omani business group.

[437] Mathai, S., op. cit., 2000, p 24.

[438] Chief Executive, Bank Muscat.

from the global trading system, which could have negative repercussions.[439]However, an academic, Dr Fahim Al-Marhouby,[440]questions the claims made by the supporters of the WTO, that Membership in the WTO in and of itself will improve economic performance. He argues that openness alone will not generate sustained growth, since growth requires investment, technological development, macroeconomic stability, human resources and good governance. The ability of openness to the world economy through WTO Membership to contribute to these prerequisites will depend on the availability within the Sultanate of the complementary policies and institutions. Thus openness (Membership in the WTO) is not a panacea.[441]

Now that Oman has already become a Member of the WTO, it may seem that discussion of how this decision was taken is vain. It should, however, be noted that there is a very strong feeling that the Ministry of Commerce and Industry, in leading Oman's accession negotiations, failed to consult public opinion, and in particular the view of the private sector. Moreover, many complain that the issue was not deliberated at the Oman Council, and suggest that the opinion of this important domestic institution should have been sought, for such a major undertaking which will affect the life of all Omanis. Ministry officials have often claimed "it will be more costly to stay out than to be in the WTO". This may be so and Oman, like many other countries, may have very little option but to join the process of global trade liberalisation. Nevertheless, such claims draw attention to the simple fact that no serious cost/benefit analysis was undertaken and/or the ministry has kept any such analysis to itself. This supports the claim of those who argue that domestic institutions in developing countries are only symbolic with no real value and no regard is paid to their opinions![442]

4.3. Terms And Procedures Of The Accession To The WTO

The WTO imposes some terms upon the countries who want to join it; also there are some procedures that must be followed in accession to the organization. The first term is known as "tariff mandate". It is well known that fixing custom duties and their protection through local rules and regulations represents one of the basic principles

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[439] Al-Mandhary, F., 'WTO Benefits Vs Risks', *Al-Markazi,* Vol 24, Issue 5, 1999, pp 8-14. at p 10.

[440] Professor, Sultan Qaboos University, College of Commerce and Economics.

[441] Al-Mandhary, F., op. cit., 1999, p 13.

[442] *[Oman-1] Oman And WTO,* consulted on 31 October 2002 from, http://www.oman.org/pipermail/oman-1/2000-October/000903.html

of GATT. Each Member country must have a tariff schedule of goods with serial numbers in accordance with the united system of the WTO No. HS96. The schedule should indicate the "bound rate," showing the highest possible rate, and the "applied rate," indicating the rate which is usually applied, which is less than the bound rate. According to the GATT agreement, countries may increase the rate wherever necessary up to the bound rate. As is well known, there is no single rate for each Article acceptable to all countries. Custom duties for all goods are not equal in all countries. There is another important GATT and WTO principle concerning "gradual liberalization", that is, the gradual reduction of bound tariffs for goods and the gradual increase of scheduled goods. Accordingly, Member countries are required to fix ceilings for custom duties through the WTO. These ceilings shall not be exceeded, unless in special circumstances through negotiations in accordance with WTO principles.[443]

The second term is that a Member country must present a schedule of obligations, which it is going to implement in the services sector. The schedule includes a list of terms and barriers which apply in the services sector, and a timetable to remove them. The third term is that a Member country should sign the protocol of accession, which includes the agreement of the country to execute and implement all WTO agreements (except the plurilateral agreements), which means that there is no possibility of any country selecting between the agreements, and any contrary ones which applied in GATT's days.[444]

As regards the accession process, the WTO argues that this has not been greatly changed by the WTO, which largely follows the practice of its predecessor, the GATT 1947,[445]except for modification to accommodate the WTO's more extensive activities. During 1994, seven new working parties were established to examine accession requests, and at the end of 1994 the number of GATT contracting parties rose to 128. At its meeting of 21 December, the PrepCom proposed that as and when requests for WTO accession under Article 12 were made by governments for whom a GATT 1947 working party already existed, WTO's General Council agree to these working parties continuing their work as WTO accession working parties.[446] However, in the view of

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[443] Al-Lawati, H., "Oman and WTO", *Al-Markazi*, Vol 26, Issue 4, 2001, pp 6-10 at p 8.

[444] Saito, Aki., "The WTO Agreement And The Relevant Japanese Domestic Laws", *Journal of World Trade*, Vol 30, Issue3, 1996, pp 87-108 at p 87.

[445] Accession to the GATT was possible either under Article 26.5 (c) or Article 33.

[446] *GATT Activities 1994-1995*, World Trade Organization, Geneva, 1996, pp 111-112.

Ognivtsev et al., the process of accession to the WTO is much more complex and difficult than that for accession to the GATT 1947. One reason for this is the more stringent and detailed rules and disciplines covering trade in goods, involved in the WTO agreements, as well as the expansion of the scope of such rules to cover trade in services and to protect intellectual property rights. Candidates for Membership must accept all these agreements; even the plurilateral agreements, which are formally optional, must be accepted by accedants as a matter for negotiation by major WTO Members. These new rules and disciplines represent further incursions into areas traditionally viewed as matters of domestic policy. Not only must states wishing to joint the WTO bring their trade regime into conformity with the multilateral disciplines, they will also have to negotiate concessions on reduction and bindings of tariffs, commitments on agricultural subsidies, and specific commitments on trade in various services sectors. There has also been a gradual hardening of the attitude of the major trading countries towards acceding countries, so that more is now demanded of candidates for Membership than was once the case.[447]

Throughout 1995, the WTO received a number of inquiries about accession procedures, as a result of which the secretariat produced a guideline to the procedures to be followed, information required from acceding governments and what is expected of applicants.[448] Article 12 of the Marrakech Agreement establishing the WTO, which provides for accession, states: *"Any state or separate customs territory possessing full autonomy in the conduct of its external commercial relations, and of other matters provided for in this agreement, and the multilateral trade agreements may accede to the WTO on terms to be agreed between such state or separate customs territory, and the Members of the WTO.* "As indicated by the expression "on terms to be agreed", the accession process involves negotiation between prospective and existing Members of the WTO. Generally, would-be Members will first become observers, which gives them an opportunity to become familiar with the WTO requirements and the accession process. Observers can attend meetings and review documents, without at this stage having to accept any obligations themselves. Gradually, as they become aware of WTO

[447] Ognivtsev, V. et al., "Accession To The WTO: The Process And Selected Issues" in *WTO Accession And Development Policies,* United Nations Conference for Trade and Development, United Nations, New York, 2001, p 116.

[448] See WTO Document Number WT/ACC/1, 24 March 1995.

requirements, they may voluntarily start changing their foreign trade regime in readiness for the accession process.

The General Council considers accession applications under Article 12 of the WTO Agreement. The full text of the Article reads as follows:

1- Any state separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this agreement and the multilateral trade agreement may accede to this agreement, on terms to be agreed between it and the WTO such accession shall apply to this agreement and the multilateral trade agreements annexed thereto.

2- Decisions on accession shall be taken by the Ministerial Conference. The Ministerial Conference shall approve the agreement on the terms of a accession by a two-thirds majority of the Members of the WTO.

3- Accession to a plurilateral trade agreement shall be governed by the provisions of that agreement[449]

No specific Membership criteria are set out, and this could be considered the most problematic legal aspect of the accession process. In fact, the striking characteristic of Article 12, and the source of its weakness, is its brevity. It offers guidance on the "terms to be agreed", which are left to be negotiated between the WTO Members and the applicant Furthermore, Article 12 does not identify any specific procedures, or even provide any advice about the procedures to be followed during negotiation of the terms of accession. In practice, these shortcomings are overcome by means of the long established GATT tradition that allows the gradual and independent evolution of procedures over time in the light of precedents and previous rulings.[450] In line with this tradition, the accession procedure follows a pattern of instructions set out in a note drafted by the secretariat in 1995.

The process of accession to the WTO is demanding and takes a long time for most countries. It can be divided into an introductory phase of formalities and three substantive phases. In this context, some may ask why it takes so long. To understand why it takes so long to accede to the WTO, one has to look more closely at the various phases of the accession process and investigate the reasons why delays may occur. The

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[449] The Legal Text__ the results of the Uruguay Round of Multilateral Trade Negotiations, available on WTO website from, www.WTO.org

[450] Lanoszka, A., op. cit., 2001, p 589.

first step taken by an applicant country, referred to as the "protocol or multilateral stage,"[451] is initiated when the applicant sends written notification to the Director General of the WTO of the desire to accede to the WTO under Article 12. This notice is circulated to all Members. Normally, the General Council will set up a working party with the appropriate terms of reference to examine the application and report to the General Council. All Members are eligible to join working parties. The report of such a group might include a draft protocol of accession.[452]

The first stage of substantive phase is the preparation of a memorandum. The candidate for accession must prepare a memorandum on its foreign trade regime, describing all aspects of its trade policy that have implications for WTO Agreements. It would include, for example, general economic indicators, policies affecting trade in goods, such as import and export regulations, agricultural and industrial policies, and policies regarding intellectual property rights, policies affecting trade in services, customs valuation, and licensing requirements. This memorandum is circulated to working party Members, who may ask the applicant for further information. Both the questions and the replies are classed as official documents, and are distributed among Members of the working party. Based on this initial phase of negotiations, the working party will examine more deeply the details of laws, regulations, sectoral policies, taxation systems, privatization plans, subsidy policies, information on regional trading agreements, tariff and non-tariff barriers and other policies and practices of the applicant with a potential impact on international trade. The duration of this question and answer period varies according to the quality of the memorandum and the extent of apparent inconsistencies between the laws and practices described and the WTO provision. To reduce the risk of delays caused by incomplete documentation, sometimes Members have asked the WTO secretariat to review draft memoranda prior to circulation. Nevertheless, responsibility for the contents of memoranda rests with the preparing country.[453] In the case of Oman, the memorandum of foreign trade was extremely useful because it forced Oman to examine trade policies as well as serving to

[451] Grynberg, R. and Joy, R. M., "The Accession Of Vanuatu To The WTO: Lessons For The Multilateral Trading System", *Journal of World Trade,* Vol 34, Issue 6, 2000, pp 159-173 at p 159.

[452] Naray, P., *Russia And The World Trade Organization,* Antony Rowe Ltd, Chippenham, 2001, p 93.

[453] Michalopoulos, C., *Developing Countries In The WTO,* Palgrave Macmillan, New York, 2001, p 180.

complement many of the reforms that were necessary in order to bring its trade regime into conformity with its WTO obligations.[454]

The second stage is commonly referred to as the "bilateral stage."[455] This stage begins when sufficient clarification of the applicant's trade regime has been given to the working party; a series of bilateral negotiations takes place between the applicant and interested Members to establish the latter's concessions and commitments on goods and its commitments on services. One purpose of this process is to identify what advantages will accrue to WTO Members if the application is accepted.[456]

The third stage begins when the bilateral negotiations are complete. The schedule of concessions and commitments to the GATT 1994 and the schedule of specific commitments to the GATS are prepared and annexed to the draft protocol of accession, of which they form part. The working party then reports to the General Council, together with a summary of the negotiations, a draft of decision and a protocol of accession, prepared by the secretariat in close co-operation with the Members of the working party, which sets out the terms of accession agreed among the negotiating parties.[457] This report, including the agreed schedules resulting from the bilateral negotiations, is forwarded to the General Council or Ministerial Conference, where it is submitted to a vote. If the protocol is accepted by a two-thirds majority of WTO Members, it enters into force thirty days after ratification of the applicant government.[458]

Various difficulties have arisen as a result of the surge in applications for WTO Membership, especially from transition economies. The great majority of such economies lack institutional capacity in respect of trade policy and the resources of the WTO Secretariat are insufficient to give all applicants the assistance they may need in this respect. Although progress has been made with the establishment in 1995 of the Accession Division, the first time the international trade system had an independent unit

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[454] As a Director of the Legislation and Legal Opinions Department in Ministry of Legal Affairs, the researcher was a Member in the national committee established to prepare for the accession of Oman to the WTO, and was responsible for answering the legal questions of the working party.

[455] Grynberg, R. and Joy, R. M., op. cit., p 159.

[456] Klein, C. et al., "Joining The Global Rules-Based Economy: Challenges And Opportunities For The GCC", *Middle East Policy,* Vol 7, Issue 2, 2000, p 2.

[457] Naray, P., op. cit., 2001, p 95.

[458] *About The WTO Trading Into Future,* counsulted on 21 January 2003 from, http://www.WTO.org/english/res_e/doload_e/tif.pdf

to deal with accession matters, even now, however, the resources allocated to facilitating the accession of new Members are relatively small. It has been noted, for example, that the speed of accession of transition economies to the IMF and World Bank is much faster than accession to the WTO.[459] Moreover, WTO accession-related multilateral and bilateral assistance is accused of being uncoordinated and sometimes more conducive to the protection of national interests than to integration of the given transition economy in the international trade system.[460]

Article 12, under which countries join the WTO, opens a wide field to different terms. That Article as it seen does not set out objective rules to be fulfilled by applicants. Furthermore, the countries which joined after 1995 face stronger pressures and stricter obligations than those faced by the countries that joined before that year, as original Members. It is found in practice that developed countries interpret Article 12 widely in a way which gives scope to impose more obligations than are in the trade agreement itself. A number of basic points can be concluded from the accessions that occurred after the establishment of the WTO. The first concerns the character of the DCs and LDCs. This character is not given automatically or determined objectively; the applicant country must define its character, however, its status is clearer than that of other countries which are already Members in the WTO. Moreover, the applicant country may be asked to give up its status as a DC. This was asked of China and Saudi Arabia, but both have clung to their status as DCs. The second issue is the imposition of obligations exceeding those in the final document.[461] By studying the accession terms of some countries, it was found that there are some obligations greater than those stated in the final document,[462] for example, related to privatization and economic reform. The trade agreements do not include any obligations in relation to privatization, and yet Bulgaria was asked to present a privatization programme, so Bulgaria is committed to present regular reports about its economic reform. Thirdly, the flexibility accorded to the DCs is imperfect. During the negotiations of the countries which seek to join the WTO, the

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[459] Naray, P., op. cit., 2001, p 95.

[460] Ibid.

[461] Qawaid alenthemam wa a tafawud fee monathamet ategarah alalameyah (2) [The accession rules and negotiation in the World Trade Organization (2)], briefing notes preparing by the Economic and Social Committee for West Asia (ESCWA) during the fourth WTO Ministerial Conference, 2001, obtainable from the committee.

[462] The final document means, the collection of Multilateral Trade Agreements which reached after the Uruguay Round and agreed by the ministers in Marrakech in 1994.

interpretation of the developed countries of Article 12 was that everything is open to negotiation. This means that the flexibility granted to the DCs is not given automatically, but it has to be negotiated. This applies even to the period awarded for implementation. Other Members have prevented DCs from benefiting from the leeway agreed on during the negotiations of Uruguay Round. Most countries which joined the WTO after 1995 have not been given so much time for implementation, even if they are DCs, but have been subject to the same conditions as the countries which joined in the Uruguay negotiations. For instance, in the TRIPs Agreement, the DCs which joined after 1995 have not been allowed to benefit from the agreed periods (1 year for developed countries, 5 years for DCs or in some agreement terms, it 10 years). Ecuador is the only country which was allowed extra time (6 months) to execute the agreement.[463] However, as Klein points out, some difficulties are now being experienced in the WTO with the transitions that were provided for in the original WTO Agreement in 1995. Some countries appear to have thought the five year transition ample in length, and failed to take timely action in the meantime, to implement their commitments, and had still not done so by the time the transitions provided expired on January 1, 2000.The situation is understandable, given the many competing demands that countries face and the other urgent priorities which may require their attention. No immediate action has been taken against these countries. However, non-compliance undermines the essence of participation in the WTO, which is based on compliance with the rules towards other people's trade so that the Member can expect the same treatment for its own exports.[464]

According to Paragraph 48 of the Doha Ministerial Declaration (DMD) provides that new negotiations "shall be open to: (1) all Members of the WTO; and (2) states and separate customs territories currently in the process of accession and those that inform Members, at a regular meeting of the General Council, of their intention to negotiate the terms of their Membership and for whom an accession working party is established." The only difference in the terms of participation of Members and non-Members concerns decisions on the outcomes of the negotiations, in which only Members are eligible to participate.[465] So what are the implications for acceding countries of paragraph 48 of DMD? There would seem to be three main concerns that acceding

[463] Qawaid Alenthemam Wa A Tafawud Fee Monathamet Ategarah Alalameyah (2) [The Accession Rules And Negotiation In The World Trade Organization (2)], op. cit..

[464] Klein, C. et al., op. cit., 2000, p 3.

[465] WTO Document Number, WT/MIN(01)/DEC/1, 20 November 2001.

countries will want to address. First, they will want to be sure that their terms of accession, notably tariff bindings and commitments on services and agricultural subsidies contained in their schedules should constitute their contribution to the final package of the post-Doha negotiations, i.e. that they should not have to "pay twice". Secondly, acceding countries are concerned to be allowed to submit proposals, individually or jointly with WTO Members, having similar interests, in the various negotiating bodies. This would include proposals for changes in the rules, as well as requests for liberalization of barriers to their exports of trade in goods and services. Thirdly, candidates for Membership will seek balanced terms of accession, with rights and obligations comparable to those of WTO Members. Such terms should also reflect the letter and spirit of DMD, particularly as regards Special and different treatment which, as was clearly recognized by DMD, is "an integral part of the WTO Agreements."[466]

To accelerate the integration of the countries into the world trading system, it is necessary to strengthen the institutional capacities of acceding countries through better co-ordinated and more generously funded technical assistance (as actually proposed and financially supported by a number of WTO Members),[467] and adhere to the accession terms laid down in the trade agreements by the countries Members. However, it is likely also that, whatever the accession conditions, countries will still demand to join the WTO. The reason is that in practice, they have little choice, since a country that chooses not to join will be disadvantaged by being isolated and out of the world trade game. The question here is how did the accession of Oman to the WTO take place?

Each accession to the WTO is a unique event, but like most accessions, Oman's accession process to the WTO began with a letter from the Sultanate of Oman addressed to the Director -General of WTO. The item was then place on the agenda of the WTO General Council for action (April 1996) which established a "working party" to examine Oman's application.[468] In 1997 Oman submitted a memorandum of its foreign trade regime, describing the regime in details and providing data. The preparation of the memorandum is no easy task for governments, as detailed discussion is required of a

[466] Ognivtsev, V. et al., 2001, op. cit., pp 142-143.

[467] Naray, P., op. cit., p 95.

[468] From the report of the working party on the accession of Oman, op. cit., 2000, p 1, it is clear that the working party met six times (30 April and 28 November 1997; 2 October 1998; 7 May 1999; 29 February and 6 July 2000), under the chairmanship of H.E. Mr Munir Akram (Pakistan).

number of issues, and this demands human and material resources on a scale which are often unavailable. Indeed, governments may not even be familiar with the concepts and legal and economic issues involved. Oman was in such a position, and had to seek assistance from outside experts.[469] Questions were then submitted by the WTO working party, to which the Oman's Government was invited to respond, as a focus for dialogue on the extent of the regime's conformity with WTO requirements, with a view to ensuring a good match. Some months later, when the scrutiny of Oman's foreign trade regime had reached a sufficiently advanced stage, Members of the working party started bilateral market access negotiations on goods and services between Oman and interested countries. [470] The process of negotiating the protocol of accession required Oman to conclude bilateral agreements with WTO Members. Thus, Agreements were ratified with the EU on 28th July 1999; with Japan on 10th August 1999; with India on 10th October 1999; with Mexico on 19th October 1999; with New Zealand on 29th October 1999; with Australia on 18th November 1999; with Republic of Kazakhstan on 18th November 1999, with USA on 19th November 1999; with Switzerland on 23rd November 1999 and with Canada on 25th November 1999. The terms of these agreements set specific conditions for market access and regulatory norms that will be incorporated into the protocol of accession.[471] The terms of Oman's accession to the WTO were set out in the final protocol of accession, which was informed by the working party's final report. The protocol reflects the terms and conditions of the various bilateral agreements, and contains such other requirements as are determined by the working party established to oversee Oman's accession. Thus, following successful conclusion of negotiations in 2000, the results were incorporated in the schedules appended to the draft protocol of Oman's accession. The market-opening commitments of Oman, although negotiated bilaterally with individual WTO Members at their request, are applicable to all Members as a result of the MFN clause. The decision on Oman's entry to the WTO was approved by consensus, as is usually the case in the WTO.[472]

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[469] The researcher got this understanding from his participation as a Member in the national committee, which was responsible for preparing for the accession of Oman to the WTO.

[470] *The Sultanate Of Oman: An Overview Of The Managerial Concerns In International Trade And Economic And Trade Policy Issues, A Background Note,* consulted on 29 November 2003 from, http://www.intracen.org/worldtradenet/docs/networking/country_papers/paper_Oman.pdf

[471] Al-Lawati, H., "Oman And WTO", *Al-Markazi,* Vol 26, Issue 1, 2001, p 7.

[472] *The Sultanate Of Oman: An Overview Of The Managerial Concerns In International Trade And Economic And Trade Policy Issues, A Background Note,* op. cit..

The accession process of Oman was faster than that of some other countries. The speed of progress could be to a great extent due to the state of readiness of Oman's trade regime and the country's ability to conclude rather rapidly bilateral negotiations with WTO Members who so requested. According to the chairman of the working party on Oman, Ambassador Munir Akram, Members of the working party had commended Oman's ``broad- ranging and dynamic efforts aimed at achieving conformity of its trade regime with the WTO rules and disciplines.'' Oman had put in place the necessary legislation to implement the WTO agreements by the date of its accession. [473] In addition, the US Ambassador, Rita Hayes, complemented Oman's negotiating team, led by the Minister of Commerce and Industry, on its persistent and determined efforts leading to Oman's accession. She hailed the outcome of the accession negotiations with Oman as a significant contribution to overall trade liberalization, in line with Oman's broader long-term efforts to modernize and to increase the economic opportunities available to its people. Accession reflected Oman's recognition that full participation in the WTO would complement its other policies designed to promote economic growth through economic diversification.[474]

However, these comments do not mean that the accession of Oman to the WTO was easy. Between establishment by the General Council of the working party, and the full accession of Oman to the WTO, the Ministry of Commerce and Industry, through the national committee, had to ensure compliance with bilateral agreements ratified with interested countries. Seven rounds of bilateral negotiations took place both in the area of goods and services principally with quad countries, Switzerland, Australia, and New Zealand, and to a lesser extent with Mexico, India, and the Kyrgyz Republic, which joined in the final stages of negotiations. There were further rounds of negotiations with United States and the European Union. Oman had to revise its initial offer from 50% to 35% in the first revision; to 25% in the second revision; to 20% in the third revision; and finally to 15%. [475] The Omani negotiators also had to answer various questions relating to Oman's economy and, in return, learned a lot more about the policy and laws of the WTO and the commitments that must be fulfilled by the Sultanate in order to

[473] Ibid.

[474] *Statement By US Ambassador Rita Hayes Regarding The Accession Of Oman To The WTO,* Geneva October 10, 2000, consulted on 31 October 2002 from, http://www.us-mission.ch/press2000/1011oman.htm

[475] Al-Riyami, S., "Process And Implications Of Oman's Accession To The WTO", *Al Markazi,* Vol 30, Issue 1, 2005, pp 18-25 at p 20.

qualify for Membership. To facilitate those efforts, the Ministry of Commerce and Industry decided to open an office in Geneva and maintain a permanent representative there to co-ordinate contacts and supply replies to any queries from the WTO and the working party. Moreover, accession to WTO was quite difficult, as the negotiating countries required measures to be taken regarding, *inter alia*, custom tariffs, and protection of industry, non- discrimination between nationals and foreigners, anti-dumping safeguards, and protection of intellectual property rights.[476]

The Omani government has adopted a liberal trade strategy as part of the accession process. This involved: (a) binding tariffs at the usually low currently prevailing levels; (b) agreeing to liberal trade regime in services; and (c) agreeing to participate, at an early date after accession, in negotiations for Membership in the Agreement on Government Procurement. Michalopoulos highlights the economic benefits of such a strategy, as the country concerned is able to reap the benefits of liberal trade and investment. However, the terms of accession of Oman and some other DCs' accession, as Butkeviciene et al. have pointed out, involved a significantly higher level of commitments and obligations than were accepted by the original WTO Members of comparable levels of development. These more recent accedants, Oman included, were, moreover, able to gain little benefit from the special and different treatment provided under the WTO Agreements.[477]

4.4. COMMITMENTS FOR ACCESSION TO THE WTO

Since Oman's accession to the WTO, the state's commitment to its WTO obligations has often been declared by Omani officials. It is well known that a country acceding to the WTO will have to accept certain disciplines and rules, on which the WTO is based. In the legal instruments related to the accession to the WTO, namely, the protocol on the accession, the report of the working party and the various WTO agreements, not only the market access commitments, but also various rules under which the Member is to conduct its trade are set out. Trade in goods, services and intellectual property, investment, competition policy, trade facilitations and transparency etc. are all covered by these rules, which constitute the legal ground for

[476] Al-Lawati, H., op. cit., 2001, pp 6-7.

[477] Butkeviciene, J. et al., "Terms of WTO Accession", in *WTO Accession And Development Policies,* United Nations Conference Of Trade And Development, United Nations, New York, 2001, p 155.

international commerce. This section discusses the obligations by which Oman become bound by accession to the WTO. The discussion is divided into two sub-sections. The first one concerns the commitments arising from the accession to the WTO generally, whereas the second one focuses on the commitments of Oman which arise from its negotiations of accession.

4.4.1. General Accession Commitments

The WTO is distinguished from its predecessor, the GATT, by the mandatory nature of its multilateral agreements. Whereas under the GATT, contracting parties could decide which agreement to adhere to, all Members are bound by WTO obligations. Another example of the WTO's greater power, compared to its predecessor, can be seen in its dispute settlement system, with panels capable of producing binding reports. These features give the WTO strong authority over its Members, and make it important to consider the commitments it exacts from Members, with particular reference to DCs and LDCs. [478]

At the Uruguay Round, DCs for the first time bound themselves not only to reduce trade barriers, but also to carry out significant reforms both on trade procedures (e.g., import licensing procedures, customs valuation) and on many other areas central to the conduct of business, such as intellectual property law. Moreover, these commitments demand substantial expenditure on purchasing of equipment, training of people, establishment of systems of checks and balances, etc. Is such expenditure justified? Arguably, there would be advantage in strengthening weak LDC institutions in the areas covered by the WTO Agreements. On the other hand, LDCs are faced with significant difficulties in implementing the WTO regulations on SPS, customs valuation, intellectual property, etc., and for most DCs and transition economies-around 100 in number- spending on these areas may not be the most productive use of their scarce resources. A further criticism is that the reforms DCs are required to implement are not ones that they themselves helped to formulate or agreed on at Uruguay, since their capacity to participate in the negotiations was limited. Obligations were imposed on them, with little concern for their capacity to implement the measures in question or how their interests would be affected as a result. In this situation, DCs economic

[478] Kufuor, K. O., *World Trade Governance And Development Countries: The GATT/WTO Code Committee System,* Blackwell Publishing, Oxford, 2004, pp 1-2.

capability to implement WTO obligations, and their political commitment towards them, may be in doubt.[479] For this reason, some writers have asserted the need, in the interpretation of WTO Agreements, to adopt a development perspective, that is, where possible to adopt an interpretation that helps to reduce the burdens that accompany trade liberalization; maintains a level playing held between the different types of Memberships of the WTO; and facilitates development objectives. This development dimension to interpretation should be reflected in cannons of interpretation and materials included in the interpretative process, as well as the general procedures and the participants involved in the interpretation process. Such an approach, it has been argued, should not only be taken into account by the Membership of the WTO when trade agreements are being negotiated and implemented, but should be embedded into the structure of the WTO system.[480]

Certainly, countries differ in the extent to which they can implement and benefit from implementation of WTO disciplines, according to their size, revenues, workforce composition and institutional capacity. For this reason, it can be argued that there is a need for 'differentiation' between developing countries in determining the reach of resource-intensive WTO rules. In this context, Winham and Lanoszka argue that the WTO has a clear organizational structure with special committees responsible for monitoring the implementation of obligations for different fields of trade. The obligations are meant to be realistic commitments, since they are set with consideration of the level of development, and the particular circumstances, of the Member. Thus, obligations or the time required to fulfil them may differ according to the Member's status, for example, LDC, a developed country or transition economy. Special transitional periods have been granted, according to a country's level of development. Furthermore, the WTO code provides for the sovereign interests of its Members by allowing them to except certain items from the applications of measures, for example, for reasons of health, public morals and national security. There are also a number of provisions in the agreement that permit the imposition of trade restrictions in an

[479] Finger, M. & Schuler, P., "Implementation Of Uruguay Round Commitments: The Development Challenge" in Hoekman, B. & Martin, W., (ed), *Developing Countries And The WTO,* Blackwell Publishing, Oxford, UK, 2003, pp 115-1116.

[480] Qureshi, A., "Interpreting World Trade Organization Agreements For The Development Objective", *Journal of World Trade,* Vol 37, Issue 5, 2003, pp 847-882 at pp 851-852.

emergency, for example to alleviate balance of payments disequilibrium.[481] Despite such provisions, however, Hoekman, et al. question the effectiveness of the traditional approach to such special and differential treatment (SDT) in the GATT/WTO in promoting development. Indeed, they argue that the approach is basically misguided, as it contributed to a situation where countries are discouraged from participation in the process of reciprocal liberalisation of trade barriers and the rule-making process. They also suggest that it has contributed to stagnation in the rule-making arena.[482] Differentiation is needed because countries differ in their development priorities and hence in the salience of different agreements. In other cases, the implementation of a certain agreement may not be beneficial until various preconditions are met, such as a minimum level of per capital/income, institutional capacity and economic scale. Some WTO disciplines may not be disproportionately costly for very small countries to implement.[483] For these reasons, criticis have argued that the effectiveness of the WTO in helping developing countries to use trade for development requires revision of the SDT. Among the proposed alternatives designed to differentiate between countries when deciding the reach of WTO disciplines that have significant resource allocation implications is total flexibility for developing countries, as long as other WTO Members are not harmed. This approach was implicit in many of the proposals made by countries to the WTO in 2002.[484] Another possibility is an agreement-specific approach involving country-based criteria that are applied on an agreement-by-agreement basis to determine whether (or when) agreements should be implemented. At the same time, technical assistance could be provided and the country helped to draw up a national action plan for eventual assumption of the WTO obligations concerned.[485] A third option would be a country-based approach whereby trade reform priorities would be viewed in the context of national development plans, and multilateral surveillance and monitoring

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[481] Winham, G. and Lanoszka, A., "Institutional Development Of The WTO", in Rugman, A. & Boyd, G., (eds) *The World Trade Organization In The New Global Economy Trade And Investment Issues In The Millennium Round,* Edward Elgar Publishing Limited, 2001 at p 31.

[482] Hoekman, B. et al., "Special And Differential Treatment Of Developing Countries In The WTO: Moving Forward After Cancun", *The World Economy,* Vol 27, Issue 4, 2004, pp 481-506 at p 503.

[483] Ibid, p 492.

[484] See generally, Stevens, C., *The Future Of SDT For Developing Countries In The WTO,* Institute For Development Studies, University of Sussex, May 2002. See also for more information on STD his paper, "Recognising Reality: Balancing Precision And Flexibility In WTO Rules", April 2003.

[485] Wang, Z. K. & Winters, L. A., *Putting "Humpty" Together Again: Including Developing Countries In A Consensus For The WTO,* CEPR policy paper No. 4, 2000 at p 6.

would be carried out as part of effort to assist a cooperative effort to assist countries in gradually adopting WTO norms within the context of more general trade-related reforms.[486]

Generally, obligations of WTO Members can be classified into two types: (a) the general obligations to comply with WTO rules (the rules obligations); and (b) the individual obligation to reduce trade barriers with respect to specific goods and services (the market access obligations). The first type are set out in the WTO Agreement and its annexes, including GATT1994 and its related agreements, GATS, TRIPs and the understanding on rules and procedures governing the DSU. The second type, on the other hand, is contained in the Member's goods and services schedules annexed to GATT 1994 and GATS respectively.[487]

However, in this section, a different classification is used to present the accession obligations, and the discussion does not cover comprehensively the obligations laid down in different WTO Agreements, because that would need a special study. Thus, this sub-section is concerned only with the substantive obligations under the mother agreement (WTO Agreement), and the notification obligations.

As emphasised in sub-section 4.3 in this chapter, the multilateral trade agreements are binding on all Members of the WTO and there can be no exception or reservations to any of the provisions of the WTO agreement or the multilateral trade agreements. The most fundamental obligation of all obligations of the multilateral trading system of WTO is the obligation enshrined in one of the Articles of the WTO agreement which reads as follows: "*Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed agreements*".[488] This means that the obligations and commitments of the WTO agreements will have to be transposed into the national laws, regulations and administrative system. Furthermore, provision is to be made for a process of "judicial review", which means a review by a body independent from the executive body of the government. In addition, administrative procedures and practices must be also consistent with the obligations under the agreements. Indeed, in many cases they can be

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[486] Prowse, S., "The Role Of International And National Agencies In Trade-Related Capacity Building", *The World Economy,* Vol 25, Issue 9, 2002, pp 1235-1261 at p 1240.

[487] Qin, J., "'WTO-Plus' Obligations And Their Implications For The World Trade Organization Legal System", *Journal of World Trade,* Vol 37, Issue 3, 2003, pp 483-522 at p 483.

[488] Article 17.4.

used to fulfil a state's obligations, even if, as is often the case in DCs and LDs with embryonic legal systems, relevant laws or regulations are not yet in place. In any case, such procedures or practices must not be such as to undermine the obligations under the agreements.[489] Some commentators have expressed the view that this primacy of WTO obligations in effect challenges or undermines national sovereignty.[490] Whilst others see this as something of an exaggeration,[491] the WTO can with justification be called the most powerful global institution in the post-Second World War era, the system of contractual agreement which existed under the GATT having given way to an institution empowered to make binding rules for all its Members.

Further, to promote compliance with the substantive obligations and commitments by all Members, particularly those related to market access concessions and commitments, and in order to facilitate international supervision at the level of the WTO, most of the agreements and understandings of WTO commit Members to certain standards of transparency and to a complex array of reporting and notification procedures. Many developing countries at the Uruguay Round complained of the onerous nature of these obligations. These include the setting up of national enquiry points, making available English language versions of the laws, regulations or notifications, and making available, in addition to the notifications themselves, generally applicable judicial decisions and administrative rulings. Many agreements require Members to respond to requests for "consultation" from other Members, which necessitate ready access to the documents. Moreover, administrative demands include not only a state's submission of its own notifications, but also the time and expertise needed to scrutinize by other Members' notifications. States which lack the necessary administrative capacity and expertise will in effect be prevented from participating effectively in the multilateral trading regime of WTO.[492]

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[489] Ganesan, A. V., 1997, op. cit., pp 12-13.

[490] See Chakravarthi, R., *Recolonization: GATT, Uruguay Round And The Third World,* Third World Network, Penang, Malaysia, 2000; Wallach, L. & Sforza, M., *Whose Trade Organization? Corporate Globalization And The Erosion Of Democracy: An Assessment Of The World Trade Organization,* Public Citizen, Washington DC, 1999, and Hainsworth, S., "Sovereignty, Economic Integration And The World Trade Organization", *Osgoode Hall Law Journal,* Vol 33, Issue 3, 1995, pp 584-622.

[491] See Jackson, J. H., "The Great 1994 Sovereignty Debate: United States Acceptance And Implementation Of The Uruguay Round Results", *Columbia Journal of Transnational Law,* Vol 36, Issue 1, 1997, pp 157-188.

[492] Ibid, pp 57-60.

The notification obligations in the WTO can be classified into three types. The first consists of the notifications that had to be sent as a one-time requirement, within a certain period after 1st January 1995. Omission or incompleteness of these notifications had serious implications. An example is the TRIMs requirement of notification of trade-related conditionalities on investment like domestic-content requirements and foreign-exchange balancing requirements, to be submitted by 31 March 1995. Countries which did not send this notification, or which failed to list a particular conditionality therein, would no longer be able to apply the conditionalities, whereas notification would enable them to apply these conditionalities till the end of 1999. Other subjects of initial notifications included subsidies, safeguard measures and grey-area measures continuing in a country on 1st January 1995. These notifications were to be sent "immediately after 1st January 1995."[493] The second category of notifications is those that must be sent at specific times to inform other Members of particular measures adopted by the Member concerned, such as the preliminary and final imposition of countervailing duty against a subsidy, the preliminary and final imposition of anti-dumping duty, and, in the area of safeguards, on the initiation of an investigation, a finding of injury and the decision to apply safeguard measures. The third category is required periodic notifications, for example, annual notifications on subsidies, and six-monthly notifications on the application of countervailing duties and anti-dumping duties.[494]

The quality and quantity of notifications under the various agreements was one of the issues highlighted in a quadrilateral statement by the Trade Ministers for the European Union, the United States, Japan and Canada, following a decision to focus on consolidating the WTO and addressing a number of areas outstanding from the Uruguay Round, where greater effort was needed. In their statement, the Ministers noted the need for improvement in notifications, given the incidence of lax and late implementations and loose monitoring and enforcement of commitments. They also pointed out that LDCs needed more technical assistance to fulfil their obligations in this respect.[495] The need for measures to promote full compliance, and at the same time, consideration of proposals for simplification, were asserted at the Singapore Ministerial Meeting in

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[493] Bhagirath, L. D., *The WTO And Multilateral Trading System: Past, Present, And Future,* Third World Network, Malaysia, 2003 at p 70.

[494] Ibid, p 70.

[495] *European Report,* Vol 2, Issue 2162, 1996, p 1, EU/US/Canada/Japan: quad ministers narrow Singapore trade agenda.

1996.[496] The WTO Secretariat recognizes the difficulties for DCs of meeting the extensive notification obligations of the WTO agreements, and has organised annual workshops in Geneva, since the establishing of the WTO in 1995, to help them understand the requirements. In addition, specific technical missions on this matter are undertaken at the request of Members.[497] In addition, the WTO Secretariat has, in conjunction with the Working Group on Notification Obligations and Procedures, prepared a Technical Cooperation Handbook on Notification Requirements.[498]

There is an important Ministerial Decision on notification procedures, which requires Members to notify their adoption of trade measures affecting the operation of GATT 1994, as per an illustrative list annexed to the decision. It dictates: "*Members recall their undertakings set out in the understanding regarding notification, consultation, dispute settlement and surveillance adopted on 28 November 1970 (BISD 26S/210). With regard to their undertaking therein to notify to the maximum extent possible, their adoption of trade measures affecting the operation of GATT 1994, such notification itself being without prejudice to views on the consistency of measures with or their relevance to rights and obligations under the multilateral trade agreements and, where applicable, the plurilateral trade agreements, Members agree to be guided, as appropriate, by the annexed list of measures. Members therefore agree that the introduction or modification of such measures is subject to the notification requirements of the 1979 understanding.*"[499] Under the Ministerial Decision, a working group has been set up to review all existing notification obligations with a view to reducing their complexity through standardisation and consolidation. The working group has been tasked with reporting within two years to the Council of Trade in Goods, which will then decide whether and how to modify the notification obligations and procedures. Another provision of the Ministerial Decision is for a Central Registry of notifications

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[496] Lumpur, K., "Minister: Set Up Pand On Trade Pacts" Note: World Trade Organization Ministerial Conference December 9-13 1996: Singapore, *Business Times,* 14 December 1996, p 1.

[497] *Technical Assistance In Meeting Member's Notification Obligations,* consulted on 18 May 2003 from, http://www.WTO.org/english/tratop_e/devel_e/teccop_e/tctdnot_e.htm

[498] The document code for this handbook in the WTO website on http://www.WTO.org is WT/TC/NOTIF.

[499] *Decision On Notification Procedures*, consulted on 18 May 2003 from, http://www.org/english/docs_e/legal_e/33-dnotf.pdf

to be set up in the Secretariat of the WTO to receive, monitor and circulate notifications.[500]

Some of the crucial notification requirements are those under the TBT Agreement,[501] the SPS Agreement,[502] the Agreement on Rules of origin,[503] the SCM Agreement, [504] and TRIPs Agreement. [505] However, for applicant countries which maintain open economies and have stable and simple trade regimes, the notification obligations are less onerous than for some DCs and LDCs. The candidate for Membership should list all the applicable requirements applicable to it, including the format, timing and periodicity of reporting; help in this can be obtained from the WTO. It should then assign responsibility to one or more Ministries/Agencies to prepare the information to be disclosed. A centralised unit in the accountant ministry should oversee the preparation of the notifications to the WTO, and should itself submit such notifications to the WTO. The same unit will also liaise with the aforementioned centralised registry of the WTO for receipt and distribution of the notifications of other Members of the WTO. The WTO will provide the officials with technical assistance in the manner of preparation and submission of the notifications.[506]

4.4.2. Oman's Accession Commitments

There are no hard and fast rules, or even guidelines, of GATT or WTO in the matter of tariff bindings and reduction commitments to be undertaken by new Members. The nature and extent of concessions and commitments acceptable to other Members of WTO will finally be settled by crude bargaining, especially by the major traders of WTO, in bilateral negotiations. From the foregoing account, it is evident that Oman recognised from the beginning the requirements of the organization and made every effort to remove barriers to WTO Membership during the period of negotiation. To do so, it had to formulate extensive new legislation and enact a number of bilateral

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[500] Ibid.

[501] Article 15.2, in addition Articles 2.9.2, 5.6.2, 2.10.1, 5.7.1, 3.2 and 7.2.

[502] Annex B, paragraph 5.

[503] Article 5.1, and Annex 2, paragraph 4.

[504] Notifications are required under SCM Agreement regarding (1)subsidies; (2)authorities, procedures, or legislation; and (3) countervailing measures.

[505] Articles 3, 4,5,63.2,65.5,69,70.8 and 70.9.

[506] Ganesan, A., 1997, op. cit., pp 59-60.

agreements with interested Members. At the same time, the government strongly defended its emerging industries and its productive services and agriculture sectors.[507] Oman's accession to the WTO necessitated concessions and commitments on goods, specific commitments on services, commitments on domestic support and export subsidies to agriculture and the enactment of new legislation or revision of existing legislation to bring it into conformity with the provisions of the WTO. This section is divided into three sub-sections as follows:

4.4.2.1. Bilateral Issues: Goods Offer And Service Commitments

Oman submitted to the working party a comprehensive package for its accession to the WTO, containing a draft goods offer and services sector commitments, as a draft protocol of accession. Compared with those of other WTO Members at a similar level of development, Oman's offer was extremely generous.[508]

4.4.2.1.1. The Goods Offer

The most important part of Oman's access negotiations concerned the offer of market access concessions and commitments. In fact, Oman had little difficulty in negotiating its schedule of commitments, given its open market, low and stable tariffs, and virtual absence of quota restrictions or other restrictions on imports into Oman. The main concern here is therefore, is how far Oman bound itself in WTO, although it would have continued its open market policies in any event. Member countries must fix ceilings for custom duties through the WTO, and these are not to be exceeded, except in special circumstances, and then only through negotiations in accordance with WTO Principles. During the negotiations for accession, Oman was allowed high ceilings for a number of products. The Ministry of Commerce is quoted by Al-Lawati as saying that "the Sultanate was not required to reduce custom duties. In fact, she was asked to raise them because they were provisionally very low."[509] In the schedule of concessions and commitments on goods, Oman has bound customs import duties on all agricultural and industrial goods. On a majority of agricultural products, Oman has bound duties at 15%

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[507] Trowers and Hamlins Consultation Firm, 'Oman: Recent Developments', *Arab Quarterly Law,* Vol 16, Issue 2, pp 207-210 at p 208.

[508] Grynberg, R. and Joy, R. M., op. cit., 2000, p 167.

[509] Al-Lawati, H., op. cit., 2001, p8.

with a few exceptions with respect to sensitive agricultural products where Oman has succeeded in binding duties at fairly high rates in order to give adequate protection to sensitive agricultural products. The exceptions are: Liquid milk 75%; Eggs 75% in season and 20% out of season; Fruits and vegetables that Oman grows, 80% in season and 30% out of season; Bananas and dates 100%; Tobacco and related products 150%; Pork and alcohol 200%.[510] Special arrangements were made regarding pork, pork products, alcohol, and pornography, which are forbidden to Muslims (with an exception, known as *darura,* for necessity, which would be relevant in extreme circumstances). The fact that some medicines contain alcohol, or that some soaps contain oil from pigs, is immaterial. The strict practice of Islam forbids consumption of these products. Oman was able to reconcile its Muslim values with its WTO obligations, because there is no affirmative duty in multilateral trade law to import any product. Goods forbidden on religious or moral grounds can, therefore, be avoided, without breach of international trade obligations. Oman, like most if not all Muslim countries in the WTO, applied a "prohibitive" tariff on alcohol, pork, and pork products, and made use of GATT Article 20: (a) exception for immoral Articles for pornographic materials.[511] The question may be raised why Oman did not institute an outright ban on the import of alcohol, pork and pork products. From some perspectives, it could be claimed that, unlike some Arab countries such as Algeria,[512] Oman lacked an objective ground for such a ban. Oman avoided possible challenge in this respect by accepting a distinction between banning importation and banning consumption. Alhosani argues that this situation gives the Sultanate chance to benefit from the high tariffs and improve tourism. Moreover, Oman has not banned the import of these products even before the accession to the WTO; thus, there were no logical reasons to change her position.[513] This could be true to some extent; however, there is a practical problem that a "black market," could be encouraged

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[510] *Report Of The Working Party On The Accession Of The Sultanate Of Oman To The World Trade Organization, Schedule Oman, Part 1 Schedule Of Commitments On Goods,* WTO Document Number WT/ACC/OMN/26/Add.1.

[511] Bhala, R., "Saudi Arabia, The WTO, And American Trade Law And Policy", *The International Lawyer,* Vol 38, Issue 3, 2004, pp 741-812 at p 790.

[512] Algeria applied to join the GATT in June 1987, but is not yet a WTO Member. In the Algerian context, the aim of the ban the import of alcohol is to protect the domestic economy by insulating the government monopoly on wine from foreign competitors, and preserve lucrative tax revenues on beer sale.

[513] Interview done by the researcher with Mr Mohamed Alhosani, the Director of Office of the President of Oman Chamber Commerce on 10 April 2005.

by a "prohibitive" tariff -this has certainly been true in relation to alcohol-. Moreover, it may be argued that the chosen solution may not be satisfactory from a strict Islamic perspective, as the fact that foreign alcoholic beverages, pork, and pork products are available, albeit at a very high price, enable their consumption. It has been suggested that another solution would have been to argue that alcohol, pork, and pork products are immoral Articles within the meaning of GATT Article 20: (a). In other words, from a strict Islamic perspective, it could be argued that these products are no different from pornography.[514]

Apart from these exceptional goods, the implication of Oman's commitments is that Oman can levy customs duties up the level of the bound rates, if necessary, but cannot normally go beyond the bound rates. However, there are situations in which Oman can go beyond the bound rates, for example, protection through the Agreement on Safeguard (Article 2), protection of infant industries in accordance with Article 18 of the GATT 94, Anti-Dumping or subsidies and measures countervailing duties. There is a special agreement for dumping and anti dumping. Therefore, the Sultanate has issued with other GCC State a law to combat dumping.[515]

The situation is similar with industrial products. Oman has bound customs duties on a majority of items at 15%, but there are several product exceptions as follows: fish and fish products 20% (fish is not considered an agricultural product in WTO Agreements); Oil and oil products 20% (meaning products of Oman refinery):[516] Pharmaceuticals 0%; Chemicals 0%, 5.5% and 6.5% (these rates shall become effective after 10 years from the date of accession to the WTO in respect of plastic products and after 5 years for other products); Information Technology Agreement (ITA) products 0% (effective after 5 years); paper 5% (effective after 2 years); construction equipment 5% (effective after 5 years); medical equipment 5% (effective after 5 years); Aircraft and parts thereof 5% (from the beginning and 0% after 3 years); and ships and boats 5%. There are also a few selected items not mentioned above with binding tariff rates

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[514] Bhala, R., 2004, op. cit., p 791.

[515] Flaifil, J. M., *Etefaqeyat Al Uruguay Wa Endemam Sultanate Oman Le Monadamete Ategarah Al Alameyah [Uruguay Agreement And The Accession Of Sultanate Of Oman To The World Trade Organization]*, Oman Chamber Of Commerce And Industry, 2000, p 43.

[516] Oman refinery is a 100% Omani Government Commercial Limited Liability Company. The company is responsible for the processing of Omani crud into refined products necessary to meet local demand. However, the company exports long residue (fuel, oil), which is associated with the production from this refinery.

ranging between 10% and 5%. Wood is one of these items and is bound at a rate of 8%.[517] Dr Jabir[518] argues that the bound rates are higher than the currently applied rates, thus allowing Oman the freedom to provide protection to existing or future industries in Oman if necessary. However, in the few cases where the bound rates are equal to or lower than the currently applied rates, Oman has succeeded in negotiating a transitional period of at least five years and that will give domestic industries a reasonable time to prepare for competing with imported products. In addition, in Oman's quest for modernisation of its economy, especially in the services sector, which will need to play an important role in the country's future development, the rapid diffusion and absorption of information technologies will be crucial. Free import of IT products will be an important step in accelerating this process. Oman views duty free entry of IT products to be in its interest in the long term, as cheaper IT products will have a positive impact on the Omani economy. Low duties on chemicals will also be beneficial; considering that Oman has a comparative advantage in petrochemicals, it is in no need of high duty protection in this sector. Moreover, Oman's potential exports of petrochemicals will have easy access to developed countries' markets and also to some developing countries that have reduced their tariffs to very low levels.[519]

Nevertheless, the question that needs to be answered here is this: how will Oman be affected by the rates arising from its accession, especially the rates which Oman achieved from the negotiations to protect some agricultural and industrial products? In other words, will Oman be able to use these rates? Since Oman is one of the GCC States, it is a Member in the customs union that was established between the GCC States on 1st January 2003, and which fixed the customs tariff on all foreign goods imported from outside the GCC States at a rate of 5% (expect Tobacco, Pork and Alcoholic drink, which are subject to the custom duty at the rate of 100%). Pursuant to the Doha Declaration issued by the Supreme Council of the GCC in its 23rd session in Qatar for the establishment of the Customs union for GCC States as of 1/1/2003, the transitional period shall be three years starting from the date of declaration and ending in the year 2005. This simply means that all the foreign goods will enter Oman by the end of 2005

[517] *Report Of The Working Party On The Accession Of The Sultanate Of Oman To The World Trade Organization; Schedule Oman, Part I Schedule Of Commitments On Goods,* op. cit..

[518] Dr Jabir Marhoun Flaifil is the Director General of the Directorate General of Organizations & Commercial Relations, at the Ministry of Commerce and Industry, and he is the responsible on behalf of assent the entire WTO issues in Oman.

[519] Flaifil, J. M., op. cit., 2000, pp 44-45.

under the customs union rate, not other rates. So another question to arise here is, were the negotiating team of Oman aware of the customs union rate during the negotiations of accession? Mr Saleem asserted that he did not know.[520] Nevertheless, it is worth emphasizing here that implementing a rate of 5% reduces the value of the GCC as a customs union, because it lessens the margin of preference resulting from duty-free treatment for products originating in the GCC.

4.4.2.1.2. Services Sector Commitments

The most significant challenge of globalization as a result of Oman's accession to the WTO, however, will be felt in the service sector as a result of foreign competition. Thus, the question is what concessions did the Sultanate make? Oman views service trade liberalization as a vehicle to attract efficient and competitive Foreign Service suppliers to bring their investment, technology and expertise to Oman, as this will benefit the rest of Oman's economy and fit eminently with Oman's policy on the diversification of the economy. It can be argued that the state can no longer assume the burden for economic development and welfare in the country. In other words, the concessions could be needed for the Sultanate to privatize large state-owned monopolies, and for it to increase the share of GDP accounted for by the private sector. Oman, however, perhaps did not want to compromise its twin objectives of Omanization in ownership and Omanization in personnel in the course of service trade liberalization. According to Dr Jabir, the Sultanate has been committed to trade in services and was ready to open its markets for import of services from abroad. Foreign importers can directly establish their trading establishments in the Sultanate or provide the services indirectly. In addition, the Sultanate has endeavoured to protect its interests during tough negotiations by introducing some restrictions against the foreign importers of services in order protect and support the local importers of services.[521] However, Ambassador Hayes acknowledged that "*Oman has used the WTO accession process to make significant improvements to its services regime, by limiting its horizontal restrictions and MFN exemptions, as well as undertaking important commitments in*

[520] Interview conducted by the researcher with Mohammad Saleem (WTO Advisor, former Director of GATT/WTO) the advisor of the government of Oman on 21 March 2005.

[521] Ibid, p 53.

financial services, telecommunications services, professional services, and audio-visual services".[522]

Oman has given a commitment to open its markets in the following sectors and branch sectors: Telecommunication services; banking and other financial services; insurance services; maritime transport services; professional services (e.g. legal and accounting); business services (e.g. computing, management consultancy, advertising); construction services; education, health and environmental services; some audio-visual services; and distribution services.[523] As has already been explained, the Sultanate managed during the negotiations to make some restrictions in certain areas for the protection of the public interest regarding the import of services.

Dr. Jabir argues that Oman was faced with serious opposition during the negotiations in its attempt to restrict the rate of participation by foreign suppliers of services. The negotiating Members such as the USA wanted to give the foreign suppliers of services 100% rights to the establishment of their own businesses within the Sultanate. The Omani side refused this totally and insisted that foreign participation must be within the present rate of 49-51% until the end of year 2000. Thereafter, the rate would be 30-70%, allowing foreigners to contribute up to 70% of the capital.[524] However, some sectors will maintain the following rates even after 2000: motion picture and videotape distribution services 49%; cinema ownership and operation 51%; restaurants 49%; selling and marketing of air transport services 51%; computer reservation services 51%; storage and warehouse 51%; and building cleaning and packaging services 51%.[525] However, it can be argued that these rates of foreign participation, although they may encourage foreign investors to invest in Oman, at the same time will hurt the domestic economy. They will remove the incentive for Omani youth to establish their own companies, because they know well that they lack the financial capability and experience to match the foreign investors. This could create a sort of dependence upon the participation of foreign investors, especially as companies with foreign equity up to 70% will pay income taxes at the same rate as wholly owned

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[522] *Statement By Us Ambassador Rita Hayes Regarding The Accession Of Oman To The WTO,* op. cit..

[523] *Report Of The Working Party On The Accession Of The Sultanate Of Oman To The World Trade Organization; Schedule Oman, Part 1 Schedule Of Specific Commitments On Services,* WTO Document Number WT/ACC/OMN/26/Add. 2.

[524] Flaifil, J. M., op. cit., 2000, p 46.

[525] *Report Of The Working Party On The Accession Of The Sultanate Of Oman To The World Trade Organization; Schedule Oman, Part 1 Schedule Of Specific Commitments On Services,* op. cit..

Omani companies (Royal Decrees 68/2000 and 69/2000).[526] However, even this participation will not be available to everybody, but only to those who have economic and political power in Oman. On the other hand, however, officers such as Dr Jabir argue that although Oman has succeeded in limiting foreign equity to a lower level in some sectors (as pointed out above), due to their sensitivity in the domestic economy, the percentage allowed to the foreign participation is not low enough to protect the sensitive sectors. Moreover, the sensitivity of these sectors is not clear, because as is widely recognized by economists, incomes are generally weak. In addition, Oman has agreed to allow service providers either to open branches or full ownership, or both, in some sectors, namely, in computers and trade services (full foreign ownership from 2003); Telecom services (full foreign ownership from 2005); Banking services (new and established branches are permitted to continue, but for full ownership from 2003)- however, Oman has fixed a limit on the number of banks branches, whether local or foreign, allowed to operate in the Muscat area of four of each bank; Insurance services (branches of foreign companies as well as foreign owned companies from 2003); and other financial services (securities) (full foreign ownership from the date of accession).[527]

Oman may hope that further liberalization will increase the flow of foreign investment and transfer of technology and modern know- how into the country. This is a reasonable ambition, and it could be true to some extent, compared with the sectors in which Oman has managed to limit foreign participation, which are more sensitive and need more protection. However, the period given to foreign companies to provide services in the country will not be enough for the domestic suppliers, with their limited capabilities, to prepare themselves to face the challenges of the strong competition of these companies, and as a result of that the domestic companies which work in these sectors could be destroyed. Dr. Jabir asserts, moreover, that although the negotiating countries claim to have the right to supply any number of foreigners in the institutions they establish to trade in service to occupy key posts such as directors, executive managers and specialists, this is inconsistent with the policy of Omanisation adopted by the Sultanate. In this respect, Oman achieved a notable success during the negotiations, by restricting the number of foreign staff in Foreign Service companies to 20% of the

[526] Ibid.

[527] Ibid.

manpower employed.[528] In addition, the entry of such natural persons shall be for a period of two years subject to renewal for an additional two years, with a maximum of four years.[529] This could be one of the major achievements of Oman's negotiations to join the WTO, since any growth that happened as a result of the liberalization of the services sector could create additional jobs for Omanis. In addition, such additional growth would more than compensate for the jobs that could be taken up by foreigners under the 20% commitment.

4.4.2.2. Systemic And Protocol Issues

Both prior and subsequent to its accession to the WTO, Oman has undertaken certain reforms. This part of the study looks at the nature of these reforms and their implications. The likely impact of reform, and the difficulties and opportunities that may result can be viewed from two perspectives. The first one is the legal, that is, the legal reforms, legal rights and legal responsibilities following accession. The main concern in this respect is with Oman's need to commit to implementing certain policies, and to assert and maintain rights resulting from its Membership of the WTO through the dispute settlement process. The second perspective is economic. Accession will require Oman to introduce certain economic reforms to extend the openness of the economy as part of the integration into the expansive WTO system. The question is whether the necessary reforms are creatively adapted to Oman's particular national circumstances, and how Oman's commitments are implemented during the post-accession phase to create a well-balanced, well-integrated market economy, and to promote national development.[530] Oman's accession has taken place very much alongside the country's more significant reform process. This reform process, which is still ongoing, formed the basis of trade, investment and general commercial reforms necessary for Oman's WTO accession.[531]

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[528] Flaifil, J. M., op. cit., 2000, p 47.

[529] *Report Of The Working Party On The Accession Of The Sultanate Of Oman To The World Trade Organization; Schedule Oman, Part 1 Schedule Of Specific Commitments On Services,* op. cit..

[530] Mosoti, V., "The Legal Implications Of Sudan's Accession To The World Trade Organization", *African Affairs,* Vol 103, 2004, pp 269-282 at p 275.

[531] *Accession To The World Trade Organization: The Process And Issues,* Discussion Paper, UNCTAD, May 1998.

In the area of agriculture, the Agreement on Agriculture states that subsidies for export or for domestic support for agricultural products must be cancelled or reduced. Although the representative of Oman said that the government during the period of 1994 to 1996 had not maintained direct or indirect import substitution policies with respect to agricultural products[532] and this may be the reason why Oman did not undertake to reduce subsidy for domestic agricultural products, or support export subsidies. Moreover, since bans and quotas on import of agricultural products are not permissible,[533] the representative of Oman confirmed that Oman has removed all bans and quotas on imports agricultural products such as eggs, milk, fruits and vegetables and replaced these bans and quotas with tariffs through Ministerial Decisions number 20/2000 and 38/2000.[534]

Other measures have taken place in the area of intellectual property rights, one of the most important aspects of international trade. There is an agreement for trade related aspects of intellectual property rights (TRIPs), which all WTO Members must observe and implement. The Sultanate reviewed its existing laws, especially those regulating trade-marks and copyrights, and has also approved the convention of patent issued by GCC States, after revising it to meet WTO norms.[535] Ambassador Hayes referred to these measures, commenting that "*Oman has successfully implemented a TRIPs-compatible intellectual property regime*".[536] Yahya Al Riyami[537] reports Oman's notable effort to update and develop its intellectual property laws in order to bring them into line with international laws and agreements such as TRIPs, and the Berne and Paris Conventions. In addition, Oman ratified the Patent Cooperation Treaty (PCT) in 2001. Furthermore, as a practical example of these efforts, according to the new Global Software Piracy Study in 2004, commissioned by Business Software Alliance (BSA), Oman is one of the Middle East countries which demonstrated positive results in combating software piracy during 2003. Moreover, His Highness Sayed Haitham Bin Tareq, the Omani Minister of Heritage and Culture, said that Omanis have a rich

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[532] *Report Of The Working Party On The Accession Of The Sultanate Of Oman To The World Trade Organization,* op. cit., p 23.

[533] See Article 4 of Agricultural Agreement.

[534] See subsection number 4.3.3.1.

[535] Flaifil, J. M., op. cit., 2000, pp 48-49.

[536] *Statement By Us Ambassador Rita Hayes Regarding The Accession Of Oman To The WTO,* op. cit..

[537] Yahya Al Riyami is the Director of Intellectual Property in the Ministry of Commerce and Industry (Oman).

cultural heritage and understand the need for the protection of intellectual property rights. In this context, the Ministry's intention to launch fresh initiatives in 2004 to curb Intellectual Property Rights (IPR) violations in the country was announced by Mr. Khalid Al Ghassani, General Manager of the Directorate of Culture in the Ministry; however, nothing has been seen until now.[538] In this regard there is increasing international concern over the protection of national heritage and folklore, as it is the wealth of the nation and an essential pillar of its identity, and hence should be protected from exploitation. This subject is especially significant for developing countries as they have relative advantages in these aspects as they are the home of several old cultures and have excellent spiritual and folklore wealth.

Also attracting attention and debate is the importance of traditional knowledge, a term used to refer to the ways in which individuals or communities identify and improve genetic resources over time, including processes related to their extraction from nature and their preparation for human usage, as well as methods and techniques for preserving the communities accumulated information about genetic resources for future generations. The need to promote market access for traditional knowledge related products provides a partial rationale for placing the legal protection of traditional knowledge within the remit of the WTO. The TRIPs Agreement does not explicitly mention traditional knowledge. However, attempts are ongoing to make the Convention on Biological Diversity and Benefit sharing (CBD) and its boon guidelines mutually compatible with TRIPs. Should these efforts succeed, IPR under TRIPs would have to be interpreted in a manner consistent with the principle of "access and benefit sharing", and conversely, the CBD would have to be viewed as consistent with TRIPs-imposed IP obligations.[539] Article 27.3 (b) which deals with patentability or non-patentability of plant and animal inventions, and the protection of plant varieties, was already scheduled for review. However, paragraph 19 of the 2001 Doha Declaration has broadened the discussion, to include the relationship between the TRIPs Agreement and the UN Convention on Biological Diversity; the protection of traditional knowledge and folklore; and other relevant new developments that Member governments raise in the review of the TRIPs Agreement. The Declaration also states that TRIPs Council's work

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[538] 'Oman to launch fresh initiatives against IPR violations in 2004', *AGIP Bulletin,* March 2004, p 3.

[539] Cottier, T. & Panizzon, M., 'Legal perspectives on traditional knowledge: the case for international property protection', *Journal of International Economic Law,* Vol 7, Issue 2, 2004, pp 371-400 at pp 378-379.

in this respect should be guided by the TRIPs Agreement's objectives (Article 7) and principles (Article 8), and should give full consideration to development issues fully into account.[540] These issues have been under review in the Council since the Cancun Ministerial Conference in 2003, and several proposals have been put forward. One of these, submitted by the EU, was a suggestion including a proposal to examine a requirement that patent applicants disclose the origin of genetic material as a subject in itself, with legal consequences outside the scope of patent law.[541] In the view of the United States, commitments on disclosure would best be addressed through national legislation and contractual arrangements based on legislation. The US sees this as the most appropriate and effective way of achieving the objectives of the Biodiversity Convention.[542] In contrast, Bolivia, Brazil, Cuba, Ecuador, India, Peru, Thailand and Venezuela propose amending the TRIPs Agreement to oblige patent applicants to disclose the origins of the biological resources and traditional knowledge used in the inventions; to provide evidence that they received "prior informed consent" (a term used in the Biological Diversity Convention), and to show that the benefits will be shared in a "fair and equitable" manner. The proposal also looks at weaknesses of alternative methods such as contracts and databases[543]

Despite the importance of traditional knowledge in building bridges between civilizations and cultures, creating wealth, and the environmental benefits to be gained from its protection, Oman, a country with rooted cultural heritage and enormous creative capacity, has not yet fully exploited the potential of intellectual property system to protect these assets and to facilitate access to markets. Al Jahwary attributes this to insufficient knowledge of how to acquire and manage intellectual property assets, and to a mistaken view that the intellectual property system is complex, time consuming and expensive. He draws attention to the need for measures to improve communication between traditional knowledge holders, support institutions and associations, property offices, as well as the WIPO, with view to obtaining a clearer understanding of the needs of traditional knowledge holders. Oman must raise awareness and understanding of intellectual property issues among traditional knowledge holders in order to take full

[540] TRIPs: reviews, Article 27.3 (b) and related issues, background and the current situation, consulted on 27 February 2005 from, http://www.WTO.org/english/tratop_e/art27_3b_background_e.htm

[541] See for more details the WTO document number IP/C/E/383.

[542] See WTO document number IP/C/W/257.

[543] See WTO document number, IP/C/W/403.

legal and economic advantage of the existing intellectual property system.[544] In this context, in preparing the domestic legislation in this field, Oman may benefit from the experiences of some countries, which have made progress in making available some specific legal protection for traditional knowledge related subject matter, particularly those developing countries which have made particular efforts to move traditional knowledge beyond existing IPR and to develop *sui generis* regimes.[545]

Nevertheless, Oman has already issued some laws related to its intellectual property commitments, among them is the Law on the Protection of Copyrights and Neighbouring Rights, passed by Royal Decree 37/2000, which entered into force on 1st June 2000. The law grants protection to authors of literary, artistic and scientific works, irrespective of their value, purpose or medium of expression, writing, sound, drawing, image or motion picture. It also includes creative title works and computer software, which are published, acted or displayed for the first time in Oman or abroad.[546] Another relevant provision is the Law of Trade Marks, Descriptions and Secrets and Protection from Unfair Competition issued by Royal Decree 38/2000 which came into effect from 1st June 2000. Registerable marks consist of distinctive shapes consisting of words, signatures, letters, drawings, symbols, headings, seals, pictures, engraving or any other distinctive mark or combination. With the exception of alcoholic goods of Class 33, Oman has adopted all forty-two classes of the international classification. Before being registered, marks are published in the Official Gazette and in one daily paper. Opposition may be filed within thirty days from the date of publication in the Official Gazette. Registration confers protection for ten years, with the possibility of renewal for a further ten years period thereafter, and exclusive ownership of the mark is given. If a mark is unlawfully registered or falls out of effective use for a period of five consecutive years, a petition may be filed by the registrar or any interested party, for its cancellation. Violations of the law carry criminal penalties including fines,

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[544] Al- Jahwary, M., 'Muscat symposium intellectual property & traditional knowledge', *Al Markazi,* Vol 27, Issue 1, pp 23-25 at p 25.

[545] With WIPO's support, for example, India adopted the Indian Biological Diversity Bill of 2000, which was the first legislation of its kind. This law established a National Biodiversity Authority (NBA), whose approval will be required when firms apply for IPR to protect any invention based on a biological resource from India or on traditional knowledge the originated in India. For more information, see Cullet, P., 'Property rights over biological resources, India's proposed legislative framework', published in *4 Journal of World Intellectual Property,* International Environmental Law Research Centre, 2001, pp 212-230.

[546] For more information see www.agip.com/countries/oman

imprisonment or both.[547] In addition, there are also following laws: Patent Law (Royal Decree 82/2000); Law on the Protection of Industrial Designs (Royal Decree 39/2000); Law on the Protection of Geographical Indications (Royal Decree 40/2000); Law on the Protection of the Topographies Rights of Integrated Circuits (Royal Decree 41/2000); and the Law on the Protection of New Plant Varieties (Royal Decree 92/2000). Moreover, there is the Ministerial Decision 14/2000 which adopts the new version of the Gulf Co-operation Council Patent Regulations. However, there are some existing laws that need to be reviewed by Oman, and to the best of the researcher's knowledge, this review has not yet taken place. They are: the Law on the Protection of the Autographs (Royal Decree 77/70); the Law on the Protection of the National Heritage (Royal Decree 6/80); the Law on Printed Matters and Publications (Royal Decree 49/84); and the Law on the Supervision of Classified Arts (Royal Decree 75/97).

However, it cannot be justifiably argued that the above laws, which cover different fields of intellectual property rights, are being introduced to protect the domestic intellectual property rights, since there are few if any rights which need to be protected. Conversely, these laws will protect the foreign intellectual property rights from counterfeiting and plagiarism. Thus, it seems that Oman's design in these laws is to demonstrate commitment, more than to achieve specific goals.

As regards the manufacturing sector, since the Sultanate generally does not prohibit or restrict the import of manufactured goods, there is no need for any significant amendments except in petroleum products, where products made by Oman Refinery are prohibited and other petroleum products are restricted. These barriers will be removed by issuing a new customs tariff to impose a rate of 20% on Oman Refinery products and a rate of 15% on others.[548] However, Article 76 of the Law to Regulate and Encourage Industry, which is also repeated in the Customs Law, contains prohibitive measures which are contrary to the WTO's laws, and therefore should be cancelled. However, these requirements do not mean that the Sultanate will not be able to protect local industrial products, as the Sultanate can raise the customs tariffs to 15% or resort to other permissible measures.

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[547] For more information see www.agip.com/countries/oman

[548] Flaifil, J. M., op. cit., 2000, p 49.

See also subsection 4.3.3.1.

The WTO rules prohibit any support for domestic industry if it is not in compliance with the Subsidies Agreement and Countervailing Measures. However, the agreement does not in fact prohibit or restrict the right of governments to subsidize, but such subsidy must not have adverse effects on the interests of other WTO Members.[549]Dr. Jabir explains that the Sultanate has undertaken not to use subsidies for exporting industrial products and will use permissible subsidies for local products.[550]

Article 18 of the GATT Agreement provides special flexibility to developing countries for transitory periods to take some protection measures to restrict imports in order to develop new industries, subject to WTO ratification, so Oman can use such measures to protect its industries if necessary. Moreover, governments can take anti-dumping action when foreign importers apply illegal practices that affect the smooth flow of trade and hurt or could hurt the domestic industry. However, the Anti-Dumping Agreement puts very severe criteria for the dumping definition.[551] The Agreement allows the governments to impose tariffs in cases of dumping products in order to defend their own domestic products. In addition, according to the Subsidies and Countervailing Measures Agreement, governments can also use special countervailing duties to offset subsidies leading to distorted competition. However, compensatory tariffs cannot be imposed simply because of dumping or benefiting from government subsidies, but the government which wants to impose such tariffs must establish proof of specific conditions.[552] Given the permissibility of anti-dumping and countervailing measures, albeit subject to strict criterion, Oman needed to issue a law concerning such measures individually or even through the GCC. In fact, early in 2004, the GCC States adopted a Common Anti-Dumping Regulation[553] designed to be consistent with the WTO Anti Dumping Agreement. The GCC formed a committee, called the Anti-dumping Committee, drawing Membership from the relevant bodies in each state, to consider queries and applications related to anti dumping. This is subordinate to a "ministerial committee", which is authorized to ratify the final findings of the technical

[549] More analysis of this agreement will be in the next chapter.

[550] Ibid. p 50.

[551] See Article 2/1-2 in the Anti-Dumping Agreement.

[552] See Article 3 of the Anti-Dumping Agreement and Article 15 of the Subsidies and Countervailing Measures.

[553] GCC Anti-Dumping Regulation Article 7.

committee.[554] The GCC Secretary General has the responsibility for investigating complaints. The Anti-dumping Committee is also empowered to impose provisional measures and definitive measures for certain sectors, while the Ministerial Committee imposes definitive anti-dumping duties. A formal investigation involves two main stages: (1) examination by the secretary general and consultation with the responsible body in the Member States; (2) Study by the Anti-dumping Committee to decide whether or not there is reasonable evidence to merit a formal investigation.[555]

The Custom Valuation Agreement puts into effect Article 7 of GATT 94. The Agreement asks Member countries to review their national legislation to bring it into line with this agreement.[556] One Member of the working party was concerned by indications that Oman did not expect to implement the WTO Custom Valuation Agreement immediately from the date of accession, as it considered full implementation of the Custom Valuation Agreement an integral part of the WTO accession package. In response, the representative of Oman submitted an action plan for implementation of the Agreement on Custom Valuation, circulated in document WT/ACC/OMN/13. The Custom Department had set up a task force in early 1998 to carry out an in-depth study of the Agreement on Custom Valuation. Its Members met monthly to study the provisions of the agreement and to discuss implementation, including the training of customs officials. In 2000, in addition to Royal Decree 21/2000 to join the World Custom Organization, Oman issued a new regulation on the customs evaluation of imported goods (Royal Decree 83/2000).[557]

The Agreement on Technical Barriers to Trade (TBT) sets technical regulations for the specification of compulsory standards which should be applied by all Members. The Agreement also recognizes countries' rights to adopt the standard that they consider appropriate. It refers to the rights of countries in making technical regulations for specifications of compulsory technical standards, to ensure good quality exports for the protection of health and safety for human, animal and plants.[558] During the negotiations, it was pointed out that Oman's existing regulatory system was not consistent with the

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[554] GCC Anti-Dumping Regulation Article 8.

[555] GCC Anti-Dumping Regulation Article 10.

[556] See the introduction of the Custom Valuation Agreement.

[557] *Report of the Working party on the Accession of the Sultanate of Oman to the World Trade Organization,* op. cit., p 12.

[558] Flaifil, J. M., op. cit., 2000, pp 52-53.

WTO TBT or Agreement on the Application of Sanitary and Phytosanitary Measures (SPS). With regard to the former, the Omani representative confirmed that Oman would follow the requirements and procedures of Article 5 of the TBT Agreement in authorizing imports of telecommunications equipment. He reported that medicines and medical equipment were regulated by the Ministry of Health. He confirmed also that a work programme had been established to review and existing mandatory standards with a view to their replacement by voluntary standards or technical regulations, and that Oman would apply all obligations under the TBT Agreement from the date of accession without recourse to any transition period.[559] It was also noted that Oman's regulations on shelf life did not conform with international norms and were inconsistent with the provisions of the SPS and TBT Agreements that require the use of sound science to establish such requirements. The representative of Oman confirmed that the government would abolish mandatory shelf-life standards for shelf-stable foods upon accession. He added that Oman was in the process of implementing the SPS Agreement in accordance with an established plan of action. In reviewing its legislation, Oman had paid attention to specific aspects of the SPS Agreement, particularly with respect to its disciplines in the areas of transparency, MFN treatment, national treatment and the appropriate use of international standards. Oman's SPS legislation fell into two basic categories; food safety, addressed in Ministerial Decision 74/2000 on food labelling and safety, and quarantine requirements which were regulated by the Royal Decree for plant quarantine, and the Royal Decree for veterinary quarantine. He confirmed also the applicability of Ministerial Decision 72/2000 on standards and its annexes to Oman's SPS obligations. Finally, he said that Oman would apply the SPS Agreement from the date of accession, without recourse to any transition period; this was done by the Ministerial Decision 143/2000.[560]

Another area in which reform was rendered necessary by accession is regarding textiles and clothing. In the time of accession of Oman, textile and clothing items were subject to voluntary export restraints under bilateral agreements with the USA and Canada. The representative of Oman stated that *"the quantitative restrictions on imports of textiles and clothing products originating in Oman between it and WTO*

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[559] *Report of the Working party on the Accession of the Sultanate of Oman to the World Trade Organization,* op. cit., pp 17-19.

[560] Ibid, pp 19-20.

Members that were in force on the date prior to the date of accession of Oman to the WTO, should be notified to the Textiles Monitoring Body (TMB) by the Members maintaining such restrictions and would be applied for the purposes of Article 2 of the Agreement on Textiles and Clothing." He added that the provisions of that Article, in particular paragraphs 13 and 14 therefore, would apply in stages in respect of base levels and growth rates from the date of Oman's accession.[561] Basically, this is one of the sensitive fields in the Omani industry. Chapter five therefore contains an in-depth discussion of the way it could be affected by the accession of Oman to the WTO.

It is to be hoped that the willingness of the government to embrace world standard legislation will be matched by an equally effective administrative structure to facilitate compliance and adequate enforcement of rights. Oman's entry into the WTO has led to a rapid reform of its legislation, which is ongoing.[562] Thus, in addition to the laws that have already been issued, others are expected to be issued soon, including: the Commercial Companies Law; the Foreign Capital Investment Law; the Commercial Registry Law; the Real Estate Registry Law; the Consumer Protection Law; and the Supervision and Control of Insurance Business Law. Furthermore, Oman has issued various ministerial decisions for the regulation of various aspects, such origin, import licenses, procedures and explanatory data.[563]

4.4.2.3. Other Protocol Issues

A host of multilateral issues arose relating to the implementation of agreements. Oman was asked by the Members of the working party to join plurilateral trade agreements. There are two WTO plurilateral trade agreements; the first one is the Agreement on Trade in Civil Aircraft, and the second is the Agreement on Government Procurement (GPA). As explained before, the plurilateral trade agreements in the WTO are those which are binding only on those WTO Members that have accepted them. However, developed countries, in order to protect their interests during the negotiations of the developing countries to the WTO, always tried to compel them to accept these agreements. During the negotiations on the accession of Oman, the Members of the

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[561] Ibid, p 24.

[562] Trowers and Hamline Consultation Firm, op. cit., 2001, p 210.

[563] *Rationalization And Updating Of Laws, consulted on 1 December 2003 from, http://www.mocioman.gov.om/english/achievements/rationalization.html*

working party asked Oman to adhere to the WTO Agreement on Trade in Civil Aircraft and adopt the zero level tariffs on civil aircraft and parts of civil aircraft provided for in the agreement from the date of accession. The representative of Oman stated that in order to gain understanding of the Agreement, Oman would become an observer in the agreement upon accession and would join within three years of accession, or when it eliminated tariff duties on imports of aircraft parts for any Member of the agreement on a preferential basis, whichever came first. The working party also recognized the importance of government contracting in Oman, where the government was still the owner of the greater part of the economy, and targeted regulations whereby explicit preference in the award of public contracts is given to Omani enterprises. Thus, the Members of the working party sought Oman's accession to the GPA and encouraged Oman to present an initial offer for an entity list upon accession to the WTO. Oman correctly pointed out that from a legal perspective, GPA is a plurilateral accord, not part of a unilateral undertaking to be made by founding or new WTO Members. Nevertheless, the Sultanate showed flexibility, asking for time rather than making an outright refusal. This is a sensible stance, given the complexity of the negotiations on liberalizing government procurement. Careful consideration, for example, will need to be given to which types of contracts, and from which government agencies, will be subject to the GPA disciplines. Thus, the Omani representative confirmed that upon accession to the WTO, Oman would initiate negotiations for Membership in the Agreement on Government Procurement by tabling an entity offer. He also confirmed that if the outcome of the negotiations was consistent with the interests of Oman and the other Members of the agreement, Oman would complete negotiations for Membership in the agreement within a year of accession.[564]

In addition to the above commitments and obligations, Oman undertook to submit all initial notifications required by any WTO agreements, and that any regulations subsequently enacted by Oman which gave effect to the laws enacted to implement any WTO Agreements would also conform to the requirements of that agreement.[565]

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[564] Ibid, pp 22-24.

[565] For more information on the Notification Obligations of Oman under the WTO Agreements, see the WTO document No. G/L/223/Rev.12 on 3 March 2005.

4.5. CONCLUSION

This chapter has discussed the accession of Oman to the WTO in three main sections. The first considered the potential advantages and disadvantages of the accession of Oman to the WTO. The second reviewed the accession terms and procedures under the WTO system, including the procedures of the accession of Oman to the WTO. The third examined the commitments for accession to the WTO, focusing on the commitments of Oman.

Regarding the accession procedures, it was seen that, notwithstanding the goal for the universality of the multilateral trading system, the acceding countries are facing substantial difficulties. In particular, current arrangements were criticised as providing insufficient differentiation between countries of different levels of development, in terms of market access commitments in goods and services, and the benefits to be gained from some of the special and different treatment provisions in the WTO Agreements, as they, for example, face strong opposition from major developed countries when negotiating transition periods. Moreover, recent candidates for Membership are forced to accept heavier obligations than did the original WTO Members, or than those stipulated in the WTO Agreements themselves, for example, in such areas as agriculture, privatization, export tariffs and the acceptance of optional plurilateral trade agreements. Moreover, the demands they face for liberalization of market access in goods, and especially in services, may not be consistent with their present development needs.[566] What is clear, however, is that generalization is unhelpful, since the negotiations and their dynamics vary from case to case. Nevertheless, Oman's experience, like that of a few other small countries that have recently attained Membership, suggests that accession proceeds more smoothly for smaller countries, particularly those with a more liberal regime. This may be attributable to their recognition of the high costs of protection in small economies, and because with small economies they pose fewer market access problems for the major WTO Members.[567]

Basically, accession to the WTO is a far more complex, difficult and lengthy process than was the case with GATT. From a theoretical perspective, at least three levels of practice may be discerned in the process of the WTO accession. First, accession is a rule-oriented, legal mechanism. This has twofold effects, constraining

[566] Butkeviciene, J. et al., op. cit., 2001, p 172.

[567] Michalopoulos, C., 2001, op. cit., p 190.

both the candidate for the accession and existing Members. On the one hand, the applicant must demonstrate in advance strict compliance with the legal principles and rules of the WTO Agreements. On the other hand, they cannot and, it could be argued, should not be compelled to enter any obligations above and beyond the requirements of the WTO instruments. New Members should not be made to adhere to norms stricter than the generally applicable rules of the WTO. Although the accession working party serves as the main watchdog for compliance in the WTO context, it does not have any authority in law to impose economic policy on the acceding state beyond the rules of the WTO. On the second level, accession still is a bargaining process targeted towards specific goals. Despite the basic importance of rules, they are not the only issue. Detailed review of domestic tariff or pricing policy has the ultimate goal of admitting a new Member into the global trading community on terms that benefit both the acceding state and existing Members. On the third level, accession may also be viewed as a facilitator of economic reform. In addition to the immediate results of improved access to foreign markets, and to foreign products and services on the domestic market, accession has the indirect effect of changing the acceding state's domestic legal-economic regime.[568]

Comparison of the obligations arising from the accession of Oman to the WTO with the obligations of some other developing countries reveals that Oman's WTO accession entails only a few obligations, and it has not undertaken too many substantive commitments in its WTO accession. It may be argued that since Oman's market is already open, Oman therefore has nothing to lose and much to gain from the WTO accession and globalization. Contrary to that, others may argue that because the size of Oman's market is very small and the share of Oman in the global market is very low, there was not much interest from the other countries to negotiate with Oman. This could be true, looking at the number of countries that negotiated in China's accession, compared with Oman's. Nevertheless, it is certain that some sectors in Oman will be hurt by this accession and others will benefit. In this context, a very important factor that can benefit Oman's ability to face the impact of accession to the WTO is the Gulf Co-operation Council.

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[568] Broude, T., 'Accession to the WTO current issues in the Arab world', *Journal of World Trade,* Vol 32, Issue 6, 1998, pp 146-166 at p 164.

The accession of Oman to the WTO assumes a special significance as it comes within highly important and complex circumstances and variables at the local, regional, and global levels. It was necessary to take into account these circumstances and variables in all the steps of the accession. Among the most significant variables were the fluctuation of oil prices and the negative impact of such fluctuations on the stability of the economy; the establishment of the Customs Union with other GCC States; the emergence of economic blocs; and the increasing importance of the role of the state financial reserves in realizing sustainable development. The major question that remains unanswered regarding the ongoing process of Omani economic integration into the global economy is: "So where do Oman and the Member countries of the WTO go from here (after the accession)?" What will be the effect on the development of the multilateral trading regime of having as a full Member such a large transitional state and one which by most standards, does not yet possess a market economy?

For Oman, as for most countries, accession to the WTO may benefit some sectors in the country while at the same time harming others. From the point of view of WTO compatibility, the examination of the commitments arising from the accession of Oman has revealed that there are only a few areas where the country's trade regime is in conflict with WTO rules. However, there are some problems with the implementation of trade and other related rules, which require changes in regulations and enactment of new ones.[569] On the other hand, the question now that Oman has officially entered the WTO remains as to what will happen domestically to Oman's reform process and its economy.[570] Although it is too early to know how the implementation of those commitments would affect the Omani economy, however, at first glance it could be said that some of these commitments will affect some sectors in one way or another, and some of these sectors could be hurt. The consequences that could arise for Oman from its accession to the WTO, in some sensitive sectors, are examined in depth in the next chapter.

[569] Naray, P., op. cit., 2001, p 146.

[570] Alexandroff, A. S. and Gomez, R., 'Where do we go from here?' In Ostry, S. et al (eds), *China and the long march to the World Trade Organization,* Routledge, London and New York, 2002, p 234.

CHAPTER FIVE: AN ANALYSIS OF THE WTO AGREEMENTS AND THEIR IMPACT ON OMAN IN SELECTED SECTORS AND INDUSTRIES

5.1. INTRODUCTION

In its quest for economic development, Oman has faced four major dilemmas since the boom in oil prices in the early 1970s. Decisions have had to be made as to whether oil reserve should be utilized and if so, at what depletion rate; whether oil production should be domestic or export oriented and if the latter, whether to use the resulting revenues to build a domestic industrial base or to acquire foreign assets or both and if the decision was to spend oil revenues, then the choice had to be made as to how and where to invest. Oman has adopted different approaches to those issues. It has chosen to use its oil resources, but to varying degrees; and has grown dependent on oil export markets as well as supplying the domestic market.[571]

Like the neighbouring GCC States, Oman is currently experiencing a degree of recovery after a period of decline caused by a drop in oil prices and reduced oil production potential. The strengthening of crude oil prices is likely to stimulate a reversal of the downward trend of the early 1990s. At the same time, other economic and commercial activities are heavily dependent upon the Omani government spending, given the government's position as the largest, and in some cases, the only importer and end-user of a wide range of products and services in the country, as well as the largest employer of Omani and expatriate manpower. However, government expenditure has recently been curtailed, with a depressive effect on the public sector, which has offset growth in other sectors. The government strategy for meeting the huge costs of development has been to open up the economy to foreign investors and to privatize several Omani government entities.[572] In line with this strategy, it has begun to sell off stakes in commercial companies, and moreover, to implement a coherent privatisation strategy.[573] In such a situation, as Amison argues, the governments and commercial entities considering privatisation schemes within the Gulf region would be well advised to look carefully at the Omani experience.[574]

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[571] Presley, J. R., 'The problem of risk management in banking in oil-rich Gulf economies', *The International Journal of Bank Marketing,* Vol 10, Issue 1, 1992, pp 36-41, at p 37.

[572] *1996 Country Commercial Guides,* consulted on 16 October 2003 from, http://dosfan.lib.uis.edu/ERC/economics/commercial_guides/Qatar.html

[573] Reddy, M., 'Emerging markets of the Gulf: an overview', *Journal of International Banking Law,* Vol 10, Issue 5, 1995, pp 191-194 at p 192.

[574] Amison, M., 'Oman: Project finance opportunities in the Sultanate', *Company Lawyer,* Vol 16, Issue 8, 1995, pp 254-255 at p 255.

Like its GCC neighbours, Oman has achieved remarkable success in promoting economic growth through adopting a consistent strategy based on market-oriented policies. Given the pegged exchange-rate regime, absence of restriction on capital movements and the leading role played by government, fiscal policy continues, as in the past, to be the primary instrument of demand management. However, recent experience demonstrates that fiscal policy in Oman is strongly influenced by external shocks as well as by social and political considerations. Public policy has prioritised intergenerational equity and the redistribution of oil wealth. The associated high wages, large-scale public employment, and subsidies have created a heavy burden on the public purse and encouraged the domination of the public sector.[575]

Bora et al. considered the impact of new disciplines on subsidies, local content protection, export restrictions and TRIPs. They found these disciplines to be ownership neutral, in terms of their applicability to both foreign and domestic firms, but not country neutral, because some WTO Members are exempted from obligations. Calls for further concessions in the interest of development may be a source of disputes among Members. Developing countries can most effectively articulate their development objectives with foreign direct investment or derogate from the ownership neutrality, by the formulation of national rules on foreign investment.[576] However, their view cannot be supported, as most DCs see the WTO rules as a constraint on their ability to pursue their development objectives. Thus, in order to keep pace with the current competitive environment, developing countries seek to prioritise industries and products with the potential for high growth and high added value. This raises questions as to how government can promote achievement of this objective through more focused industrial policy. The general view is that efforts should be focused on creating strengthened market systems, balanced by competition policy and infrastructure and institutional development, and in respect of the latter, strengthened technical cooperation is envisaged.

The linkages between competition policies and trade are currently being discussed as a potential issue to be addressed in the context of the WTO. In general terms, the reason for linking competition policies with trade issues is that, although

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[575] Al Faris, A. F., 'Public expenditure and economic growth in the Gulf Cooperation Council Countries', *Applied Economics,* Vol 34, Issue 9, 2002, pp 1187-1193 at p 1187.

[576] Bora, B. et al., *Industrial policy and the WTO,* presented paper in the WTO/World Bank Conference on Developing Countries in a Millennium Round, 20-21 September, Geneva 1999, consulted on 12 April 2004 from, http://www.redem.buap.mx/rm25.htm

steps forward have been taken in removing and reducing governmental restrictions on trade, distortions may nevertheless occur as a result of anti-competitive practices by private firms.[577] Having studied the system of mechanisms functioning, as well as the real situation in the country, it can be said that, for the Sultanate of Oman, accession to the WTO need not be a final process or result, but rather a key element of the national development policies; a catalyst of economic reforms, based on market economy principles. Furthermore, accession to the WTO, as is well known, requires a high level of competence and coordination of the government institutions' activities, as well as a political consensus to follow an efficient implementation of the process and to protect national interests. In fact, the Omani economy has special features which make Oman different from other economies, and make it necessary that Oman should connect with the international markets. Furthermore, to push development, Oman should resort to the outside markets, because the benefits to Oman will be greater if she involves herself in the international family and works with it. Some of the distinctive features of the Omani economy are as follows: a small and weak domestic market; a recent transition to industrialization with a multiplicity of difficulties and a need for protection; increased level of revenues and high consumerism based on imports. Under these conditions, the importance of foreign trade in the Omani market can be seen, since the effectiveness of economic actions based on the domestic market would be limited. However, these economic features sometimes give rise to conflict between the importance and necessity of liberalization of foreign trade (which will increase the achieved income), and the limitation of the capacity to achieve some economic goals (such as diversification of the production base, protection of the national economic security, and dispersal of employment). However, the decision to adopt or oppose the liberalization of foreign trade cannot be made in a hasty manner, but needs analysis of the practical outcome in the Omani market.[578]

Since Oman became a Member of the WTO just a few years ago, it is too early to know clearly the consequences arising for Oman from the WTO Agreements. Thus, most of the consequences discussed in this chapter are hypothetical. Nevertheless, it is very important to highlight and study such expectations, because they do not come from

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[577] McCorriston, S. and Maclaren, D., "State trading, the WTO and GATT Article 17", *The World Economy,* Vol 25, Issue 1, 2002, pp 107-135 at p 107.

[578] Tahleel Mazaia Wa Oyoub Anzmam Dowal Majles Altawon Ela GATT wa Anetham Almoamem Llmazaya [Analyse The Advantages And Disadvantages Of Accession Of GCC States to the GATT and GSP], Gulf Organization For Industrial Consulting, 1992, pp 96-98.

a vacuum and there is a very high chance that they could happen, so it is always much better to look for solutions to potential problems before they occur. These potential outcomes can best be investigated on a sectors basis, the sectors being: petrochemical industries; manufacturing industries; agriculture and banking sector.[579] Therefore, the aim of this chapter is to analyse the relevant WTO agreements to point out their likely impact on these sectors in turn. The importance of the impact will differ from one sector and one agreement to another. For consistency, the structure of the legal analysis will be to discuss first the three main agreements: GATT, GATS, TRIPs, then the other important agreements such as: Agriculture agreement, TBT, ADA, SCM, and so on, and finally the side agreements and other issues, such as TRIMs and trade facilitation.

As this chapter is the core chapter, it is the biggest one of the six chapters of this thesis. Therefore, in the interest of balance between all the chapters of the thesis, this chapter is divided into two parts. The first part contains the discussion of the impacts of the relevant agreements on the petrochemicals and manufacturing industries. The second part contains the discussion of the impact of the relevant agreements on the agriculture and banking sectors.

[579] Fayza, A., Ather Mondamet Ategarah Alalmeyah Ala Tnmeyat Dowal Majles Altawoun Alkaleegy [Effect of WTO upon Development of GCC States], LLM, Arabic Gulf University, Bahrain, 1997, p 55.

(PART ONE)

This part contains two sections; the first one is concerned with the petrochemicals industry, whereas the second one is about the manufacturing industry.

5.2. PETROCHEMICALS INDUSTRY

This section contains two sub-sections. The first one gives a general overview of the petrochemicals industry in Oman, while the second one focuses on the impacts of the WTO Agreements on this industry.

5.2.1. General Overview

In the early days of the trading system, energy resources had been essentially under western control. This situation ended with the "wave of nationalizations" of the 1970s and the success of OPEC in effectively forcing concessionaire international oil companies to accept what was called "the principle of government participation in producing oilfields", leading to majority control by those countries.[580]

Since the 1970s, the petrochemical industry has experienced cycles of growth and restructuring that have had a global impact. With the exception of slight fluctuations during the two recessions of the early 1980s and 1990s (which had widespread economic repercussions in most developed countries), the world petrochemical industries saw a continued expansion of both demand and production capacities.[581] As Al-Zamel points out, the refining and petrochemical industries in the GCC States are flourishing, with record production rates and profits. As a result, the GCC Member States are particularly attractive choices for new petrochemical productions and for investments in the petrochemical industry.[582] This can be seen from the increase in the number of petrochemical factories in the GCC States between 1990 and the end of 2003, from 4,386 to 9,802, a growth of 123.5% according to official figures. At the same time there was a huge surge in investment in these factories, from

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[580] For further information, see Brown. G (ed)., *OPEC And The World Energy Market: A Comprehensive Reference Guide,* Longman, London, 1990, pp 411-433.

[581] *Impact Of The GATT/Uruguay Round On GCC Trade In Petrochemicals (Including Fertilizers),* Gulf Organization For Industrial Consulting, The 4th Conference Of GCC Petrochemical And Fertilizer Industries, 21-23 November 1994.

[582] Al-Zamel, Y., *GCC Overview Of Petrochemical Opportunities,* consulted on 5 March 2004 from, http://www.processingtalk.com/news/sab/sab109.html

$32.9 billion to $101 billion, an increase of 207%, according to the Gulf Organization for Industrial Consultancy.[583]

The petrochemical industry these days is the leading industry in Oman, as in the whole GCC region; it is primarily feedstock-driven and is based on capital-intensive technology. The industry is very sensitive to a number of factors, including regular oversupply and cyclical fluctuations, resulting from changing conditions regarding demand and supply.[584] The expansion of the petrochemical capacity in Oman can be seen as the beginning of a long-term trend for locating basic chemical industries where feedstock and fuel are available in the form of cheap gas.[585] If this was a gradual, incremental process in line with growing demands, this process of relocation would be relatively painless. However, because it comes at a time of overcapacity in petrochemical facilities, it could result in economic losses and could prompt protectionist actions on the part of major chemical-producing nations such as Europe.[586] However, in view of the continuing GCC-level negotiations with the EU to sign the FTA, and the new conditions to be created by the WTO, the main producers in Oman, like those elsewhere in the region, justifiably expect to receive a better tariff treatment than the one currently imposed by the EU.[587]

Crude oil has not yet been explicitly addressed by the WTO agreements, although oil-based industries will be subject to the WTO agreements, as are all manufactured goods. However, there is a particular need to identify the relevant provisions and assess their impact, because of the likelihood that this industry will be challenged by high cost producers in the world under the new international trading system.[588] As is known, the GATT Agreement aims to liberalize international trade and increase access to products, through tariff reductions, tariff binding and the

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[583] Mena, R., "Number Of Petrochemicals Factories In GCC States Up", *Business Custom Wire,* 9 September 2004.

[584] Abas, E., Senaet Al Petrocemawyat Fe Alwatan Alarabi: Waqeha, Kasayesaha Wa Ahameyatah [Petrochemical Industry In The Arabic Homeland: Its Case, Its Idiosyncrasies And Its Importance] Unpublished Paper Presented To Seminar About Finance Of Petrochemical Industry, Held By The Arabic Union Banks Jointly With Qatar Central Bank, Doha 28-30 November 1994, pp 9-11.

[585] In this context see Table 5.1 for the status of the new proposed gas based industrial projects in Oman.

[586] Fesharaki, F. and Isaak, D. T., *OPEC, The Gulf, And The World Petroleum Market: A Study In Government Policy And Downstream Operations,* Westview Press, Boulder, 1983, p 209.

[587] Abdulrazzaq, A. et al., *The Role Of Industrial And Development Of Finance Institutions In The GCC States: Dimensions And Policies,* The Emirates Centre Of Strategic Studies And Research, Number 45, 2002, p 3.

[588] *Challenges And Opportunities Of WTO For Crude Oil, Petroleum Products And Petrochemicals In GCC Member Countries,* Gulf Organization For Industrial Consulting, Doha, 2000, p 4.

transformation of non-tariff barriers into tariff barriers. The benefits to the petrochemical industry in Oman and in the Gulf region as a whole, from the price effect and income effect resulting from tariff reduction on chemicals, and higher level of growth generated by liberalized trade, will depend on a number of factors. These include development in the structure of production, market access and the clear comparative advantage of access to cheap feedstock. Petrochemical products from Oman have duty-free entry to the EU market under the GSP. However, the same products are subject to high tariff and non-tariff barriers in the USA and Japan, as well as in South East Asian countries.[589] Countries in these two regions are becoming increasingly more important markets for petrochemical exports from the GCC States. In the chemical sector and as an integral part of the total Uruguay Round package, Canada, the U.S and EU proposed a joint framework agreement for market access on chemicals. The Agreement has also been signed by other countries.[590] According to this agreement, tariff levels on all chemical products should be harmonized and bound. Accordingly, all tariffs of 10% or less should be harmonized to 5.5-6.5% within 5 years. Tariff levels of 10.1-25% should be harmonized to 6.5% within 10 years. Tariff levels over 25% should be harmonized to 6.5% within 15 years; and tariffs currently below the harmonization level will remain the same. Any reduction below the specified harmonization level, including total elimination of tariffs, is a viable goal in certain sectors or products and should be applied by negotiations.[591] It is worth mentioning that the average tariff reduction on all manufactured goods exported by developed countries to developing countries equals 37% of the pre-Uruguay Round tariffs, while that on chemical products equals 47%, from 7.2 to 3.8.[592] The generalized system of preferences, applied to Omani petrochemical products, is coming to an end, which will result in the imposition of tariffs between 8% to 12%. However, these percentages will be harmonized. This will increase the competition between the petrochemical industries in the GCC generally and the same industries in the South East Asian countries, which are bound to non tariff barriers. This means that the petrochemical industry in Oman, and in the other GCC

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[589] Apart from Saudi Arabia, all petrochemicals from the region enjoy preferential treatment in the EU market.

[590] Ibid, pp 9-10.

[591] Selselat Al GATT Wa Enecasateha Ala Ectesadeyat Dowel Majles Altawon Al Kalejee, 2 Senaate Alptrocemaweyat [GATT And Its Effect Upon GCC States, 2 Petrochemical Industry], Secretariat General Of Champers Union Of GCC States, 1997, p 6.

[592] See for example, EU: tariff rates on petrochemical imports from the GCC countries and scheduled reduction under Uruguay Round Agreement, in Table 5.2.

States except for Saudi Arabia, will be worse off, at least in the short run,[593] especially as the industrial countries believe strongly that all petrochemical products from the GCC States are highly subsidized, and consequently, it is not possible to grant them market access on an equal footing with petrochemicals from other sources. Moreover, the higher cost producers in Europe and the USA will be lobbying hard for strong action especially after Saudi Arabia joined the WTO.[594] However, Oman and the other GCC States, are trying to solve such challenges by addressing them in the RTAs, which they are seeking to sign with these countries.

5.2.2. The Relevant WTO Agreements And Their Impact

Each of the WTO Agreements will be examined individually with regards to its effects on this sector. The analysis of each will depend primarily on the magnitude of its impact on this sector. This is the reason for the disparity in the length of each section.

5.2.2.1 General Agreement on Tariffs and Trade (GATT)

The understanding of the interpretation of Article 24 of GATT[595] (on customs union and free trade areas) should provide Oman with opportunities to develop her petrochemical industries through enlarging and protecting her domestic market under the umbrella of a GCC Customs Union. This situation is expected to be further accentuated under the new international trading system: first, because of growing regionalism, especially among major producers in Europe, North America, Japan and other Pacific countries; and second, because high cost producers are likely to deny petrochemical exports from GCC States market access as long as they are provided with cheap feedstock. If this happens, petrochemical industries in the region could be adversely affected, since recent and future developments are based on the region's comparative advantage of access to cheap feedstock. Although the GCC States have established a customs union, their total market is too small to assimilate all petrochemical products. Thus, the above two factors should encourage the GCC States to look for alternatives among the other Arab countries to expand their own market. The Arab market for petrochemical-based commodities is still greatly undeveloped

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[593] *Challenges And Opportunities Of WTO For Crude Oil, Petroleum Products And Petrochemicals In GCC Member Countries,* op. cit., 2000, pp 13-14.

[594] "Special Report On Petrochemicals", *Middle East Business Weekly,* Vol 41, Issue 17, 25 April, 1997.

[595] For more analysis on this Article, see section 3.3 of Chapter Three.

compared with other countries, although it is increasing with the rise in per capita income. The creation of a regional market in petrochemicals, therefore, would give petrochemical industries in the region a sound base on which to face outside competition, and enable them to absorb the market shocks characteristic of this sector. A global force relying on large market access and access to cheap feedstock, the Arab petrochemical industry would be well placed to attract FDI and advanced technology to the region.[596]

Whilst Article 24 appears to have favourable implications for Oman, other provisions of the GATT may prove problematic. One of the areas where WTO Membership could impact Oman's petrochemical industries is with regard to environmental protection measures. Indeed, an important challenge is to deal with the interface between trade policy and environmental policy designed to reduce risks to the environment. GATT rules did not restrict the ability of countries to take appropriate steps to protect their environment from damage resulting from domestic production activities or from the consumption of domestically produced or imported products.[597] Nor did they restrict the Members' right to impose sales taxes on products that create pollution; to give favourable tax treatment to environmentally friendly products; to tax production and sales of particular products even to the extent of prohibition; or to set a ceiling on air pollution levels. However, WTO provisions on non-discrimination, MFN and National Treatment (GATT Articles 1 and 3), and transparency (GATT Article 10) apply to any use of trade measures for environmental purposes.[598]

In general, measures to discriminate among products in international trade because of the way they are produced are prohibited through the interpretation of "like products" in GATT Article 3 on National Treatment. However, exceptions to the National Treatment applicable in certain situations, such as those involving health or natural resource conservation, are provided in GATT Article 20. Under GATT/WTO rules, the governing principle is what might be called "international treatment," whereby international standards should be applied to imported products. In situations involving health or the environment, the GATT/WTO may allow standards more

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[596] *Challenges And Opportunities Of WTO For Crude Oil, Petroleum Products And Petrochemicals In GCC Member Countries,* op. cit., 2000, p 19.

[597] Article 20: General Exception.

[598] "The World Trade Organization, OPEC And The Environment", *OPEC Monthly Bulletin*, Vol 28, Issue 2, 1997.

restrictive than international ones to be applied to imports.[599] In other words, Members may, under the exceptions clauses contained in GATT Article 20, prioritise public health and safety, the conservation of natural resources and national environmental goals ahead of their WTO obligations, provided the measures undertaken are confined to what is necessary, in terms of trade restrictions or discrimination.[600] Therefore, it can be said that Article 20 seeks to preserve at the same time the rights of WTO Members to implement measures to achieve their goals, and the advantages to other WTO Members of compliance with WTO obligations. In this regard, Panels and the Appellate Body apply two criteria in deciding whether a measure is justified under Article 20. First, whether a measure is of the kind described in paragraphs "(b) necessary to protect human, animal or plant life or health", or (g) "relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption". Second, whether the measure meets the requirements of the chapeau of Article 20.[601]

There are different schools of thought on the relationship between the GATT disciplines and Article 20. Some commentators consider that GATT Articles 1, 3, and 11 impose disciplines on governments, and that GATT Article 20 provides exceptions to those disciplines. Therefore, the consistency of a national measure with the GATT can only be adjudged by taking an integrated view of both the disciplines and the exceptions. From this perspective, a measure that fails to provide national treatment, although violating Article 1, cannot be called a GATT violation on that basis alone. In order to decide its GATT status, Article 20 must also be considered. Others, however, view GATT Articles 1, 3, and 11 as conferring or describing "rights" of a WTO Member country to have the exports of its private actors accepted by other WTO Member countries. Under this interpretation, the Articles 1, 3 or 20 rights of the exporting country will need to be considered in light of the Article 20 rights of the importing country to rely upon one of the listed exceptions. A practice incompatible

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[599] Schultz, Jennifer, "The GATT/WTO Committee On Trade And Environment Toward Environmental Reform", *The American Journal of International Law,* Vol 89, Issue 2, 1995, pp 423-439 at p 426.

[600] Sampson, G. P., "Risk And The WTO", in Robertson, D. & Kellow, A., *Globalization And The Environment: Risk Assessment And The WTO,* Edward Elgar, Cheltenham, 2001 at p 16.

[601] Goh, G., "The World Trade Organization, Kyoto And Energy Tax Adjustments At The Border", *Journal of World Trade,* Vol 38, Issue 3, 2004, pp 395-423 at p 412.

with Article 1 is a GATT violation, but it might be excusable by Article 20. This is the stance taken by the WTO Appellate Body.[602]

Of course, there is a danger that environmental concerns can be used as a cloak for protectionism and a number of disputes have for this reason involved the environment.[603] This raises concerns for Oman, that environmental measures could be used as a disguise for protectionism in the new world trade order. Such protectionism in effect would allow importing countries to impose their environmental standards on exporting petrochemicals products. In addition, Oman could fear that environmental concerns will be used as a means of hampering development of this industry in the oil exporting countries.[604] In other words, because petrochemicals are highly polluting, enforcement of measures relating to environmental protection represents a new and additional challenge to Oman now and in the future. These challenges include higher production cost, restrictions on new explorations and the imposition of additional domestic taxes, including carbon tax on oil consumption in developed countries.[605] Thus, Oman is advised to monitor and analyse developments in the field of energy use and the environment through various channels, including the Environmental Task Force established by OPEC in 1994, as an input into relevant policy decisions. Oman is also advised to participate actively in debate within the WTO Committee on Trade and the Environment (CTE) to influence decisions to her interest and prevent environmental issues being used as barriers to trade in oil-based industries.

Oman's trade in this vital resource, the mainstay of her economy, could suffer if Oman finds itself involved in disputes related to environmental issues and the meaning of Article 20, which other countries might try to use to affect Oman's petrochemical industry. In this regard, some disputes can be taken as examples to illustrate the importance of environmental issues in the trade between WTO Members, and the potential for conflict with trade policy. A notable instance is the Gasoline Case, which was decided under the new WTO dispute settlement rules but nevertheless reflected the

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[602] Charnovitz, S., "The Law Of Environmental "PPMS" In The WTO: Debunking The Myth Of Illegality", *Yale Journal of International Law,* Vol 27, 2002, pp 59-103 at pp 80-81.

[603] Paltrowitz, J. H., "Note And Comment: A "Greening" Of The World Trade Organization? A Case Comment On The Asbestos Report", *Brooklyn Journal of International Law,* Vol 26, 2001, pp 1789-1838 at p1811

[604] Hunt, K. J., "International Environmental Agreements In Conflict With GATT...Greening GATT After The Uruguay Round Agreement", *International Lawyer,* Vol 30, 1996, pp 163-191 at p 184.

[605] Selselat Al GATT Wa Enecasateha Ala Ectesadeyat Dowel Majles Altawon Al Kalejee, 2 Senaate Alptrocemaweyat [GATT And Its Effect Upon GCC States, 2 Petrochemical Industry], op. cit., 1997, pp 14-15.

underlying GATT trade framework. Early in 1995, separate requests for consultations were made by both Venezuela and Brazil concerning possible incompatibility of the Gasoline Rule with GATT/WTO disciplines. When the consultation exercise brought no agreement, a Dispute Settlement was established to consider the matter. The EC and Norway also presented arguments. The US responded to Venezuela and Brazil's claim that the Gasoline Rule violated the National Treatment provisions of Article 3.1 and 3.2 and the MFN provision of Article 1, by invoking as justification the exceptions in Article 20(b) and (g).[606]

The environmental measures in question were found inconsistent with the GATT. A significant development in the *Gasoline Case*, however, was the panel's extension of the scope of Article 20 (g) by recognizing clean air as an exhaustible natural resource. The importance of this analysis, however, was undermined when the United States appealed the *Gasoline Case* decision to the Appellate Body of the WTO. The Appellate Body substantially upheld the Panel's report which had recommended that the US Environmental Protection Agency (EPA) should bring the Gasoline Rule into conformity with GATT requirements or face the possibility of trade sanctions. The United States had contested the Panel's view that the "baseline establishment rules of the Gasoline Rule [were] not justified under Article 20 (g)," and specifically argued that the Panel was incorrect in refusing to accept the baseline rule as "a 'measure' 'relating to' the conservation of clean air within the meaning of Article 20 (g)." There were numerous other aspects of the Panel's decision, however, which did not fall within the scope of this appeal, so the Appellate Body was required only to analyse the baseline establishment rules, rather than the Gasoline Rule as a whole under Article 20(g). Although the Appellate Body for the most part affirmed the Panel's decision, it overturned one element of the Panel's decision. This was the Panel's rejection of the United States' argument that its measures were justified under Article 20 (g) because they were necessary for the conservation of clean air. The Appellate Body, however, accepted this argument, and recognized that the US Gasoline Rule was intended to preserve clean air in combination with domestic conservation programmes.[607]

On the other hand, in the *Shrimp-Turtle* case, the first Article 20 (b) dispute after the WTO was established, pre-WTO doctrinalism was still evident. The panel clearly

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[606] Meier, M., "GATT/WTO, And The Environment: To What Extent Do GATT/WTO Rules Permit Member Nations To Protect The Environment When Doing So Adversely Affects Trade?", *Colorado Journal of International Law and Policy,* Vol 8, 1997, pp 241-282 at pp 254-255.

[607] Ibid, pp 267-268.

took the view that under GATT/WTO dispute resolution, maintenance of the status quo of the multilateral trading system took priority over environmental concerns. This attitude was conveyed in its decision that it was not crucial to examine the US trade measure, section 609 of Public Law 101-162, because it could put the multilateral trading system at risk. The panel expressed the view that trade measures potentially damaging to the multilateral trading system are inherently prohibited under Article 20. This interpretation contradicts the statement in the WTO's preamble linking trade expansion with the objective of sustainable development, and asserting the need both to protect and preserve the environment. Contrary to the compromise between trade and the environment indicated in the preamble, the panel in *Shrimp-Turtle* refused to seek such a balance.[608]

In *Asbestos*, a panel upheld a French ban on the importation of asbestos from Canada, even though it treated imports less favourably than like domestic products - French asbestos substitutes. The ban was accepted as falling within Article 20 (b)'s exception for measures "necessary to protect human...life or health." The panel took the view that the submissions of the parties and the comments of experts consulted contained sufficient scientific evidence to support France's claims concerning the health risk posed by asbestos, and rejected Canada's argument that this risk was reduced to acceptable level by international safety standards. Such standards would not achieve the level of protection desired by France, and France had the right to choose the level of protection it considered appropriate.[609]

Although GATT/WTO cases have not set a clear test for consideration of national health and environmental measures under Article 20, the cases reflect a growing concern with environmental issues. Over time, the scope of protected values and areas has been extended. In this context, it can be argued that Oman might become involved in similar disputes to the examples above such as the *Gasoline Case.* However, in this case trade policy was given priority, suggesting that environmental excuses for protectionism will not been accepted. Nevertheless, it cannot be guaranteed that this will be the position if Oman faces such disputes. What is clear, however, is that each case must be looked at on its merits, rather than Article 20 exceptions being viewed as

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[608] Paltrowitz, J. H., 2001, op. cit., p 1812.

[609] McGinnis, J. O., & Movsesian, M. L., "Commentary: The World Trade Constitution", *Harvard Law Review,* Vol 114, 2000, pp 511-605 at p 594.

always subordinate to the free trade requirements of Articles 1, 3, and 11. This is a welcome and potentially beneficial development.[610]

5.2.2.2 General Agreement on Trade in Services (GATS)

Next to be considered is the possible implication of the GATS[611], which provides a framework for the negotiations of commitments on trade in services. Cross-border services in the area of petrochemicals include pipeline and maritime transport and commercial presence, e.g. foreign investment which covers flows of capital and movement of natural persons. It would apply to joint ventures in the development of new production opportunities, distribution and the entry of foreigners to provide exploration or other oil field services. As is well known, the acceding country grants a number of specific commitments on services to be included in its schedule for negotiation during the accession negotiations. For Oman, and in respect of oil-based industries, certain areas such as the EU, U.S.A, Japan and South and Southeast Asia are of particular importance. Thus, it can be anticipated that the EU, the U.S.A and other WTO Members with competitive advantage in services related to oil exploration, production and exportation, will insist on big commitments from oil-producing countries, on the basis of MFN and National Treatment. This would be especially likely in relation to petrochemicals related services of interest to them, such as construction and engineering consultancy, pipeline transport, maritime transport, and telecommunications.[612] Oman, while accepting the GATS provisions, should consider not only her existing expertise in these areas, but also her potential to develop more expertise while granting market access to oil-related services.[613]

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[610] Stevenson, P., "The World Trade Organization Rules: A Legal Analysis Of Their Adverse Impact On Animal Welfare", *Animal Law,* Vol 8, 2002, pp 107-141 at p 128.

[611] More analysis will be provided in the discussion of the impact upon the services sector in Section 4.5 of this Chapter.

[612] That is exactly what happened; in this context see Oman's accession commitments in the service sector in Subsection 4.3.2.1.2 of Chapter Four.

[613] Selselat Al GATT Wa Enecasateha Ala Ectesadeyat Dowel Majles Altawon Al Kalejee, 2 Senaate Alptrocemaweyat [GATT And Its Effect Upon GCC States, 2 Petrochemical Industry], op. cit., 1997, pp 18-19.

5.2.2.3 Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs)

Another issue Oman needs to consider is the implication of the Agreement on Intellectual Property Rights (TRIPs).[614] Prior to this agreement, DCs had little incentive to legislate for strong protection of intellectual property rights (IPRs). Their concern was, rather, to encourage the free-flow of information in order to acquire a technological base for development. Low standards of patent protection was a factor in the ability of countries such as India and Brazil, for example, to develop industries. In addition, there was little agreement, worldwide, on what was patentable, or what would be given under a patent. Some commentators have opposed strong IPRs protection in DCs, based on the need of these countries for maximum access to western technology to increase development. From this standpoint, minimal restriction of technological information is seen as benefiting not only the Third World but, through the development of DCs, the international community as a whole. Critics of strong IPRs protection have drawn attention to the freedom to exploit intellectual property for their own economic development enjoyed by most developed countries during the 18th and 19th centuries. Stronger IPRs protection would mean that DCs could not use intellectual property, which is concentrated primarily in the hands of individuals and corporations in developed countries, without payment, which they cannot afford, and so would impede development.[615] Of crucial concern to DCs, therefore, is the extent to which the agreement facilitates access to technology and the costs of that technology as a function of the degree of control granted to a patentee in the international context. On the one hand, DCs could benefit from the current patent systems of developed countries and the use of indigenous knowledge to develop new patents. On the other hand, the potential gains will be reduced by the inability of the DCs to operate single-handedly within the current patent systems, because of the high cost of the patent application process in most developed countries, and the difficulty of handling the necessary volume and complexity of information about legal requirements. Such difficulties will put the process beyond the reach of the LDCs, as well as some DCs, and certainly their citizens. The main policy issue under the TRIPs Agreement, therefore, is how to provide for substantial gains from an exclusive international right, while also ensuring that patent

[614] More analysis on this Agreement will be in the next section.

[615] Tully, L. D., "Prospects For Progress: The TRIPs Agreement And Developing Countries After Doha Conference", *Boston College International And Comparative Law Review,* Vol 26, 2003, pp129-143 at p 137.

protection in a developing country should confer some meaningful benefit to that country.[616]

TRIPs is clearly most beneficial to the firms in developed countries that engage in extensive research and development and export their know-how and products abroad. Firms exporting technology abroad now can take legal action against foreign violation of their intellectual property rights. Technological advantages already give petrochemical industries in developed countries a strong competitive edge over their counterparts in DCs. TRIPs rules are expected to exert a considerable effect on the future progress of petrochemicals in DCs. This assumption is based on rapid technological progress in developed countries, on the one hand, and their reluctance to transfer and disseminate technology, except at a very high price, on the other. In light of the intensity of research and development in petrochemicals, measures may need to be taken in Oman to modify the impact of the agreement on the progress of these industries, such as establishing joint ventures with big transnational companies that possess up-to-date technology; cooperation with research and development institutions in other countries; and providing opportunities for the use of unproven technology.[617]

5.2.2.4 Agreement on Technical Barriers to Trade (TBT)

The Technical Barriers to Trade Agreement (TBT) is a set of guidelines as to the circumstances in which WTO Members may impose restrictions on imports or exports based on product standards and technical regulations, and under which the standards and regulations may be applied. The intention is to ensure that the WTO principles of MFN and National Treatment are applied to technical regulations and standards, from their formulation to implementation. Regulations and standards that constitute trade restrictions are prohibited and TBT aims that their use should be confined to 'legitimate health, safety, product quality and environmental protection purposes.'[618]

It is helpful to distinguish between regulations and standards in the TBT. The former are at government level, while the latter are voluntary and stem from the private sector. Regulations must comply with the MFN and National Treatment rules regarding trade restrictiveness, and must confine trade restrictiveness to the minimum needed to

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[616] Gana, R. L., "Prospects For Developing Countries Under The TRIPs Agreement", *Vanderbilt Journal of Transnational Law,* Vol 29, 1996, pp 735-775 at p 759.

[617] Tully, L. D., 2003, op. cit., p 51.

[618] Ruddell, S. J. and Bourke, I. J., "International Access For Wood Products: Post- Uruguay Round Issues", *Bridges,* Vol 3, Issue 1, 1999, pp 17-18 at p 17.

achieve a legitimate objective such as health, safety or environmental protection.[619] This obligation is inevitably very general because of the wide scope of measures covered, which makes it difficult to apply. It is effective only in the most extreme cases, which in any event could normally also be prosecuted under GATT Articles 2 (Schedule of Concessions), 3 (National Treatment), or 11 (Elimination of Quantitative Restrictions).[620] The term 'no more trade restrictive than necessary' can be taken to mean least trade restrictive. This would enable Members to object to a measure if they are able to identify other ways of fulfilling the objective. The TBT also stipulates that regulations should be based on internationally agreed standards, unless the standards available are ineffective or not suited to the achievement of the objectives. In this way the TBT is supportive of internationally negotiated and agreed standards, and hence the TBT recognizes the legitimacy of the ISO Standards. Moreover, the rules related to standards are less strict than for regulations. The code of good practice does not impose the requirement that a standard is no more trade restrictive than necessary. However, standards must not be discriminatory, and must not be designed unduly to impede trade.[621]

One area where the TBT agreement may have implications is with regard to product labelling. This is related to the trend, as a result of the growing concerns of consumers about the environmental characteristics of products, for producers to provide more information on this issue through what is called "eco-labelling". Eco-labelling is used to encourage both the production and consumption of products that are "more environment friendly" than alternatives available in the market. For this reason, there has been much discussion, especially in the WTO, concerning the implication of eco-labelling for market access of similar products and also whether demanding eco-labelling on products is actually legal.[622] The legal position of eco-labels and forest certification schemes in terms of trade law is in doubt and has consequently been debated in the WTO's committees on Trade and Environment and Technical Barriers to

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[619] Tallontire, A. and Blowfield, M. E., "Will The WTO Prevent The Growth Of Ethical Trade? Implications Of Potential Changes To WTO Rules For Environmented And Social Standards In The Forest Sector", *Journal of International Development,* Vol 121, Issue 4, 2000, pp 571-584 at p 577.

[620] Thorn, C. and Carlson, M., "The Agreement On The Application Of Sanitary And Phytosanitary Measures And The Agreement On Technical Barriers To Trade", *Law And Policy In International Business,* Vol 31, Issue 3, 2000, pp 841-855 at p 842.

[621] Tallontire, A. and Blowfield, M. E., 2000, op. cit., p 577.

[622] Joshi, M., "Are Eco-Labels Consistent With World Trade Organization Agreements?" *Journal of World Trade,* Vol 38, Issue 1, 2004, pp 69-92 at p 69.

Trade. The uncertainty stems from two sources: one is that the WTO text dealing with environmental measures does not explicitly mention eco-labels and so it is necessary to rely on interpretations. The other is that the WTO is an agreement between sovereign states, whilst many eco-labels are private, voluntary initiatives, in relation to which WTO trade disciplines are not relevant or are less specific. Moreover, interpretations of the relevant parts of WTO rules are evolving over time; they are dynamic and changing to reflect an ongoing process of debate.[623] The relevant parts of the WTO for understanding the relationship between trade and the environment in relation to eco-labels and forest certification are TBT[624] and exceptions to the MFN and National Treatment rules permitted under GATT Article 20 clause (b) and (g), referred to previously.[625]

It is difficult to assess the likely trade implications of the trend to environmental labelling programmes, because much depends on how they are administered. A danger exists that proliferation of eco-labelling programmes could have trade effects unrelated to the environmental purpose of the scheme, especially for small foreign suppliers and those from developing countries. An example is the practice under certain labelling scheme of visits by the administrators of the scheme to the manufacturing plant, to check compliance with the relevant environmental standards, before awarding the label. Many manufacturers in developing countries will find the costs of such inspection procedures, which in most labelling schemes in OECD countries are borne by the applicant manufacturer, to be prohibitive. Other costs are incurred in the form of application fees, cost of the annual contract, and sometimes label publicity. These charges could be too costly for small and foreign firms, to an extent that they could be perceived as administrative trade barriers.[626]

A labelling programme could be viewed as a trade barrier if its financial or other requirements put small and foreign producers at a disadvantage. All such programmes,

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[623] Cosbey, A., "Environmental Management And International Trade", in Hens, L (ed), *Environmental Management,* Routledge, 1997 at p 21.

[624] Eco-labels are not explicitly mentioned in the text of the TBT, but in the last few years the issue about the trade restrictiveness of eco-labels and their relationship to trade rules has been raised in the WTO's committee on TBT and also in the WTO Committee on Trade and Environment.

[625] See for more details in this regards, Okubo, A., "Environmental Labelling Programs And The GATT/WTO Regime", *Georgetown International Environmental Law And Georgetown University,* Vol 11, Issue 3, 1999, pp 599- 646.

[626] Subedi, S. P., "Balancing International Trade With Environmental Protection: International Legal Aspects Of Eco-Labels", *Brooklyn Journal of International Law,* Vol 25, Issue 2, 1999, pp 373-405 at p 383.

whether mandatory or voluntary ones, would be required to conform to the provisions of Articles 2 to 7 of the TBT, including the Code of Good Practice for the Preparation, Adoption and Application of Standards (Annex 3). Under Article 2.1 of the Agreement, Member States are required to "ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favorable than that accorded to like products of national origin and to like products originating in any other country." Similarly, Article 2.2 requires all contracting parties to "ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade." The Article permits technical regulations necessary to fulfil a legitimate objective, including environmental concerns, but they must not be more trade-restrictive than necessary to fulfil the objective in question (Article 2.2). Article 2.9 imposes certain requirements to be met when a Member State adopts a technical regulation with regard to a product, and the regulation has a significant effect on the trade of other Member States. These include the publication of a notice to this effect in sufficient time to enable other contracting parties to submit written comments, and the requirement to consider these comments (Article 2.9.1, 2.9.4). This would mean the Member State is concerned with granting effective access to labelling schemes to overseas suppliers, providing them with a voice in the selection process of a product's category for consideration of labelling, as well as establishing the criteria and threshold levels that such products must meet to qualify for a label. These are just some of the possible trade implications that could arise from eco-labelling programmes. However, much will depend upon the practice of national labelling authorities when selecting product categories for labelling and determining the environmental criteria that must be met for a label to be granted. If this process favours product attributes that can more easily be met by domestic manufacturers, or gives weight to local environmental resource constraints and local preferences for particular product attributes, foreign products may be disadvantaged.[627]

In view of the complexity of technical standards applied in the petroleum-based industries, TBT has obvious significance for oil-exporting countries such as Oman. Whilst opportunities to trade in these products are encouraged by the guidelines so that technical measures are not to be allowed to constitute barriers to trade, and Members must ensure MFN and National Treatment in the application of these measures which will protect oil-exporting countries from arbitrary damaging actions by other WTO

[627] Ibid, pp 385-386.

Members, there are also challenges. These relate to environmental measures, particularly salient given the increase in environment-related trade conflicts and disputes that can be anticipated in the future.[628] The Agreement does not require environmental measures to pass very restrictive tests; nor is there any requirement for an "effectiveness" test. Moreover, there is no provision requiring a country to offer scientific justification for any technical regulations it imposes.[629] The Agreement could, nevertheless, prove beneficial if its provisions result in Oman introducing environmental measures and complying more fully with international standards and regulations.

Generally, Oman has responded to recent environmental concerns by issuing legislation in line with the new trend. Although the legislation in Oman may not be as sophisticated as that in the industrialised countries, the protection and development of the environment is taken seriously. Oman is investing heavily in the protection of the environment in all fields.[630] For example, Oman has created an individual ministry for environment. However, Oman faces difficulties in implementing environmental programmes, due to inadequate funding, shortage of qualified manpower, and unsuccessful attempts to create partnership between industry and environment. Oman needs to integrate environmental issues into her developmental efforts, based on clear priorities for the present and long-term plans. These could include, for example, establishing more recycling factories and waste treatment plants, providing nationals with training in environmental issues, and arranging the necessary financing for environmental activities.[631] It can be noted that two GCC States - Qatar and Saudi Arabia- have already begun to introduce environmental rules and regulations in the petrochemical industries and Oman is well advised to do the same.[632]

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[628] *Challenges And Opportunities Of The New International Trade Agreements (Uruguay Round) For ESCWA Member Countries In Selected Sectors: Crude Oil, Petroleum Products And Petrochemicals,* op. cit., 1998, pp 46-47.

[629] The World Trade Organization, OPEC And The Environment, 1997, op. cit..

[630] Reumann, R. M., "The Legal Environment Of The Environment In The Gulf", *Arab Law Quarterly,* 2001, pp 3 58-365 at p 360.

[631] "Gulf Organization For Industrial Consulting", *Monthly Bulletin,* Vol 2, Issue 13, 2001 at p 2.

[632] *Challenges And Opportunities Of WTO For Crude Oil, Petroleum Products And Petrochemicals In GCC Member Countries,* op. cit., 2000, p 16.

5.2.2.5 Anti-Dumping Agreement (ADA)

Another agreement that could have implications for Oman's petrochemical industry is the Anti-dumping Agreement (ADA). Article 2.1 of the Agreement on Implementation of Article 6 GATT "Anti-dumping" (ADA) defines dumping as the export of a product to another country at less than its normal value, the comparable price of a like product when destined for consumption in the exporting country. The ADA allows imposition of an anti-dumping duty when material injury to an importing Member's domestic industry is caused or threatened by dumped imports. The purpose of an anti-dumping duty is to create a "level playing field", a concept which was reflected in the US paper on trade remedy rules presented in the Doha Round. This paper characterized dumping as unfair because it reflects "artificial advantages" that "distort market signals indicating where the most profitable business opportunities are found", and "reduce worldwide economic efficiency, thereby diminishing the gains to all Members from international specialization and exchange based on [natural] comparative advantage". The role of anti-dumping duties is not directly to "neutralize" the artificial advantages, but to provide a remedy to an importing country suffering harm as a result of such artificial advantages "to help create a 'level playing field".[633] In non-economic terms, an anti-dumping duty is simply one of a range of safeguards that can be used to remedy injury to a domestic industry caused by dumped imports. From this perspective, it may be asked why another type of safeguard measure is needed for injury caused by dumped imports, in addition to a general safeguard measure. One argument is that dumping may arise because of differences of economic structure among countries, and that anti-dumping is an "interface mechanism" "to allow different economic systems to trade together harmoniously".[634] It has also been suggested from a public choice perspective that remedy of a domestic industry injured by trade practices that the industry "perceives" as unfair, may be justifiable, regardless of the rationality of the perception, because of the political pressure for relief exerted by the industry concerned. A third argument is that dumping may "signal prosperity in the exporting industry", which indicates "circumstances in which the political detriment associated

[633] Fukunage, Y., "An "Effect-Based" Approach To Anti-Dumping: Why Should We Introduce A "Mandatory Lesser Duty Rule"?" *Journal of World Trade,* Vol 38, Issue 3, 2004, pp 491-507 at pp 503-504.

[634] Jackson, J. H., *The World Trading System,* The MIT Press, Cambridge, Massachusetts, London, England, 1997, 2nd ed, pp 248-250, 272-274.

with restrictions on its exports may be modest".[635] The existence of dumping, material injury or threat thereof, and the causal link between dumped imports and injury, is to be decided by the investigating authority, in line with Article 6 of the GATT. The level of such duty, according to Article 9.3 "shall not exceed the margin of dumping". Thus, with the exception of a discretionary lesser duty rule provided in Article 9.1,[636] the level of an anti-dumping duty is limited to the level of dumping margin under the ADA.

Evaluation of the dumping margin by an investigating authority involves comparison of the export price with the normal value, generally necessitating the conversion of currency of one or other of these values. Under Article 2.4.1 of the ADA, the investigating authority must allow exporters at least 60 days to adjust export prices to reflect sustained movements in exchange rates during the period of investigation; in other words, to either a sustained depreciation or a sustained appreciation of the exporting country's currency. In the case of appreciation of the exporting country's currency, the normal value rises, making the dumping margin greater. The export or domestic sales price therefore needs to be adjusted to reduce the dumping margin. In contrast, where the exporting country's currency has depreciated, the normal value falls relative to the export price, thus reducing the dumping margin. This situation is advantageous to the exporter, who therefore has no reason to make any adjustment. Thus, although "sustained movement" in Article 2.4.1 could in theory apply to the case of exchange rate depreciation, in practice it is best understood as dealing only with the sustained appreciation of the exporting country's currency. A more serious concern is the failure of Article 2.4.1 to address the issue of choosing the correct exchange rule that reflects the true relative value of the currency. Although the agreement permits the conversion of currency for this purpose, it does not make clear how potential distortion in the dumping margin calculation resulting from conversion can be avoided. Use of an inappropriate exchange rate could result in a spurious estimate of dumping margin, contrary to the fair comparison requirement of Article 2.4 of the ADA.[637]

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[635] Sykes, A. O., "The Economics Of "Injury" In Antidumping And Countervailing Duty Cases" in Bhandari, J. S. and Sykes, A. O., eds., *Economic Dimensions In International Law: Comparative And Empirical Perspectives*, Cambridge University Press, Cambridge, 1997, pp 118-120.

[636] A "discretionary lesser duty rule" is provided in the second sentence of Article 9.1, which stipulates "it is desirable . . . that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry".

[637] Jong, B. K., "Currency Conversion In The Anti-Dumping Agreement", *Journal of Financial Management & Analysis,* Vol 16, Issue 2, 2003, pp 92-95 at p 92.

In relation to injury, what has to be determined is whether dumping, once established, causes injury to the industry of the importing country. The ADA contains no definition of injury, except for a footnote to the heading of Article 3 explaining that the term injury shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry, or material retardation to the establishment of such an industry. However, Article 3.1 states that a determination of injury shall be based on positive evidence and involve an objective examination of (a) the volume of dumped imports and the effect of the dumped import on pricein the domestic of like products, and (b) the consequent impact of these imports on domestic products of such products. Thus, at least formally, the tendency of many authorities to take account of all imports of a given product once dumping has been found is contrary to the Article's provisions. However, the dumped imports may not be the only cause of injury, so it may be the case that imports from countries other than those under challenge, or imports not sold at dumping prices, will be considered in reaching an overall finding of injury. In most states with developed anti-dumping laws, the legislation implementing Article 3 contains several lists of relevant factors to be considered, evaluated, or examined, together with a statement that no single group of factors can necessarily give decisive guidance.[638]

In practice, there have been very few cases concerned with threat of injury, and none at all with "material retardation", so the question at issue has been the existence of material injury arising from dumping. The decision in this respect inevitably depends mainly on economic evidence, and is subject to the same uncertainties that arise in respect of many other issues where economic analysis plays the central role. As a result, debate frequently arises, between accuser and accused, as to whether material injury has in fact occurred, and if so, whether dumping is the cause.[639]

The determination of injury is no easy task. Assuming, for example, that a product is obsolescent and a new industry emerges, which produces a better product, can the first industry be said to have been materially injured in the sense implied by the anti-dumping regulations? Another dilemma arises in the case where the market in an importing country is expanding and the domestic industry is expanding also, but at a slower rate, so that imports are taking a larger share of the market. In such a case, is it

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[638] See generally, Steel, K. (ed), *Anti-Dumping Under The WTO: A Comparative Review*, The Hague, Kluwer, Netherland, 1996.

[639] Silberston, A., "Anti-Dumping Rules-Time To Change?", *Journal of World Trade,* Vol 37, Issue 6, 2003, pp 1036-1081 at p 1071.

fair to say that the domestic industry has been injured? Whatever view is taken on such issues, it is likely to be difficult to decide whether and to what extent an industry has been injured by dumping, as industries may be adversely affected and suffer material injury as a result of many factors which may be entirely unconnected with any dumping that has taken place. Thus, even when the existence of dumping has been clearly identified, it may be by no means certain that dumping has been a material cause of damage to the industry concerned.[640]

The current Agreement can be criticized as too vague on many key issues, as a result of which there is scope for the administering authorities to interpret it in unduly protectionist terms. From a practical perspective, the present text of the Agreement can be viewed as a hastily drafted compromise between very different negotiating positions emerging during the Uruguay Round, which contains many technical deficiencies.[641] Alternatively, from a theoretical viewpoint, the uncertainty and vagueness of the Agreement can be traced to the contradiction between the contention that dumping, as defined by the Agreement, should be sanctioned only when it is causing injury, and the failure to qualify dumping in positive or negative terms, or to define clearly what constitutes injury (is it any material damage to the domestic industry, or only unfair damage?). There is a widely-held view that the Agreement's provisions are not clear and effective enough to meet the needs of the DCs. For example, it takes no account of the heavy burden anti-dumping investigations place on DCs, whether or not duties are imposed or not. From the perspective of non-market economy countries, the current provisions are punitive, rather than conducive to economic reform. They are seen as negating the substantial trade benefit derived from the bound tariff rates by the imposition of anti-dumping duties which wipe out such concessions, because of the special rules on the calculation of normal value for these countries. Moreover, the ambiguity of some provisions prevents the exporter/producer from deciding in advance at the outset of an investigation what level of final duty will be imposed on its exports. It may not even be clear to him whether or not he is dumping, because different administering authorities adopt different calculation practices.[642]

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[640] Ibid, p 1071.

[641] See generally Horlick, G. N. & Shea, E. C., "The World Trade Organization Anti-Dumping Agreement", *Journal of World Trade*, Vol 29, Issue 1, 1995, pp 5-31.

[642] Adamantopoulos, K. & De Notaris, D., "The Future Of The WTO And The Reform Of The Anti-Dumping Agreement: A Legal Perspective", *Fordham International Law Journal,* Vol 24, 2000, pp 30-61 at pp 35-36.

Recent years have seen a significant increase in the use of anti-dumping measures. As other trade barriers are eliminated, for many governments and domestic industries, anti-dumping measures and other trade remedies now appear to be the most attractive way of protecting domestic markets permissible under WTO disciplines. The more widely anti-dumping laws are adopted, the more countries are using those laws to impose anti-dumping measures. Moreover, the countries targeted by anti-dumping measures have not vigorously challenged these measures in the WTO.[643] Where disputes have been raised, WTO panel decisions have been criticized, but largely because of a mistaken view of Article 17.6 of the ADA. This special standard of review has often been interpreted as requiring substantial deference to the national authorities, to the extent that decisions by national authorities should rarely, if ever, be overturned. This, however, is not what Article 17.6 says. The text of Article 17.6 provides that: *(1)* in its assessment of the facts of the matter, the panel shall determine whether the authorities' establishment of the facts was proper and whether their evaluation of those facts was unbiased and objective. If the establishment of the facts was proper and the evaluation was unbiased and objective, even though the panel might have reached a different conclusion, the evaluation shall not be overturned; (2) the panel shall interpret the relevant provisions of the Agreement in accordance with customary rules of interpretation of public international law. Where the panel finds that a relevant provision of the Agreement admits more than one permissible interpretation, the panel shall find the authorities' measure to be in conformity with the Agreement if it rests upon one of these permissible interpretations.[644]

Although there have been instances of difference between panels and the Appellate Body, these have been related to the circumstances of the particular decision. However, scrutiny of disputes to date shows that the implementation of most WTO decisions involving anti-dumping has been patchy, although in some cases anti-dumping orders were eventually terminated or amended to satisfy the parties,[645] the

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[643] Durling, F. P., "Deference, But Only When Due: WTO Review Of Anti-Dumping Members", *Journal of International Economic Law,* Vol 6, Issue 1, 2003, pp 125-153 at pp 125-127.

[644] Ibid, p 141.

[645] Guatemala - Definitive Anti-Dumping Measure on Grey Portland Cement from Mexico, ('Cement'), WT/DS60 and WT/DS156/R, (24 Oct. 2000); United States - Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors ('DRAMS') of a Megabit or Above from Korea, WT/DS99/R, (29 Jan. 1999); United States - Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel and Strip from Korea ('Stainless Steel'), WT/DS179/R, (22 Dec. 2000); Thailand - Antidumping Duties on Angles, Shapes and Sections of Iron and Non-Alloy Steel and H-Beams from Poland ('Structural Steel'), WT/DS122/R, (28 Sep. 2000); Argentina - Definitive

termination was, on average, 3.2 years after imposition of the measure. This is a rather long period of time to be subject to improper duties, particularly since WTO remedies cannot be applied retrospectively.

From the above analysis it seems that the ADA holds both opportunities and challenges for Oman, as for the other GCC States' trade in petrochemical industries. The quick erosion of GCC's petrochemical margins of preferences in EU countries, makes them worried that their exports could face some problems in EU markets under the pretext of dumping, to which the GATT is opposed.[646] There have been suggestions in some quarters that the provision of cheap inputs to petrochemical industries in GCC States represents a case of dumping in other countries, but this is not so. Since provision of inputs at a discount price applies not only to production for export, but also to that for domestic use, the anti-dumping procedures are not applicable, since the case does not match the definition adopted by the agreement. Providing cheap raw materials to petrochemicals in the GCC States may fall under subsidies, but not dumping, although Al-Itir argues that the gas feedstock which is sold to petrochemical industries in the region at a rate below the international market price should not be considered as a form of subsidy to these industries.[647] Nevertheless, for a dumping case to be made, the situation has to be discussed for each product individually, bearing in mind that dumping usually targets certain markets and not all markets in the world. This is why the agreement provides for comparison with an appropriate third country, which is not applicable for petrochemicals from the GCC States.[648] Another dimension of the implications of this agreement for Oman's petrochemical industry is the vulnerability of her domestic market to dumping pressure from other producers of the same products. If the provision of cheap inputs to domestic petrochemical industries is not challenged by other countries, the probability of dumping by other countries would be slight, if not

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Anti-Dumping Measures on Imports of Ceramic Floor Tiles from Italy ('Ceramic Tiles'), WT/DS189/R (28 Sep. 2001).

[646] In this context, UNCTAD has indicated that the threat of anti-dumping measures against petroleum products and petrochemicals, especially with higher value added, is a real one and should be a matter of concern to exporting countries. It referred to a number of recent anti-dumping actions in petrochemicals. Among them, Saudi Arabia was mentioned in relation to polyvinyl chloride resin, but details on the case were not provided. See for that, *GCC-EU Trade: Past, Present, And Future Prospects Within GATT/*WTO, unpublished paper, prepared by Federation of GCC Chambers during the third conference of Gulf businessmen and their European counterparts, Muscat 16-18 October 1995, p 29.

[647] Al-Itir, A., "Uruguay Round And Its Impact On The GCC Countries", *Co-Operation Journal,* Vol 35, September 1994, pp 26-38 at p 36.

[648] *Challenges And Opportunities Of WTO For Crude Oil, Petroleum Products And Petrochemicals In GCC Member Countries,* op. cit., 2000, p 18.

non-existent. The probability of challenges, however, would be greatly increased if the challenge to cheap input proves successful. In this case strong competition could result between the EU countries and South and South-East Asia to dump petrochemical products on the markets of the region.[649]

At this point it is worthwhile to consider the implications of anti-dumping rules for Oman as a developing country. It can be argued that the impact is likely to be unfavourable, partly because most of the anti-dumping cases are initiated against developing countries, and partly due to the high financial costs of implementing an anti-dumping case. The provisions of the ADA are very complex and a case requires collection of very detailed information. In addition, developing countries have few government officials to deal with anti-dumping cases. In Malaysia, for example, there are only 6 officers handling these cases. Such countries are therefore at a disadvantage compared with the USA and the EU, in terms of the resources, personnel and technology to handle such cases.[650] Analysis of antidumping measures currently in force by user and target countries shows a marked asymmetry between the two. The top 10 users are the targets of less than a third of all the measures in force, and the gap between using antidumping measures and being a target widened in 2001 and 2002.[651] In sum, antidumping is currently an instrument enforced by a few large countries against the smaller economies of the rest of the world. This means that there is little pressure coming from the international community to urge intensive antidumping users to restrain their actions.

As regards the likelihood of Oman being a complainant, because Oman is an open economy with very low tariffs, no quantitative restriction and free movement of capital, and because this law is invoked only when there is a serious injury or threat of serious injury to domestic industry, Oman may have little need to invoke the anti-dumping provisions. There is little chance that products dumped from abroad could seriously hurt domestically this industry. Indeed, Ganesan goes so far as to suggest that an open and import dependent economy like Oman should, with rare exceptions, welcome rather than worry about dumping, as such exports from abroad would in effect

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[649] *Challenges And Opportunities Of The New International Trade Agreements (Uruguay Round) For ESCWA Member Countries In Selected Sectors: Crude Oil, Petroleum Products And Petrochemicals,* op. cit., 1998, p 50.

[650] Alavi, R., "Trade Protectionism Under The WTO: The Impact On Muslim Countries", *Journal of Economic Cooperation,* Vol 23, Issue 4, 2002, pp 1-32 at pp 8-10.

[651] Messerlin, Patrick A., "China In The World Trade Organization: Anti-Dumping And Safeguards", *The World Bank Economic Review,* Vol 18, Issue 1, 2004, pp 105-131 at pp 107-108.

constitute a foreign subsidy to Omani consumers which would add "welfare" to the Omani economy. This is not to say that Oman has no need at all for anti-dumping legislation, as without it she would be prevented from protective action even in the occasional cases where it might prove necessary. [652] Thus, as mentioned in chapter four, Oman with the other GCC States have formulated together such a law. However, the more difficult task now is building up the necessary technical expertise in the bureaucracy to administer it.

5.2.2.6 Agreement on Subsidies and Counterveiling Measure (SCM)

Another agreement with important implications for Oman's petrochemicals industry is the Agreement on Subsidies and Countervailing Measures (SCM). The Agreement defines in Article 1 a subsidy as a financial contribution and/or a benefit conferred by a government to its domestic industries to enable a given sector to develop with (temporary) lower production costs and improve its competitiveness. Such assistance may take various forms, including direct transfers, loan guarantees, fiscal investments such as tax credits, provision of goods and services other than general infrastructure, or direct payments to a funding mechanism. [653] Under the SCM Agreement subsidies are classified into three kinds: prohibited (known as the red light category), non actionable (known as the green light category), and in between or actionable (known as the yellow light category). Red light or prohibited subsidies include the previously condemned subsidies contingent on export performance[654], but also import substitution subsidies, i.e. subsidies contingent upon the use of domestic over imported goods.[655]

Red light subsidies are liable to challenge by Member States either in countervailing duty proceedings (including a determination of injury)[656], or in an expedited dispute settlement proceeding.[657] In such cases, it is not necessary to prove injury to the complainant state, but only that the challenged measure is prohibited. If a challenged subsidy is found to fall into this category, it must be withdrawn immediately.

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[652] Ganesan, A. V., op. cit.., 1997, p 29.

[653] Zhang, Z. X. & Assuncao, L., "Domestic Climate Policy And The WTO", *The World Economy,* Vol 27, Issue 3, 2004, pp 359-386 at pp 361-362.

[654] Article 3.1 (a).

[655] Article 3.1 (b).

[656] Article 10-23.

[657] Article 4.

In the event of challenge to a red light subsidy before a dispute panel, the applicable time periods are to be one half of the periods provided under the DSU, which mean that the entire matter can be settled within six months.[658]

At the opposite end of the spectrum are green light or protected subsidies which may not be challenged in the DSU or be subject to countervailing duties under national law. This category, which was introduced in imitation of a similar provision of the European Community, reflects recognition that not all expenditures undertaken by governments that are directly or indirectly related to the production of goods constitute unfair trade practices.[659] The SCM in Article 8 clearly sets out the criteria for three kinds of subsidies in this category: government assistance for research and development in the basic science or pre-competitive phase[660]; government assistance for regional development to protect territories of high unemployment (defined as 10 percent above the national average) or whose per capita income or product is no more than 85 percent of the national average[661]; and one time government assistance to firms of up to 20 percent of the cost of introducing modifications in order to comply with new environmental requirements.[662] Green light subsidies should in theory be notified in advance to the Subsidies Committee and may then be subject to scrutiny[663] However, it appears that even after a challenge is raised, a state may still be able to attempt to establish that the measure in question is of a protected kind.

The intermediate category of yellow light or actionable subsidies is not expressly defined, other than stating that they must meet a test of specificity -de jure or de facto, and that they do not come within the other two categories. The Agreement states that '[n] o Member should cause, through the use of any subsidy..., adverse effects to the interests of other Members....[664] Measures thought to infringe this provision may be challenged under the strengthened dispute settlement mechanism[665] and subjected to countervailing duty proceedings under national law meeting the criteria of Article 6 of GATT as elaborated in the Agreement- i.e. determination of

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[658] Article 4.

[659] Lowenfeld, A. F., *International Economic Law,* Oxford University Press, Oxford, 2002, p 236.

[660] Article 8. 2 (a).

[661] Article 8. 2 (b).

[662] Article 8. 2 (c).

[663] Article 8. 3.

[664] Article 5.

[665] Article 7.

subsidization and injury, and a causal link between them.[666] The SCM Agreement also recognizes three classes of adverse effects: traditional injury to the domestic industry of another Member, where the onus of proof is on the complainant; nullification or impairment of benefits accruing to other Members, where again the burden is on the complainant; and so-called 'dark amber' subsidies, i.e. four kinds of subsidies presumed to cause serious prejudice, with the burden shifted to the respondent state to show that no adverse effects were caused by the challenged measure (Article 5). This latter category includes total subsidization of a product exceeding 5 percent ad valorem; subsidies to cover operating losses sustained by an industry or an enterprise, and direct forgiveness of a debt (Article 6.1). In general, it is the yellow light subsidies that are the subject of ongoing argument.[667]

Subsidization of imports may be contested through the DSU. In the case of both yellow and red light subsidies, a complainant may request consultations with the Member conferring the alleged subsidy under the DSU.[668] If this fails to produce a resolution a dispute settlement panel may be established (Article 4.4 & Article 7.4). WTO panel proceedings on complaints regarding red light subsidies are speedier[669], and involve a lower burden of proof than for yellow light cases[670], reflecting the greater seriousness of such subsidies. Following adoption of a panel report agreeing that a challenged subsidy is actionable, the complaining country is entitled to take appropriate countermeasures. Challenges to green light subsidies are more difficult. Members may contest only the categorization of a subsidy as "green light" (Article 8), but not the subsidy per se, if the country applying the subsidy has previously notified it to the Committee on Subsidies and Countervailing Measures (CSCM) and claimed green light status (Article 8.3). The CSCM includes delegates from all Member countries, and normally meets twice a year (Article 24.1). The complaining Member must present its argument on the green light classification to the Committee, rather than a DSB panel (Article 8.4). If the committee upholds a green light classification, the complaining

[666] Articles 10-23.

[667] Lowenfeld, A. F., 2002, op. cit., p 237.

[668] Article 4 provides for consultations regarding red light subsidies, and Article 7 provides for consultations regarding yellow light subsidies.

[669] For example, the deadline for consultations regarding red light subsidies (Article 4) is 30 days, whereas that for yellow light subsidies is sixty days (Article 7.4). Similarly, the timetable for issue of the panel's report is 90 days and 120 for red light and yellow light subsidies respectively (Article 7.5).

[670] Whereas in yellow light proceedings, the complaining country must establish the requisite adverse effects, in red light proceedings, adverse effects are assumed (Article 5).

Member cannot claim compensation, unless it is able to persuade the Committee that it has suffered "serious adverse effects." This is a stricter condition than for the other subsidy categories (Article 9.1).

Certain provisions of the SCM Agreement have special implications for DCs such as Oman. These include several of the presumptions with respect to 'red light subsidies' and 'dark amber subsidies.' Moreover, other proceedings, both before panels and before investigating authorities in countervailing duty cases, are made subject to greater hurdles (Article 27.7- 27.10) when the target is a DC. In addition, the SCM Agreement has been criticized for allowing subsidies only in areas that are of interest to developed countries, such as the environment, while types of subsidies commonly applied by developing countries in the process of development and industrialization have been prohibited.[671] Overall, however, the SCM Agreement, binding on all Members of the WTO, reflects an effort to bring the DCs -with some leeway- into the global subsidies regime.[672] So what will be the impact of the SCM Agreement on Oman's petrochemicals industry?

The SCM could affect Oman in the area of petrochemicals produced for export and domestic consumption, and could also lead to challenges by the country to other countries' subsidies on competitive products. Some may argue that while the government subsidizes, through the provision of feedstock at discounted prices, petrochemical industries for export as well as for domestic use, such subsidy is not prohibited under the agreement.[673] This argument can be accepted to some extent. The SMC rule applies only to subsidies that are specific in accordance with Article 2. Export contingent subsidies and subsidies contingent upon the use of domestic products over imported products fall into this category.[674] A government energy pricing policy making oil and gas available to domestic exporters at reduced prices might, if the advantage in access to energy products was linked to export performance, be considered as falling within the category of a prohibited export subsidy under the SCM. Oman's pricing policy does not, however, make a specific distinction in relation to exports. All producers of goods for domestic consumption benefit from the same prices. Thus,

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[671] The World Trade Organization, OPEC And The Environment, 1997, op. cit..

[672] It is worth to noting that most DCs were given a five year grace period with respect to the prohibition on subsidies contingent on the use of domestic goods; for the LDCs, the grace period was set at eight years.

[673] Babban, M. A., *Impact Of Qatar's Accession To The WTO On The Manufacturing Industries Sector,* Gulf Organization Industrial Consulting, 1997.

[674] See Part 3 of the SCM.

government assistance cannot be regarded as an export subsidy. Domestic subsidies are not prohibited. However, they may be actionable. A Member whose domestic industry is harmed by subsidized imports may offset the subsidy by imposing a countervailing duty (Article 19).

Another remedy open to a Member believing that a subsidy results in adverse effects, is to bring a dispute settlement complaint before the WTO calling for the withdrawal of a subsidy or removal of adverse effects (Article 7). For such action to be taken, however, the domestic subsidy in question must be specific in the sense of Article 2, which means that it must be specific to an enterprise or industry, or group of enterprises or industries, or a region. This criterion would be met if, for example, the Omani government confined its provision of low-cost energy inputs to certain industries. This, however, is not the case. Access to low-priced energy is available to all enterprises and industries throughout the economy. A question might be raised, nevertheless, whether a subsidy is actionable if it de facto, confers a specific benefit for a particular industry, even if it does not explicitly do so by regulation. Such a question arises in situations in which *de jure* generally available subsidies are bestowed in a way that makes them *de facto* specific.[675] The SCM provides scope for determining *de facto* specificity in Article 2.1 (c): "if notwithstanding any appearance of non-specificity....there are reasons to believe that the subsidy may in fact be specific, other factors may be considered." If, for example, a subsidy programme is used by a limited number of enterprises, or used predominantly by certain enterprises, if disproportionately large amounts of subsidy are granted to certain enterprises, or if discretion has been unfairly exercised by the granting authority in the decision to grant a subsidy, a measure may still be regarded as specific.[676] This provision, however, leaves it for the investigating authority to decide which factors should be considered. The list in Article 2.1 (c) is not comprehensive, nor is it mandatory. This interpretation was provided recently by the panel in Canada Softwood lumber.[677]

Nevertheless, since the EU and Japan, in particular, heavily subsidize their coal industries, there is a strong case for oil-exporting countries such Oman using this issue as leverage to press for more concessions from developed countries, especially regarding the provision of oil and gas to domestic petrochemical industries at

[675] Selivanova, J., "World Trade Organization Rules And Energy Pricing: Russia's Case", *Journal of World Trade,* Vol 38, Issue 4, 2004, pp 559-602 at pp 573-574.

[676] See Article 2.1 (c).

[677] Selivanova, J., 2004, op. cit., p 574.

discounted prices.[678] The EU point of view regarding subsidies provided by the GCC States for their petrochemicals, referred to above, was discussed with officials at the WTO.[679] However, if the EU or any other Member of the WTO wants to raise an anti-subsidy case against petrochemical products from the GCC States, it has to bring the case to the WTO Dispute Settlement Body, as mentioned before, with all the required evidence. Moreover, the procedures have to be on a product by product basis and not for all petrochemical products. This is important, because the salient issues in assessing the impact of a subsidy are the share of each item of petrochemical for each GCC State in the EU's total market in that particular product, and the damage caused by this subsidy to the industry of that product as a whole. Another possibility was put forward by some officials in the WTO which, with careful consideration, may generally help oil-exporting countries to resolve the dilemma of dual-pricing in oil industries. The argument would be for *"oil-producing countries to price the crude oil at cost plus a reasonable profit margin. At this price they could sell oil for domestic consumption as well as for a certain quota of exports (i.e., the latter is exported for a zero tariff). A tariff is then imposed on any quantity of export above this quota which will be called "tariff quota" and is allowed under WTO."*[680] This suggestion, however, needs further scrutiny and clarification before implementation, to avoid any possible loopholes, especially under the circumstances of a weak oil market.

Another matter which has been taken up with the WTO is whether oil producing countries in the region can claim comparative advantage by producing petrochemicals at a lower cost than their competitors. Since the WTO is a legal body and comparative advantage is a policy issue, WTO officials replied that the WTO would not get involved automatically; the onus was on the party concerned to make a strong case.[681] There remains a problem of the position with regard to subsidized feedstock for domestic petrochemicals to encourage the use of domestic petrochemical products over imported ones. However, since Oman's imports of petrochemicals are non-competitive imports, domestic products are not driving imports out of the domestic market. In any case, this

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[678] *Challenges And Opportunities Of The New International Trade Agreements (Uruguay Round) For ESCWA Member Countries In Selected Sectors: Crude Oil, Petroleum Products And Petrochemicals,* 1998, op. cit.., p 45.

[679] The discussion was between an ESCWA representative and officials at WTO headquarters in Geneva in November 1996.

[680] *Challenges And Opportunities Of WTO For Crude Oil, Petroleum Products And Petrochemicals In GCC Member Countries,* op. cit., 2000, p 15.

[681] Ibid, p 45.

problem can be solved by the Sultanate entering into partnership and joint-ventures with influential foreign companies from various countries. Such initiatives are already under way, but they need to be more widespread. Throughout the GCC, foreign petrochemical companies are interested in establishing such ventures in particular to reap the benefit of access to cheap feedstock, which accounts for around 40% of the total cost.[682] In addition, Oman with other GCC States can present such anxieties to be solved through the FTA negotiations with the EU, and through her negotiations with the USA.

5.2.2.7. Agreement on Trade Related Investment Measures (TRIMs)

Concerns for Oman may also arise in relation to trade related investment measures. A trade-related investment measure is any measure imposed by a government (not necessarily, but in practice usually, a developing country) on a foreign investor (often, but not always, a multinational enterprise) as a condition for investing in the host country. Such measures can be positive (incentives) or negative (performance requirements). The former include financial incentives, such as tax holidays or subsidies, to invest within the host country generally, or within specific regions where the government perceives a need to boost the economy. Negative measures could include local equity requirements, licensing requirements, profit remittance restrictions, foreign exchange restrictions, transfer-of-technology requirements, domestic sales requirements, trade-balancing requirements, local-content requirements, export requirements, and import-substitution requirements.

What these many different forms have in common is that their use by states in the area of foreign direct investment (FDI) may distort the flow of international trade in goods and/or the flow of international investment. FDI is eagerly sought by DCs, since multinational enterprises bring with them an array of often intangible assets needed in developing countries, such as technology, management skills, global marketing and distribution channels product design, quality characteristics, brand names, etc.[683] For this reason, such countries have tended in recent years to take measures towards liberalising national trade and investment regimes. With FDI seen by many nations, both developed and developing, as the driver of globalization, the trend is to focus more on liberalization and opening up of domestic markets to foreign investors than on their

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[682] Ibid, p 15.

[683] Agosin, M. R. and Mayer, R., *Foreign Investment In Developing Countries: Does It Crowd In Domestic Investment?*, UNCTAD, Paper Number UNCTAD/OSG/DP/146, 2000 at p 1.

regulation.[684] The role of FDI in the growth process has been extensively discussed; despite the evident advantages, however, concerns continue to be expressed about the impact of FDI on the stability of the macro-economy and the competitive ability of the export sector and the foreign security of the economy. Another concern is that the economy of the host county will suffer sudden inflation if FDI is given excessive encouragement. Inadequate planning may lead to financial crisis, as in the cases of Mexico in 1994, and South East Asia in 1997.[685] Even the more liberal countries have their reservations about certain kinds of FDI. Some analysts see the inclusion of the trade related investment measures in the Uruguay Round package as a reflection of transnational companies' dissatisfaction with the conditions imposed by some countries.[686]

Negative trade-related investment measures are dealt with in the Agreement on Trade Related Investment Measures (TRIMs), which confines its attention to a small number of the worst and most flagrant trade-related investment measures.[687]Article 1 of the TRIMs states that its coverage 'applies to investment measures related to trade in goods only' and therefore it is not applicable to investment incentives and many performance requirements, such as technology transfer and licensing requirements. TRIMs recognizes that the potential of certain investment measures to restrict and distort trade. It therefore, in Article 2, prohibits application of any trade related investment measure that is inconsistent with Article 3, the National Treatment Article of the GATT, or Article 11, the prohibition on quantitative restrictions. An illustrative list is appended, but it contains only broad restatements that local source requirements violate Article 3.4, and that restrictions on importation of products used in local production and restrictions on exportations of goods produced by the enterprise violate Article 11. A significant feature of the Annex, however, is its coverage not only of mandatory requirements and prohibitions enforceable under domestic law, but also of regulations and rulings which provide for incentives that may distort the movement of

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[684] Subedi, S. P., "Foreign Investment And Sustainable Development", in Weiss, F. et al., *International Economic Law With A Human Face*, London, The Hague, 1998, pp 416-417.

[685] Saito, A., "The WTO Agreement And The Relevant Japanese Domestic Laws", *Journal of World Trade,* Vol 30, Issue 3, 1996, pp 87-108 at pp 88-89.

[686] Husain, A., 'Future Developments In The Oil Market', *Al-Hayyat/Business,* Issue 12392, 31 January 1997.

[687] Kennedy, K. C., "A WTO Agreement On Investment: A Solution In Search Of A Problem?", *University of Pennsylvania Journal of International Economic Law,* Vol 24, 2003, pp 77-188 at p 136.

goods. Such incentives are not defined or illustrated, but it seems that any benefit, such as a negotiated tax regime, waiver of zoning regulations, or subsidy that is offered subject to behaviour inconsistent with Article 3.4 or Article 11.1 of the GATT would be prohibited under Article 2 of the TRIMs.[688]

There may be other measures imposed by host states, such as discriminatory taxes, arbitrary licensing requirements, expropriation without compensation, exclusion from stated activities, requirements for local partners, and so on, contravening bilateral treaties or customary international law, that are not trade related within the meaning of Article 3 or 11 of the GATT. Such measures do not come under the TRIMs. Thus the TRIMs is less broad in scope than the TRIPs.[689]

TRIMs already in place at the time of the Agreement were to be notified to the WTO Council on Trade in Goods. Transition periods were allowed for the elimination of prohibited trade related investment measures: two years for developed countries, five for DCs and seven for LDCs. DCs and LDCs may apply to the Council on Trade in Goods for an extension to this period, by showing that they face particular difficulties. Article 9 of the TRIMs provided for a review, within five years from the entry into force of WTO, of the work of the Council on Trade in Goods, and consideration whether the agreement should be complemented with a provision of competitive policy.[690] States view TRIMs as part of a larger debate involving multilateral standards on international investment, investment policy and restrictive business practices.[691] The WTO has not yet dealt with anti-competitive practices, but it is left to each Member to determine the need for such provisions in its national legislation.[692]

Although the TRIMs Agreement was not intended to apply specifically or exclusively to any particular industry, in practice almost all disputed TRIMs have been directly related to the automobile industry. It is not surprising that TRIMs should have significant impact for this industry, since it is one that is generally important to a country's economy and as such subject to heavy governmental regulation. The

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[688] Lowenfeld, A. F., 2002, op. cit., p 96.

[689] Ibid, p 97.

[690] The review was begun by the Council in October 1999, however, until now nothing has been achieved and the discussions will continue in working group, as reference made in the Ministerial Declaration issued at the close of the Cancun Conference in September 2003.

[691] Morrissey, O. and Yogesh, R., "The GATT Agreement On Trade Related Investment: Implications For Developing Countries And Their Relationship With Transnational Corporations", *The Journal of Development Studies,* Vol 31, Issue 5, 1995, pp 702-803 at p 793.

[692] *Challenges And Opportunities Of WTO For Crude Oil, Petroleum Products And Petrochemicals In GCC Member Countries,* op. cit., 2000, pp 16-17.

automobile industry has long been a focus of such impediments to free trade as "import quotas and voluntary restraints to local content rules and other forms of investment incentives and requirements," most of which do not comply with GATT and are not permitted under TRIMs.[693] The conflict between the TRIMs Agreement and the Brazilian and Indonesian automotive industry regulations has been cited as evidence of the failure and inadequacy of the Agreement.[694] On the other hand, the TRIMs has been welcomed for at least placing direct investment issues onto the WTO agenda.[695]

It is potentially distortive trade-related investment measures, rather than lack of market access for foreign capital, that is actually the main problem facing the WTO Membership in relation to FDI. The most common restrictions include measures relating to admission and establishment (e.g. investment notification, approval, or authorization requirements that sometimes depend upon fulfilment of highly subjective criteria, leaving scope for political manipulation); measures relating to ownership and control (e.g. limitations on the nationality or residency of senior managers or Members of the board of directors, local equity requirements, and restrictions on the acquisition of real estate); and measures relating to operations (e.g. currency exchange controls and employment requirements). Whilst some of these negative measures, such as performance requirements tied to the purchase of local versus foreign-source goods, as well as measures that tie the amount of foreign exchange and imported inputs to the value of exports are prohibited by TRIMs, there are others, such as technology transfer requirements, requirement to have local business partners, or foreign exchange controls that prevent the free repatriation of profits, that do not fall within the TRIMs Agreement. Measures of this kind could deter FDI and its associated technology, and could limit competition in local markets. However, in view of countries' need to attract FDI, it may well be that self-interest will encourage them to eliminate such measures voluntarily. Otherwise, potential investors can probably relatively easily find an alternative host country where no such disincentives apply. At the same time, negative trade related investment measures may be negotiable, so even if in theory they would impede FDI

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[693] Quillin, S. S., "The World Trade Organization And Its Protection Of Foreign Direct Investment: The Efficacy Of The Agreement On Trade Related Investment Measures", *Oklahoma City University Law Review,* Vol 28, 2003, pp 875-903 at p 890.

[694] Civello, P., "The TRIMs Agreement: A Failed Attempt At Investment Liberalization", *Minnesota Journal of Global Trade,* Vol 8, 1999, pp 97-126 at p 106.

[695] Burt, E. M., "Developing Countries And The Framework For Negotiations On Foreign Direct Investment In The World Trade Organization", *American University Journal of International Law & Policy,* Vol 12, 1997, pp 1015-1061 at p 1038.

flows, an investor may be able to negotiate around them. One study found that in 83% of the projects covered by negative trade related investment measures, investors claimed that the requirements imposed by the trade related investment measures were no more than practices they would have observed in any event. In the same study, 63% of respondents reported having been compensated for the imposition of the trade related investment measure. [696]

Regarding the potential impact of the provisions of TRIMs for Oman, at first sight it may seem that these provisions and further extension to cover free competition, are likely to limit the scope of Oman for the formulation of national policy objectives in petrochemicals production and investment. However, this is not true as currently, Oman which is seeking to diversify her economy, is undertaking the privatization of large state-owned public utilities including petrochemical industries, to reduce the role of the public sector and promote the growth of the private sector, and the improved economic outlook in Oman is expected to make financial markets in the country more attractive to foreign investment.[697] The memorandum of Oman makes it clear that Oman does not maintain any TRIM, nor does it have any intention to do so.[698] In addition, Oman has several advantages which could be attractive to foreign investors. These include the availability of oil and gas, adequate infrastructure, a stable pegged currency and political stability. The Sultanate has also set up a legal framework to serve and protect the rights of investors. Many economic sectors are ready to receive investment, including converting industries, energy and services. However, the question is, are there any signs that these reforms encourage foreign investors to invest in Oman? There are no specific statistics about foreign investments in petrochemicals as a result of these reforms. However, from the general view of the foreign investors in the Sultanate as whole, Al-Rahabi argues that such signs can be seen from the increase in Oman's contributions to the WTO budget, given that such contributions are usually based on contribution in the world trade. He adds that there are currently a number of projects that are believed to have attracted considerable foreign investment over a very short period. In addition, portfolio foreign investment into Muscat Securities Market also seems to have increased recently. Muscat Security Market statistics show that foreign

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[696] Kennedy, K. C., 2003, op. cit., pp 165-166.

[697] *ESCWA Meeting Discusses Economic Diversification, Conference Examines Ways To Move Away From Oil,* Consulted on 5 March 2004 from, http://www.escwa.org.lb/index.html

[698] *Memorandum On The Foreign Trade Regime Of The Sultanate Of Oman,* WTO Document Number WT/ACC/OMN/2, pp 42.

participation in the capital of general joint stock companies has increased to 18.22% as at end of December 2004 compared with 16.47% as at end of December 2003.[699] Data of the International Investment Report 2004 indicates that FDI into Arab countries increased in 13 countries including the Sultanate which received accrued cumulative flows amounting to US$ 554 million during the period 1995-2003 representing 1.186% of the total flows directed to Arab countries.[700] However, the Sultanate still receives less FDI than most of the other GCC states. According to the same report, the Sultanate came fifth, whereas the Kingdom Of Bahrain received the highest rate of accrued FDI flows among the six states during the same period.[701] To promote the role of foreign investment in economic development, however, additional measures are still needed. As a result of the transitional stage of development, for example, far more funds are needed than is available from local savings in order to qualify for merging in the global economic system. Moreover, given the limited size of the local market, the encouragement of local industries to export is also needed. Foreign investment will help to open new markets for exports and to introduce global information and technology. There is, moreover, a close relationship between the foreign investment situation and the balance of payments. Foreign investments tend to accelerate opportunities and any downward trend of foreign investment adversely affects the balance of payments. This is especially noticeable in periods of low oil price.[702] In spite of the various steps taken by the Sultanate to attract foreign investment, there is still a wide gap between the investments acquired and those needed to attain the level of development targeted in the five-year development plans. This is perhaps an indication that the flow of investment faces difficulties, according to some observers, who argue that foreign investments threaten national interest.[703]

5.2.2.8. Dispute Settlement Understanding (DSU)

Finally, there could be implications for the petrochemical sector in relation to disputes with other WTO Members. The DSU of the WTO is a central element in

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[699] Interview conducted by the researcher with Kalfan Al-Rahabi, the Director of Conferences and Organizations at the Ministry of Commerce and Industry in Oman on 21 March 2005.

[700] International Investment Report 2004, published by the UNCTAD.

[701] Ibid.

[702] Al Balushi, Y. H., "Foreign Direct Investment In Oman: Assessment And Prospects", *Al Markazi,* Vol 26, Special Issue 2001/2002, pp 49-52 at p 51.

[703] Ibid, p 52.

providing security and predictability for the multilateral trading system. Its purpose is to preserve the rights and obligations of Members under agreements covered by this system.[704] From the discussion in this sub-section, it is clear that petrochemicals could become a strong area of contention between exporting and importing countries on issues like protection of the environment, intellectual property rights, subsidies, dumping and others.

5.3. MANUFACTURING INDUSTRIES

The section contains two sub-sections. The first one gives a general overview of the manufacturing industries in Oman, while the second one discusses the impact of WTO Agreements on these industries.

5.3.1. General Overview

The WTO, like its predecessor the GATT, affords Members the opportunity to protect themselves from two types of foreign import competition: competition from aggregate imports that destabilizes their balance of payments (Article 18); and competition that threatens their individual industries, whether as a result of an import surge (Article 21 on temporary safeguards) or of an unfair trade practice (Article 6 on anti-dumping and countervailing duties). Unlike the GATT, however, the WTO limits the duration of such measures to eight years and, moreover, introduces greater transparency. For late industrializers, there are both similarities and differences between GATT and WTO. The main difference from the perspective of such economies is that the latter prohibits subsidies to exports, thereby removing a key developmental tool. Countries that began to industrialize after the Second World War viewed exporting as the cornerstone of efficiency and growth. They made it a condition for operating in protected domestic markets, and encouraged it with subsidies. This policy must now change. On the other hand, the WTO, like GATT, still allows most preferential measures to protect infant industries and to diversify manufacturing industry, and so is

[704]However, delegates from Latin American Countries in an UNCTAD workshop held in Geneva on 3-4 March 1997, complained about the lack of response by some WTO Members to decisions taken by dispute panels. This suggests that the mechanism that obliges Members to comply with the panel decisions is still not strong enough. (Unpublished paper about the above workshop, available from the UNCTAD).

the reciprocal control mechanism that a number of such economies applied to ensure that subsidies to businesses were not given away free.[705]

Oman has viewed manufacturing as the main route towards economic diversification. She has promoted it by the development of large-scale state-owned industry, and by the introduction of policies and procedures to encourage private industry. The latter measures tend to be in the form of soft loans, cheap or free land, and other financial incentives, including tariff protection. The numerous incentives and protective measures for manufacturing should be seen in the context of the Omani government's wish to phase out subsidies, and the fact that Oman has joined the WTO. It must also be recognized that manufacturers in Oman are unable to compete primarily on price. Petroleum and petrochemicals are the only industries where they have advantages in material costs. Advantages in energy costs will be eroded with the removal of subsidies. Labour costs will probably be raised as a result of the ongoing policies of replacement of foreigners by nationals. In these circumstances, it may be wondered how long the Omani government will wish, or be able, to protect manufacturing and, subsequently, whether Oman manufacturing will prove viable in a competitive environment.[706]

As part of her plans for economic diversification, Oman has pursued industrial development in two main dimensions: the development of capital and energy-intensive heavy industries; and the establishment and encouragement of medium and small scale manufacturing industries, producing for domestic consumption, as well as exports within the region. The latter, which have been developed in Oman from the 1980s onwards, include industries producing cement and building materials and equipment, heavy and light metal products, electrical products, textiles, clothing and accessories, food products, furniture, household items and utensils, and many other diverse consumer goods. According to recent statistics, the total number of industrial establishments in Oman increased from 812 in 1997 to 862 in 2001.[707] During the same period, manufacturing industries in Oman (excluding oil and gas), achieved a growth

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[705] Amsden, A. H., *Industrialization Under New WTO Law,* Paper Presented During The UNCTAD Conference (High-Level Round Table On Trade And Development: Directions For The Twenty-First Century), Bangkok 12 February 2000, consulted on 12 May 2004 from, http://www.unctad-10.org/pdfs/ux_tdxrt1d7.en.pdf

[706] *Manufacturing In The GCC: Prospects And Opportunities*, consulted on 12 May 2004 from, http://www.econresearch.com/Datapak/Industry/bb98q3a.html

[707] See Table 5.3, Total number of establishments in the manufacturing sector by industrial activity in Oman.

rate ranging between 4% and 61%, with an annual growth rate of 20%. Growth was significantly boosted in 1999, by the expansion of the non-metallic mining products sector, especially in cement.[708] Monthly statistical data published by the Ministry of National Economy indicate that the GDP of manufacturing industries rose from RO 277.2 million in June 2002 to RO 330.7 million during the same period of 2003, an increase of 19.3%.[709] The sector is expected to grow further in the coming years due to the many large industrial projects that were launched recently, particularly those based on liquefied natural gas. In this regard it is worth mentioning that of 7487 factories in the manufacturing sector in GCC States in 2000, 1402, about 18.7%, were joint ventures with foreign capital contribution, representing investment of 43893 million US Dollars, over half of total investment, which is 83177 million US Dollars.[710] It may be suggested that this growth has been achieved in part by the provision of various subsidies, such as low-cost industrial sites and utilities, tax exemptions and low interest loans, which raises the question whether economic diversification should be pursued by propping up industries that may not be competitive in a free trade environment. On the other hand, medium and small scale industries have the benefit of encouraging domestic entrepreneurship and skills, particularly since they generally do not require sophisticated technology which, in the case of Oman, has required long term technical management and marketing contracts with multinational corporations. To that extent, these smaller industries counteract what may be termed the growth of "foreign enclaves" that has been associated with the heavy industries.[711]

Oman attaches great importance to its manufacturing industry as a cornerstone of its vision for economic development. In consequence, the Omani government has set in motion several projects to boost industrialization. This sector is expected to support the national economy by providing new employment opportunities for the unemployed and for the increasing number of graduates from secondary schools; improving the balance of payments situation through increasing export and import substitution; attracting technology, including modern information technology to bridge the digital

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[708] See Table 5.4, Volume of investment (capital formation in the manufacturing industrial sector) in Oman.

[709] *Monthly Statistical Bulletin,* October 2003, Ministry of National Economy, Oman.

[710] See Table 5.5, Number of factories and size of investment in the factories in which foreign capital contributes as percentage of the total manufacturing sector in the GCC States.

[711] *Economic Diversification In The Oil-Producing Countries: The Case Of The Gulf Cooperation Council Economies,* United Nations, New York, 2001, pp 15-22.

divide; improving domestic and foreign investment; and promoting scientific research which will benefit all economic sectors in the future.

The future vision for the development of the industrial sector in the country is expressed in terms of a number of objectives: adopting a high value-added strategy for the industrial sector; emphasising export development and import substitution in the industrialization strategy; promoting industries that use local raw materials, thus encouraging the development of domestic production and stimulating investment; giving priority to industries that depend on liquefied natural gas as a major input; cooperation with foreign capital; and attainment of a competitive position in international markets.[712]

With these aims in mind, government makes loans available to the industrial projects included in the five-year development plans, with the intention of increasing the contribution of the industrial sector in the GDP from 4% to 15% by 2020. Although this policy was originally intended to apply to projects of all sizes, change has been introduced with regard to large industrial projects based on natural gas which are financed jointly by the government and foreign investors. The reason for this is the adverse effects on the development of the industrial sector in the country, due to the collapse of some industries, and the fears of other companies that they may face financial difficulties due to strong competition or dumping, especially after the accession of Oman to the WTO.[713] For the Sultanate, as a developing country whose industrial sector is still in its infancy, such problems require careful consideration. Omani companies have been given all types of support and incentives, including government loans, for the last thirty years, but according to H.E. Ahmed Makki, the Minister of National Economy and Deputy Chairman of the Council for Financial Affairs, some failed due to a lack of respect for public money and to maladministration. He stated that some of the companies were established on the basis of unrealistic feasibility studies, and claimed that other preoperational expenses were misappropriated with the intention of obtaining government loans and securing other benefits from the purchase of machinery and equipment required for those companies.[714] The question here is why did the government offer loans and other facilities to projects based on

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[712] Al Lawati, H., "Manufacturing Industry: A Major Impetus For Development In The Sultanate", *Al Markazi,* Vol 29, Issue 1, 2004, pp 14-17 at p 14.

[713] Al Lawati, H., "Stumbling Industrial Companies In The Sultanate", *Al Markazi,* Vol 27, Issue 1, 2002, pp 19-22 at p 20.

[714] Ibid, p 20.

inaccurate feasibility studies? It has been suggested by some that inadequate accounting systems, coupled with lack of disclosure and transparency, contributed to this situation, with serious consequences, and calls have been made for the government to intervene in the affairs of these companies in order to protect public money and regain the confidence of investors.

The authorities recognize that to face the challenges ahead, there is a need for change within the manufacturing industry, with reform of policy making and strategic planning mechanisms. Moreover, staff within the authorized organizations must be equipped with the necessary skills in industry management and financing to enable them to perform their leadership and guidance roles effectively. As Oman joins the world trading system, the challenges ahead become clear and it is encouraging that those concerned at both the public and private level are willing to recognize the prevailing weaknesses, and take appropriate steps to remedy the situation.[715]

In the meantime, however, the shortcomings and problems facing the manufacturing industry in Oman, in general, including doubts about the long-term viability of certain industries in the Sultanate, raise concerns about the challenges and opportunities that the WTO Agreements could bring for the manufacturing sector.

5.3.2. The Relevant WTO Agreements And Their Impact

This section is divided into subsections, each considering the impact of the various WTO Agreements on this sector as follows:

5.3.2.1. General Agreement on Tariffs and Trade (GATT)

There are those who assert that, in the areas of market access in WTO, DCs have won significant concessions from developed countries, but close analysis casts doubt on this claim. In support of the current tariffs, developed countries assert that several DCs have made significant gains from the lowering of tariffs by developed countries in the past. Even without reciprocity, these low tariffs have been applicable to the exports of DCs as a result of the MFN principle set out in Article 1 of the GATT, which provides for non-discrimination. They argue, therefore, that it would be unreasonable further to lower tariffs on the products of interest to the DCs, unless DCs make some reciprocal

[715] Al Mandhary, F., "The Manufacturing Sector: Review Of Diagnostic Towards Improving The Health Of The Sector", *Al Markazi,* Vol 26, Issue 4, 2001, pp 6-10 at p 10.

commitment further to reduce their own tariffs.[716] Given the centrality of market access for the WTO, the "market access" effect of national antitrust can be seen as a persuasive argument for inclusion of competition disciplines into the WTO. Fox, for example, proposes that WTO Members should be required to have a competition law that ensures market access is not "unreasonably impaired." A theoretical foundation for such a view is provided by Bagwell and Staigers' argument that it is in countries' interest to seek compensation for, or to "retaliate" against, actions by trading partners that have a negative impact on a previously agreed market access arrangement.[717]

The term market access is a broad one encompassing a range of issues around the entry of goods in a country. It includes measures like tariff and direct quantitative restrictions on imports. A country is entitled to impose a tariff, i.e., customs duty on imports. The main reason for doing so, in developed countries, is to provide protection to the domestic industry. Tariffs are not significant contributors to government revenue, nor an important tool for allocation of foreign exchange. The latter roles of tariffs are, however, important to DCs, which encourages them to maintain their tariffs at quite high levels. Members of the WTO enter into commitments regarding the highest levels of tariffs on specific products, called the bound levels; they agree not to raise tariffs beyond these levels. Each country's bound levels of tariffs are recorded in a schedule and constitute an obligation from which it cannot derogate except under certain, very specific circumstances. Any proposed increase in tariff beyond the bound level must be negotiated with other countries which have either the initial negotiating right or principal supplying interest in that product.

In general terms, the GATT/WTO offers a forum within which its Member governments may negotiate over market access, viewed in terms of competitive relationship between imported and domestic products. It has been common in GATT/WTO negotiations for governments to perceive any lowering of tariffs as a concession which they expect to be offset by a reciprocal tariff concession by a trading partner. However, governments are not forced to adhere rigidly to their negotiated market access levels. For example, as indicated above, they may renegotiate their market access commitments, subject to the conditions set out in Article 28 of the GATT. These provide that a government wishing to modify or withdraw a tariff concession

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[716] Bhagirath, L. D., *The WTO Agreements Deficiencies, Imbalances And Required Changes,* Zed Books, London, 1998, pp 30-31.

[717] Hoekman, B. & Mavroidis, P. C., "Economic Development, Competition Policy And The World Trade Organization", *Journal of World Trade,* Vol 37, Issue 1, 2003, pp 1-27 at p 9.

must either compensate the effect by offering tariff concessions on other products, or else accept equivalent withdrawals of concessions by the trading partners concerned. In other words, the focus is not so much on maintaining a specific level of market access commitments as preserving the balance of market access commitments between states. Thus, in general, GATT Articles can be seen as facilitating negotiations towards beneficial increases in market access levels, and providing a degree of protection for negotiated market access commitments, against unilateral governmental infringement.[718] However, liberalization of market access brings costs as well as opportunities. Trade negotiations need to take account of the possible costs of tariff concessions. For instance: (1) some industries would have to bear the cost of adjustment with losses in price advantage; (2) tariff concessions would result in a reduction of revenue; (3) tariff concessions may result in worsening of the current account deficit. On the other hand, tariff reduction may lead to prices and, hence, reduction of input costs in export industries, which may offset any negative impact on the balance of payments arising from tariff concessions. While the overall effect of tariff concessions may be unclear, some industries are likely to suffer more than others as a result of tariff concessions; indeed, there would be a differential impact even among firms within an industry.[719]

Apart from tariffs, another way of restraining imports is through the imposition of quotas and restrictions on imports of certain products. Several developed countries have often introduced such restraints, albeit without any specific authorisation. However, these measures have not been explicitly declared as contravening GATT principles- indeed, they have never formally been subjected to legal scrutiny. Controls of this kind have therefore customarily been termed grey area measures, since they are neither authorised nor specifically prohibited. The removal of quantitative restrictions (Article 11 of the GATT), is a highly significant development that especially benefits the DCs. Equally significant, states undertake a commitment not to employ such restraints in future.[720]

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[718] Bagwell, K., Mavroidis, P.C. & Staiger, R.W., "It's A Question Of Market Access", *The American Journal of International Law,* Vol 96, Issue 1, 202, pp 56-76 at p 59.

[719] Mohmood, Amir, "WTO And Market Access In Non-Agricultural Products: Issue And Options For Developing Countries", *Journal of American Academy Of Business,* Vol 6, Issue 1, 2005, pp 1-11 at p 8.

[720] Bhagirath, L D., 1998, op. cit., pp 25-27.

It can be suggested that the extent of any gains for Oman as a result of WTO Membership will depend on whether Oman's export capacity is sufficient to allow her to exploit the bound market access opportunities offered by the multilateral trading system of the WTO. At present, given the limited supply capacity of Oman's manufactured exports, the scope for benefiting from these market access opportunities is limited. In time, however, as with increase in the range of Omani manufactured products, Oman could gain further advantages from the bound market access opportunities available in the markets of both developed countries and DCs. Whilst Oman's product range is still limited, she has increased her non-oil exports of Omani origin in recent years, and Dr Al-Riyami sees this as in large part due to market access opportunities derived from WTO Membership.[721] At the domestic level, Oman's manufacturing industry is unlikely to be affected by the tariff reductions, as Oman did not have protective tariffs in place in the first place, before accession. Indeed, the tariffs to which Oman agreed on joining the WTO are higher than those the GCC States have agreed to practise after establishing a customs union, for goods and merchandise imported from outside the union, which are confined to 5% except for some products such as pork, alcohol and tobacco, on which higher tariffs are imposed for religious and health reasons.[722] This means that Oman will not be contravening the GATT rules. However, as explained in Chapter Four, this also means that Oman will not be able to benefit from the success in binding duties on a large majority of industrial products at rates, higher than its applied rates which have been replaced by the GCC Customs Union bound rates.

Generally, there are no barriers upon Oman imports. In addition, there is no import and export licensing for most non petroleum industries' merchandise, although in practice, companies that import goods must be registered with the Ministry of Commerce and Industry. Importation of certain classes of goods, such as alcohol, firearms, narcotics, and explosives requires a special licence, and media imports are subject to censorship, whereas there is no licence for export.[723]

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[721] Al-Riyami, S., "Process And Implications Of Oman's Accession To The WTO", *Al Markazi,* Vol 30, Issue 1, 2005, pp 18-25 at p 25.

[722] For more understanding of the case of pork and alcohol see Sub-section 4.4.2.1.1 of Chapter Four of this thesis.

[723] *Memorandum On The Foreign Trade Regime Of The Sultanate Of Oman,* WTO Document Number WT/ACC/OMN/2, pp 49.

The influence of the GATT rules in the field of tariff and non-tariff barriers upon the manufacturing sector can be analysed from both sides, exports and imports. The reduction of tariffs and consequent lowering of price in the importing country, and facilitation of non tariff procedures from the Member countries, will contribute to open the markets to Oman export industries. Furthermore, liberalized world trade will increase the global income, which in turn will lead to increased demand upon all kinds of merchandise, including those produced in Oman. Therefore, the competition between the exporting countries to enter the markets of importing countries generally, and hence, the capability of Oman to benefit from the chance to enter these markets, will depend on improvement in her industries in various respects: quality, amount and price. She needs to compete with the domestic merchandise in the importing countries, and simultaneously with merchandise exported from other countries, especially from the countries of South East Asia, which have strong competitive capability. Otherwise, the benefit from accession to the WTO in this field will be very limited. On the imports side, it is not expected that Oman will reduce the protection levels because she is already practising a free policy, mostly in accord with WTO Agreements. In this regard, it can be argued that the industrial merchandise imported to Oman will not have much influence and the competitive position of the domestic industries with foreign industries will continue without any change in the short and medium term. In the long term, the influence on the domestic industries will depend on continued protection policies and the amount of improvement made by these industries.[724]

5.3.2.2. Agreement on Textiles and Clothing (ATC)

Another area concerning the manufacturing sector in Oman is the effect on the clothing industry resulting from the termination of the Agreement on Textiles and Clothing (ATC), whose purpose was to dismantle the Multi-Fibre Arrangements (MFA) followed by certain industrialised countries and to integrate the textiles and clothing sector into GATT rules and disciplines. The Agreement contained a number of principles, the most important of which are related to integration of textiles and clothing trade with GATT rules (integration principle), and free trade in this merchandise (liberalization principle). In line with the integration principle, the Member countries in

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[724] *Derasah Hawla Kyfeyat Hemayet Al Montajat Al Senaeyah That Al Mnsha Al Watany Fe Deal Etefaqyat Mondamete Al Tegarah Al Almeyah Wa Al Motagyerat Al Dawlyah. [Study About How Could Protect The Industrial Production Of National Commodities In The Shadow Of WTO And World Changes,* Gulf Organization For Industrial Consulting, 1999, pp 15-16.

the MFA removed the prescribed quotas set in relation to textiles and clothing imports from the developing countries during 10 years from the establishing of the WTO. This was according to the following percentages: 16% during the first three years; 17% during the following four years, and 49% during the last three years,[725] thus, implemental to Article 9, the ATC and all restrictions thereunder terminated on January 1, 2005. Since the ten-year transition period of ATC implementation has expired, that trade in textile and clothing products is no longer subject to quotas under a special regime outside normal WTO/GATT rules; the general rules and disciplines of the main Trade Agreement now apply. However, the effect of this will differ from one state to another.[726] While the world's large producing countries, namely China, India, Brazil and Argentina, stand to benefit from their comparative advantage in the textiles sector, many other developing countries like Oman that benefited from quota rents under the former arrangement are likely to suffer by comparison. From here the question arising is what some of the implications are likely to be for the textiles and clothing industry in Oman?

Unquestionably, Oman's entry into the textiles and clothing industry was facilitated by the quota system imposed on the sub-continent. As quota ceilings in the manufacturing countries were reached, many of the manufacturers sought to establish industries in quota-free countries, and Oman was one such. By the time tariffs and quotas were introduced in these countries too, prompting investors to relocate, this industry was well-established.[727]

In a country where the industry was established to utilize the quota advantage, it was expected that the end of the ATC regime would bring the immediate loss of many players. Thus, it came as no surprise that most of the factories exited the scene, since they were set up by short term investors taking the opportunity of quota demand. According to Al-Saheb, most of the textiles and clothing factories closed, so now only 7 out of 35 factories are operational and as a result, the manpower rate in manufacturing in Oman dropped in volume. He adds that as most of these factories were jointly owned by Omanis (51%) and their foreign partners (49%), with the closure of these factories

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[725] Smeets, M., "Main Features Of The Uruguay Round Agreement On Textiles And Clothing, And Implications For The Trading System", *Journal of World Trade,* Vol 29, Issue 5, 1995, pp 97-108 at pp 98-99.

[726] For more information in this respect see generally: Myeong Hwan, K., *The WTO Does Promote Trade: Aggregate And Specific Sector Level Analysis,* PhD, The Claremont Graduate University, 2006.

[727] Al-Mandhari, F., "The Garment Industry Beyond The Quota Era", *Al-Markazi,* Vol 28, Issue 1, 2003, pp 24-29 at pp 25-26.

the foreign partners escaped and the Omani partners were left to pay the debts, and many were imprisoned. In addition, many cases are brought before the courts involving workers who suffered from the closure of these factories. Thus, the government now is trying to help this industry by negotiations with the USA to abolish or reduce the tariffs in this field through the FTA.[728] However, in the Omani textiles and clothing industry, with many units not sufficiently efficient or competitive by global standards, this will require a complete change of equipment and designs, as well as experience for the workers. Al Saheb emphasises that what Oman is trying to get from the negotiations with the USA is a transition period or complete exemption. As a result of these efforts, the Omani textiles and clothing industry should take advantage of its infrastructure and cheap energy resources to improve production to enable it to continue under a competitive environment. For example, it can benefit from the products of the big petrochemicals projects, such as the synthetic fibres.

5.3.2.3. Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs)

Another area in which Oman's manufacturing industry may be affected by accession to the WTO is with regard to intellectual property rights. The term "property rights" can be used to refer broadly to two subsidiary types of rights, possessory rights and rights of transfer. What are often called possessory rights allow individuals to use things and prevent others from using them, although some writers include only the former in this category. The other type of right associated with the notion of property rights is the right to transfer a possessory right, that is, the option of a person who holds a possessory right to give it to another person (usually, in exchange for something).[729] The inclusion of intellectual property rights laws within the WTO package led to some controversy. Some view the 1995 TRIPs as conducive to trade and competition. The Agreement recognises that anti-competitive practices involving the use of intellectual property rights may be detrimental to trade. It seeks to avoid this by allowing WTO Members to prohibit licensing practices or conditions that may constitute an abuse of intellectual property. If a Member does not take adequate measures to tackle such practices, its trading partners can call for consultations to resolve the issue. Although

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[728] Interview conducted by the researcher with Mr Samee Al-Saheb, the Vice Director of Industrial Development Planning Department in Ministry of Commerce and Industry in Oman on 17 March 2005.

[729] Shavell, S., *Foundation Of Economic Analysis Of Law,* The Belknap Press Of Harvard University Press, London, 2004, pp 9-10.

the TRIPs does not prescribe a particular level of enforcement, it provides for the enforcement measures taken by Members to be challenged by other Members and to be subject to WTO review.[730] However, others criticise the agreement for focusing on protection of the rights of the intellectual property rights holders, while almost totally neglecting the rights of the users of intellectual property![731] The TRIPs Agreement covers a number of issues and goes far beyond the simple debate between regulation and deregulation. Moreover, there are strengths and weaknesses to the arguments both for and against regulation. Free trade alone may not be sufficient to ensure the optimisation of intellectual property creation, and greater access and better distribution. Without socially accountable multilateral governance, free trade conditions may degenerate and exacerbate concentration tendencies and oligopolistic conduct, thereby preventing realisation of the expected advantages.[732]

The TRIPs Agreement contains three main sections--standards, enforcement, and dispute settlement. Parts 1 and 2 of the TRIPs Agreement set out the basic standards of intellectual property protection and provide for three fundamental commitments--minimum standards, national treatment, and most-favoured nation treatment. The section on minimum standards defines what is protected under the agreement, what rights are conferred, and the minimum duration of protection. Although these standards are to some extent based on the principles and provisions contained in the Berne and Paris Conventions, the TRIPs Agreement contains several additional obligations to fill gaps or remedy deficiencies in the other conventions. The national treatment provisions of the WIPO govern the TRIPs Agreement, where "each Member shall accord to the nationals of other Members treatment no less favourable than it accords to its own nationals with regard to the protection of intellectual property..."[733] This idea is linked to the concept of most-favoured nation ("MFN"). Article 4 of Part I states "with regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members."[734] Following

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[730] Dr Marsden, P., *A Competition Policy For The WTO,* Cameron May, London, 2003, p 10.

[731] Bhagirath, Lal Das., *The WTO Agreements: Deficiencies, Imbalances And Required Changes,* Zed Books, London, 1998, p 121.

[732] Rasiah, R., "TRIPs And Capability Building In Developing Economies: Critical Issues", *Journal of Contemporary Asia,* Vol 33, Issue 3, 2003, pp 338-362 at p 358.

[733] Article 3 of TRIPs.

[734] Article 4 of TRIPs.

these general provisions come Articles containing detailed regulations, many of which are of concern only to specialists in the law of patents, trademarks, copyright, and related fields. The Agreement covers virtually all aspects of intellectual property: copyright (Article 9-14); trademarks (Articles 15-21); geographical indications (Articles 22-24); industrial designs (Articles 25-26); patents (Articles 27-34); layout designs of integrated circuits (Article 35-38); and trade secrets (Article 39). In relation to each of these, Members are obliged to provide protection against use of the property by unauthorized persons.

Part 3 of the TRIPs Agreement contains provisions related to procedures for enforcing the rights conferred in the agreement.[735] These can be divided into internal and external enforcement mechanisms. At the internal level, enforcement depends mainly on private actions by requiring Member countries to ensure the availability, in their national laws, of enforcement procedures, as specified in the Agreement. Section 2 of Part 3 of the TRIPs Agreement, entitled Civil and Administrative Procedures and Remedies, is concerned with the standards of evidence, injunctions, damages, and other remedies required under national law.[736] The procedures will vary according to each country's administrative and judicial system, but they must be fair and equitable, not unduly complex or costly, and must not be excessively prolonged. Decisions in such cases are to be in writing, reasoned, and subject to judicial review (Articles 42-49). Although the preamble to the agreement designates intellectual property rights as private rights, it appears that breach by a Member of these broad procedural requirements could result in referral for state-to-state dispute settlement. States must provide adequate remedies to rights holders, including injunctions against the sale or use of infringing products, monetary damages, and forfeiture of infringing goods (Articles 44-46, 50). As regards external enforcement mechanisms, the agreement permits the use of trade sanctions to force compliance with its provisions. How effective such measures will be, however, will depend on the legitimacy of the DSU established by the WTO, which the Agreement, in contrast to the Berne and Paris Conventions, adopted.[737] The new DSU mechanism differs from its predecessor in guaranteeing a right to adopt the dispute panel's decision, unless there is a consensus to the contrary. Entitlement to refer the dispute panel's decision on the violation to review by an appeal

[735] Article 41 of TRIPs.

[736] Articles 42-49 of TRIPs.

[737] See Article 64 of TRIPs.

body is also provided. A measure found to be inconsistent must be changed or the offender must negotiate a compensatory settlement within a given timeframe. If it fails to do so, the WTO may choose to retaliate by withholding trade benefits in the same sector.[738]

Where TRIPs enforcement may be problematic for Oman is in its reliance on the judiciary; many of the disputes regarding the TRIPs concern enforcement at the national level. However, a strong intellectual property system needs more than a set of intellectual property laws and a body to enforce them. It requires a judiciary that has familiarity, technical knowledge, and a cultural inclination towards strong intellectual property rights, in order to be truly successful, and the judiciary in Oman has not yet reached this point. Furthermore, judicial enforcement will also be affected by domestic legislation enacted to implement TRIPs obligations. Many authors and officials have pointed to ambiguities in the TRIPs enforcement criteria and have anticipated difficulties with enforcement.[739]

The TRIPs imposes an obligation on Member countries to ensure that enforcement procedures as specified in the agreement are provided under national laws, especially in the case of intellectual property rights covered under the agreement. The Agreement also sets out requirements that such enforcement procedures should be administered by an expeditious process[740], decisions should be in writing[741] and decisions should be subject to judicial or administrative review.[742] The breadth of these requirements, however, is limited by the lack of requirement for special enforcement structures or processes.[743] It remains ambiguous, under Article 41, exactly what internal measures DCs must undertake to meet their TRIPs obligation. For example, in the absence of a judicial system capable of meeting the "due process" requirements of the TRIPs,[744] it is questionable whether the country concerned may rely on the built-in

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[738] Su, E., "Comment: The Winners And The Losers : The Agreement On Trade Related Aspects Of Intellectual Property Rights And Its Effects On Developing Countries", *Houston Journal of International Law,* Vol 23, 2000, pp 169-218 at pp 188-191.

[739] Kimberly, A.C., "Argentina's Emerging Standard Of Intellectual Property Protection: A Case Study Of The Underlying Conflicts Between Developing Countries, TRIPs Standards, And The United States", *Case Western Reserve Journal of International Law,* Vol 33, 2001, pp 191-219 at p 219.

[740] Article 41 (2).

[741] Article 41 (3).

[742] Article 41 (4).

[743] Article 41 (5).

[744] Article 42.

limitation to Article 41, which provides that there is no obligation to put in place a distinct judicial system for the enforcement of intellectual property rights. It could perhaps be suggested that Members are required under the Agreement to ensure that the existing judicial system is adapted to facilitate TRIPs Agreement enforcement. However, it is still unclear how far a developing country must go to satisfy Articles 41(2), (3), (4), and (5) of the Agreement. This is a particularly vexed question for DCs, which often have insufficient resources to devote to extensive judicial processes. A possible interpretation, therefore, given that Article 41 (5) clearly states that Members are not expected to expend additional sums of money for the enforcement of intellectual property rights under the TRIPs Agreement, is that all that is required of developing country Members is a "good faith" effort to comply with the enforcement provisions.[745]

Another problematic issue concerns the types of remedies that the TRIPs Agreement provision envisages.[746] They include a number of measures, such as injunctions or criminal penalties[747] that are foreign to the subject matter of real property law. This will pose a difficulty for their introduction into existing legal doctrines in these countries. In addition, the provisions for criminalizing counterfeiting or copyright piracy will inevitably face resistance in countries where cultural models have a strong hold in the economic and legal structure. Indeed, it may be doubted whether the broader legal and political framework existing in these countries is compatible with such sanctions. Finally, there remains the question of invoking the TRIPs Agreement before a national court. Enforcement of the TRIPs Agreement provisions relies on a certain level of knowledge within the judiciary and practising bar about intellectual property rights. This knowledge must be acquired, consolidated and implemented within a period of ten years - the deadline set for enforcement of all rights - although it has taken more than a century for these rights to be formulated, adapted, and assimilated more by developed countries. The latter also had the advantage of pre-existing legal, social, and economic frameworks supportive of such rights. It may be questioned, therefore, whether DCs are being subjected to unrealistic demands.[748]

It is well known that the intellectual property laws were introduced through the huge power of the developed industry countries to protect their objectives. Strong

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[745] Gana, P. L., 1996, op. cit., pp 770.

[746] Articles 44-46.

[747] Article 61.

[748] Gana, P. L., 1996, op. cit., pp 771.

criticism came from the United Nations Development Programme, which in its Human Development Report of 1999 argued that the negotiations in the Agreement on Trade Related Aspects of Intellectual Property Rights had contained little participation of developing countries. In addition, the negotiations took place before most of the governments and most people were aware of the social and economic influence of patents. The Report clarified that around 97% of patents around the world are recorded in the industrial countries. For example, of 74,023,000 recorded in the World Intellectual Property Organization (WIPO) in 1999, 29,463,000 (39.8%) were for the USA and 10,897,000(14.7%) were for Germany, compared to only 61 for India and 56 for Turkey. Sudan was the only Arab country represented, with only 3 patents. Another report from *Business Week Magazine* (6 August 2001) points out that of the hundred most expensive trade marks, western brands predominate, especially American.[749] Basically, countries of the world can be classified into three categories as regards their "production and consumption of intellectual property products." First, some developed countries such as the United States basically are net sellers and exporters of intellectual property. Their interest is in extending markets for their exported technology, while at the same time broadening worldwide protection. The second group are those developed or newly developed countries "with the resources and industries to become net sellers and exporters." These countries seek broad worldwide protection in addition to increased domestic protection in order to encourage local industry to develop intellectual property and enable it to compete more effectively at home and abroad. The final group are net users and importers of intellectual property, newly developed countries which seek to provide protection, at least within their own borders.[750] Oman falls into the latter category. The reason for the low level or lack of patenting in Oman by her nationals and residents can be explained on a number of grounds, including non-use of the system by university and local research institutions. She has, nevertheless, as explained in Chapter Four, taken clear and concrete measures to strengthen her intellectual property system. The obligation incurred under the TRIPs has induced Oman to introduce or strengthen legislation in order to conform to international standards.

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[749] Al Jahwari, M., Echkalate Tatbeek Qwaneen Hemayat Al Melkya Al Fekreyah Fee Oman [Effecuation Problems Of Intellectual Property Laws In Oman], *Al Markazi*, Vol 26, Issue 5, 2001, pp 23-27 at p 25.

[750] Smith, M.W., "Bringing Developing Countries' Intellectual Property Laws To TRIPs Standards: Hurdles And Pitfalls Facing Vietnam's Efforts To Normalize An Intellectual Property Regime", *Case Western Reserve Journal of International Law,* Vol 31, Issue 1, 1999, pp 211-252, at p 212.

As Oman is a net user and importer of intellectual property, the most significant impact of the TRIPs for the manufacturing industries in Oman will be on the introduction of patents for products. In this regard, the TRIPs requires that protection be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. Subject to exceptions on various grounds and grace periods for developing countries, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced (Article 27.1). Moreover, the agreement specifies the rights that must be conferred in connection with a patent, both with respect to products and with respect to processes (Article 28), and stipulates that patents should be valid for at least twenty years counted from the date of filing (Article 33). Where the patent is for a process, the judicial authorities of Member States may place the onus on an alleged infringer to prove that its product was made with a process different from the patented process and that if he cannot do so, the challenged product shall be regarded as having been made by the patented process (Article 34). The criticism can be raised that these requirements restrict Members' freedom in refining their patent system to match their level of techno-economic development. Before the TRIPs, Oman could exclude from patenting certain inventions, such as food products, impose limitations on the exclusive right of the patentee, for example by excluding import monopoly from the exclusive right of the patent holder; or make patent duration flexible, such as by linking the period of validity of a patent to the domestic exploitation of the protected invention etc.[751] However, the impact of introducing product patents will vary significantly, depending on the length of transitional period actually applied[752] and the date of granting and the scope of the exclusive marketing rights. Whilst the implications of patent protection for technology transfer are addressed in the literature, there is little hard evidence. It is arguable that intellectual property rights protection constitutes a pre-condition for product innovators to license their technology. However, the introduction of such protection would increase net technology flows, since the patent holder may prefer, in

[751] Getachew, M., *The Impact Of The International Patent System On Developing Countries,* WIPO Document NO. A/39/13 Add.1 on 15 August 2003, p 33.

[752] The transitional period for Oman as a developing country expired on 1st January 2000. However, the WTO has extended the deadline for LDCs until 1st January 2006, to ensure that her domestic legislation on the patent protection of pharmaceuticals complies with the TRIPs agreement. For more information in this context, see Josephberg, K. et al., "WTO Members Approve TRIPs Extension For Developing Countries", *Intellectual Property & Technology Law Journal,* Vol 15, Issue 2, 2003, pp 20-22.

most cases, to exploit the invention directly through exports or subsidiaries. It should also be noted that as scientific knowledge increasingly has economic implications, there is increased pressure to limit the free dissemination of research results and to constrain the traditional openness of university laboratories where most basic research is performed in western countries, thereby making access to scientific knowledge more difficult.[753]

Another of the anticipated direct and immediate influences of the TRIPs is an increase in the cost of manufacturing industries which depend on the use, production or reproduction of other people's intellectual works and patents, for example, pharmaceuticals and journalism. Such cost increases could be an impediment to improving these industries in Oman in the short and medium term. However, in the medium and long term, the agreement will give the country a chance to face one of its big problems, namely, the importing of non-original merchandise in huge amounts, especially from South East Asia. For example, after Oman issued the required intellectual property laws, on 1st July 1999, work started to stop current non-original computer programmes, and the Ministry of Commerce and Industry has undertaken extensive operations in this regard. According to a report of the trade programmes production union in the Middle East, piracy in Oman fell from 88% in 1999 to 78% in 2000, and as a result, financial losses have been reduced to 6.5 million US dollars, compared with 9.8 million US dollars in 1999. However, it can still be argued that there is no benefit to Oman from implementation of these laws, since Oman is a net importer in this field. As a result, consumers turn to buy these kinds of products, meaning that a huge amount of national revenue will be transferred outside the country.[754] Nevertheless, some argue that the agreement will serve to attract foreign investors who are reluctant to enter the markets of countries which do not protect intellectual property.[755] It is not easy to assess the likely impact of the implementation of TRIPs in terms of FDI, technology transfer and global innovation. There are few studies on the relationship between FDI and intellectual property, and their findings are inconclusive. Nogues, discussing this

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[753] *Challenges And Opportunities Of The New International Trade Agreements (Uruguay Round) For ESCWA Member Countries In Selected Sectors: Implications Of WTO/TRIPs For Technology Transfer In The Pharmaceutical Industry,* Economic And Social Commission For Western Asia, United Nations, New York, 1998, pp 19-22.

[754] Al Jahwari, M., op. cit., 2001, p 26.

[755] *Selselat Al GATT Wa Enecasateha Ala Ectesadeyat Dowel Majles Altawon Al Kalejee, 1 Senaate Altahwelyah [GATT And Its Effect Upon GCC States, 1 Manufacturing Industries],* op. cit., 1997, pp 31-32.

issue, found no definite reason to expect an increase in FDI in general. Moreover, there is evidence that intellectual property rights are more influential on FDI involving research and development than on FDI concerned only with manufacturing, or sales and distribution.[756]

In addition to the above, the implementation of the TRIPs, among others, will involve the amendment of existing legislations, the adoption of new ones, the strengthening of IPR administration and building up of enforcement capacity. These will entail a huge financial cost on Oman. It has also to be noted that the above estimates do not include training costs, which would be high, given that trained professionals are extremely rare.

Basically, it can be said that if the domestic industries in Oman can change the local positions and increase their productive capability, they could overcome the negative influence of the agreement in the short and medium term. In this context, Oman, in her effort to diversify the economic base, needs to develop her industries through specialized research and development centres. The manner of attaining that goal will vary from one industry to another, according to the local needs and convictions. However, in the modern industrial climate, knowledge-based industries are the key to success in the international market, and likely candidates for foreign investment. An in-depth review of the technology-intensive, knowledge-based industries (e.g. pharmaceuticals, telecoms and information technologies, electronics, computers, semi-conductors, etc...), clearly shows the interlinks between those industries, new products and research and developing activities. However, for example, in the GCC States the percentage of research and developing expenditure has been estimated at only 0.2% of the GDP in 1999, which amounted to U$500 million, compared to 3% in the developed countries. The contrast is highlighted by the figures published by the *Herald Tribune* of February 2000, which show that 10 major global companies expended a total of $32.16 billion on research and development in 1998.[757] The best approach for Oman may be to have a common intellectual property protection system for all the GCC States, with joint offices for particular intellectual property being located in different countries, such as the joint office for patents located in Riyadh. In turn, these joint offices can establish arrangements with the European Patent Office, WIPO, etc. so that intellectual property

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[756] *Challenges And Opportunities Of The New International Trade Agreements (Uruguay Round) For ESCWA Member Countries In Selected Sectors: Implications Of WTO/TRIPs For Technology Transfer In The Pharmaceutical Industry,* op. cit., 1998, p 21.

[757] Gulf Organization Industrial Consulting, *Monthly Bulletin,* Vol 2, Issue 14, 2001, pp 1-2.

rights granted by those institutions, which have considerable experience and expertise in the field of intellectual property protection, can be automatically recognised in the Gulf States under stated conditions.

The most difficult part of any intellectual property protection regime is the technical examination of the applications and the technical determination whether the application qualifies for the grant of an intellectual property right. This will require enormous technical knowledge and manpower, which Oman, at this stage, may be unable to provide. Oman, therefore, would be well advised to cooperate in choosing the foreign institutions whose grant/rejection of intellectual property rights would be recognised by, and would have validity in, the GCC States as well.[758]In this context, the participants in the Conference of Intellectual Property Protection in the GCC, concluded in Manama (Bahrain) on 21st April 2004, recommended the following points to the GCC governments:

Extending jurisdiction on IP issues to transit goods and free trade zones; Initiating unified legislation in the GCC and coordination among the governments; Educating the public/consumers about risks and dangers of using counterfeit products; Highlighting to people that taking or buying pirated goods is theft; Creating and fine tuning procedures and mechanisms for enforcement and implementation; Providing proper and sufficient training to enforcement authorities and customs officials; Evaluating penalization for intellectual property infringement and enforcement; Working on educating judges and prosecutors about IP protection.[759]

5.2.3.4. Agreement on Techinical Barriers to Trade (TBT)

In addition to intellectual property issues, an area in which the manufacturing industry could be affected by WTO accession is standard setting. Standards and standardization touch all aspects of economic and social activities of human beings. It is true to some extent that standards are the best guarantee towards removal of non-tariff trade barriers, and are the most effective instruments for fast industrial development, resource conservation, technology transfer, skills up gradation, environmental protection, safety and protection of health of the populace at large, consumer protection and welfare of society. All WTO Members are bound by the TBT, whereby they are

[758] Ganesan, A. V., op. cit., 1997, p 35.

[759] Intellectual Property Experts Call For Unified IP Legislation In The GCC, *AGIP Bulletin,* May 2004, p 5

required to ensure that technical regulations, voluntary standards and conformity assessment procedures do not create unnecessary obstacles to trade (Article 2.2). In addition, Annex 3 of the Agreement contains a Code of Good Practice for the Preparation, Adoption and Application of Standards. Article 4 obliges all central government standardizing bodies in Member countries to adhere to this Code. WTO Members must also take reasonable steps to ensure compliance with the code by their subnational and regional standardizing bodies, whether governmental or non-governmental.[760] In other words, TBT allows for the use of product standards - including conformity-assessment procedures -mandated by law and enforced by regulation, and for voluntary or industry standards such as often comprise an industry 'code of practice'. The Agreement stipulates that mandatory product standards should not be such as to constitute an unnecessary impediment to trade, they should not be used unnecessarily, and they should be set in light of scientific assessments of risk. Mandatory product standards based on internationally agreed standards are not seen as creating unnecessary barriers to trade. Where particular geographical, climatic or other factors prevent Member countries from basing their mandatory regulations on international regulations, they must make available a draft of these regulations for comment by other WTO Members, and such comments must be taken into account in the finalization of the standards. Other provisions require conformity assessments to be conducted on a non-discriminatory basis and that the burden on trade be minimized. Voluntary standards may also be a source of obstacles to international trade if there is wide variation between countries. The Agreement on TBT calls on Members to exert every effort to require national standardizing bodies to use the same principles and rules in preparing and applying voluntary standards as are laid down for mandatory standards.[761] In order to achieve its objectives, the TBT sets out a number of legitimate objectives for which mandatory technical requirements may be developed. It also lays down the principles governing technical requirements and conformity assessment procedures, namely: (1) non-discrimination, (2) the avoidance of unnecessary obstacles to international trade, (3) harmonization (4) the equivalence of technical regulations and

[760] All products, whether industrial or agricultural, are covered under the TBT, except those covered by the SPS and AGP.

[761] *Product Standards And Quality,* consulted on 5 May 2005 from, http://www.intracen.org/worldtradenet/docs/information/trainingmat/training_packs/itcguide98/itc2-02.htm

of the results of conformity assessment procedures, (5) mutual recognition of conformity assessment results, and (6) transparency.[762]

A difficulty with implementing the TBT is that it can result in TBT producers and exporters incurring substantial and unnecessary costs, including production costs incurred in meeting different requirements in different markets, and the heavy burden of administrative and assessment costs entailed in having products tested for conformity with technical regulations prior to sale in other countries (e.g., duplicate testing). The experiences of many countries suggest that the TBT provisions affect the competitiveness of developing countries' products.[763] Moreover, the international standards encouraged in order to foster harmonisation of technical regulations in many cases create non-tariff barriers for products originating from DCs. The extent to which the TBT allows trade restrictions based on specifications related to process and production methods is also a controversial issue. There is disagreement, for example, as to how far nations are free to differentiate between identical products that were produced in different ways. Can products be subjected to different treatment on the basis of differential environmental impacts of the production processes? Uncertainty on this point causes concern among environmentalists and other civil society groups that the imposition of international standards will undermine countries' ability to uphold their own principles in relation to environmental quality or public health principles.[764]

At this point it is worth nothing that, while the TBT Agreement is much broader in terms of its reach, there are interesting overlaps between the TBT Agreement and SPS Agreement. As regards food for human consumption, for example, it is not always clear what is a TBT or a SPS regulation, because of the indistinct boundary between food quality and food safety. Food quality is a TBT matter, while food safety is an SPS issue. The difficulty can be illustrated by a hypothetical example based in part on a previous SPS dispute. Let us suppose that a Member wanted to label beef produced with hormones. If the view is taken that consumers have a right to know whether or not the beef is produced with hormones (irrespective of concerns for human health or life) this would be an issue within the scope of the TBT Agreement. If, however, the concern is

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[762] Ravier, P.H., *Keynote Speech: The WTO View,* consulted on 5 May 2005 from, http://www.iso.org/iso/en/commcentre/presentations/presidents/elias/tcsc-conf/raviertext.html

[763] 2001 WTO Consultations - Doha (Qatar) Ministerial Meeting - Technical Barriers To Trade Information Paper, consulted on 24 April 2005 from, http://www.dfait-maeci.gc.ca/tna-nac/TBT-info-en.asp

[764] *Sanitary And Phytosanitary Measures And Technical Barriers To Trade Sumary,* consulted on 5 May 2005 from, http://www.cid.harvard.edu/cidtrade/issues/spstbt.html

with the possibility, suggested by some risk assessments, that at least some of the hormones used in beef-production may harm human life or health, the provision of information on the use of hormones in production is an SPS issue. The first case is one of food quality (or the perception of food quality), while the second is a food safety issue. The juncture of the TBT and SPS Agreements may be significant in any disputes brought before the Dispute Settlement Panel on genetically modified organisms, because Members may not agree on whether a regulation is a food quality or food safety issue. One way for Members to avoid the problem of deciding under which Agreement to file their cases would be to claim violations of multiple Agreements (e.g., SPS, TBT, GATT, and Agreement on Agriculture).[765]

In practice, so far the TBT Agreement has been raised in only two cases, EC - Asbestos and EC - Sardines. In the Asbestos case, the Appellate Body held that the regulation at issue was a technical regulation but, due to the state of the record, would not rule on whether the regulation violated the TBT. The Appellate Body, however, made clear that the TBT constituted an independent set of obligations from those of the GATT; "...the TBT Agreement imposes obligations on Members that seem to be different from, and additional to, the obligations imposed on Members under the GATT 1994." In the Sardines case, the disputed measure was an EC regulation providing that only sardines from the species Sardina pilchardus, commonly found in the Northern Atlantic, could be labelled and marketed in the EC as "sardines." Peru objected to this regulation as it excluded the species Sardinops sagax, commonly found in the Eastern Pacific. According to an international standard (Codex Stan 94), adopted by both the United Nations Codex Alimentarius Commission and the WHO, sardine was defined as encompassing twenty-one different species, including both pilchardus and sagax. The Appellate Body accepted Codex Stan 94 as a relevant international standard (even though it had not been adopted by consensus) and that the EC had not based its regulation on this standard. It further held that Codex Stan 94 was neither inappropriate nor ineffective to achieve the EC's stated objectives of "market transparency, consumer protection and fair competition." On this reasoning, the EC was found to have violated TBT Article 2.4. The Sardines decision appears to be justified on the facts; it can reasonably be claimed that, for labelling purposes, the two sardine species should be accorded the same treatment. The case shows, however, that a violation can be found

[765] Norbert, W.W., "Clarifying The Alphabet Soup Of The TBT And SPS In The WTO", *Drake Journal of Agricultural Law,* Vol 8, 2003, pp 703-723 at pp 721-722.

under the TBT where opposition to a measure might have failed under the GATT. This is because it imposes a free-standing requirement to base technical regulations in any field--national security, public health, or environmental protection--on international standards unless there is no relevant standard or the existing standard (s) can be shown to be inappropriate or ineffective to achieve the purposes intended by the regulation.[766]

As regards the implications of these agreements on Oman, all goods produced domestically, and those imported from abroad, must meet Omani standards and measures. The body responsible for standards and standardization is the Directorate General of Standards and Specifications. The responsibilities of the Directorate are to formulate, adopt, publish and distribute national standards, to oversee testing and provide certification of conformity with the standards.[767] Medicines and medical equipment are regulated by the Ministry of Health. Under the regulations, a certificate from the Ministry is required for sale of medicines and medical equipment in Oman.[768] In addition, in compliance with Article 10 of the TBT and by Ministerial decision 143/2000, Oman established the National Enquiry Point for the TBT and the Agreement on Sanitary and Phytosanitary Measures (SPS).[769] Oman has designated the Directorate General for Specifications and Measurements (DGSM) as the National Enquiry Point and the Information Centre for TBT and SPS, to disseminate information and to answer reasonable inquiries on TBT and SPS to interested parties in Oman and in other Member States. However, Oman is concerned that she has had limited input into the process of developing and approving international standards. Moreover, the efforts made by the government, to bring Oman's regulatory system into conformity with the TBT, like those of many developing countries, still faces some major challenges, namely: (1) meeting the technical requirements of importing countries, (2) providing scientific justification for her own technical measures, and (3) participating effectively in the development and adoption of international standards. Oman's technical ability to meet such standards is far below that of the other industrial countries. In fact, it is by no means clear what costs and benefits Oman will derive from conforming to international standards. Whilst the government is trying to promote the high standards of Omani

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[766] Kalderimis, D., "Problems Of WTO Harmonization And The Virtues Of Shields Over Swords", *Minnesota Journal of Global Trade,* Vol 13, 2004, pp 305-351 at p 328.

[767] The Directorate General of Standards and specification established by Royal Decree number 39/76, and point its competencies by Royal Decree number 1/78.

[768] *Memorandum On The Foreign Trade Regime Of The Sultanate Of Oman,* op. cit., pp 54-55.

[769] More discussion on the SPS is provided in the next section.

products in order to market these products globally, from a consumer perspective, the observance by manufacturing industries of the standards set by Oman is still below expectation. Implementation of global standards could effectively reduce the access of Omani products to the markets of some importing countries. Additional problems could arise when new, more stringent standards are introduced on risk assessment grounds; considerable time and resources may be needed to ensure conformity with these standards.

5.2.3.5. Agreement on Subsidies and Counterveiling Measures (SCM)

One of the most important, and difficult, topics arising from the attempt to establish a set of global economic rules is subsidy discipline and anti subsidy remedies. Among the benefits claimed for the Uruguay Final Act was a "major advance" in subsidy discipline. This optimism was not without some foundation, but was rather over-stated. Most of the main achievements were accompanied by limitations. Whereas the wide coverage of the SCM was an improvement on the plurilateral Subsidies Code of the Tokyo Round, the benefit depended upon the quality of the newly negotiated substantive rules and limited by the substantial derogations extended to new adherents. Although the SCM (in Article 1) provided for the first time, a definition of the term "subsidy,"[770] the confused language of the definition left scope for conflicts of interpretation which undermined the effectiveness of SCM remedies.[771]

A serious criticism of the SCM is its placing of the subsidies commonly used by developing countries for their industrialization and development in the actionable or prohibited category, while those used by developed countries are in the non-actionable category. This is clearly inequitable, particularly bearing in mind that today's developed countries attained their present position in part by using as instruments of development the same sort of subsidies that DCs are currently condemned for using. DCs, especially those with small and vulnerable economies, need such measures to strengthen their industrial sector and diversify their export base, in order to participate actively in international trade. The use of such measures can be very effective, resulting in the establishment of new industries, attraction of foreign investment, job creation, the improvement of trade balances, and regional development, which in turn promote

[770] See the definition of this Article in sub-section 5.2.2 of this chapter.

[771] Magnus, J. R., "World Trade Organization Subsidy Discipline: Is This The "Retrenchment Round"?" *Journal of World Trade,* Vol 38, Issue 6, 2004, pp 985-1047 at pp 985-986.

greater economic development and social stability. As explained previously, the SCM classifies subsidies into three categories: prohibited (known as the red light category), non actionable (known as the green light category), and in between or actionable (known as the yellow light category). Red light or prohibited subsidies include not only the previously condemned subsidies contingent on export performance (Article 3.1.(a)), but also import substitution subsidies, i.e. subsidies contingent upon the use of domestic over imported goods (Article 3.1.(b)).[772]

By looking closely at the SCM rules, it is noticeable that many kinds of subsidies provided in Oman are prohibited by the SCM. In the field of exports subsidies, the exports industries in Oman are exempt from paying export tariffs and this kind of subsidy is prohibited by the Agreement, so the government will need to look for alternatives if possible.[773] Concerning the subsidies of domestic products, which could be objected to by other WTO Members, the government provide different kinds of incentives to the domestic industries.[774] For example, local industries enjoy many incentives provided by the Ministry of Commerce and Industry. These include: (a) exemption from custom duties on imports of the equipment and raw materials necessary for industrial production; (b) exemption from income tax during the first five years of the factory's production, with the possibility of extending the period for another five years by a decision from the Ministry of Finance; (c) provision of the facilities required for the establishment of industrial projects; (d) a special electricity tariff for eligible projects; (e) carrying out surveys and feasibility studies; (f) extending loans to industrial projects whose investment cost exceeds R.O.250,000 at 3% annual rate according to the Royal Decree 17/97, in connection with the financial support to the private sector in certain economic and service activities. Oman Development Bank, on the other hand, extends loans to industrial projects whose investment cost is less than R.O. 250,000 at 3% annual rate. In connection with WTO accession, Oman recently established an Export Credit Guarantee Agency, which issues guarantees against the risk of non-payment, to commercial banks providing financing for exports without interest.[775] The

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[772] See for more analysis on SCM Agreement see, Sub-section 5.2.2 of this Chapter.

[773] Al Majarbal, R., "Al Hawafez Alaty Tokademoha Kawaneen Alsenaa Fee Douwal Alkaleej [The Incentives Offered By The Industry Laws In The GCC States]", *Magazine Of Industry Affairs,* Vol 12, Issue 45, 1996, pp 27-41 at p 33.

[774] See generally, *Takreer Hawla Alhawfez Altchgeeyah Almokadamah Llketaa Alsenaee Fe Dowel Majles Altawan [Report On The Encouraging Impulses Provided To The Industrial Sector In The GCC States],* Gulf Organization For Industrial Consulting, January 2002.

[775] *A Glance At Industry In Oman,* Ministry of Commerce and Industry, Oman, Issue 2003, p 51.

question arises whether the above kinds of subsidies are legal or not according to the agreement. This depends on the influence of these subsidies upon the competitive capability of the export industries, which have major importance in the world market, such as petrochemicals, as explained in the discussion of the impact of SCM on the petrochemicals industries. Subsidies provided to the small and medium industries are not expected to cause any trouble for Oman. However, the subsidies to the manufacturing industries which could give rise to questions from the Member countries are those provided to the big industries such as cement, aluminium, iron and steel and plastics, which have export capability. From a theoretical perspective, it would not be difficult for these countries to show that such subsidies hurt their corresponding domestic industries.[776] It is clear that Oman should make changes, especially to her policies in the field of subsidies for manufacturing industries, whether for domestic consumption or for foreign exports. This would (in the short and medium term) hurt the industries which need these subsidies to continue, which are mostly marginal industries. With regard to the big industries such as Plastics, to which the state looks for comprehensive industrial development and diversification of sources of income, which is why they receive big subsidies from the Government, although these industries could suffer, the influence on the total economy of the State is expected to be limited. In the long term, these industries will continue to operate with less subsidy than before, due to the enormous potential they have, which will enable them to adapt to the new position.[777]

Given that, as noted above, the subsidies used by DCs for development, diversification and up-gradation of their industry tend to fall in the yellow light category, their interests require specific changes in the SCM. For example, India proposed that Article 8.1 of the SCM dealing with non-actionable subsidies should be expanded to include subsidies referred to in paragraph 3.1 of the Agreement, in the case of DCs Members, thereby protecting them from action, whether through the dispute settlement mechanism or through the imposition of countervailing duties. In addition, the prohibition of using export subsidies under Article 27.6 should be suspended in the case of DCs, until its export levels in a product have remained over 3.25% of world trade

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[776] See generally, *Tather Etfaqeyat Monadamet Altegarah Alalameyah Ala Asenaate Alsageerah Fe Dowel Almajles [The Influence Of WTO Agreements Upon The Small Industries In The GCC States]*, Gulf Organization Industrial Consulting, 2002, pp 73-76.

[777] Selselat Al GATT Wa Enecasateha Ala Ectesadeyat Dowel Majles Altawon Al Kalejee, 1 Senaate Altahwelyah [GATT And Its Effect Upon GCC States, 1 Manufacturing Industries], op. cit., 1997, p 21.

continuously for a period of five years. Furthermore, an automatic inclusion provision should be added in Article 27.6 to enable developing countries to reintroduce export subsidies once the share of their export of a product decreases to a level below 3.25% of world trade. India also proposed a clarification to Article 27:3 of the Agreement, which allows a DC to grant subsidy for the use of domestic products in preference to imported products (defined in Article 3.1(b) of the Agreement), to make clear that this facility applies, notwithstanding the provisions of any other agreement.[778]

5.2.3.6. Agreement on Trade Related Investment Measures (TRIMs)

The TRIMs Agreement is another one with potential impact on the manufacturing industry. As said before, Oman does not maintain any TRIM, nor does it have any intention to do. More analysis of this Agreement is contained in the discussion in sub-section 2.5.2 of this chapter. Nevertheless, it can be argued that improving the industry in Oman in the prevailing international economic circumstances will depend on transfer of advanced technologies, which is one of the main benefits of foreign investments. Thus, as mentioned before, Oman has started to learn the importance of encouraging foreign investment. Therefore, she has reviewed her laws, for example, to increase their attractiveness to foreign investors.

5.2.3.7. Agreement on Government Procurement (GPA)

Another important area in which accession to the WTO brings implications for Oman is government procurement. A noticeable trend in recent years has been for some existing parties to the Agreement on Government Procurement (GPA) to demand a commitment to the Agreement by applicants for WTO Membership, particularly those with a large state sector (such as the countries of the former Soviet Union). In addition, the European Union requires new EU Members to join the GPA: of current observers and applicants Latvia, Estonia, Poland, the Slovak Republic, the Czech Republic, Bulgaria and Turkey are all potential EU Members. The impact of such external pressures varies from one Member to another. Nevertheless, although the Agreement is plurilateral, in practice the DCs may effectively be forced to sign it. The Members of a working party can demand signature of the GPA as a condition of acceptance as a

[778] *India's Proposals Regarding The Agreement On Subsidies And Countervailing Measures,* consulted on 30 May 2005 from, http://www.indianeMbassy.org/policy/WTO_india/subsidies_06_99.htm

Member in the WTO (this is what was happening with Saudi Arabia), especially if the country has economic importance in the world.[779]

Because of its sensitive nature, government procurement was largely excluded from the non-discrimination obligations of GATT 1947 (GATT Article 3.8 and 17.2). The same was true of GATT 1994 and also characterizes GATS (GATS Article 13.1), where the only significant multilateral obligations are those requiring publication of general measures on government procurement (GATT Article 10 and GATS Article 3). During the Tokyo Round, a separate procurement agreement was formulated, which included National Treatment and MFN obligations for covered procurement and also transparency rules, the main purpose of which was to make it difficult to conceal discrimination. This agreement, as explained in Chapter Four, was carried through to the WTO as a plurilateral, rather than a multilateral agreement.[780] According to the preamble, the motivation for the GPA is that it is 'desirable to provide transparency of laws, regulations, procedures and practices regarding government procurement'. In the context of trade agreements on procurement, transparency serves three purposes: to deter discrimination by making it more difficult to conceal; to make it easier for suppliers unfamiliar with the system to participate; and to improve information for market access negotiations. The GPA focuses more on the first two, although the third is provided for to some extent in a provision requiring statistics to be made available on smaller, non-covered, procurements (GPA Article 19.5). Many rules serve more than one purpose. For discussion purposes, the rules can be classified into four main categories. The first consists of requirements to publicize contract opportunities (GPA Article 9). The second consists of rules requiring publication of award procedures, such as those obliging Members to publish general procurement rules (GPA Article 19.1) and to notify the qualification and award criteria for each contract (GPA Article 12.2 and 13.4). The third group, which is mainly designed to prevent hidden discrimination, consists of rules limiting discretion. One such is the GPA provision requiring contracts

[779] In Oman's Accession negotiations, as seen in Chapter Four, the Members of the working party sought Oman's accession to the Agreement on Government Procurement and encouraged Oman to present an initial offer for an entity list upon accession to the WTO. The Omani representative confirmed that upon accession to the WTO, Oman would initiate negotiations for Membership in the Agreement on Government Procurement by tabling an entity offer. He also confirmed that if the outcome of the negotiations was consistent with the interests of Oman and the other Members of the Agreement, Oman would complete negotiations for Membership in the Agreement within a year of accession. However, up to now, Oman has not acceded to this Agreement.

[780] See generally Reich, A., *International Public Procurement Law: The Evolution Of International Regimes On Public Purchasing,* Kluwer Law International, London, 1999.

to be awarded by competitive procedures. This may be an open procedure, open to all suppliers, or a selective procedure, whereby invitation is tendered to a selected number of suppliers. This obligation may be dispensed with only in exceptional cases, such as extreme urgency (GPA Article 15). Some second-category requirements, such as notification of award criteria, fall into this category also, since they serve the double purpose of imposing constraints on discretion, as well as ensuring publicity. Finally, there is a group of provisions to enable interested parties to verify and enforce the rules - for example, on reasons for decisions and challenge procedures.[781] In sum, the WTO GPA, compared to the GATT GPA, covers in greater detail such matters as valuation of contracts, rules of origin, tendering procedures, qualification of suppliers, selection procedures, and limited tendering, and runs to 24 Articles as opposed to the 9 in the GATT GPA.[782]

The supporters of the GPA claim that three main benefits are derived from accession to it. Members gain access to other markets, a benefit which will increase with the growing Membership. They also gain support for liberalizing their own markets which, despite its economic benefits, may be difficult to achieve because of the political influence of protected interests. The approach of the GPA in this respect is like that of the other WTO agreements. It encourages the exchange of reciprocal concessions to gain support for liberalization from exporters, and it places obstacles in the way of reversing market-opening measures. For governments that seek greater transparency for domestic reasons (such as value for money and integrity), accession helps them in carrying through domestic reforms in the face of internal opposition.[783] Another argument is that GPA Article 5.5 provides an opportunity for DCs to use covered procurement for industrial development without compensation, which may to some extent mollify opponents of accession. However, it is not easily achieved, since it is subject to the approval of the Committee; DCs may fear that approval will not be granted if important interests of other parties are affected.

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[781] Arrowsmith, S., "Reviewing The GPA: The Role And Development Of The Plurilateral Agreement After Doha", *Journal of International Economic Law,* Vol 5, Issue 4, 2002, pp 761-790 at pp 765-766.

[782] Lie, H. Y. and Ahn. D., "Legal Issues Of Privatisation In Government Procurement Agreements: Experience Of Korea From Bilateral And WTO Agreements", *International Trade Law & Regulation,* Vol 9, Issue 2, 2003, pp 54-62 at p 61.

[783] Hunja, R. R., "Obstacles To Public Procurement Reform In Developing Countries", in Arrowsmith, S. and Trybus, M. (editors), *Public Procurement: The Continuing Revolution,* Kluwer Law International, London, 2003

Despite the claimed benefits, however, there are numerous obstacles to expanding participation. First, and most obviously, 'non-Members desire to be able to discriminate against foreign products or suppliers...'[784] Moreover, economic benefits notwithstanding, states may be induced by political pressures to continue to protect industry through procurement, particularly as WTO rules make it difficult to do so by other means. So far, the benefits of GPA Membership have not generally been sufficient to outweigh these limitations. One problem in this respect is that countries seem to be forced to decide, either to apply the full range of non-discrimination rules and award procedures to covered procurement, or not to accede at all. There is no structured system for step-by-step adaptation to the GPA, such as by implementing 'tariff equivalents', e.g. price preferences. Another consideration is that states may wish to use procurement as a tool of other policies. Yet another factor is that transparency rules, in particular stringent enforcement, reduce the scope for contract award being used as a tool for gaining personal or political advantage. For example, Debroy and Pursell suggest that this is a factor in relation to India.[785] In fact, it can be argued that it is difficult to design an enforceable provision setting out more detailed and objective criteria for its application, given the political nature of the justification for the provision.

One way that Oman protects and subsidises domestic industry is by giving it priority in government procurement, within certain parameters. Such procurement is governed mainly by the Government Tender Regulations issued by Royal Decree number 86/84, and the unified rules granting preferences in government purchases to national products and the products of the GCC States, issued by Ministerial Decision number 18/87. These laws require that preference in government procurement should be given to products of Omani origin, provided these meet the conditions and technical specifications of the contract. If national products are not available in the required quantity or specification, preference in procurement shall be given to products of GCC origin. Products of foreign origin are the last to be considered. Products of Omani origin shall be granted a preference of 10% in price as compared with similar foreign products,

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[784] Hoekman, B. M. and Mavroidis, P. C., *The WTO's Agreement On Government Procurement: Expanding Disciplines, Declining Membership?* Centre For Economic Policy Research, Discussion Paper Number 1112, p 73.

[785] See generally, Debroy, B. and Pursell, C., "Government Procurement Policies In India", in Hoekman, B. M. and Mavroidies, P. C. (eds), *Law And Policy In Public Purchasing: The WTO Agreement On Government Procurement. Studies In International Trade Policy,* University of Michigan Press, US, 1997, pp 189-202.

and 5% as compared with products of GCC origin.[786] Such measures will be affected by the GPA if Oman decides to join it. The question arising here is whether Oman is still concerned to join the GPA? If yes, what are the specific reasons for that, and what will be the impact of GPA upon her industry?

Some WTO Members, notably the United States, are seeking to secure higher level of commitments on key areas such as government procurement, on which countries are not required to provide concessions in order to join the WTO, through the FTAs with other WTO Members. In this context, the Sultanate has signed an FTA with the US, and some commitments has been given for government procurement. According to Al Rahabi, as a result of the American request, Oman provided some concessions in the government procurement; the same thing may happen in the negotiations of the FTA with EU. Thus, he argues, as the US and EU are the largest trade partners to Oman and the other GCC States, there will be no logical reasons why Oman should not join the GPA, and the government is thinking seriously of doing so.[787] In addition, Al-Hinai argues that the industry will not be hurt if Oman joins the GPA, because the companies do not benefit much from being given priority in government procurement. Moreover, this priority given to Omani and GCC States' products constitutes a burden upon the government.[788] Whatever the reasons to justify Oman joining the GPA, nevertheless, accession to the GPA will have a negative influence upon the policy of supporting domestic industry by giving it priority in government procurement. Thus, Oman would be well advised not to join this Agreement, or even provide any concessions in the area of government procurement through the RTAs, and if Oman does so, it should try to exempt manufacturing industries that need support from its application. Alternatively, Oman could reduce the minimum value of international tenders to half of what is in the Agreement, which could give a chance to the small and medium industries to benefit from these measures.

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[786] *Memorandum On The Foreign Trade Regime Of The Sultanate Of Oman,* WTO Document Number WT/ACC/OMN/2, pp 59-60.

[787] Interview conducted by the researcher with Kalfan Al-Rahabi, Director of Conferences and Organizations at the Ministry of Commerce and Industry in Oman on 21 March 2005.

[788] Interview conducted by the researcher with Dr Abdulmalik Al-Hinai, Under Secretary of Ministry of National Economy for Economic Affairs in Oman on 16 March 2005.

5.4. AGRICULTURAL SECTOR

This section contains two sub-sections. The first one gives a general overview of the agricultural sector in Oman, while the second one discusses the impacts of WTO Agreements on this sector.

5.4.1. General Overview

Oman relies for food predominantly on imports, although she is making efforts to become self-sufficient in major staples. In an attempt to promote the agriculture and fisheries sectors to the level of international competitors, several incentives have been introduced to entice foreign investors, including tax exemptions, utilities discounts, soft (concessional) loans, and tariff protection. The government also offers assistance in exporting food products. The greatest scope for development is in the area of high-tech, high-yield agriculture. Other concerns to be addressed in the agricultural sector include the increasing salinity of table water and water supply pressures. [789]

Food security is the most discussed of "non-trade concerns," particularly in developing countries, but also in a significant number of developed countries. [790] Agriculture is the key to alleviating rural poverty. It employs more than half of the total labour force in developing countries and almost three quarters in lower-income developing countries. Most of the world's poorest rely on agriculture for their sustenance. For example the rural population was 16 percent of the total population in Oman in 2000, and the agriculture population was 36 percent of the total population in the same period.[791] Agriculture in Oman has existed for thousands of years, as shown by the existence of the *falaj* irrigation system. Thus, Sutton stated that "the *falaj* systems of Oman have provided communities with water for irrigation and domestic purposes for 1,500-2000 years." In addition, Oman is endowed with considerable areas of fertile land

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[789] *Oman Sector Analysis,* Arab Commercial Directory, consulted on 12 May 2004 from, http://www.guidearab.com/ArabCountries/oman/sector.htm

[790] Diaz-Bonilla, Diao, and Robinson have a good discussion of the various submissions to the WTO on this subject by both developed and developing countries. See their paper *"Thinking Inside The Boxes: WTO Agricultural Negotiations And The Development And Food Security Boxes"* presented in The International Conference: Agricultural Policy Reform And The WTO: Where Are We Heading?, University of Calabria, 23-26 June, 2003.

[791] *Rural Development: Some Issues In The Context Of The WTO Negotiations On Agriculture*, consulted on 23 December 2003 from, http://www.fao.org/DOCREP/005/Y3733E/y3733e04.htm

and with good underground aquifers.[792] According to Abdurazzak, Oman is an exception to the prevailing situation in the GCC States with regard to lack of surface water relative to demand. Nevertheless, like other countries in the region, it has been necessary to mine underground water aquifers and to treat sea and brackish water.[793]

Agriculture and livestock farming have improved enormously since 1970, with the aid of support in successive five-year plans. Both are to be expanded in line with sustainable development, and are expected to play a key role in the country's diversification plans. In this context, agricultural production rose from 665,000 tonnes to 1,214,000 tonnes between 1988 and 2000, and now around 103,000 Omanis are employed in this sector. Measures to increase food production include provision of technical advice to Oman's 3,252 bee-keepers, and efforts to boost date palm yields, including distribution of 22,000 high yield date palm seedlings. Attention is also being focused on improving irrigation in the interest of water economy and increased productivity. Modern irrigation systems have been installed on 1,111,948 feddans on 2,313 farms (Feddan=0.42 hectares). Traditional Arab *falaj* irrigation methods have been upgraded, thereby saving 80% of falaj water and enabling more land to be cultivated. Research is another focus of Oman's agricultural development. Two agricultural research centres have been established, one for research into plant production, the other, with laboratories researching plant protection. Their activities have enhanced crop protection effectiveness, improved the quality and quantity of production and resulted in higher yields. The cloning laboratory, responsible for the date palm project referred to earlier, plans to increase its productive capacity to 30,000 seedlings a year. The laboratory produces pineapple and banana seedlings and is carrying out research to propagate other crops. The main Omani export crops are dates, tomato, cucumber, lime, banana, potato, green pepper, cabbage, melon, and watermelon. Most of the exported produce goes to the GCC States, although a small but growing market for dried dates (busur) exists in India.[794]

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[792] Al Marshudi, A.S., "The Development Of Agriculture Extension In The Sultanate Of Oman: Improvement And Future Prospective", *Al Markazi,* Vol 27, Special Issue 2002/2003, pp 39-45 at p 40.

[793] Abdurazzak, M., "Status Of Water Use Development And Management In The ESCWA Region", in *Proceedings Of Expert Group Meeting On Assessment Of Economic And Social Developments In The ESCWA Region During The Last 25 Years And Priorities For The Next Decade, 2000-2009,* Document Number E/ESCWA/ED/1999/22, p 147.

[794] *Oman 2002-2003,* Ministry of Information (Oman), October 2002, pp 87-89.

A further role of the agriculture development centres is in training stock breeders in up-to-date practices, and dissemination of research findings to help breeders improve their performance. A national livestock immunisation project has been initiated, which in 2000 covered 1,414,037 animals, while 741,870 animals were treated at the veterinary clinics. Oman's livestock sector has grown by 3.7% to reach 1,740,000 animals in the year 2000. In 2002, a national strategy was launched to improve natural pasturages and promote sustainable development of Omani livestock by land management, balance between the supply of land and Member of livestock and limitations on other uses of grazing land. Legislation has been introduced to encourage stock breeders to breed animals that produce a better economic return, and measures have been introduced to persuade farmers to rehabilitate natural pastures in the mountains of Dhofar to support grazing animals. Research is being conducted on animal resources, and efforts are being directed to conserving high-yield fodder plants, and introducing new strains of fodder plants with high nutritive values.[795]

Food production is a crucial issue, given that the total population in Oman will double every sixteen years if the current rate of population growth of 3.6% is maintained. The population growth rate of Oman is much greater than that of the world as a whole, which doubles every thirty five years. It is very well recognized that a growing population creates increased need for food supply, which can be met from domestic food production or food imports, or a combination. Increasing dependence on food imports is not consistent with the policy of food security. A more appropriate solution is to increase the quality and quantity of food available through the use of appropriate science and technology. The increase in food imports signals the inability of the agricultural production to meet the increasing demand of food. Currently, the availability of foreign exchange from oil sales provides sufficient funds for food imports, but in the long term, this situation may not continue.[796] Assuming continuation of the present rate of population growth, domestic food production must be increased. However, crop production faces constraints such as heat and water stress, salinity and seasonality, while livestock production faces problems of nutrition, management, reproduction and animal health and feed supply. The breakthroughs in technology

[795] Ibid, pp 89-90.

[796] See the main imports and exports of agricultural products in Oman in Table 4.6 of this Chapter.

needed to increase domestic agricultural production can only come through investment in research.[797]

The last decade or so has seen two major agricultural reform policies in Oman. First, subsidies on fertilizer and other inputs have been phased out. Second, greater competition in agricultural markets has been encouraged by the close of the state controlled Agricultural Commodities Markets (PAMAP) and the opening of a new wholesale market. PAMAP was a non-profit organization, which bought produce, mainly fruit and vegetables, from farmers and sold to the public at low prices. The new wholesale market located in the Muwalh area allows more participation of the private sector. It is difficult to assess the impact of these changes after a short period, although there are signs of improvement in market efficiency, reduced budget deficits and stimulation of exports. Sustainable development of agriculture will depend on how well the sector adjusts to meet cost efficiency conditions. From now, and in the face of new international trade regulation, farmers will be more self-reliant and will be looking for ways to expand their knowledge, rather than for free inputs.[798]

The agricultural production in Oman is not export-oriented at present, and so export volumes are small. In addition, farm exports have hitherto been determined mainly by local production levels, prices rather than any systematic analysis of market opportunities by producers or traders. According to Abdaly,[799] the Ministry's export promotion strategy aims to address the major constraints to agricultural export development and organisation. At present, professional institutions and infrastructure capable of taking advantage of available opportunities to boost exports are lacking. Nor is there any integrated national export plan to promote and explore the potential market. The lack of market coordination between producers and traders to improve quality and produce for available foreign demand has also been criticized.[800] However, the Ministry intends to address these constraints. Abdaly pointed out a number of advantages conducive to agricultural export development, for example, Oman's favourable climate, which enables it to produce crops relatively cheaply, that many countries would have to import, as well as speciality crops for developed countries. Oman also benefits from its

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[797] Al Marshudi, A. S., op. cit., 2002/2003, pp 40-42.

[798] Ibid, pp 43-44.

[799] Assistant Director General of Planning and Investment in Ministry of Agriculture and Fisheries (Oman).

[800] Prabhu, C., "New Strategy To Boost Agricultural Exports", *Oman Daily Observer,* consulted on 1 April 2004 from, http://www.mafhoum.com/press2/72E12_files/hnews3.htm

proximity to export markets in the Gulf, Asia and Europe. The official also emphasised the farming community's increasingly market-oriented mindset, as well as the government's determination to promote economic diversification. With the latter in mind, the Ministry envisages agriculture becoming an important agribusiness industry and making a more significant contribution to the national economy. Plans to boost productivity, to promote exports of high value products with comparative competitiveness, to develop local market and agribusiness support, to enhance farm management and agricultural resources allocation, and so on, will help farmers and traders face the WTO regulations and international competition. [801]

The role of the agriculture sector in the Omani economy is, as yet, weak. However, the government subsidises it to increase production and its contribution in Oman's economy, in line with its economic, social and political importance. It is important, therefore, to assess how accession to the WTO will affect the agriculture sector in the Sultanate, at a time when her agriculture policies have started to bear fruit in the form of significantly increased productivity and product diversity, progress towards closing the wide food gap. The direct effects will depend on a number of considerations, including farmers' ability to produce more efficiently and at lower costs, to meet sanitary and environmental standards, and to respond to market demand. Basically, the agriculture sector in Oman needs to capture the economies of scale offered by the new international trade order in order to be self-sustainable.

This brings our attention to the challenges and opportunities that the WTO Agreements will bring for the agriculture sector in Oman.

5.4.2. The Relevant WTO Agreements And Their Impact

The most relevant agreement to this sector is of course the Agreement on Agriculture. However, as explained in the beginning of this chapter, the legal analysis will discuss first the impact of the three main agreements (GATT, GATS, TRIPs), then the other important agreements such as the Agreement on Agriculture. Similar to the approach in Part One, the discussion of the impact of these Agreements in this section will be examined individually with regards to their effect on this sector.

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[801] Ibid.

5.4.2.1. Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs)

One of the issues which could in the future face Oman, like other DCs, in the agriculture field, is with regard to intellectual property rights. Of course, the issues of intellectual property rights are not part of the negotiations of the Agreement on Agriculture, but of TRIPs.[802] Nevertheless, they have implications on agriculture, poverty and food security in developing countries, because of the key role of technology in expanding world agricultural production. A major technological development has been the emergence of biotechnology and genetically modified crops. These products have stimulated enormous controversy related to their impact on future food production, and on poverty and hunger. Whilst their opponents argue that genetically modified products are not needed to feed the world in the future, since there is enough food in the world, others point to the declining yields since the Green Revolution, and claim that biotechnology can help to improve food quality in terms of vitamin and mineral protection content, reduction of toxins, and removal of allergens.[803]

With advances in genetics in the last few decades, and development of the ability to modify the genetic code, intellectual property laws have been adapted to include living organisms. Plant breeders' rights (PBRs), also called plant variety protection and, more recently, patents, have been used to create limited monopoly rights in organisms and in the technology used to modify them.[804] Protection by PBRs is available for new, distinct, uniform and stable varieties.[805] However, the protection provided by PBRs is not applicable to individual genes and biotechnology processes. For protection in these areas, therefore, biotechnology firms have turned to the patent system.[806] The grant of patents for living materials is quite recent[807] but these have now become the main means of protecting the products of biotechnology. To qualify for

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[802] More discussion on this Agreement is available in Sub-section 5.3.2 of this Chapter.

[803] Diaz-Bonilla, E. et al., *WTO, Agriculture, And Developing Countries: A Survey Of Issues,* International Food Policy Research Institute, TMD Discussion Paper Number 81, January 2002, consulted on 12 April 2004 from, http://www.cgiar.org/ifpri/divs/tmd/dp.htm

[804] Christie, J., "Enclosing The Biodiversity Commons: Bioprospecting Or Biopiracy?" in Hindmarsh, R. & Lawrence, G. (eds), *Altered Genes II,* North Carlton, Scribe Publications, 2001 at p 177.

[805] Barton, J. H., "Acquiring Protection For Improved Germplasm And Inbred Lines" in Erbisch, F.H. & Maredia, K. M. (eds), *Intellectual Property Rights In Agricultural Biotechnology*, United Kingdom, CAB International, 1998 at p 21.

[806] Ibid, p 22.

[807] Murray, D. R., *Seeds Of Concern: The Genetic Manipulation Of Plants*, Sydney, NSW University Press Ltd, 2003, p 101.

such protection, an 'invention' must be novel, non-obvious, and of practical use.[808] Developed countries feared that the protection provided by IPRs in the North could not be matched in the South, where equivalent IPR systems were often lacking. Agricultural companies envisaged the loss of their competitive advantage in biotechnology if the countries of the South used the knowledge behind the invention, without profit to them.[809] Such concerns prompted the introduction of TRIPs in order to ensure that the DCs would provide an IPR system to complement that in the developed world. TRIPs requires Member States to develop strong intellectual property laws.

One of the most critical provisions is Article 27 (1) of TRIPs, which as mentioned before, requires Member States to allow patents for any investments, "whether products or processes, in all fields of technology." This Article has eliminated much dispute on pharmaceutical product patents, but fails to resolve the issue of protection for biological matter and agricultural biotechnology, since exceptions to patentability are allowed under Article 27 (2) and (3). More importantly, Article 27 (3) (b) allows Members to exclude from patentability "plants and animals other than micro-organisms as well as essentially biological processes for their production". Whilst no obligation is imposed on Members to allow plants to be patented, they must nevertheless provide protection of plant varieties, whether by patents or by an "effective *sui generis* system" or by a combination of the two. Such systems are relatively well established in developed countries, but many developing countries face difficulty in complying with the implementation of TRIPs. Thus, it appears that in the field of agriculture and agriculture biotechnology there will be considerable variation in the type and scope of protection from one country to another, and especially between the North and South. One issue is whether the development of intellectual property regimes and rights may pose an obstacle to agricultural research conducted in, or of with potential benefit for, developing countries. A second issue is the impact on farmers; in particular, the right of farmers to save seeds can be protected, even under the International Union for the Protection of New Varieties of Plants 1991.[810]

In a report by the Food and Agriculture Organization of the United Nations (FAO) four core ethical issues in food and agriculture are identified as arising from the

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[808] Barton, J. H., op. cit., 1998, p 23.

[809] Barwa, S & Rai, S.M, "The Political Economy Of Intellectual Property Rights: A Gender Perspective" in Newell, P. et al (eds), *Development And The Challenge Of Globalisation*, Glasgow, ITDG Publishing, 2002, p 48.

[810] Diaz-Bonilla, E. et al., op. cit..

TRIPs. First, the increasing possibility of important knowledge being transferred from the common domain (public goods) to the private domain, often controlled by corporations. Second, the potential harm, as a result of the TRIPs, to the livelihood of poor farmers. Third, the uncertain outcome in terms of sustainable access to affordable, safe, nutritious food for those of modest means. Fourth, the environmental impact, including effect on biodiversity. The report suggests that the existing system under the TRIPs needs to be supplemented with measures to prevent misappropriation of genetic resources in the public domain by enterprises and plant breeders. It proposes that the grant of patents should be restricted to genuine inventions giving rise to a biological product significantly different from any that existed before, and that the coverage of the protection should be confined to the inventive step itself. It also recommends that in ongoing review of Article 27.3(b) of the TRIPs, *sui generis* laws should allow for community rights, the continuation of farmers' practices and the prevention of abuse of patenting to anti-competitive effect, taking fully into account the duty to protect farmers' rights.[811]

Oman should be aware of the above debates and the negative impact that could result from the decisions it may take in regard to public health in the country. It is thus advised that the Omani government, instead of fulfilling its future obligation in haste -as is happening with the existing laws- should make such amendments in the law as would adequately safeguard and protect the interests of the domestic industries and market, taking advantage of the concessions given in the TRIPs Agreement. For example, while Art 27.3(b) of TRIPs is under review, the Omani government should await the completion of the review instead of starting to make any change in Oman's Patent Law. However, a more holistic approach to decision-making may result in a more accurate consideration of costs and benefits in the regulatory decision-making process. Again, the answer for Oman would be to work with the other GCC States and other developing countries, to avoid being forced to devote a comparatively larger percentage of resources to these regulatory aspects than is committed by developed countries.

Despite the general growth in total world trade brought about by a gradual reduction of trade barriers, markets in agriculture continue to be heavily protected, especially in rich countries. The grains and oilseeds sector, for example, is characterized by extensive trade on the one hand, and high levels of domestic subsidies and border

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[811] Report Of The Panel Of Eminent Experts On Ethics In Food And Agriculture, 2003, consulted on 8 May 2005 from, http://www.fao.org

protection (including export subsidies) on the other. However, a major policy shift and changes in instrumentation have taken place in this sector over the past 15 years, from border to domestic support and from coupled subsidies to land area payments and historical entitlement payments.[812]

The Agriculture Agreement was one of the key achievements of the Uruguay Round, given that agriculture was one of the thorny problems which faced the negotiations from the beginning of GATT in 1947. Agriculture came outside the GATT and thus the developed and developing countries used various kinds of discriminatory measures to protect their agricultural production. The rounds before the Uruguay Round failed to deal with protection and subsidy in the agriculture sector, despite the importance of agricultural merchandise in the global trade and its importance to most countries.[813] This can be attributed to the differences between the USA and EU countries, because of the intransigence of the latter in protecting their agriculture by enforcing implicit discrimination upon agricultural imports and by subsidising domestic production in accordance with common agricultural policies.[814]

The Agreement on Agriculture covers all agricultural products as defined by Annex 1 of the Agreement (which basically means all agriculture and food products including raw fibres and hides, but excluding fish and forestry products). There are also other WTO agreements applicable to trade in agricultural products, although in the event of conflict between the Agreement on Agriculture and any other WTO agreement, the Agreement on Agriculture has priority to the extent of the inconsistency. However, in many areas it is the general GATT/WTO rules that apply, due to the lack of detailed implementation rules in the Agreement on Agriculture. For example, the administration of tariff quotas is governed by GATT Article 13 (non-discriminatory administration of quantitative restrictions) and by the Agreement on Import Licensing Procedures (ILA).[815] The rules of the Agreement have significant implications on the conditions for market access for agricultural products. It has, as a general rule, replaced non-tariff

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[812] De Gorter, H. et al., "The Distributional Effects Of Agricultural Policy Reforms", in Ingco, M.D., & Nash, J.D., *Agriculture And The WTO Creating A Trading System For Development,* International Bank For Reconstruction And Development/The World Bank, Washington, 2004 at p 149.

[813] Anderson, K. & Tyres. R., "International Effects Of Agricultural Policies", in Snape, R. H., *Issues In World Trade Policy: GATT And Crossroads,* St. Martin Press, New York, 1986.

[814] For more information about the European common agricultural policies see generally, Rosemary. F., *The Common Agricultural Policy Of European Community,* Allanheld Osamum, London, 1979.

[815] Ingco, M.D., & Croome, J., "Trade Agreements: Achievements And Issues Ahead", in Ingco, M.D. & Nash, J.D., op. cit., 2004, p 26.

barriers such as quotas, embargoes and licences, with bound tariffs, and improved transparency.[816] Anderson notes, the Agreement on Agriculture comprises three elements: reductions in farm export subsidies, increases in import market access, and cuts in domestic producer subsidies.[817]

5.4.2.2. Agreement on Agriculture

The market access part of the Agreement on Agriculture is very brief and general, being confined basically to Article 4; Article 4.1 provides that market access concessions contained in schedules relate to bindings and reductions of tariffs, and to other market access commitments as specified therein. In addition, Article 4.2, the only significant provision concerning market access and tariffication, prohibits the maintenance, introduction or restoration of any measures of the kind which have been required to be converted into ordinary customs duties. These measures include quantitative import restrictions; variable import levies; minimum import prices; discretionary import licensing; non-tariff measures maintained through state-trading enterprises; voluntary export restraints; and similar border measures other than ordinary customs duties, irrespective of whether they are associated with country-specific derogations from the provisions of GATT 47.[818] They do not, however, include measures maintained under balance-of-payments provisions or under other general, non-agriculture-specific provisions of GATT 94 or the other multilateral trade agreements in Annex 1A to the WTO Agreement. These provisions are accompanied by an exception clause excluding those measures that are justified under the special safeguard provisions of Article 5 and the special treatment provisions of Annex 5 from the Agreement.[819] O'Connor criticises Article 4 for its lack of guidance as to how the process of tariffication should be undertaken. In practice, WTO Members performed their own calculations and set them out in their country schedules. Thus, when questions of compliance with the market access provisions of the Agreement on Agriculture arise, exporters and lawyers have no objective basis for an assessment. They must take on

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[816] De Gorter, H., & Hranaiova, J., "Quota Administration Methods: Economics And Effects With Trade Liberalization", in Ingco, M.D., & Nash, J.D., op. cit., 2004 at p 95.

[817] Subedi, S.P., "The World Trade Organization, The European Union And The Liberalisation Of Trade In Agriculture," *Managerial Law,* Vol 45, Issue 5/6, 2003, pp 29-47 at p 33.

[818] For more information in this respect see generally: Xianghong, Li., *Agricultural Tariff Rate Quotas: Impacts On Market Access,* PhD, University of California, Davis, 2005.

[819] Desta, M.G., *The Law Of International Trade In Agricultural Products: From GATT 1947 To The WTO Agreement On Agriculture,* Kluwer Law International, Netherlands, 2002, pp 67-68.

trust the claims of importing Members that their border measures are consistent with their obligations under the Agreement.[820]

Overall, DCs' market access is not significantly improved by the Agreement's minimum access requirements, due to the low level of access required and the confining nature of the provisions to the low level of access opportunities, rather than ensuring that the imports actually take place. Moreover, no obligation was imposed on Members to open markets to new entrants; the requirements of Article 4 could be fulfilled through existing agreements for the import of commodities on concessionary terms, an example being the EU's agreement to purchase sugar from certain countries in the African, Caribbean and Pacific regions.[821]

Generally, agricultural products in Oman are not subject to non-tariff barriers, except within very limited bounds. For example the government prohibits the import of fruits and vegetables during the harvest season, to protect the domestic products.[822] In line with the requirements of the Agreement, however, Oman, on her accession to the WTO, removed all bans and quotas on imported agricultural products and replaced them with tariffs, as mentioned before.

As a result of the removal of non-tariff barriers, it is expected that the global prices of food merchandise will increase. The influence of this increase will hurt Oman, since she is a net food importer. Due to the lack of data, it cannot be estimated how great a financial loss Oman will incur, although all the signs are that it will be considerable. However, it could be argued that this impact will reach all countries that import food, and also that it would reach the Sultanate, whether she joined the WTO or not. Some argue that Oman, to protect her agricultural merchandise, could overcome the removal of non-tariff barriers by using high tariff rates which can provide more protection than non-tariff barriers. Oman, in negotiations of accession to the WTO, has also achieved good rates to protect some of her sensitive agricultural products (higher than the rates prevailing before accession).[823] Oman, however, will not benefit from these, since she is Member in the customs union which was established between the GCC States on 1st January 2003, and which, as explained before, fixed the customs

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[820] O'Connor, B., "A Note On The Need For More Clarity In The World Trade Organization Agreement On Agriculture", *Journal of World Trade,* Vol 37, Issue 5, 2003, pp 839-846 at pp 842-843.

[821] Gonzalez, C.G., "Institutionalizing Inequality: The WTO Agreement On Agriculture, Food Security, And Developing Countries", *Columbia Journal of Environmental Law,* Vol 27, 2002, pp 433-490 at p 466.

[822] Dr Alyousef, Y. K., op. cit., 1993, pp 101-105.

[823] See for example what Oman achieved in this context in Sub-section 5..3.2.1.1 of Chapter Four.

tariff on all goods (except the products mentioned in Chapter Four) imported from outside these States at a rate of 5%. This rate is lower than what has been achieved through the negotiations; even lower, in some cases, than what prevailed before the accession. On the other hand, the influence of changing to tariffs will be limited in the short term, for various reasons. There has been no fundamental change in the enforcement of tariffs; some countries, when they changed to tariffs, enforced a very high level of tariff protection, which means that the domestic prices of agricultural products in the importer countries will not decline. Even if we assume that the prices of agricultural merchandise will decline, the influence of this decline will be limited, since Oman's exports of agricultural merchandise and foodstuffs are very small and of limited importance to the importing markets. In the long term, the above picture will change slightly if the Sultanate can improve her basic production upon a basis of competence and competitive capability, diversify agricultural production and reduce costs to compete with the global levels, and as a result increase exports. However, even if she does so, the benefits will be limited, due to the constraints facing the agriculture sector in terms of cultivation area and water sources. However, the food industries are expected to benefit in the long term if they can increase their production capability to a level which is globally acceptable.[824]

Another issue to be considered in relation to agriculture is subsidy, which is affected in various ways by the regime concerning the general practice of subsidies in the WTO. For example, according to Article 21 of the Agreement on Agriculture, the provisions of all the multilateral trade agreements in Annex 1A to the WTO Agreement, of which the SCM is an important element, are expected to apply to agricultural matters except where there is an inconsistency between those provisions and the Agreement on Agriculture. In such a case, the latter has priority. In addition, the SCM, as the generic Agreement regarding subsidies[825], always forms "part of the general context" within which subsidy-related issues in any of the instruments falling under the umbrella of the WTO Agreements are interpreted. For example, although the term "subsidies" occurs in a number of WTO Agreements, it is defined only in the SCM, and so that definition will apply in any specialized agreement under the WTO system referring to subsidies in specific areas. Recourse must, therefore, be had to the provisions of the SCM, both to

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[824] *Selselat Al GATT Wa Enecasateha Ala Ectesadeyat Dowel Majles Altawon Al Kalejee, 3 Alqeta Alzeraee [GATT And Its Effect Upon GCC States, 3 Agriculture Sector]*, Secretariat General Of Champers Union Of GCC States, 1997, pp 13-14.

[825] See the analysis of this Agreement in Sub-section 5.2.2 of this Chapter.

fill gaps within the subsidies provisions of the Agreement on Agriculture, and as a basic guide for the interpretation of the provisions of the Agreement on Agriculture itself.[826]

Export subsidies, as a specific category, are explicitly covered under Article 1 (e) of the Agreement on Agriculture. The Article encompasses within this category all subsidies contingent upon export performance, including those listed under Article 9. According to Article 9 the following export subsidies should be reduced: (A) The provision by governments or their agencies of direct subsidies, including payments-in-kind, to a firm, to an industry, to producers of an agricultural product, to a cooperative or other association of such producers, or to a marketing board, contingent on export performance. (B) The sale or disposal for export by governments or their agencies of non-commercial stocks of agricultural products at a price lower than the comparable price charged for the like product to buyers in the domestic market. (C) Payments on the export of an agricultural product that are financed by virtue of governmental action, whether or not a charge on the public account is involved, including payments that are financed from the proceeds of a levy imposed on the agricultural product concerned or on an agricultural product from which the exported product is derived. (D) The provision of subsidies to reduce the costs of marketing exports of agricultural products (other than widely available export promotion and advisory services) including handling, upgrading and other processing costs, and the costs of international transport and freight. (E) Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments. (F)Subsidies on agricultural products contingent on their incorporation in exported products.[827] This list is, however, not a comprehensive list of export subsidy practices. Thus, there are practices which fall within the definition of an export subsidy under Article 1 (e) but are outside the scope of the Article 9 list. The question of whether such non-listed export subsidies are allowed on the specified as well as non-specified agricultural products is complex. The Agreement on Agriculture leaves their legal status ambiguous, and it is a matter of debate among scholars.[828]

However, on the basis of Article 6 of the Agreement on Agriculture, there are three categories of domestic support measures that are exempted from reduction commitments. First, domestic support, whether product-specific or not. Such subsidies

[826] Desta, M.G., 2002, op. cit., pp 153-154.

[827] *The Agriculture Agreement (legal text)*, available from WTO website on www.WTO.org

[828] Useful analysis on this point is available in Desta, M.G., 2002, op. cit., pp 232-235.

need not be reduced if they do not exceed 5% of the total value of total agricultural production in the developed countries (Article 6.4.(a)), and 10% in the developing countries (Article 6 (4.(b)). Second, direct payments under production-limiting programmes (often known as the "blue box") are excluded from the calculation of the Current Total Aggregate Measurement of Support "AMS", and are therefore not subject to the reduction requirements, on certain important conditions. Payments must be direct from the government budget, not transferred to the agricultural products through market manipulation devices and similar mechanisms. Moreover, payment should be linked to a requirement of production limiting measures on the port of the recipient. The payments may be made based on a fixed acreage and yields, or on 85% or less of the base level production, or in the case of livestock payments, on a fixed number of head (Article 6.5). The third category of exempted subsidies is domestic support provided by DCs "development programmes." These are investment subsidies which are generally available to agriculture, agricultural input subsidies generally available to producers who lack funds and resources, and domestic support to encourage producers to switch from illicit narcotic crops to alternative products (Article 6.2).

In addition, Annex 2 to the Agreement on Agriculture contains a detailed, although not exhaustive list of so-called "green box" measures, for which governments may claim exemptions. In order to qualify for exemptions under Annex 2, support practices should have no, or at most minimal, trade distortion effects or effects on trade (paragraph 1 of Annex 2). With this in mind, various criteria are applied to all measures for which exemption is claimed. There are two general criteria set out in paragraph 1 as follows: (a) the support shall be provided through a publicly funded government programme not involving transfers from consumers; and (b) the support in question shall not have the effect of providing price support to producers. There are also policy specific criteria and conditions, which vary according to the nature of the particular policy under consideration. Annex 2 lists a dozen categories of such policy- specific measures and the specific criteria and conditions applicable in each case. However, these policy specific conditions and criteria are additional to, not a replacement for, the aforementioned general conditions.[829]

[829] For more information and analysis of these policy specific criteria, see, Desta, M.G., 2002, op. cit., pp 414-422.

The Agreement also includes temporary exemptions for DCs, allowing them to subsidize marketing and transport (Article 9.4). This exemption is available only during the implementation period as defined by the Agreement.[830]

Estimates of domestic support to agriculture are constructed by the Organization for Economic Co-operation and Development (OECD).[831] Much of the total support in agriculture takes the form of either border protection or so-called non distorting domestic support[832] According to Vanzetti and Wynen, the focus of trade negotiations concerning multifunctionality is on whether production-distorting support (including amber and blue box domestic support and border measures) should be maintained or perhaps increased to guarantee benefits indirectly provided by agricultural production. Those who oppose such action claim that if such benefits from agriculture are desired, they can be provided without increasing production.[833] Article 20 of the Agreement on Agriculture and the paragraphs of the Doha Declaration dealing with the present negotiations on agriculture are intended to extend the reforms begun in the Uruguay Round, with "the long-term objective of substantial progressive reductions in support and protection." Of the objectives and concerns mentioned in the Agreement preamble, Article 20 refers specifically to "non-trade concerns, special and differential treatment to developing country Members and the objective to establish a fair and market-oriented agricultural trading system." Paragraph 13 of the Doha Declaration elaborates on these points and confirms that all three issues will be addressed in the new negotiations.[834]

The Agreement achieved some success in restricting the type of border instruments available to governments, and introducing quantitative commitments which facilitated subsequent negotiation on market access issues. Particularly significant were the conversion of all non-tariff measures into bound tariffs and the introduction of access commitments in the form of current and minimum access import quotas (as a share of domestic consumption).[835] However, problems remain with regard to the

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[830] For more details, see the WTO Secretariat Background Paper, "Export subsidies" G/AG/NG/S/5, downloadable from the WTO website on www.WTO.org

[831] For more details, see OECD Monitoring Report 2002.

[832] De Gorter, H. et al., "Domestic Support: Economics And Policy Instruments", in Ingco, M. D., & Nash, J.D., op. cit., 2004 at p 95.

[833] Vanzetti, D., & Wynen, E., "The "Multifunctionality" Of Agriculture And Its Implications For Policy", in Ingco, M.D., & Nash, J.D., op. cit., 2004, p 167.

[834] Ingco, M.D. et al., "Food Security And Agricultural Trade Policy Reform", in Ingco, M.D. & Nash, J.D., op. cit., p 179.

[835] De Gorter, H. et al., "Market Access: Economics And The Effects Of Policy Instruments", in Ingco, M. D., & Nash, J. D., op. cit., 2004, p 63.

relatively high levels of agricultural protection compared to other sectors and the continuation of certain non-tariff barriers. Trade in agriculture is still constrained by export subsidies, credits, and limited market access. It has been claimed that domestic support disciplines have limited impact in most countries, and that some commodities are largely unaffected by the reform process.[836] Protection by countries in the North remains at a high level, and constitutes an impediment to trade to many countries in the South. Since most developing countries rely heavily on agriculture, liberalization of the agricultural market should open up more export opportunities for them, thereby facilitating to their active participation in the new globalization era.[837] This has yet to be achieved. For instance, according to the Economic Cooperation and Development Organization (OECD), in its report of 2001, governmental subsidies had declined as a percentage of total farmers' income in the developed countries, but this was because of the increase in the global prices more than efforts to reduce the subsidies. The American agricultural subsidy in 2001 was $49 billion (21% of total agricultural income) compared with $49billion (22%) in 2000. In the same period, the agricultural subsidy in the EU was $93billion (35% of total agricultural subsidy) compared with $90billion (34%) in the previous year. In addition, the USA attracted protests from its trade partners, because it introduced, in 2002, a law which provided for increases in the subsidy (67%) to some crops and dairy produce for 6 years. Thus, the developing countries complained that the generous subsidies in the USA and EU gave these countries a competitive advantage. This is why there is still much debate about agriculture during negotiations in the WTO.[838]

In Bhagirath's view, the benefit of market access commitments to the developing countries is undermined by high subsidies in the developed countries, which counter the benefits of tariff reduction. Meanwhile, tariff reduction in developing countries exposes their domestic production to the double risk of fewer barriers at the border and artificially reduced prices of imports.[839] The evidence suggests that many of

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[836] Kennedy, P. L. et al., "Key Issues And Challenges For The 1999 World Trade Organization Agriculture Round", *American Journal of Agricultural Economics,* Vol 81, Issue 5, 1999, pp 11134-11141, at p 1140.

[837] Diao, X. et al., "Developing Country Interests In Agricultural Reforms Under The World Trade Organization", *American Journal of Agricultural Economics,* Vol 84, Issue 3, 2002, pp 782-790 at p 782.

[838] *Al-Watan Newspaper,* Issue 2469, 7 Jun 2002, p 5.

[839] Bhagirath, Lal Das., *Some Suggestions For Modalities In Agriculture Negotiations,* consulted on 16 May 2004 from, http://www.twnside.org.sg/title/das8.htm

the provisions of the Uruguay Round have not had the intended consequences, which makes caution necessary when trying to evaluate the impact of trade agreements.[840] Nevertheless, the current challenges faced by industrialized country agricultural trade policies, the severity of rural poverty, and the importance of agriculture to developing countries' economic growth, suggest the necessity of renewed attention to this sector to take advantage of the comparative advantages most developing countries have in agricultural production. In this respect the developing countries have a huge stake in the success of the Doha Development Round. They stand to benefit from the strengthening of a rules-based global trading system for agriculture and the reduction of distortions in global agricultural markets. As the weaker Members of the trading system, developing countries have most to gain by the adherence of the dominant trading countries to common rules that regulate government measures supporting agriculture in the three key areas of domestic support, market access, and export competition. Developing countries could derive advantage from further reforms in these three areas and would also be helped by reforms in antidumping rules, which are increasingly applied in both developed and developing countries.[841] Developing countries have exhibited a strong interest in dissuasions on agricultural trade, and have been active participants in negotiations. However, the evidence so far is that the Uruguay Round Agreement on Agriculture did not result in a significant improvement in their opportunities.[842] The Uruguay Round should be seen as the start of a long term reform process. Of concern now is whether continued progress towards those reforms can be achieved in the Doha Development Agenda within the framework defined by Article 20, or whether the process might falter. The latter outcome could pose a serious treat to the legitimacy of the WTO system. Cause for concern is given by delays in the Doha timetable, notably the unresolved issue of the agriculture modalities in 2003 and the lack of progress in Cancun and Hong Kong. However these issues develop, agricultural trade policy reform can be expected to remain a major focus of debate in the WTO.[843]

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[840] Will, M., "What Has The GATT/WTO Agricultural Agreement Actually Done?: Discussion", *American Journal of Agricultural Economics,* Vol 82, 2000, pp 729-730 at p 729.

[841] Ingco, M.D., & Nash, J.D., "What's At Stake? Developing-Country Interests In The Doha Development Round", in Ingco, M.D., & Nash, J.D., op. cit., 2004, pp 1-3.

[842] Matthews, A., "Developing Countries' Position In WTO Agricultural Trade Negotiations", *Development Policy Review,* Vol 20, Issue 1, pp 75-90 at p 88.

[843] For more information about the agriculture trade negotiations of the Doha Development Agenda, see generally, Swinbank, A., "The Challenge Of The Agriculture Trade Negotiations In The WTO Doha Round", in Perdikis, N. and Read, R., (eds), *The WTO And The Regulation Of International Trade: Recent Trade Disputes Between The European Union And The United States,* Edward Elgar

As an overall assessment, it can be said that inequities between developed countries and DCs with respect to the availability of export subsidies as a tool of agricultural policy will be worsened by the Agreement. Historically, the agricultural sector has been a source of tax revenue. By allowing existing export subsidies to be retained, subject to certain reduction obligations, while forbidding Members to initiate new subsidies, the Agreement entrenches the unfair competitive advantage held by producers in the handful of developed countries where the practice of export subsidization is concentrated.[844] They will be able to continue using such trade distorting domestic subsidies while DCs will be prevented from utilizing these subsidies beyond *de minimis* levels.[845]

The accession of Oman to the WTO enforces the Sultanate to review her agriculture policies, whereby subsidies were provided to the agriculture sector. As regards export subsidies, there are no kinds of export subsidies which should be reduced pursuant to the Agriculture Agreement. However, Oman has undertaken not to support export subsidies. In relation to domestic subsidies to the agriculture sector, the government generally provides different kinds of subsidies. For example, income from agriculture is exempted from all income tax. Water for use in agriculture may be provided at a lower price than the original price. Agriculture harvests may be bought from the farmers at prices higher than the global prices, as in the case of lemons and dates. Farmers are sometimes given financial subsidies to encourage them to plant particular crops.[846] There is no comprehensive estimate of the value of the above kinds of subsidies in Oman and even in the GCC States, except in Saudi Arabia, where one study in 1996 estimated this value at around 2.3 billion US Dollars, around 45% of agriculture production value, compared with 80% in Swaziland, 49% in the EU, and 30% in the USA.[847] In this context it seems that the Sultanate, as a developing country, should reduce the above kinds of subsidies by AMS to 31.1% over ten years. Basically, the reduction of subsidies to farmers will in the short term hurt these farmers, because

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Publishing, Cheltenham, UK, 2005. See also Althukorata, P. C., "Agricultural Trade Reforms In The Doha Round: A Developing Country Perspective", *Journal of World Trade,* Vol 38, Issue 5, 2004, pp 883-893.

[844] Gonzalez, C. G., 2002, op. cit., p 464.

[845] Stevens, C. et al., *The WTO Agreement On Agriculture And Food Security,* Economic Paper Number 42, 2000, London, Commonwealth Secretariat, p 39.

[846] *Selselat Al GATT Wa Enecasateha Ala Ectesadeyat Dowel Majles Altawon Al Kalejee, 3 Alqeta Alzeraee[GATT And Its Effect Upon GCC States, 3 Agriculture Sector]*, op. cit., 1997, pp 18-19.

[847] *The Impact Of GATT On The Business Sector Of The Kingdom Of Saudi Arabia,* Jeddah Chamber Of Commerce And Industry, 1996, pp 2-14.

they are a very important resource which assures their survival. However, in the middle and long term, increased productive ability and acclimatization to a free and open policy in the agriculture field will arm the farmers with capability to respond to the new challenges with competence. However, the Sultanate can subsidize domestic agricultural products by applying another measure, namely the Green Box Policies, which is permissible. In addition, it can provide domestic support not exceeding 10% of the gross national agricultural product. However, the challenge at the moment to agricultural products in Oman comes from the subsidies provided in Saudi Arabia and the Emirates and not in Oman, to some agricultural products such as potatoes and dates, the latter in particular being regarded as a strategic product in Oman. Due to the customs union between the GCC States, the products from each of these States may enter any country in the union freely and without any discrimination. In the case above, potatoes and dates from Saudi Arabia and the Emirates sell in Oman at cheaper prices than their domestic equivalent, which means that domestic production is hurt.[848] Thus, Oman should present this issue for discussion among the GCC States to avoid any damaging commercial practice on the GCC level, such as anti-dumping. In addition, such a challenge also could come from some subsidized products coming from some Arab countries - especially those who are not yet WTO Members - who enter the Sultanate freely under the GAFTA which was established in 2005.

5.4.2.3. Agreement on Technical Barriers to Trade (TBT) and Anti-Dumping Agreement (ADA)

In relation to the impact of TBT and ADA upon the agriculture sector, more analysis can be found in sub-section 5.2.2 for the TBT and sub-section 5.3.2 for the ADA. However, as said before, all goods produced domestically or imported from abroad - such as agricultural production - must meet Omani standards and measures. However, it is argued that Oman needs to improve her standards and quality to international level if she wants to access other countries' markets. On the other hand, as mentioned before, as Oman is an open country with very few quantitative restrictions, and due to the lack of agricultural products capacity, there is little chance of dumping

[848] Al Nbhani, H. et al., Waraqat Amel Hwla Tather Enzemam Asultanah Lletehad Aljumrqy Alkahligi Wa Etefaqyat Alarbya Wa Adwlyah Ala Keta Alzerah Wa Ma Ytratb Alyh Men Enfetah Fee Alaswaq [Working Paper On The Influence Of Accession Of The Sultanate To Gulf Customs union And Arabic And International Agreements Upon The Agriculture Sector, And What It Is Arranged On Opening In The Markets], unpublished paper, prepared by the Ministry of Agriculture and Fisheries (Oman), June 2004, p 11.

from abroad. Furthermore, the implications of anti-dumping rules for Oman as a developing country, to reduce acrimony and problems arising in relation to several non-tariff measures applied to her agriculture and food exports -if they occur- will be unfavourable. That is partly because most anti-dumping cases are initiated against developing countries, and partly due to the high financial costs of implementing an anti-dumping case.

5.4.2.4. Agreement on the Application of Sanitary and Phytosanitary Measures (SPS)

Another agreement with potential impact on Oman is the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), which forms a part of the WTO Agreement, signed in 1994. The aim of this Agreement is to lay a firm foundation for strengthening multilateral disciplines in the implementation of food safety standards in agricultural trade, with a view to achieving the objective of consumer protection while regulating the use of these standards as a means of non-border trade protection. The Agreement seeks to spell out in a limited area the principle of Article 20 of the GATT, which was largely ineffective in achieving this objective because of ambiguity and restriction in its provisions and the lack of an effective institutional framework for implementation. The text of the SPS (unlike the original GATT Article 20) is part of the mandatory portion of the WTO Agreement and as such is binding on all WTO Members.[849] Theoretically the SPS is expected to facilitate trade between developing and developed countries by improving transparency, promoting harmonisation and preventing the imposition of arbitrary SPS standards. Whether this will be achieved in practice will depend on how effectively developing countries can participate in the implementation of the Agreement.[850] The SPS Agreement, however, makes insufficient allowance for the special needs of DCs. Some awareness of the difficulty of compliance for DCs is reflected in the Article 10 provision; the needs of this group must be considered by WTO Members in the preparation and enforcement of safety measures. There is, moreover, provision in Article 9 for DCs to be given technical assistance in compliance with health and safety standards. In practice, however, developed countries have done little to meet these obligations. Although, for example, the United States has admitted that more technical assistance should be provided to DCs, it has not

[849] Athukorala, P.C. & Jayasuriya, S., "Food Safety Issues, Trade And WTO Rules: A Developing Countries Perspective", *The World Economy,* Vol 26, Issue 9, 2003, pp 11395-1416 at p 1409.

[850] Ibid, p 1410.

significantly increased its efforts in this respect. Lack of the necessary technical assistance has sometimes forced governments representing DCs to argue at Codex for downward harmonization due to their inability to meet high, international standards. Such a situation is undesirable for both developing and developed countries. DCs need to be given technical assistance to enable them to meet international standards to both benefit their own citizens and compete effectively in international markets.[851]

The essence of the Agreement is that Members must justify the food safety standards that they apply and demonstrate that distortive impact on trade is not disproportionate. A balance is sought between the right of Member States to make their own decisions about health and safety measures (Article 2.1) on the one hand, and prevention of unduly restrictive practices on the other. In order to prevent unnecessary restriction, measures having the effect of excluding or limiting imports should be permitted only if they are backed up by scientific findings (Article 2.2) and should not become disguised efforts at protectionism or discrimination (Article 2.3). If the scientific findings on which an import restriction is based are incorporated into a widely accepted international standard, and the importing state's regulations conform to the standard, the import restraint should be deemed to be necessary to protect human, animal, or plant life or health, and presumed to be consistent with the relevant provisions of the SPS and GATT (Article 3.2).852 National SPS measures can be justified, either through the adoption of international standards, in particular those of Codex Alimentarius, Office International des Epizooties (OIE) and International Plant Protection Convention (IPPC), which are automatically assumed to comply with the provisions of the Agreement (Article 3.4), or through a structured, scientific assessment of the risks to human, plant or animal health addressed by the SPS measure concerned. Although the Agreement does not mandate a specific assessment process, it requires certain criteria to be met in order to justify a national SPS standard: (a) Risk assessment should be conducted according to generally recognized risk assessment techniques. It should clearly distinguish between hazards and risk and encompass processes of risk assessment, management and communication. (b) Risk assessment must be supported by currently available scientific evidence or, failing this, by "pertinent information." (c) The level of protection must be shown to be proportionate to the level of risk faced. (d)

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[851] Silverglade, B. A., "The WTO Agreement On Sanitary And Phytosanitary Measures: Weakening Food Safety Regulations To Facilitate Trade?", *Food And Drug Law Journal,* Vol 55, 2000, pp 517-524 at p 521.

[852] Lowenfeld, A. F., 2002, op. cit., p 324.

The level of protection must be shown to be consistent across different contexts/situations. (e) It must be shown that actions taken to achieve the desired level of protection do not constitute an unnecessary obstacle to trade (Article 5).[853]

Victor has pointed out what he calls a 'curious tension' in Article 5 and other related provisions of the SPS Agreement.[854] The main point of these provisions, and especially Article 5, is to ensure that countries apply risk assessment when formulating their SPS measures, and that the measures adopted are not unduly restrictive of trade. They make little reference to the level of SPS protection that a country seeks. It is emphasised throughout the SPS Agreement that countries may decide their own level of SPS protection, irrespective of the level provided by international standards (Articles 2.1, 3.3). The only explicit constraint in the SPS Agreement is with regard to the permissible level of SPS protection is Article 5.5, under which countries are obliged to seek comparable levels of SPS protection in comparable situations. Thus, the legitimacy of a country's level of SPS protection depends on whether that country consistently seeks a particular level of SPS protection. There is also a difficulty in relation to the requirement that a country's SPS levels be based on risk assessment, because assessment of the risks of SPS measures must logically take into account also the risks associated with the level of protection, levels and measures being two dimensions of the same issue. This continues to be a matter of debate, because a nation's sovereign right to determine its own SPS protection level is a politically sensitive issue.[855]

In the event of any disputes arising under the SPS Agreement, like other WTO disputes, the consultation and dispute settlement procedures of GATT Articles 22 and 23, as amplified by the Dispute Settlement Understanding, are applicable. Where such a dispute involves scientific or technical issues, the panel is directed to consult with the parties on selection of experts from whom advice may be obtained.[856] Sources of law applied in disputes include the texts of the WTO Agreements, followed by the adopted reports of panels and the Appellate Body of the WTO. The latter are not binding on

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[853] Henson., et al., "Impact Of Sanitary And Phytosanitary Standards On Developing Countries And The Role Of The SPS Agreement", *Agribusiness,* Vol 15, Issue 3, 1999, pp 355-370, at p 358.

[854] Victor, D., "The Sanitary And Phytosanitary Agreement Of The World Trade Organization: An Assessment After Five Years", *New York University Journal of International Law And Politics,* Vol 32, 2000, pp 865-937 at p 882. The other related provisions are, in particular, Articles 2 and 3 and Annex A.

[855] Ibid, pp 882-883.

[856] Kennedy, K.C., "Resolving International Sanitary And Phytosanitary Disputes In The WTO: Lessons And Future Directions", *Food And Drug Law Journal,* Vol 55, 2000, pp 81-104 at p89.

future disputes, since the principle of stare decisis does not apply within the WTO system.[857] Nevertheless, they constitute useful sources of guidance and are often referred to by panels and the Appellate Body.[858]

The *Hormones* and *Salmon cases* demonstrate the approach taken by the Appellate Body in interpreting the provisions of the SPS Agreement. The former was adopted in 1998.[859] The *Hormones* dispute arose from a European ban on the sale of meat from cattle that had been treated with certain growth hormones.[860] Although the said hormones had been declared safe by an international body of experts, the European Community (EC) claimed that they were carcinogenic.[861] The ban applied both to European and imported beef. However, since use of the hormones in question was already prohibited in Europe, the impact of the ban disadvantaged producers in countries like the United States and Canada, where administration of growth hormones was permitted.[862] The Appellate Body held the ban to be in violation of the SPS Agreement.[863] Whilst accepting the EC's right to adopt measures affording a higher standard than available under international standards[864], it insisted that such measures must be based on objectively valid risk assessments.[865] In the view of the Appellate Body, the EC had failed to offer any risk assessment that sufficiently warranted the ban on hormone-treated meat.[866] The only evidence offered had been general studies on the carcinogenic potential of hormones, which did not explicitly discuss the administration

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[857] Terence, P.S. & Johanson, D.S., "A Nexus Of Trade And The Environment: The Relationship Between The Cartagena Protocol On Biosafety And The SPS Agreement Of The World Trade Organization", *Colorado Journal of International Law And Policy,* Vol 14, 2003, pp 1-32 at p 28.

[858] In this regard, see what the Appellate Body stated in its decision on Japanese taxes on alcoholic products, WTO Document Number WT/DS8/AB/R,WT/DS10/AB/R,WT/DS11/AB/R on 14 October 1996, available from, http://www.WTO.org/english/tratop<uscore>e/dispu<uscore>e.htm

[859] See WTO Appellate Body Report on EC measures concerning meat and meat products (Hormones), Document Number WT/DS26/AB/R, WT/DS48/AB/R on 16 January 1998, available from WTO website on www.WTO.org

[860] Ibid, pp 2-5.

[861] McNiel, D.E., "The First Case Under The WTO's Sanitary And Phytosanitary Agreement: The European Union's Hormone Ban", *Virginia Journal of International Law,* Vol 39, Issue 89, 1998, pp 89-134 at pp 102, 107-108, 117

[862] WTO Appellate Body Report on EC measures concerning meat and meat products (Hormones), op. cit., p 244.

[863] Ibid, pp 253-255.

[864] Ibid, p 172.

[865] Ibid, pp 176-177. As the Appellate Body explained, this means the measure in question should be reasonably supported by the assessment. Ibid, p 193.

[866] Ibid, p 208.

of growth hormones to cattle.[867] The studies in question found no danger in hormones, provided that good veterinary practice was followed in their administration. The SPS Agreement's consistency requirement was also addressed by the Appellate Body. It held that unjustifiable distinction had been made between the levels of protection imposed by the EC with respect to hormones and those applied in relation to certain other feed additives. However, since strong legitimate concerns about drug-free meat were reflected in legislative history, the Appellate Body refrained from categorizing this inconsistency as "discrimination or a disguised restriction on international trade."

The same issues of risk assessment and consistency were discussed in the *Salmon case,* which concerned Australia's ban on the importation of certain uncooked salmon from Canada. Once again, the Appellate Body found the ban to be unsupported by a valid risk assessment. The government report submitted in justification of the Australian ban had assessed the likelihood of some adverse effects, but in relation to others offered no more than "general and vague statements of mere possibility." Nor did it consider whether alternative SPS measures might equally or better reduce the risk of those adverse effects. The Appellate Body also considered the ban to be in contravention of the consistency requirement reflecting on arbitrary and unjustifiable distinctions between the standards applied in the case in question and those applied in comparable situations. Herring, for example, had been subjected to less restriction, despite posing potentially greater risks than salmon. The Appellate Body concluded that such inconsistency in treatment of comparable products amounted to disguised restriction on international trade.[868]

In general, most developing countries are aware of the SPS and recognize that in the long term there are advantages to be gained from its proper implementation. However, many are dissatisfied with the manner in which the SPS has been implemented to date. A major grievance is the perception that developed countries do not sufficiently consider the needs of developing countries when setting SPS requirements. They also argue that insufficient time is allowed between notification and implementation of SPS requirements, and that DCs need more technical assistance.

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[867] For an interesting criticism of the Appellate Body on this issue, see Walker, V. R., "Keeping The WTO From Becoming The "World Trans-Science Organization": Scientific Uncertainty, Science Policy, And Factfinding In The Growth Hormones Dispute", *Cornell International Law Journal,* Vol 31, pp 251-320 at pp 251, 269-270.

[868] McGinnis, J.O., & Movsesian, M.L., 2000, op. cit., pp 600-601.

Oman is among the many DCs that has not yet played an active role in the SPS. Indeed, since many DCs are not represented at SPS committee meetings or meetings of the international standards organizations, they may fail to take advantage of the provisions and mechanisms laid down by the Agreement, to safeguard their interests. Key problems are insufficient ability to assess the implications of developed country SPS requirements following notifications, insufficient ability to participate effectively in dispute settlement procedures, and insufficient ability to demonstrate that domestic SPS measures are equivalent to developed country requirements.[869] The major problems facing Oman in participating in international standard setting are the cost involved and the lack of technical expertise needed to provide the required scientific evidence to support standards proposals. The implementation cost of SPS is enormous. Notification and inquiry points must be established and the country must have a representative in Geneva who can participate in the meetings of the SPS Committee[870], as well as technical and financial capacity to provide detailed input on how to develop new standards.[871] However, it can still be argued that this Agreement supports Oman's efforts to confront the import of some agricultural merchandise that is potentially hazardous to health by allowing her to take suitable safeguard measures without arousing her trading partners' anger.

In this context, Oman with the other GCC States have made significant strides towards regulatory harmonization by issuing Gulf Standard (GS) 9/95, which revised previous label regulations for pre-packaged food products, and GS150/93, part 1, which established shelf-life standards for a number of food items. Oman adopted GS9/95 as Omani Standard (OS) 58/95, and GS150/93, part 1, as OS246/93. The possible need for further modification of this standard is still under discussion. Until this matter is settled, GS150/93, part 2, will not be formally ratified. Since joining the WTO, Oman has accepted manufacturers' recommended shelf life. On 26 June 2000, the Omani Minister of Commerce and Industry issued Ministerial Decision 74/2000 which relates to food labelling and safety. This decision is intended to complement OS58/95, and consists of four main components: (a) Labelling information on food and food products shall be in

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[869] Henson, S. et al., *Impact Of Sanitary And Phytosanitary Measures On Developing Countries,* Department Of Agriculture And Food Economics, University of Reading, Earley Gate, Whiteknights, 2000 at p 1.

[870] As mentioned in Chapter Four, Oman has only one representative in Geneva, who needs to attend all the WTO meetings such as the meeting of the SPS Committee. In view of the number of these meetings, it can be imagined how difficult it is, if not impassable, to attend all these meetings.

[871] Alavi, R., 2002, op. cit., p 21.

accordance with the Codex General Standard for the labelling of pre-packaged foods (Codex Stan.1) and all information shall be written in Arabic and any other language beside Arabic. (b) Food products shall not contain alcohol, pork, lard or their derivatives. (c) Definitions and limits of food additives, contaminants, residue of pesticides and residue of veterinary drugs in food and food products shall be in accordance with Codex Alimentarius standards. (d) Whatever contradicts this decision shall be cancelled.[872] The wording of this decision has given rise to some confusion over Oman's commitment to the GCC on one hand, and its commitment to the WTO on the other. Quoted by Taha, an Omani high level official acknowledged the difficulty that might be caused for third parties by the attempt to follow Codex regulations simultaneously with GCC standards, but expressed Oman's hope that GCC States will eventually voluntarily come into compliance with WTO commitments.[873] As a step in this direction, all GCC States have agreed to adopt Codex regulations governing the use of food colouring agents and other food additives. From the foregoing discussion, it can be suggested that more efforts must be made to enhance the capability of Oman to bring her practice in line with the SPS requirements. These might include initiatives to make scientific and technical expertise more readily available and the development of domestic SPS control systems that are effective and appropriate to local circumstances. In addition, Oman has to improve her participation in the SPS Committee meetings, like the meetings of the other WTO Committees.[874]

5.5. BANKING SECTOR

The section contains two sub-sections. The first one gives a general overview of the banking sector in Oman, while the second one discusses the impacts of the GATS Agreement on this sector.

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[872] Taha, M., *Oman Food Agricultural Import Regulations And Standards: Country Report 2003,* Report Prepared by the Agricultural Trade Office of the USDA/Foreign Agricultural Service in Dubai, for US Exporters of Domestic Food and Agricultural Products, consulted on 12 April 2004 from, http://www.fas.usda.gov/gainfiles/200309/145986181.pdf

[873] Ibid.

[874] More discussion on improving the performance of Oman in the WTO is available in Section 6.2 in the next chapter.

5.5.1. General Overview

Oman, when she joined the WTO, become bound by the general commitments under GATS, and in addition, has her own individual schedules of commitments in specific service areas.[875] The service industry, in general, has its own peculiarities that will characterize its response to liberalization, in ways that differ from that of the industrial sector. Since the GATS covers many services which cannot all be covered within a few pages, the discussion in this section will focus on the challenges and opportunities of the GATS Agreement for Oman in the banking sector. This sector is chosen because of its importance as one of the fastest growing sectors in Oman's economy, which supports the claim that "trade and investment have become major engines of growth in developed and developing countries alike, including the Arab region".[876]Although recent World Bank programmes have emphasised the development of capital markets in general and stock markets in particular, the process of development of stock markets and their integration with the global capital market is far less advanced in the GCC States. The market in the six GCC States is less active compared to those in Egypt, Jordan, and Turkey.[877]Moreover, a leading role in influencing the financial markets in the Gulf regions is played by commercial banks. Stock markets are characterized by relatively low market capitalization, the number of listed companies is small, most securities are infrequently traded, and trading volume is low.[878]

The banking sector in any country has crucial economic importance, as a result of its vital role in accumulating savings and financing investments which drive the economy. In the case of Oman, however, a domestic banking industry was established only comparatively recently, the oldest local banks being traceable no earlier than the 1950s and 1960s. For a 20 year period until 1968, the British Bank of the Middle East had a monopoly. Before the 1960s there was little or no bank supervision. However, the inadequacy of the existing regulatory and supervisory arrangements was highlighted by the banking crises faced by many states of the region in the 1980s, resulting in calls for

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[875] For example, see Sub-section 4.3.2.1.2 of Chapter Four for Oman's commitments on the services sector.

[876] Safadi, R., "The Arab World And The New Multilateral Trade Agenda: Trade In Services And Investment Provisions In The WTO", *Journal of Development And Economic Policies,* Vol 1, 1998

[877] Mazhar, M.I., "Characteristics, Performance And Prospects Of Emerging Stock Market Of Oman: Facts & Figures For International Investors", *Journal of American Academy Of Business,* Vol 3, Issue ½, 2003, pp 230-237, at p 231.

[878] Abraham, A. et al., "Analysis Of Diversification Benefits Of Investing In The Emerging Gulf Equity Markets", *Managerial Finance,* Vol 27, Issue 10/11, 2001, pp 47-58, at p 48.

more demanding regulations and better supervision. Much has been achieved in this respect in recent years.[879] However, Oman has a number of under-capitalized banks that have little chance of surviving competition with the big supermarket banks. The fall of even one such bank might shake confidence in the whole financial system, even though little if any money might be lost,[880] suggesting that it would be desirable for them to merge to strengthen the overall system. In this context, the government expanded repossession facilities to the interbank market; implemented a capital market law to restructure the Muscat Securities Market into three separate bodies dealing with regulations, trading and exchange, and depository registration; and adopted a new banking law in 2000.[881] The Central Bank has reactivated the issuance of certificates of deposits to manage liquidity, and implemented measures to reduce the risk of over-lending to individuals, corporations, and their related parties. Oman has taken steps toward full compliance with the Financial Action Task Force (FATF) recommendations on money laundering and combating the financing of terrorism. The Central Bank is also strengthening risk-management assessment. Oman is ranked as the world's sixth most economically free country in terms of access to sound monetary policy out of 123 countries analysed by the Canadian Fraser Institute. The index of economic freedom is composed of 4 criteria. These are average annual growth in the money supply in the last five years, the standard inflation variability in the last five years, the recent inflation rate and the freedom to own foreign currency bank accounts domestically and abroad.[882] In addition, consistent with the trend in international banking, the banking industry in Oman has also experienced mergers in the recent past. Five important mergers were effected in the nineties, two in 1993 and one each in 1994, 1997 and 1998. The main impetus for these came from globalisation, demographic and economic changes, and

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[879] Shihata, I.F.I., "Some Trends In Banking Law And Their Relevance To The GCC States", *Arab Law Quarterly,* Vol 13, Issue 4, 1998, pp 303-335 at pp 327-328.

[880] Bakheet, B., "Developing GCC Stock Markets: The Private Sector Role", *Journal of Middle East Policy Centre,* Vol 6, Issue 3, 1999, pp1-5 at p 5.

[881] The new law contains the following: (a) The definition of banking business was widened to introduce new activities including corporate and project finance, investment brokerage, advisory services, investment management, the underwriting of securities, custodian and fiduciary services. (b) The paid up capital of a domestic bank was established at not less than twenty million Rials Omani, and the paid up capital of a branch of foreign bank at not less than three million Rials Omani. (c) Additional controls were provided on bank loans. The law established by regulation, the maximum lending limits allowed to major shareholders including their related parties to avoid any misuse of influence. (d) The confidentiality of banking transactions and non-disclosure of information relating to bank customers is confirmed unless instructed otherwise by the Central Bank.

[882] "Banking News: The Sultanate Ranked 6th In The World For Sound Monetary Policy", *Al Markazi,* Vol 29, Issue 1, 2004 at p 23.

technological advancement.[883] By 2000-2002, there were 15 commercial banks, of which six were locally incorporated and nine were branches of foreign banks. The market is dominated by three leading local institutions, which together account for approximately 70% of total assets. Commercial banks' liabilities continue to be dominated by deposits, which at the end of 2002, accounted for 64% of total liabilities. Private sector time deposits accounted for the bulk of total deposits. As regards assets, the greater part (70%) was made up of lending, predominantly personal loans. Since opportunities for loans are limited, local banks have taken on limited exposure to the project finance market where the risk/reward returns are lower. Some banks have sought diversification opportunities outside the local market, even though this means competition with regional and international banks and the assumption of additional risk. Their endeavours have been only moderately successful. The GCC markets, in general, are heavily over-banked and it is difficult to compete with the stronger institutions.[884] However, the high profitability of commercial banks in Oman is testimony to their operational efficiency. Foreign banks, though larger in number, account for a much smaller share in total profits than their local counterparts, as a consequence of their comparatively small share in the total asset base of the commercial banking system; less than 25%. Foreign banks' operations are mainly confined to the capital area, in contrast to local banks, whose branches cover even remote areas. Although this wide geographical coverage results in higher operational costs, local banks as a whole have contributed effectively to the national economy.[885] However, the question is, is this position going to continue after the accession of Oman to the WTO? In addition, how may the efforts of Oman to develop her banking sector be affected by accession to the WTO?

5.5.2. The Impact of GATS

A significant achievement of the Uruguay Round of multilateral trade negotiations was the incorporation of trade in services into a GATT-like framework within the WTO. The stimulus to take account of trade in services came primarily from

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[883] For more information in this context, see generally Dr Kalmoor. M.A., "Administrative Ramifications Of Bank Mergers: E Acquisitions - An Empirical Evidence Of Oman", *Al Markazi,* Vol 24, Special issue 1999/2000, pp 23-30.

[884] Shireen, A.Y., "Profitability Of The Commercial Banks In Oman (2000-2002)", *Al Markazi,* Vol 28, Issue 2, 2003, pp 7-16 at pp 12-13.

[885] Ibid, p 15.

US private sector service providers who were frustrated by restrictions on their ability to operate in foreign markets, and envied the assistance given to goods traders by the GATT in removing barriers to market access. They succeeded in arguing, first in the United States and then in the GATT negotiations, that similar institutional facilities should be extended to international service transactions. The result was the GATS, which is now one of three rather unequal pillars of the WTO.[886]

It is generally recognized that every services negotiation involves two basic issues: domestic regulation and investment, which also have a crucial bearing on ability to attract capital. In many DCs, a prior question arises as to the status of the law. Open competition, especially where non-nationals are concerned, requires not looser but stricter enforcement of law. The law must be effective, impartial, transparent, universally applicable and associated with clear consequences. Financial services is an example of an area where allowing foreign competition without adequate regulatory and supervisory control could have deleterious results.

The Uruguay Round is the first multilateral trade negotiation to reach a comprehensive agreement on international trade in a wide range of services, from accounting to tourism. It applies not only to cross-border trade in services, but also to every other means by which services can be internationally traded, except those supplied in the exercise of government authority (Article 1 and 13 of GATS). Like the GATT, the GATS does not provide for liberalization of trade directly, but provides for Members to undertake commitments which they negotiate under the framework of the Agreement, and which are bound in schedules or annexes. Four modes of trade in services are identified in part 1 of the GATS (Article 1.2: *(1) "Cross border" services where both provider and user remain in their home territory (such as services provided generally by facsimile, e-mail, phone, or other means of communication). (2) Services provided to the user who travels to the territory of the provider (such as tourism).(3) Services provided where the provider establishes a commercial presence in the territory of the user (such as a UK bank, insurance, or financial services company established as a branch or subsidiary in Oman). (4) Services provided when a natural person provider temporarily travels to the territory of the user (such as an attorney, interpreter, or teacher travelling to another country to consult or lecture).*[887] In addition, the GATS

[886] Deardorf, A.V., "International Provision Of Trade Services, Trade, And Fragmentation", *Review Of International Economics,* Vol 9, Issue 2, pp 233-248 at p 233.

[887] Matsushita, M. et al., *The World Trade Organization: Law, Practice, And Policy,* Oxford University Press, Oxford, 2003 at p 229.

gives the WTO Member governments a high degree of flexibility in deciding the level of obligations they will assume. The main elements of flexibility underlying the GATS are fourfold: (a) Member governments decide in which service sectors or sub sectors they will make commitments guaranteeing the right of foreign suppliers to provide the service. Each Member is required to have a schedule of commitments, but there is no minimum required coverage; it may be as little as a small part of one sector.[888] (b) For those services that are committed, the governments may set limitations specifying the level of market access and the degree of national treatment they are prepared to guarantee. (c) Governments may limit commitments to one or more of the four recognized "modes of supply" through which services are traded and they may also withdraw and renegotiate commitments. (d) Governments may provide more favourable treatment to certain partners, the governments by taking exemptions, limited to 10 years, from the MFN principle, which must otherwise be adhered to in all services, whether scheduled or not. This flexibility in the scheduling of commitments helped to resolve conflict between developed and developing countries over the services trade.[889]

The inclusion of service transactions in the negotiations and in the final act is a significant development, given their growing contribution in world trade. Cross-border trade alone in services accounts for roughly 20 percent of world trade in goods and services, the growth rate of services exceeds that of goods. The rules and commitments in the GATS apply to all national, state, regional and local government measures affecting services. Although the GATS states that countries have the "right to regulate", this statement is in the preamble rather than the main text, so is not legally binding. Conversely, the specific Articles of the GATS requiring deregulation, such as Article 6 on domestic regulation and Article 16 on market access, are legally binding.[890] The GATS includes commitments on both general principles and specific services sectors. The general principles, or goals, agreed for trade in services are similar to those long accepted in agreements relating to trade in goods. They include national treatment

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[888] For example, many developing countries, in their commitments under this agreement, have left substantial parts of their financial services regime unbound. However, this does not necessarily mean that foreign suppliers are excluded or suffer discrimination within the market. But it leaves the government free to impose what restrictions it wishes in the future.

[889] Yun-Hwan, K., *Financial Opening Under The WTO Agreement In Selected Asian Countries: Progress And Issues,* Background Paper Presented in the 2nd Annual Conference of PECC Finance Forum, Thailand 8-9 July 2003, consulted on 19 May 2004 from, http://www.pecc.org

[890] Ellis, M. & Hardstaff, P., *Serving (Up) The Nation: A Guide To The UK's Commitments Under The WTO Agreement On Trade In Services,* World Development Movement (WDM), London, 2002, p 13.

(Article 17), most favoured nation treatment (Article 2), transparency (Article 3), and progressive liberalization.[891] MFN, national treatment and market access are the key policy elements of the GATS. Whilst MFN is in principle a general obligation, the sectoral coverage of national treatment and market access obligations depends on country schedules. In principle, GATS prohibits six types of market access restriction. These consist of limitations on: (1) the number of service suppliers allowed; (2) the value of transactions or assets; (3) the total quantity of service output; (4) the number of natural persons that may be employed; (5) the type of legal entity through which a service supplier is permitted to supply a service (e.g., branches vs. subsidiaries for banking); (6) participation of foreign capital in terms of a maximum percentage limit of foreign shareholding or the absolute value of foreign investment. It is a matter for negotiation by GATS Members which service sectors will be bound by market access and national treatment rules, and what measures will be retained for any given sector that violates market access and/or national treatment, respectively. Any introduction of new laws or changes to existing laws, regulations or administrative guidelines, which significantly affect trade in services covered by a Member's specific commitments, must be notified to the council for trade in services at least once a year. In addition, an inquiry point must be established to provide specific information to other Members on all relevant measures of general application that affect the operation of the GATS.[892]

The specific services sector commitments under GATS are conditional commitments which are part of each Member's individual schedule of commitments, agreed in the course of its accession negotiations. Having made a specific commitment regarding a service sector or sub-sector, a Member State is obligated to facilitate market access and/or national treatment to trade in the activity in question. It also undertakes not to adopt new measures or regulations that would restrict market access or the current operations of services. However, a Member may impose its own limitations on these commitments. It is possible for commitments to be withdrawn or modified, but compensatory adjustments must be agreed with affected countries. In any case, no such change can be made until the elapse of three years from the entry into force of the

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[891] Norman, F. S., "The Uruguay Round Of Trade Negotiations: An Overview", *New England Economic Review*, Vol 0, Issue 0, 1995, pp 3-14 at p 5.

[892] *Globalization And The GCC Member Countries: Opening Doors To The World*, Islamic Development Bank, 1998, p107, unbpublished; obtainable from the bank.

Agreement. Moreover, it must not compromise MFN treatment. In addition, commitments can be added to improve on anytime.[893]

Despite the flexibility in the GATS, critics argue that the GATS negotiations were initiated and promoted by those transnational service providers that will reap the greater benefit from the opening up of new service markets abroad and the removal of domestic regulatory hurdles that they view as obstacles to their trade (regardless of their purpose). They express concern that GATS could promote the transfer of public resources into private hands. Admittedly, there is legal uncertainty concerning the scope of the GATS in terms of whether it covers public service or not. Article 1.3 (2) C of GATS states that, "*a service supplied in the exercise of governmental authority means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.*" Some believe it may do so and that the impacts could include loss of universal access; and guaranteed access to public funding for private operations, etc (for example, in relation to funding for research and development and of publicly owned land).[894]

The GATS includes services to be liberalized and the principles which induce the Member countries to adhere to the agreement. The Agreement concentrates on a time-scale over which the Member countries commit themselves to liberalization of services and not to impose any discrimination in current transactions. The Agreement, however, has some exceptions, whereby a Member country can apply some restrictive practices when there are difficulties in the balance of payment (Article 13). However, such measures should be temporary and not hurt the other Members. The Agreement also concentrates on liberalization of international services and the movement of capital and to commercial presence inside each country, so as not to affect the balance of payment or control procedures (Article 13). On the movement of natural persons, the agreement does not set any clear terms, which may be related to the limitation of migration policies to northern or western countries.

On the financial services in the GATS, one of the influences is the increased competition in the supply of financial services. Considering the general weakness of the financial sector in Oman and that it has for a long time lain stagnant under the umbrella of national protection, this situation should be a matter of concern to the government.

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[893] Ashour, M.F., *The GCC And The WTO*, consulted on 31 October 2002 from, http://www.tamimi.com/lawupdate/2001-01/thegcc.htm

[894] *Response By Friends Of The Earth To The DTI's Consultation Liberalising Trade In Services - A New Consultation,* January 2003, consulted on 11 May 2004 from, http://www.foe.co.uk

The negotiations on financial services were not concluded by the end of the Uruguay Round, which led to negotiations being extended. Associated with the GATS are protocols, [895] two of which pertain to the liberalization of financial services. The second protocol, "Financial Services", was adopted in 21 July 1995, and entered into force in September 1996, while the fifth protocol was adopted in November 1997 and came into force in March 1999.[896] According to the WTO, the total commitments brought over 95% of world trade in banking, securities, insurance, and financial information under the jurisdiction of the WTO, on the basis of the broad application of MFN and under a dispute settlement mechanism. While the November 1997 Protocol improved upon the July 1995 protocol in terms of commitments by Members, market opening was not much substantially increased. In an analysis of the protocol, Dobson and Jacquet conclude that the Protocol usefully locked in prior reforms in a number of countries but achieved little new liberalization in the sector: "*While it was a milestone for the WTO because a significant number of WTO Members agreed to a legal framework for cross-border trade and market access in financial services and to a mechanism for dispute settlement,...the agreement is less than meets the eye...it simply formalizes the status quo...there is a significant agenda of market opening measures still to be taken in the future.*"[897] One criticism of the negotiations is the lack of a direct relationship between the present state of a country's financial system or its needs for a functional regulatory framework and supervisory system on the one hand, and the requests or offers of financial service providers on the other. One reason for this is that the regulatory authorities will have to handle new financial services which are permitted to be introduced by foreign financial service providers under GATS.[898] Financial services are a sector in which developing countries feel that they alone make concessions. They are anxious about the implications of financial reform and concerned that they may gain little in return. Most of them have no immediate ambitions to gain access to the financial markets of industrial countries. They do not, therefore, play the same

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[895] "Protocols" deal with results of subsequent negotiations.

[896] Masamichi, K., *The Impact Of The WTO On Finance Services,* World Trade Organization, Geneva, 1998.

[897] Dobson, W., & Jacquet, P., *Financial Services Liberalization In The WTO,* Institute For International Economics, Washington, 1998.

[898] Vander Stichele, M., "Potential Risks Of Liberalisation Of Financial Services", in Lipke, I. & Vander Stichele, M., *Financial Services In The WTO: License To Cash In? A Civil-Societal Critique Of The Liberalization Of Financial Services In The GATS Negotiations,* consulted on 11 May 2004 from, http://www.weed-online.org

negotiating game as the United States or other industrial countries do.[899] Nevertheless, the understanding on commitments in financial services is the starting-point for the new market-opening requests. Whilst it is regarded as establishing minimum demand, it is intended to be a basis for further negotiations; the poorest developing countries are to be called upon to adopt the classification of the appendix on financial services, where this has not already been done.[900]

Financial service providers, like those in other sectors, exert pressure on the political decision-making process and seek to influence public opinion. Their negotiating lobby includes the representatives of the most influential financial services industries, with the highest sales volumes of the economically and financially strongest countries. One of the most important associations is the Financial Leaders Group (FLG), whose Members are leading financial services representatives from Canada, the European Union, Hong Kong, Japan, Switzerland and the USA. It was founded principally to promote the position of its Members in the negotiations for the financial services agreement in the WTO, and was probably instrumental in securing an agreement on deregulation of financial services.[901] From here it can be understood why the financial services sector played a key role in the Uruguay Round from the very beginning. Indeed, the support and leadership of the banking and insurance industries and their insistence on bringing trade in services under the GATT framework of multilateral law was a vital element in the very existence of the round, and certainly in its success, since without a satisfactory agreement on services, liberalization on textiles would probably have been thwarted by the USA, and that of agriculture by the EC. Financial services, moreover, are probably the most important of all internationally traded services from a commercial point of view, and were regarded by many of the participants at Uruguay as the crux of the services agreement. In financial circles in particular, the achievement of greater freedom and security to offer banking, securities

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[899] Dobson, W. & Jacquet, P., *Financial Services Liberalization In The WTO,* Institute For International Economics, Washington, 1998, p 95.

[900] Lipke, I., "The Financial Service Agreement in the WTO", in Lipke, I. & Vander Stichele, M., *Financial Services In The WTO: License To Cash In? A Civil-Societal Critique Of The Liberalization Of Financial Services In The GATS Negotiations,* consulted on 11 May 2004 from, http://www.weed-online.org

[901] Lipke, I., "The Structure Of The Financial Services Industry", in Lipke, I. & Vander Stichele, M., *Financial Services In The WTO: License To Cash In? A Civil-Societal Critique Of The Liberalization Of Financial Services In The GATS Negotiations,* consulted on 11 May 2004 from, http://www.weed-online.org

and insurances services internationally were seen as the pre-eminent objective of the entire round.[902]

Trade in financial services has several dimensions. Financial services, like other types of services, may be provided across national borders, with a service provider established in one country providing services to a consumer established in another country. Another dimension of trade in financial services is the right of establishment, where the service provider combines services with investment, by setting up a branch (not separately incorporated) or a separately incorporated subsidiary, in the country of the service consumer. Whether the establishment takes the form of a branch or subsidiary may be of relatively little importance in trade terms, but will have significant regulatory, bankruptcy, and, perhaps, tax implications. As regards regulation a subsidiary may be more likely to be treated as a national of the host country and receive automatic national treatment, which would be the ordinary treatment according to general international law. In relation to regulation, a branch might raise the need for regulation and supervision of the home office. An issue will also arise as to whether it is able to benefit from its home office's capital, or whether it will be required to have its own capital. A major concern is what happens if an establishment set up in the consumer country should fail. In this respect, bankruptcy and resolution issues will be different for a subsidiary, which is a separate legal entity, than for a branch, which is not.[903]

The issues of cross-border trade and the right of establishment are linked to macroeconomic issues such as exchange controls and liberalization, foreign investment, and, ultimately, the degree of host-government control over its economy. For example, the banking system might be a vehicle for credit allocation or to distribution of subsidies. This is one reason why DCs feel threatened by foreign domination of the banking or general financial system, given the association between domestic control of the financial system and sovereignty. Several reasons can be given for this linkage. First, central banks are tools for implementation of government monetary policy, through their relationships with commercial banks, for example, the interest rates charged, or the

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[902] Dr Kakabadse, M. A., *From GATT To The World Trade Organization: Creating Trade Opportunities In The Gulf Region,* Unpublished Paper Presented To The GATT And Its Implications For The UAE Economy Conference, Organized By The Emirates Institute For Banking And Financial Studies, Sharjah 25 March 1995, p 7, available from the Institute.

[903] Trachtman, J.P., "Trade In Financial Services Under GATS, NAFTA And The EC: A Regulatory Jurisdiction Analysis", *Columbia Journal of Transnational Law,* Vol 34, 1995, pp 37-122 at pp 47-48.

imposition of reserve requirements. Second, commercial banks are central to payments systems, performing the key roles of providing checking services and collection services. Third, the commercial banking system provides essential finance to the real economy, for example in the form of loans to businesses. Despite these concerns, however, the global trend toward market economies and rolling back of government intervention in the economy facilitates the liberalization of trade in financial services.[904]

Whilst there is no specific provision or definition for financial services in the GATS itself, there is a definition in an Annex concluded at the same time as the GATS, i.e. as part of the Uruguay Round (Annex Article 5). The definition encompasses insurance of all kinds, as well as banking and related services including participation in issuance of securities, underwriting, and asset management. The same Annex in its second Article provides for prudential regulation, that is, regulation not used as a means for avoiding the commitments or obligations under the Agreement. With this concept, the annex recognises the differing needs of states regarding the kinds and levels of scrutiny of financial transactions imposed, and provided such measures are not applied with the intention of denying national treatment or market access, they will be permissible under the GATS. The Annex also provides for Members to recognise countries' prudential measures, though they are not obliged to do so. The GATS as a whole is linked to the WTO Dispute Settlement Understanding; in this respect the Annex contains a requirement that where a dispute involves prudential issues and other financial matters, the panel should have the necessary expertise relevant to the specific financial service under dispute (Annex Article 4). In addition to this Annex, the GATS there is another albeit less important Annex on financial matters. The purpose of this second Annex was to allow negotiations on financial services to continue for a period beyond the end of the Uruguay Round, when most other services commitments became final.[905]

Part 3 of the GATS, which is concerned with specific commitments, sets out a two-stage procedure. The first involves Members listing the sectors for which they are committing themselves (i) to grant access to their markets (Article 16); and (ii) to grant national treatment (Article 17), in both categories, as set out in schedules filed with and bound to the WTO. The second stage requires Member States to set out in their

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[904] Ibid, pp 47-48.

[905] *Trade In Services Division: An Introduction To The GATS*, WTO Secretariat, October 1999, consulted on 2 November 2004 from, http://www.WTO.org/english/tratop e/serv e/dsinter e.doc, p 11.

schedules the terms, limitations, and conditions on market access, and conditions and qualifications on national treatment. In other words, in the first stage Member States announce which sectors will be affected by their commitments, such as banking, insurance, etc. Those are generally divided into subsectors. For instance, banking might be subdivided into acceptance of deposits, lending of all types, mortgage credit, foreign exchange, etc. In the second stage, they announce limitations on the respective commitments, related to the four modes of supply.

Article 2.1 of the GATS, based on Article 1 of the GATT, requires Members to grant immediate and unconditional MFN treatment to services and service suppliers. Under paragraph 2 of the same Article, however, a Member may maintain a measure inconsistent with MFN, provided any such measure is listed in its MFN exemption schedule, subject to negotiations listed in the schedules to the Financial Services Agreement.

In their submitted schedules, Member States may include what are termed 'horizontal commitments.' This means conditions imposed across sectors or industries. These commitments, which in fact amount to reservations from commitments, must be listed in each of the schedules submitted by Member States, in order to avoid any misunderstanding by anyone examining a particular schedule.[906]

Another way of expressing commitments available under the Financial Services Agreement is the Understanding on Commitments in Financial Services. Although the Understanding is a part of the final Act of the Uruguay Round, it is not considered to be outside the GATS proper. It refers to an "alternative approach" (to that specified in part 3, specific commitments of the GATS itself as mentioned above) in connection with financial services. Implementation of the alternative approach is allowed subject to certain criteria, mainly: (1) that it does not conflict with GATS itself, and (2) that the resulting specific commitments be applied on a MFN basis. Member states may on an optional basis, inscribe in their schedules commitments conforming to the alternative approach.[907] This Understanding was developed mostly with developed countries in mind. Its substantive content was initially contained in the negotiations section of Financial Services Annex, but was moved after it became clear that it had few supporters. Some GATS participants, such as the US, the EC and Japan have cited the

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[906] Lowenfeld, A.F., 2002, op. cit., p 124.

[907] Wang, Y., "Most Favored Nation Treatment Under The General Agreement On Trade In Services And Its Application In Financial Services", *Journal of World Trade,* Vol 30, Issue 1, 1996, pp 91-124 at p 119.

Understanding in their schedules of commitments. The main commitments listed in the Understanding were the attempt by those incorporating the understanding into their schedules to eliminate monopoly rights: granting of MFN treatment in public procurement; allowing financial service providers of any other Member (whether or not it subscribed to the understanding) to establish a commercial presence; and allowing additional financial services to be offered by existing foreign suppliers. In contrast to the GATS itself, there is also a standstill provision, whereby non-conforming measures shall be only those existing at the time that the schedules entered into effect.[908] A new concept introduced by the understanding, in relation to market access, is that of "better than national treatment", or proportionality. Under the heading of "non-discriminatory measures", the understanding requires each Member to endeavour to remove or to limit any significant adverse effects on financial service suppliers of any other Member (section 10 of the understanding). However, the wording endeavour indicates that this is not to be considered as a firm commitment. Furthermore, it contains a proviso: "*provided that any action taken under this paragraph would not unfairly discriminate against financial service suppliers of the Member taking such action.*" This proviso reflects a dilemma in relation to market access: on the one hand, Member States wanted to discipline non-discriminatory measures that might restrict trade in financial services; on the other hand, they did not wish host country nationals to be unduly disadvantaged by the 'better than national treatment' provision. Since any instance of better than national treatment may discriminate against locals, this is a difficult balance to preserve. The provision against unfair discrimination is perhaps best interpreted in terms of the concept of equivalence: where the foreign person is subject to a home country regulatory regime or practice that either provides similar protection or similar costs or both, it might not be unfair to locals to exempt the foreign person from host country regulation that results in similar protection or costs, or both.[909]

These provisions of the GATS bear on the domestic provision of financial services and the potential for foreign banks to enter domestic markets as competitors of domestic banks. This could take place in various ways; through provision of an arm's length service directly to customers across borders without any domestic presence; direct investment to set up a new financial firm within a country; take-over of an

[908] Lowenfeld, A. F., 2002, op. cit., p 125.

[909] Mattoo, A., "Financial Services And The WTO: Liberalization Commitments Of The Developing And Transitional Economies", *The World Economy Journal,* Vol 23, Issue 3, 2000, pp 351-386 at p 353.

existing financial services provider; or partnership with an established domestic bank. In the arm's length scenario, a foreign based bank could bypass domestic banks and collect funds directly from domestic savers, provide them with payment instruments (credit cards and even cheques), and arrange loans using telephone and computer technology.[910] In principle, all banking services could be provided in this manner, though this is unlikely to be a significant mode of supply in the foreseeable future for Oman.

As regards the role of the WTO dispute settlement system in relation to services and investment, cases brought under the WTO dispute settlement involving the GATS suggest that the main issues raised are related to (1) interpretation of the Member countries' schedules (and the inclusion or otherwise of particular measures within the scope of those schedules), and (2) the interplay between a given schedule and the actual text of the GATS. Where a disputed commitment involves a binding in the commercial presence mode, the GATS may also raise issues of investment. Sciarra suggests that experience so far demonstrates the ability of the dispute settlement effectively to make the transition from focusing solely with goods issues to addressing issues arising in the services area. However, as he points out, it remains to be seen whether the WTO's treatment of investment issues will be influenced by developments outside the WTO system, and the possible implications for service providers and exporters in general.[911]

The objectives of liberalization are to increase the levels of competitiveness in the financial sector by opening the door to entrants, increasing and upgrading the available financial tools and options for investors and depositors by expanding the financial infrastructure of the sector; improving the process of decision-making with driving interest rates so that these rates reflect actual costs of financial resources, improving foreign exchange distribution so that real costs are reflected; and improving the packaging and customization of financial resources. However history has shown that liberalization is by no means a smooth process. It goes through phases, the first of which is a critical transient stage of transformation. This is the phase where most financial crises occur if they are going to happen. Numerous examples can be cited from around the world: Mexico, in 1996, experienced a crisis that cost over the long-run almost 15% of that country's GNP. Brazil and Venezuela underwent similar experiences

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[910] Murinde, V. and Ryan, C., "The Implications Of WTO And GATS For The Banking Sector In Africa", *The World Economy,* Vol 26, Issue 2, 2003, pp 181-206 at p 190.

[911] Sciarra, V.P., "The World Trade Organization: Services, Investment, And Dispute Resolution", *International Lawyer,* Vol 32, 1998, pp 923-931 at pp 929-930.

in the same year. In all three cases, financial crises occurred following intensive liberalization of the banking sector.[912] It is widely held that liberalization is strongly associated with economic and financial crises in developing countries. This relationship is robust, and in the circumstances of these countries there are also strong analytical arguments for both its existence and robustness.[913] The concern of negotiators in the WTO was intensified by the Asian financial crisis (1997/98) which occurred just when financial services, one area outstanding from the original Uruguay Round Agreements, were being negotiated, and the eventual conclusion of the agreement on financial services may be in part attributable to the inability to fully appreciate the consequences of the crises. Since then, the sense of threat perceived by many countries and their negotiators has been such that, if the actual negotiations had been held a few months later, they might not have been so successful.[914] The impact of liberalization may be felt in the areas of profitability, development and market share, pricing policy, levels of risk and the quantity and quality of financial services. Other phenomena that may occur with liberalization include large increases in interest rates, under-capitalization, and a noticeable increase in the level of risk and rapid deterioration in the quality of loan packages. Inevitably, those banks that cannot keep pace will have to declare bankruptcy.[915]

Although many DCs started to liberalize their financial sectors in the early 1980s, there has been little research on the impact of such measures on the efficiency and productivity of banks operating in these countries until recently.[916] These studies suggest that financial liberalization makes banks more efficient and productive by

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[912] Jabsheh, F.Y., "Impact Of The GATS On The Kuwaiti Banking Sector And Ways To Achieve Greater Competitiveness", *Industrial Bank Of Kuwait Papers,* Series 65, June 2001 at p 23.

[913] Singh, A., "Capital Account Liberalization, Free Long-Term Capital Flows, Financial Crises And Economic Development", *Eastern Economic Journal,* Vol 29, Issue 2, 2003, pp 191-207 at p 200.

[914] Williamson, J. & Drabek, Z., *Whether And When To Liberalize Capital Account And Financial Services,* Staff Working Paper ERAD-99-03, World Trade Organization (Economic Research And Analysis Division), September 1999, consulted on 19 May 2004 from, http://www.sice.oas.org/geograph/services/drabek.doc

[915] Jabsheh, op. cit., 2001, p 23

[916] For example see generally, Leightner, J.E. & Lovell, C.A.K., "The Impact Of Financial Liberalization On The Performance Of Thai Banks", *Journal of Economic And Business,* Vol 50, 1998, pp 115-131; Gilbert, R.A. & Wilson, P.W., "Effects Of Deregulation On The Productivity Of Korean Banks", *Journal of Economics And Business,* Vol 46, 1998, pp 39-64; Hao, J. et al., "Deregulation And Efficiency: The Case Of Private Korean Banks", *Journal of Economics And Business,* Vol 53, 2001, pp 237-254; Yildirim, C., "Evolution Of Banking Efficiency Within An Unstable Macroeconomic Environment: The Case Of Turkish Commercial Banks", *Applied Economics,* Vol 34, Issue 18, 2002, pp 2289-2301; Isik, I. & Hassan, M.K., "Financial Deregulation And Total Factor Productivity Change: An Empirical Study Of Turkish Commercial Banks", *Journal of Banking And Finance,* Vol 27, Issue 8, 2003, pp 1455-1485.

creating a competitive and flexible environment in which banks have greater freedom of action. For example, it enables banks, rather than governments, to set interest rates on their assets and liabilities. However, not all empirical evidence supports the beneficial impact of financial liberalization on the efficiency of banks.[917] Those with responsibility for Arab financial affairs have asserted the need for GCC States to direct future banking and financial developments in a manner consistent with global trends and to face the challenges arising from the application of the GATS and WTO Agreements, notably the liberalization of financial procedures to improve efficiency in the GCC banking and financial institutions. Further challenges are likely in relation to the expansion of the scope of services in a competitive global environment, given the inefficiency, small size and high operational costs of many of these banks. Commentators differ in their views on the likely impact of liberalization of financial services in the Gulf area. Some anticipate that such action will be beneficial in the short term, but that, as foreign investors derive profits from their capital investments, they will start transferring these profits outside, with negative effects for other economic sectors.[918] Others fear that depositors will be attracted away from the Omani banks by foreign banks offering better service, and that this could cause a run on the Omani banks for withdrawal of funds.[919] A detailed analysis of the liberalization of financial trade published by the Arab Monetary Fund under the title, "Laws of the WTO in the field of financial services and its possible effect on the Gulf banking sector," concluded that in spite of the provisions of GATS and the achievements of the Gulf finance and banking sector, further improvements must be made to meet prevailing challenges and keep pace with global economic trends. Thus, the general concern is that less efficient local banks, with high operating costs, will suffer from increased competition. Likewise, companies and institutions that used to receive preferential bank treatment could be exposed to losses.[920] The Central Bank of Oman in this respect believes that, its regional and international obligations compel it to treat all banks to improve their competitive abilities. However, it may perhaps provide advice and consultation to domestic banks to

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[917] Ataullah, A. et al., "Financial Liberalization And Bank Efficiency: A Comparative Analysis Of India And Pakistan", *Applied Economics,* Vol 36, Issue 17, 2004, pp 1915-1924 at p 1916.

[918] Al Lawati, H., "Liberalization Of Trade In Financial Services: Challenges For GCC States", *Al Markazi,* Vol 25, Issue 2, 2000, pp 10-14 at p 10.

[919] Langlois Jr, J.D., "The WTO And China's Financial System", *The China Quarterly,* Issue 167, 2001, pp 610-630 at p 623.

[920] Al Lawati, H., op. cit., 2000, pp 11-13.

improve their competitive abilities.[921] In the meantime, the question arises, how is the legal system of Oman preparing for this liberalization? And where is the Omani banking system going with ongoing reform?

Oman, like many developing and transition economies, has introduced a programme of financial and private sector reforms, encompassing privatization; liberalization of investment regimes and opening up of markets to foreign investors; restructuring of the banking system; development of prudential regulatory and legal frameworks; diversification of financial services; development of capital markets; including integration with international financial markets. Some progress has been made, but it is still limited and the results are largely mixed.[922] These reforms were initiated as part of an overall programme of economic stabilization and growth. With the expansion of economic activity and greater familiarity of banking, the level of financial deepening has increased substantially over the past several years. Moreover, there is an increasing attempt to reform the financial and banking system, especially after the accession of Oman to the WTO. In fact, the banking system continues to be the driving force of the Omani financial system although it must be acknowledged that its reform is closely intertwined with the rest as part of a global strategy.[923]

The challenges that the Omani economy faces -the financing needs for such a dynamic economy and the commitment to open up to foreign competition under the WTO- call for an acceleration of reforms in the financial system. The Omani banking system, characterized by low capitalization, has started a reform process based on two main pillars. First, financial liberalization, with quantity controls and the opening up to foreign competition. Second, strengthened financial regulation and supervision, as well as better risk management, corporate governance, disclosure, and the introduction of international standards. Although it is still early to judge on the success of the reform, the signs do not offer an optimistic outlook. The solvency of Omani banks is still weak given the commitment of Oman to open its banking system to foreign competition, it seems crucial that financial reform accelerates so that the Omani banking system can

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[921] Al-Lawatia, H., "Competitive Ability Of GCC Banking Sector In The Framework Of Financial Liberalization", *Al Markazi,* Special Issue 2000/2001, Vol 25, pp 40-46 at p 45.

[922] Isimbabi, M.J., *Globalization And The WTO Agreement On Financial Services In African Countries,* Funded By United States Agency For International Development, Discussion Paper Number 51 December 2000, consulted on 11 May 2004 from, http://www.eagerproject.com/discussion51.shtml

[923] Mazhar, M.I., "Development And Performance Of Domestic And Foreign Banks In GCC Countries", *Managerial Finance,* Vol 29, Issue 2/3, 2003, pp 42-73, at p 42.

compete at the international level. This is particularly the case for a further improvement of bank regulation and supervision.[924]

The first reform in this regard was the new banking law, which promulgated by the Royal Decree 114/2000. The decree endorsed the attached law and cancelled the Banking Law 7/74. In essence, without going into details of the numerous amendments introduced into the former banking law, it can say that there are some important amendments. Widening the definition of "banking business" to introduce new and renewable banking activities, as the board of governors shall decide, including corporate and project finance, investment brokerage and investment advisory services, custodian and fiduciary services, leasing factoring, and hire purchase financing. The amendments also affected chapter two of title one on functions of the Central Bank, to confer more powers on the Central Bank as the official bank of the government and to confirm its right in managing treasury bills, bonds and commercial papers of the government of any of its ministries, companies or corporations. The amendments further strengthened and refined Central Bank's depository and investment functions by adding new fields of investment with more flexible terms, subject ton the decisions of the board of governors and the banking and monetary policies the board sees fit. With regard to banking regulation provided in title four of the law, the role of the Central Bank as banking supervisor is further confirmed and strengthened from the stage of licensing a bank till its dissolution and liquidation. It should also be noted that in accordance with this law, the Central Bank may allow the banking system to run its operations freely without interference if it may pave the way to wider horizons in the fields of investment and improved banking services. Among the amendments, financial institutions are now allowed to practice banking business, except receiving deposits, provided that such institutions are regulated pursuant to other laws of the Sultanate by recognized regulator. Also regarding banking regulation, and the law prohibiting any person or group of persons to own or authorize or record the transfer of more than ten percent of the voting shares in licensed banks of such action except with prior approval of the Central Bank. As to reserves against deposits and reserves for the protection of depositors, savings deposits have been included along with demand or time deposits in computation of the ratios determining reserves required to be maintained by banks for the purpose of strengthening and protecting depositors' interests. Furthermore, the paid up capital of a domestic bank was established at not less than three million Rials Omani or at any

[924] Al-Lawatia, H., op. cit., Special Issue 2000/2001, p 45.

higher amount as may be determined from time to time by the board of governors. In relation to the credit and investment powers of licensed banks, the new law provides that a bank may transact in bills and bonds guaranteed by the Sultanate that have been publicly issued. This allows inclusion of such commercial papers in open market transactions. In addition, such securities are now qualified as reserves against deposits by virtue of the amendments of the law. Under the pervious law, only the securities issued by the Government of the Sultanate were eligible, but not securities guaranteed by the government. In this area the law also provides, in great detail, of the terms and limitations on banks' investment in securities of companies domiciled outside the Sultanate, or in related companies or other licensed banks. The law has also introduced new provisions specifying the licensed banks' powers in underwriting of company shares. According to this law, the board of governors has the power to determine the limits to be adhered to by banks on purchasing, selling and holding securities, if such was related to development bonds held for the purpose of trading only. Such this amendment could encourage and accelerate the open market operations. The law also provides for additional control concerning the borrowing and lending limitations of banks. One of the controls is the provision in the new law on Central Bank's power to establish by regulation the maximum lending limit allowed to major shareholders, including their related parties, aimed at avoiding any misuse of influence in procuring loans that may be detrimental to depositor's interests. With the objective of selecting the best individuals to occupy the leading positions in licensed banks, a new provision is introduced in the new law making it mandatory to notify the Central Bank of the appointment of Members of board of directors, executive officers and general managers within thirty days of such appointment, allowing the Central Bank the right to object to such appointment and to displace any of these officials if it sees it essential for protecting depositor's interest and bank's assets. On the other hand, the new banking law confirms the principle of confidentiality of banking transactions and non-disclosure of information relating to bank customers except as instructed by the Central Bank in accordance with what the Central Bank sees fit and prudent. Finally, in relation to dissolution and liquidation of a bank, amendments are introduced in the new law constituting an early alarm system, enabling an empowering the Central Bank to intervene at the right time to rescue a licensed bank and uphold it or to suspend its operation or liquidate it before its position deteriorates further jeopardizing depositors' interest. In this context, the amendments also encompass the provisions of the Law

Regulating the Bank Deposits Scheme 1995 regarding priority of payment of claims when a bank is in liquidation.

On the other hand, the Central bank of Oman, since assuming its full responsibilities in April 1975, has gradually liberalized the banking sector in line with evolving economic situation. In this context, to strength the financial system and prepare it to the impact of more liberalizing, the Central Bank has been taken additional measures. For examples: limiting the lending ratio (ratio of loans to deposits) to 87.5% of deposits, capital and free reserves and net borrowings from banks abroad. Raising the capital adequacy ratio to 12% (well above the 8% minimum required by Basle) to enhance the capital cushion for banks. Ensuring banks comply with standards set by international accounting standards regarding financial disclosure. Limiting the ratio of bank borrowing from abroad; short-term borrowings (within the maturity of two years) are allowed up to 100 percent of a bank's net worth. Medium-term borrowings (maturing between two and five years) are allowed up to 200 percent of net-worth including short-term liabilities whereas long-term liabilities with borrowings (for over five years) were allowed up to 300 percent of net-worth including short-term and medium-term liabilities. Limiting the lending ceiling for non-residents to 5% of a bank's net-worth for an individual borrower and 30% for all non-resident borrowers. Limiting the ratio of personal loans to 40% of the total loan portfolio of a bank. Encouraging bank mergers and consolidation to create bigger and stronger banks able to face future competition and acquire a level playing field in the international financial system. Issuing directives concerning corporate governance, distinguishing the role and responsibilities of board of directors from that of management of banks.[925] However, one of the main objectives of strengthening regulation and supervision was the introduction of a more cautious approach towards risk of the financial liberalization; it is difficult to draw conclusions from these reforms. Thus, the question still arising is what are the implications of the liberalization on the Omani banking sector?

So-called SWOT (strengths, weaknesses, opportunities and threats) analysis provides a useful framework to evaluate briefly the competitiveness of the Omani banking sector. The current strengths of the Omani banking sector are mainly good average net profits compared to their regional counterparts, high average assets and average profits per employee, a high percentage of experienced Omani college

[925] Al Raisi, A.H., "Challenges Facing The Omani Banking Sector", *Al Markazi,* Vol 38, Issue 1, 2003, pp 9-13 at pp 12-13.

graduates (most of them graduated from the Institute of Banking and Financial Studies in Muscat), and good knowledge of other GCC markets.[926] The sector has a positive attitude towards the GATS, and has drawn up preliminary plans to upgrade and improve productivity of bank employees and customer service, to reward performance directly, and to upgrade technology to improve competitive capability. Long-term planning is practised in some Omani banks. Some of Oman's other strengths are the fact that its barriers to trade are minimal, its tariffs are low, restrictions on the movement of capital are low, there are stable foreign investment laws and Oman is a net importer.[927] This puts Oman at an advantage, since the basis for liberalization is already present.[928]

The weaknesses of the Omani banking sector, on the other hand, are as follows: decreasing average return to assets, inadequate awareness of the GATS and its implications, and reduced confidence in the Omani banks' ability to compete with other banks in the region.[929] In addition, electronic commerce, one of the key issues under the WTO, is comparatively weak in the Omani banks. These banks, like most Arab banks, are small compared to their counterparts in Europe and the US. The internet service functions in these Omani banks tend to be centralized and served by relatively few staff (65 or less). Few banks have a formal internet technology strategy on electronic commerce; such developments have not yet been considered by the majority of the Omani banks.[930]

The Central Bank of Oman has explained that the opening of the banking sector could lead to creation of surplus banking services. The Central Bank believes that, in such cases, it will try to limit the effect of the phenomenon through encouraging specialized banking institutions to provide other financial services; encouraging

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[926] At the end of the first quarter of the 1999, out of 5,275 employees in the banking sector 4655 were Omanis, constituting 88.2% against 11.8% of expatriate employees. The local commercial banks had a total of 4,147 employees as on 31 March 1999, out of which 3651 were Omanis, forming 88% and 496 expatriates 12%. Meanwhile, the percentage of Omani staff in the branches of foreign commercial banks operating in Oman was 86.7% (542 employees) and that of the expatriates was 13.3% (83 employees). For more information in this context see *Al Markazi,* Vol 24, Issue 3, 1999, pp 3-5 at p 5.

[927] As noted previously, the foreign investors are allowed to provide banking services in Oman, either by opening branches of foreign banks, or by establishing a new one with full ownership.

[928] Jabsheh, F.Y., op. cit., 2001, p 28.

[929] *Competitiveness Of The GCC Banking Sector In Case Of Opening The Domestic Market To GCC Banks: A Study For The Banking Sector*, Kuwait Foundation For The Advancement Of Sciences And The Institute Of Banking Studies, Kuwait, 2000, p 17.

[930] Mo Khalfan, A. & Alshawaf, A., "Adoption And Implementation Problems Of E-Banking: A Study Of The Managerial Perspective Of The Banking Industry In Oman", *Journal of Global Information Technology Management,* Vol 7, Issue 1, 2004, pp 7-65, at p 51.

consumerism financing; encouraging the establishment of development project; financing foreign trade encouraging profitable investment projects, etc.[931] Although some critics may use this to argue that the Sultanate is over-banked, this should not be accepted as a reason for the rejection of competition with more advanced banking institutions, as quite a large number of banks in Oman have a less than ideal administrative set up, as small institutions with meagre financial resources.

There is no doubt that liberalization of the banking sector will result in unprecedented competition, which will raise the quality of services offered, reduce costs and diversify services; all of which will be to the advantage of consumers and to producers in the long-run. Technology development and transfer and the development of technical know how can also be anticipated. Opening up of the banking services in line with Oman's commitments means allowing the commercial presence of wholly owned branches of foreign banks, which would bring in new technology, and different and more competitive practices, forcing local commercial banks to review their position and factor increased competition into their future strategy for growth. However, Dr Zarrouk argues that from the commitments of the GCC States which have joined the WTO, it is evident that they have set some restrictions on opening their markets for foreign suppliers to supply banking and financial services.[932] For example, the UAE has informed the WTO of its intention not to open up its banking and other services to foreign investors at this stage. Saeed Al Nusaibi, the Emirates' director of WTO affairs at the Ministry of Economy and Commerce, explained that the UAE has no need of new banks, being already overbanked in relation to its 3.3 million populations, small volume of trade and gross domestic products.[933]

Under Section B (9) of the Understanding on Commitments in Financial Services, there are provisions for the temporary entry of "personnel" of a financial services supplier that "is establishing or has established a commercial presence" in the territory of another Member. It is not specified what constitutes "temporary" entry, but the duration of the entry authority appears to be directly related to the nature of the work in which the personnel are to engage. If the purpose of entry is to establish an enterprise,

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[931] Al Lawati, H., op. cit., Special Issue 2000/2001, p 45.

[932] Dr Zarrouk, J.E., *Potential Benefits For The Private Sector From The Accession Of GCC Countries To The World Trade Organization,* Unpublished Paper Presented To The Relationship Between The Foreign Trade Of The GCC States And World Trade Organization, Organized By Arab Monetary Fund, Bahrain 19-20 March 1996, available from the Arab Monetary Fund.

[933] Kawach, N., "UAE To Stick To Guns At WTO", *Gulf News,* 2 May 2003.

the temporary period is assumed to last only until the enterprise is operational. If the purpose of entry is to perform services for an existing enterprise, the temporary entry period lasts until the specific purpose that necessitated their presence has been fulfilled. The temporary entry provisions apply to two categories of personnel. The first category must be (1) "senior managerial personnel", who (2) possess "proprietary information", which (3) is "essential to the establishment, control and operation" of the financial service supplier. The second category to whom temporary entry provisions apply is "specialists in the operations of the financial service supplier." "Specialists" in computer services, telecommunication services, accounting, actuarial, and legal services shall also be permitted temporary entry "subject to the availability of qualified personnel" in the host Member's territory. The latter proviso seems to suggest that local personnel must be used when available, and presumably this is a matter for the host Member to determine. It is to be expected that in making such a decision, the Member should rely on objectively verifiable information. Another point worth nothing is that Section B (9) refers to "personnel." Whilst this does not expressly exclude independent contractors retained by a service supplier, the term "personnel" tends to suggest an employer-employee relationship.[934]

According to Oman's commitment, the number of foreign staff in Foreign Service companies is restricted to 20% of the manpower employed. In addition, the entry of such natural persons shall be for a period of two years subject to renewal for an additional two years, with a maximum of four years only.[935] In addition, although there are no limitations on the number of foreign service suppliers, and there are no limitations on the total number of service operations or the total quantity of services output, the Central Bank of Oman imposes restrictions on the number of branches that a particular foreign bank can operate in Oman. After the accession to the WTO Oman has agreed to allow service providers in banking services either to open branches or full ownership, or both. However, according to Al Anbury, on accession to the WTO, the Sultanate placed a restriction on the number of branches of a bank (whether local or foreign) allowed to operate in the Muscat area, (i.e. limited to four for each bank). Additional branches can be permitted in Muscat, but such permission is directly linked to the opening of branches in the interior region/un-banked areas. The rationale behind

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[934] Jarreau, J.S., "Interpreting The General Agreement On Trade In Services And The WTO Instruments Relevant To The International Trade In Services: The Layer's Perspective", *North Carolina Journal of International Law & Commercial Regulation,* Vol 25, 1999, pp 1-74 at p 61.

[935] See Oman's commitments on the services sector in Chapter Four.

this limitation was to avoid overcrowding of banking services in the Muscat area to the detriment of the interior regions.[936]

Essentially, liberalization of the financial services sector in Oman requires the reduction or removal of some of direct financial market interventions, in particular those that do not address market imperfections. Such reforms would change relative funding costs, and result in the redirection of capital away from previous "priority" sectors into investments with the highest "risk adjusted" return. The impact of this would be increased loan costs in sectors which previously benefited from cross-subsidization. In other sectors, however, borrowing costs would be reduced, facilitating the financing of a wider range of investments. Access to the financial system would probably be improved for small or less well-connected investors who previously depended on informal borrowing. Income distribution would thereby be enhanced.[937] From here, to maintain their market shares, local banks need to strengthen their administrative, organizational and infrastructural resources, in order to be able to compete more effectively. The main constraints on economic development in the Arab world are the inadequacy of socioeconomic structures and institutions under-representation of the private sector and dominance of the public sector, leading to habit of excessive dependence on a paternalistic government.[938]

However, Oman has much to gain in terms of opportunities from GATS if it succeeds in planning carefully and undertakes the required changes. Opportunities exist to increase market share, since market concentration indices indicate that Oman's banking sector is not saturated. In particular, mergers with other GCC banks could improve the competitive advantage of the local banks, enabling them to reposition themselves in the market, especially in light of liberalization, since new markets already exist. Such an initiative could result in upgrading human capital and information technology resources and in reducing costs in the long-run. The general protective economic environment will only put the country's economic sectors at a disadvantage in the long-run.[939]

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[936] Interview conducted by the researcher with Mr Hamood Al Anbury, Vice President Banking Control Departments & Legal Affairs, in Central Bank of Oman on 9 April 2005.

[937] Ruggiero, R., "Financial Services Trade Liberalization In The Wake Of The Asian Crisis", *International Finance,* Vol 1, Issue 1, 1998, pp 161-172 at p 169.

[938] Sirageldin, I., "Globalization, Regionalization And Recent Trade Agreements: Impact On Arab Economies", *Journal of Development And Economic Policies*, Vol 1, 1998.

[939] This also applies to water, electricity and many other economic sectors.

The liberalization of the banking sector in the GCC States needs special agreements concerning monetary policy, because the financial liberalization process can create situations which make the holding of such agreements necessary. Moreover, the legal and administrative arrangements vary from one country to another, and the lack of political and legislative coordination between the GCC States in the wake of financial liberalization will lead to adverse effects, hence the operation of financial liberalization need setting of priorities to these agreements. Thus, the implementation of the Economic Agreement for GCC States needs the creation of a legislative and supervisory environment in a co-ordinated manner which enables all banks to compete. This will need the integration of ways of implementing the financial and supervisory mode in all GCC States in order to avoid the negative effects due to lack of co-ordination.[940] In this context, it can be said that there has been a growing tendency to strengthen ties among the GCC States in economies and financial institutions. This endeavour gives rise to an increasing need for accounting regulations to be harmonized in order to improve cooperation and enhance the efficiency of the financial institutions among GCC States. Although the GCC States have adopted International Accounting Standards (IAS), in some areas their accounting policies and practices differ, notably in regulatory and supervisory environments and auditing. These differences are to some extent a reflection of diverse social values and regulatory environments. However, some of the practices adopted actually contradict socio-cultural and religious norms. For example, although Islamic banks have been established in all GCC States (except Oman), they do not have special Islamic accounting standards. Although in some countries minor modifications to standard practice have been made (like submission of financial reports at the end of the Hijri year instead of the Gregorian calendar year), more serious concerns, such as the incompatibility between IAS and the Islamic prohibition on interest, have not been addressed. Such differences in underlying values make it difficult to reconcile the Sharia and IAS.[941] Therefore, there are a number of issues that

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[940] Al-Lawatia, H., op. cit., Special Issue 2000/2001, p 46.

[941] For more information about the banking in the Islamic Law, see Jawahitha, S., "Banking Confidentiality-A Comparative Analysis Of Malaysian Banking Statutes", *Arab Law Quarterly,* 2002, pp 255-264 at pp 260-264. In addition, for more information on whether the objectives, principles and obligations of the WTO Agreements are consistent with Shari'a Law, see Aboul-Enein, M.I.M., "Islamic (Shari'a) Law And The Commitments To The World Trade Organization Agreements (A Brief Study)", in *Strengthening Relations With Arab And Islamic Countries Through International Law: E-Commerce, The WTO Dispute Settlement Mechanism And Foreign Investment,* Papers Emanating From The Fourth PCA International Law Seminar, 12 October 2001, edited by the International Bureau Of The Permanent Court Of Arbitration, Kluwer Law International, Hague 2002, pp 89-107.

need to be resolved at both national and regional levels, and this need is made more urgent by the growing cooperation among GCC States. Harmonization of accounting systems and standards would improve the transparency and efficiency of the countries' financial institutions, and would facilitate the globalization process.[942] In this regard the *Banker Journal (UK),* commented that "the GCC has the infrastructure but no single institution reaches effectively into all six states, some of the bigger GCC banks need to become regional rather domestic players, if they do not banking in the region will suffer". The *Gulf Banking institute* also noted that "GCC banks need to strengthen their position through consolidation in order to compete effectively with international banks. The current fragmented banking sector will be unable to put up a good fight when markets do eventually fully open up". Thus, there is a need for creating at least two or three mega-GCC finance houses which could effectively compete with global banks in the post WTO liberalization era.[943]

Nevertheless, there is a need to improve the systems of capital adequacy, financing and deposits, availability of liquidity and risk management with respect to investments, credit, foreign exchange and international operations. Liberalization will push local banks to improve their product range by developing products and services tailored to the local markets, rather than simply imitating foreign products. What is of concern is the lack of confidence amongst some of the GCC States, such as Kuwait, with regard to the WTO Agreement. The table below shows the GCC banks' own perspectives, by calculating a weighted average for all the banks in each country:

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[942] Mostaque, H. et al., "Accounting Standards And Practices Of Financial Institutions In GCC Countries", *Managerial Auditing Journal,* Vol 17, Issue 7, pp 350-363, at p 363.

[943] Siddiqi, M.A., "Arab Banking Report: Surviving The Global Downturn", *Middle East,* April 2003, pp 46-51 at p 51.

Perspectives of the GCC Members on the WTO Agreement

Country	Awareness of WTO Agreement	Competitive Preparedness	Indicate the presence of structural constraints that will compromise banks' ability to compete
Oman	100%	100%	66.7%
Saudi Arabia	100%	80%	20%
U.A.E	100%	80%	0%
Bahrain	85.7%	83.3%	0%
Qatar	100%	100%	0%
Kuwait	77.8%	50%	62.5%

Source: Jabsheh. F.Y., "Impact of the GATS on the Kuwaiti banking sector and ways to achieve greater competitiveness", *Industrial Bank of Kuwait Papers,* Series 65, June 2001.

In summary, there does not seem to be a clear improvement in the functioning of the Omani banking system associated with the reform process. This might be so because the private sector is not yet in full control of these banks or, more generally, because it is still early to feel the benefits of these reforms. However, it could also be the case that the steps taken have not been bold enough. As for prudential regulation and supervision, additional steps need to be taken faster so that the process of financial liberalization can continue. More detailed financial information should be disclosed regularly in order to promote market discipline. Another important limitation to a successful bank reform is transparency whose importance will grow over time, as the banking system opens to foreign competition. In this regard, statistics, methodologies and data collection should clearly improve. All in all, a faster pace of reform is particularly needed in the restructuring and less so for regulation front and financial liberalization. This is to strike the appropriate balance between reform and stability. In other words, "what is required is a long-term strategy in which the government plays a key role that is significantly different from its present one". There are signs that the policy makers in Oman are moving in this direction, although it is doubtful whether it will be fast enough.

5.6. Conclusion:

The chapter analysed the relevant WTO agreements, and pointed out the potential impact of these Agreements for Oman, in four selected industries and sectors, namely, the petrochemicals industry; manufacturing industry; agriculture, and the banking sector.

As regards petrochemicals, the general outlook for Oman is favourable. Although in the long-term petrochemical prices may not be particularly high, Oman is expected to continue to have the competitive advantage of access to cheap feedstock. She faces significant opportunities in the Asian market, where demand appears likely to exceed planned new capacity for the foreseeable future. However, the provision of low-cost feedstock is still a matter of controversy, not only between Oman the other developed countries, but between the all the GCC States and these countries. In this respect, for example, high-cost producers in Europe and the United States have made clear their intention to lobby hard for speedy action, if and when Saudi Arabia joins the WTO. [944] Moreover, challenges emerge from the recent developments at the international level and restructuring processes, whereby chemical companies in Europe have consolidated their operations and have become leaner and potentially stronger, and thus more efficient and more competitive. The petrochemical industry in Oman will have to match them in efficiency. In addition, the provisions of the TRIPs Agreement make the licensing of advanced technology tighter, and the regulations have become even more stringent. However, these global developments bring opportunities as well as challenges. For example, the removal of trade barriers under the WTO should create greater opportunities for producers in Oman to increase their share of the global market in these products. Furthermore, with the emergence of smaller but more efficient producers in the EU, it may become more politically acceptable for the GCC States to have a larger share in the European market, especially if the longstanding dispute with the EU is resolved.[945]

Generally, it can be said that the WTO Agreements will have a positive impact on the petrochemicals industries in the Oman. One of these influences will be to reduce the tariffs on petrochemicals exports, which will lead to increased demand for these

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[944] For more information see generally, "Special Report On Petrochemicals", *Middle East Business Weekly,* Vol 41, Issue 17, 25 April 1997.

[945] *Challenges And Opportunities Of The New International Trade Agreements (Uruguay Round) For ESCWA Member Countries In Selected Sectors: Crude Oil, Petroleum Products And Petrochemicals,* op. cit., 1998, pp 64-66.

products, and smooth entrance to the foreign markets. However, the gains will depend to a great extent on resolving the issue of subsidies, which some industrial countries argue that Oman and the other GCC States provide to their petrochemicals industry through the provision of feedstock at discounted prices, which could lead to dumping its markets and hurting its domestic industries. If such subsidies are proved, the petrochemicals industry will be seriously hurt, because it will lose its competitive capability compared with other exporter countries or even with domestic industries in the importer countries. This will limit the advantages which this industry could gain as a result of the accession of Oman to the WTO.

In relation to the manufacturing industry, it is expected that the negative and positive consequences arising from the accession of Oman to the WTO will be limited at the level of the economy as a whole, because Oman generally follows free trade and industrial policies, which do not essentially contradict with the WTO rules. However, some marginal and weak industries, and a few big industries, which work on profiteering domestic goods will be hurt by the reduction of subsidies and protection. From the accession commitments of Oman, it could be argued that accession will give Oman more freedom to increase the protection of its domestic industries by tariff protection, as Oman can set its tariffs at a higher level than prevailed before accession. This would be true, as explained, if Oman were not a Member of the GCC, and as a result not a Member in the customs union which was established between the GCC States, and which fixed the customs tariff on all foreign goods imported from outside the GCC States at a rate of 5%. This rate is less than what is in Oman's commitments, and even less in some cases, than what existed before accession. This should be recognised by the government. In relation to non-tariff barriers, Oman needs to make little amendment to its policies in this regard, and the protection of domestic industries will not be significantly affected. However, these industries should prepare to coexist in the future with lower levels of subsidy as a result of adherence to WTO principles, especially in the case of exports which relate to the use of domestic advantages. On the other hand, the new rules in the WTO such as dispute settlement procedures, anti-dumping policies, and protection policies will give Oman wide scope to protect its industries from discriminatory action taken against Oman by other Member countries, and from dumping policies which face the domestic industries. In addition, the accession to the WTO will give the Omani industries a chance to increase exports to

outside; however, this very much depends on the improvement which these industries can make, especially in quality and price.

In the agriculture sector, too, the positive and negative consequences for the economy as a whole will be limited, due to the limited role of agriculture in the Omani economy, although Omani farmers and producers in the agriculture sector will have to manage with fewer subsidies. Abolition of the subsidies on exports, and reduction of subsidies on domestic production by the Member countries will lead to increased food prices, and for Oman, as a net importer in this field, its food bill will increase. However from another perspective, this could catalyze the domestic production of products that become prohibitively costly to import. Basically, the capability of Oman to benefit from its accession to the WTO to increase its agricultural exports will depend on the limitation of these exports, and non sensitivity to global prices. Thus, it is expected that the benefits of the accession will be limited, unless a huge change is made in the quantity and quality of the agricultural production in Oman. In this context, in agriculture, co-operation among the Members of the GCC is essential for survival, and needs to be translated into workable procedures and schemes at the earliest opportunity, to facilitate the development of this sector in the region. However, intra-regional cooperation is only a part of what is needed. Co-operation with the rest of the Arab world is also essential.[946]

As Oman's barriers to trade are minimal, and the basis for liberalization is already present, liberalizing the banking sector will result in unprecedented competition, which will raise the quality of services offered, reduce costs and diversify services; all of which are beneficial to consumers and to producers in the long-run. In addition, the banking sector in Oman will benefit from transfer of technology and new techniques, which could help this sector to improve its competitive capability. However, Oman's export of commercial banking services is smaller than the import of these services. As a result of this imbalance, the more liberalizing of banking sector will hurt the domestic banks, which already, before the accession of Oman to the WTO and even with protective restrictions on the banking sector, faced some competition from foreign banks. Pressure for further opening of the banking sector can be anticipated; requests from U.S, EU, Japan, Korea, Norway and Panama for further market access in this sector have already been made. Generally, Oman has already, in its accession

[946] Kubursi, A.A., *Oil, Industrialization & Development In The Arab Gulf States,* Croom Helm, Beckenham, 1984, pp 84-85.

commitments, conceded far more than most Members of WTO, and should not be induced to make further concessions and sacrifices in the services sector.[947] As the situation stands, the positive consequences of the liberalization of services will be very limited in the short and middle term, due to the weak role of the service sector in the Omani economy and Oman's dependence on importing services from abroad. For this reason, all local service suppliers (and particularly the banks) need to review their positions and factor increased competition into their future strategy for growth. However, the positive consequences of the GATS could be increased through subsidies and improvement of the banking industry in Oman, giving it more flexibility to face the new challenges and opportunities.

Thus, at this point it may be appropriate to offer some suggestions to improve these industries and sectors. The WTO has had considerable success, since it was established, in promoting trade liberalization. The broad substantive scope of the WTO agreements gives the WTO influence over many laws and policies of Members. Oman has generally shown a willingness to comply with its obligations, and equally it should be assert its WTO rights[948] However, a number of institutional issues that need to be reviewed in Oman have been highlighted. These include increasing transparency and improving decision-making. However, this is not necessarily a comprehensive list, nor is it intended to be such. The aim here is to highlight selected issues, which are important but perhaps neglected.[949]

In the petrochemicals industry, Oman should work with the other GCC States to establish a network, which could include among its Members the important regional and international organizations concerned with the future of these industries in the region. Such organizations may include: OPEC, UNCTAD, and ESCWA. The purpose of such a network would be to initiate, coordinate and complement efforts aimed at analysing and monitoring the implications of the WTO agreements for these industries, and formulate useful policy recommendations. In addition, Oman should work with other GCC States to adopt a long-term policy for the development of these industries. Such a policy is important in order to avoid hasty and country-oriented decisions,

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[947] Sen, A.C., *WTO Ministerial Conference In Mexico: Issues And Prospects,* 2003, pp 13-14, unpublished, obtained by personal communication with the author.

[948] Hainsworth, Susan, *An Insider's Guide To The World Trade Organization,* Sweet & Maxwell Limited And Contributors, 1998, pp 1-8.

[949] Bronckers, Marco, "More Power To The WTO", *Journal of International Economic Law*, Vol 4, Issue 1, 2001, pp 41-65.

especially regarding FDI, which may inevitably lead to a conflict of interests among GCC States. The benefits of this policy can best be achieved through the GAFTA. This will also provide a larger market for petrochemical industries of GCC countries away from challenges imposed by other WTO Members, especially regarding the access of these industries to cheap feedstock. Furthermore, Oman should build a national and regional legal capacity capable of understanding and interpreting all the WTO agreements provisions related to these industries. The WTO is a legal body; consequently, the strength of argument and counter argument can be decisive in seizing opportunities or avoiding challenges raised by other Members. Moreover, it is important to capitalize on the recent developments and structural changes that have occurred in the world petrochemical industries, as well as to build on the success registered so far by the Sultanate' petrochemical industries. This can be achieved through addressing the following points: (a) Encouraging joint ventures with foreign companies on a selective basis. (b) Encouraging the private sector to play a more dynamic role in petrochemical products. (c) Encouraging downstream processing industries which rely on petrochemical products. (d) Encouraging research and development in petrochemicals in order to give a competitive edge to Omani products in international markets. (e) Encouraging intra-regional trade in petrochemicals by coordinating to establish complementary the competitive industries in the GCC States. (f) Encouraging the formation of a trade association of petrochemical producers in the region, similar to those that exist in other countries. The main purpose of the association should be to take action to promote the GCC's petrochemicals competitiveness, produce statistical data and provide information to its Members. The association should also maintain contact with counterparts in other countries. (g) In order to reduce the negative effects of any increases in production occurring as a result of the liberalisation of the sector, regulations should be drawn up and implemented, or incentives created, to ensure compliance of production technologies and products within the Sultanate with high health, environmental and safety standards, as is done in the EU for example.

In the manufacturing sector, the main point at issue is how to strengthen the competitiveness of the industry. Long-term success requires the removal of infrastructural bottlenecks to allow the inherent potential of the industry to be realized. Structural bottlenecks also need to be overcome especially when market forces are given prominence through the removal of "protective elements." The government must

pursue the infrastructural development needed to enable small enterprises to compete on equal terms.[950] Thus, Oman should work to diversify the output of the manufacturing industries, which will reduce its sensitivity to the variables which arise from the WTO agreements. Moreover, Oman should give special importance to improving the quality of the production to correspond with international standards, in order to give Oman a chance to benefit from the opportunities of accession to the WTO. In addition, as in the petrochemicals industry, there also needs to be built a national and regional capacity for understanding and interpreting all the WTO agreement provisions related to this industry. However, the main recommendation here that it is better for Oman not to sign the Agreement on Government Procurement as a plurilateral agreement, at least in the medium term.

From the discussion on the agriculture sector, it can be concluded that the main problem faced by farmers in Oman is expansion of the market, including important activities that will help farmers to make adequate decisions in production and distribution. In the new global environment, extension network activities need to be market-orientated, in line with the greater market-orientation of production. The main factors creating the marketing problem are: (a) small, low-yielding farms that do not participate significantly in the market; (b) poor bargaining power; (c) collusion among non-Omani retailers acting collusively to dominate the market and fix prices; (d) absence of an institutional arrangement for provision of information; (e) the lack of on-farm storage facilities, such that farmers must sell their products immediately after harvesting, thereby flooding the market and lowering prices; (f) strong competition from foreign agricultural products, which makes it difficult for a viable and efficient marketing system for local production.[951] Several steps can be suggested to improve marketing in Oman and as a result to increase the benefits and reduce the disadvantages of its accession to the WTO for the agriculture sector and food industries, Oman should: (a) aim to liberalize the agriculture sector as a strategic alternative in the long term; (b) bring the specifications and standards of agriculture and food merchandise in line with international standards; (c) pay attention to new ways of marketing, and work to find

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[950] Subrahmanya, M.H., "Small Industry And Globalisation Implication, Performance And Prospects", *Economic And Political Weekly,* 1st May 2004, pp 1831-1832.

[951] *Oman (Summary),* Paper Presented In The International Seminar On "Challenges To Smallholders Sector Towards Globalization", held in Kuala Lumpur in the year of 2000, consulted on 13 May 2004 from, http://www.aardo.org/workshop_seminar/malaysiasubpages/OMAN.htm

new and original niches for its agriculture and food products; (d) pay attention to transferring developed technology in agriculture and food production; (e) encourage establishing of exporter food industries in line with the industries to substitute for imports; (f) establish a linkage between research institutions and extension projects through which new technologies and cultural practices could be introduced to help farmers progress from traditional subsistence to becoming market oriented modern producers. However, before this, Oman should enact a special law for agriculture, covering all the issues related to agriculture, especially definition of the owner of the agricultural land.

Lastly, in the banking sector, it could be said that cooperation between domestic banks and their foreign counterparts is essential and will be the catalyst for internationalization and innovation in this sector. In this context, the information technology revolution is facilitating considerably the cross-border provision of financial services. Previous rounds of WTO negotiations on financial services have tended to focus on issues relating to establishment and commercial presence in foreign markets. Increasingly, however, financial institutions will be able to service foreign markets from abroad, without having to establish a permanent commercial presence in the market. For this reason, Oman should work to improve the domestic institutions in the fields of management, preparing technical, educated and well trained employees, and providing effective information systems, to enable these institutions face the global improvements and foreign competition efficiently, competently and flexibly. In this context, the domestic banks may need to strengthen themselves through mergers to withstand the competition that will result from liberalization. In addition, Oman should work with other GCC States to create a joint committee to plead their interests in this field in front of the other Members, and clarify to what extent they are bound to apply the commitments in their schedules. Several recommendations could be made to the Omani banking sector in an effort to improve its competitiveness: *(a) Raise average returns to assets so that they are more comparable to regional and extra-regional standards. (b) Invest in human resource development, by emphasizing training and increasing job stability and security so that productivity is maximized. (c) Increase spending on research and development and formulate effective research and development policy. (d) Raise interest and awareness in international issues and changes. (e) Consider the feasibility of merging with other banking institutions in GCC States. (f) Adopt plans to diversify products and services in new markets, and engrain a*

new mentality in the economy and its major participants. (g) Gradually remove protectionist measures; offer technical support and know-how to upgrade productive levels.[952]

[952] Jabsheh, F.Y., op. cit., 2001, p 36.

CHAPTER SIX: CONCLUSION, FINDINGS AND RECOMMENDATIONS

6.1. INTRODUCTION

The thesis has analysed the accession of the Sultanate of Oman to the WTO and its consequences. The discussion was presented in five main chapters. The second chapter began with an examination of the WTO's system, including the legal personality of the WTO and its effects. In this regard, the meaning of the WTO, its functions; decision-making procedures; primary goals and the principles underlying its activity were explained. There followed a discussion of the legal organizational framework of the WTO, including the political bodies; Dispute Settlement Understanding; and decision-making procedures.

The third chapter discussed two main areas, the first one related to the Oman's economic and legal background, a discussion which began with brief statement of the legal system, then the economic status and development strategies. The second one was the implications of Oman's GCC Membership for its relationship with the WTO. In the discussion of this factor, attention was drawn to the economic integration between Oman and the other GCC States through the GCC.

The fourth chapter focused on three main areas. The first was the implications of WTO Membership for Oman, and the likely advantages thereof. The second was the accession terms and procedures under the WTO system, including the procedures involved in Oman's accession. The third focus of discussion was the commitments entered into by states acceding to the WTO, and particularly the commitments of Oman.

The fifth chapter presented a detailed evaluation of the challenges and opportunities arising under the WTO agreements, by analysis of the relevant WTO Agreements, and pointed out its impact for Oman in four selected industries and sectors, namely, the petrochemicals industry; manufacturing industry; agriculture, and the banking sector.

The WTO's policy disciplines and institutional obligations are to a large extent efficiency enhancing. Non-discrimination and the many transparency provisions will reduce uncertainty in the market place as regards the applicable rules and procedures that must be satisfied in the import process. Perhaps the most important potential beneficial aspect of WTO Membership is that it can be used as a pre-commitment device by governments that seek to enhance the credibility of a liberal trade policy stance and/or reform programme. This will not be an automatic consequence of accession to - and Membership of - the WTO, however, but requires unilateral decisions/measures and a significant investment in upgrading and strengthening

institutions. After studying and analysing the accession of Oman to the WTO and its potential consequences, some conclusions can be drawn, which constitute the outcome of this study.

Prior to the Uruguay Round and the establishment of the WTO, only the industrial countries played any significant role in multilateral trade negotiations. They negotiated amongst themselves to reduce trade barriers, while DCs were on the whole excluded from the process. DCs were able to take advantage of industrial country liberalization, by means of the MFN principle, but their contribution to or benefits from GATT did not really extend beyond this subsequently, however, the developing economies found themselves forced to engage in increasingly interaction with the global economy, given rise to a need to renegotiate contracts. Although market participants have viewed with concern the pressure to re-contract, steadfast refusal to do so is no longer a feasible option.[953]

The basis of the WTO's system of regulation is a legal agreements tailored basically to suit the economic needs of the industrial states, and heavily influenced by the economic preferences and legal customs of its founding Members (contracting parties as they were known under GATT). Successive layers of regulation, such as rules and disciplines in new areas of tariff reductions and other concessions, have increased the asymmetry between developed and developing country Members, as becomes apparent when evolution of multilateral trade regulation under the GATT/WTO is viewed from a broad perspective. The current system of international trade regulation, headed by the WTO, is founded on the disciplines first developed under GATT. The latter was originally intended to be a provisional agreement, laying the ground for a more extensive system of regulation under the proposed ITO, GATT. Nevertheless, it institutionalized in international trade law two principles, MFN and reciprocity, which had in one form or another underlain most international commercial agreements since the mid-nineteenth century and had been exploited to great advantage by the main commercial powers.[954]

The benefits and cost of the accession to the WTO have been widely debated. One school of thought draws attention to the new opportunities, faster economic growth, welfare improvements and enhanced communications generated under the WTO regime. From another perspective, however, the WTO is criticised for the inequality of

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[953] Mody, A., *What Is An Emerging Market?* International Monetary Fund Working Paper Number WP/04/177, 2004 at p 2.

[954] Wilkinson, R., "Global Insights Crisis In Cancun", *Global Governance,* Vol 10, Issue 2, 2004, pp149-155 at p 151.

distribution of its benefits, and accused of marginalization of poor countries, as well as poor and vulnerable segments of the population in all countries. A number of problems arise with regard to small, poor countries, which constitute a growing share of the WTO's Membership and have, since the Uruguay Round, had a greater voice in the system. WTO Membership gives such countries a new influence on the advancement of multilateral liberalization. However, because of their small size, these countries can offer trading partners few market access concessions, and so their ability to participate in mutual negotiation, and the benefits they can hope to derive there from, are restricted.[955] A second problem is that in some areas, these countries' interests do not coincide with the broader liberalization agenda of the multilateral trading system. Increased liberalization, far from improving their market access, would remove the preferential access to the markets of the industrial countries from which they have previously benefited. They may have little to gain and much to lose from the broadening of the WTO to include new areas.[956] One area of inequality between the developed countries and developing countries is in the field of technology, which is dominated by the developed countries. On the other hand, oil, in which developing countries such as Oman have competitive virtues advantage, is not covered in the WTO agreements. This is not to say that the WTO rules are an obstacle to development policy in DCs, the Arab Countries in particular, as many of the WTO rules provide flexibility for these countries to take a development policy which suits their needs. There is, however, a danger in the rapid broadening of the WTO functions in a way which will benefit the huge foreign companies, but do little for DCs, especially in relation to new subjects, such as genetically modified organisms, and plant varieties. The same problems of representation, legitimacy, accountability and transparency that face public institutions such as the WTO are also relevant to the companies that drive the process of globalization, and to the Citizens groups that criticize business or government with regard to the process and impact of contemporary globalization. What all of these groups have in common is an interest in the stability and, ideally, equitability of the

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[955] Messerlin, P., "Making The Doha Development Round Work For The Poorest Developing Countries", in Griffith, P., *Rethinking Fair Trade,* The Foreign Policy Centre, London, 2003, p 26.

For similar analyses of the treatment of developing countries in the WTO see: Hoekman, B. et al., "Special And Differential Treatment Of Developing Countries In The WTO: Moving Forward After Cancun", *The World Economy,* 2004; Finger, J.M., *The Doha Agenda And Development : A View From The Uruguay Round,* Asian Development Bank, Manila, 2002.

[956] Mattoo, A. & Subramanian, A., *The WTO And The Poorest Countries: The Stark Reality,* International Monetary Fund Working Paper Number WP/04/81, 2004, p 3.

global economy.[957] Concerns have been expressed regarding the WTO's traditional way of working, which is state-centric and is not subject to debate, oversight or evaluation by civil society at least in formal terms.[958] Nevertheless, it is clear that an institution to manage global trade is needed, given the high volume of private capital flows (both foreign direct investment and portfolio flows) compared to public development funding, the former being four times the later 1.[959] It is estimated that restrictions on trade cost DCs $100 billion a year-twice what they receive in aid. Moreover, most investment in DCs is limited to a small group of a dozen or so, and it significantly impacts sectors previously protected or subsidized by states, rich or poor. Yet the WTO does not have an explicitly pro-development mandate.[960] Moreover, some critics accuse the WTO of prioritizing the interests of the industrialized countries that control global market share, the culmination of decades of inequality in trade policymaking whereby business interests have been served at the expense of state autonomy and civil society interests Others criticize the failure of the WTO to incorporate environmental and social/labour standards in its policymaking.[961] However, it is debatable how far civil society groups should be involved in international decision-shaping. Public access to WTO meetings would not prevent legitimate confidentiality of certain negotiations. One analyst argued that transparency could improve the public image and 'grass root perception' of the formerly too secretive GATT. WTO cooperation with NGOs should, however, be regulated in a more equitable manner so as to limit 'single interest pressures,' hold NGOs more accountable, and protect the effectiveness of WTO decision-making processes. The WTO, with its strictly delimited scope of action and limited institutional capacities, was unable to address concerns of environmental and other NGOs, unrelated to the economic sphere. On the other hand, it has been suggested, that excluding NGOs could disturb the WTO system. Although consultations with would inevitably impose

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[957] Hertel, S., "The Private Side Of Global Governance", *Journal of International Affairs,* Vol 57, Issue 1, 2003, pp 41-50 at p 42.

[958] A functional description is available in: Adamantopoulos, K., *An Anatomy Of The World Trade Organization,* Kluwer Law International, London, 1997.

[959] Oxfam, *Rigged Rules And Double Standards: Trade Globalization And The Fight Against Poverty,* Oxford, Oxfam International, 2002, p 35.

[960] Ibid, p 9.

[961] Khor, M., "How The South Is Getting A Raw Deal At The WTO", in Anderson, S., *Views From The South: The Effects Of Globalization And The WTO On The Third World Countries,* Chicago, LPC Group, 2000, p 9.

an additional administrative burden, this disadvantage would be offset by the benefits of greater inclusiveness.[962]

It is important to reMember that the rhetoric of the WTO Agreement and the various provisions introduced as a result of the Uruguay Round have real impact on millions of people around the world. This is a reality that is all too easily overlooked. Greater public awareness of the full implications of WTO decision would no doubt result in new pressures and demands being placed on governments, which might add to their difficulties, but would help the WTO to stay in tune with global realties.[963]

That the WTO has innate deep-rooted shortcomings is evident from the lack of significant change to benefit the developing world, despite the efforts of DCs' negotiators and NGOs. Inequity remains in all areas, agriculture, TRIPs and public health, implementation issues, the framework agreement on GATS. The issues of democracy and transparency, addressed earnestly by DCs since Doha, also remain unchanged, leaving the DCs to cope as best they can with the prevailing realities.[964] The WTO made relatively little progress as regards the elaboration and implementation of the principle of special and differential or preferential treatment for DCs. The intention of the principle is facilitate their development of their economies, enabling them eventually to compete with the developed countries on an equal footing. Various provisions of the WTO Agreements refer to the possibility of special and differential or preferential treatment for DCs, but fail to specify the nature and scope of such treatment. Contrary to expectation, the WTO has done little in terms of working out the detailed modalities of according such treatment to DCs. The concern currently is more with which DCs should actually qualify for such treatment. Many Members are unwilling to give more developed developing countries such as China and Korea, on the same level of assistance as less developed developing countries such as Mali and Laos.[965] One of the issues taken up by the Doha Declaration was the principle of special and differential treatment for developing and least developed countries embodied in, inter alia, the

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[962] Petersmann, E.U., "Challenges To The Legitimacy And Efficiency Of The World Trading System: Democratic Governance And Competition Culture In The WTO", *Journal of International Economic Law,* Vol 7, Issue 3, 2004, pp 585-603 at p 593.

[963]Lacarte, F.A., "Transparency, Public Debate And Participation By Ngos In The WTO: A WTO Perspective", *Journal of International Economic Law,* Vol 7, Issue 3, 2004, pp 683-686 at p 686.

[964] Bullard, N., *Reforming Or Derailing The WTO: Why We Must Keep The WTO Train Off The Tracks,* Presented on 1 December 2003 as part of the University of Hamburg's 'People, Power, Globalization' Public Lecture Series, consulted on 13 May 2004 from, http://www.focusweb.org

[965] Subedi, S.P., "The Road From Doha: The Issues For The Development Round Of The WTO And The Future Of International Trade", *International And Comparative Law Quarterly,* Vol 52, Issue 2, 2003, pp 425-446 at p 435.

decision of 28 November 1979 on differential and more favourable treatment, reciprocity and fuller participation of DCs. Nevertheless, it went no further than to express recognition of the notion of special and differential treatment for DCs and to review the relevant provisions with a view to strengthening them and making them more precise, effective, and operational.[966]

In short, through the study of the legal system of the WTO, it can see that the principles of this system are entrenched as a significant characteristic to achieve one goal: liberating international trade. However, it is noted that these principles at their current state, whether in their systematic or subjective aspects, cannot generally and wholly achieve this goal. On the other hand, the WTO -which represents the systematic aspect of the system of international trade at hand- in its formation, competences, conditions of Membership, regulatory role and others, does not facilitate the complete achievement of the goal of liberating international trade as much as it presents a challenge to this achievement. This could be because; the organization is strict - to the extent of reaching arbitrariness- in granting Membership, as it did with China. In addition, the organization has excessively applied the principle of multiplicity in units for the purpose of the systematic regulation governing the activities of the organization's Members, except this may have negative effects on the goal of liberating international trade if there is no homogeneity in the functions of those units. In addition, the organization has adopted, as previously seen, a regulatory system that indirect goal is to govern the activities of the Members. Although this may have positive effects, it may also negatively affect the goal of liberating international trade by the general aversion of the organization's Members and dodging its provisions to escape that regulation.[967] These were some of the provisions of the WTO's legal system that are considered the most important with other provisions of the legal system. It is deduced that the provisions of legal system need to be reconsidered in order to act as an incentive to liberate international trade. To face these systematic and subjective challenges, the WTO Members need to adhere to its principles and provisions and fully cooperate with the WTO with good intentions and transparency to achieve the result of liberating international trade. However, it must be noted that requesting this cooperation is not limited to Members only as the WTO itself must subjectively adhere in its management to the international trade agreements, applying transparency and good intentions and not

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[966] WTO Ministerial Declaration, Doha, 14 November 2001, WTO Document Number WT/MIN(01)DEC/W/1, para. 44.

[967] Kalifa, A.E., *Al Netham Al Kanoony Le Monadamate Al Tejarah Al Alameyah (The Legal System Of The WTO),* Dar Al Jameah Al Jadeedah, Alexandria, 2006, pp190-191.

bowing to the pressures exerted from the developed countries. As well as ensuring non-interference in the internal affairs of Members in its regulatory role.[968] Meanwhile, imbalances continue, which must be addressed. In the future rounds of negotiations therefore, attention should be paid to some issues related to the WTO system such as, fairness; legitimacy; efficiency; democracy; and competition, particularly when handling with the affairs of DCs, and "comprehensiveness", in the sense of taking all the important problems of DCs into consideration, if the goal of a fair and liberal trade system is to be realised.[969] In conclusion, the responsibility of achieving international trade liberalization rests jointly on the WTO and its Members. Thus, if the WTO adheres to subjective administration, and its Members adhere to transparency and the provisions of the WTO agreements, the benefits would be in favour of liberating international trade.

It can be said that the WTO has had considerable success, since it was established, in promoting trade liberalization. The broad coverage of the WTO agreements has implications for many laws and policies of Members. Oman has generally shown a willingness to comply with its obligations, and equally it should assert its WTO rights. However, attention has been drawn to a number of institutional issues that need to be addressed in Oman, among them increasing transparency, and improving decision-making. There is still considerable underdevelopment in the industries and sectors of the Sultanate discussed in this thesis- sectors and industries likely to be of crucial economic significance in the near future.[970] In this situation, Oman should be very careful in liberalizing her markets and must ensure that effective regulatory regimes and strong macro-economic policies are put in place, although this is not to say that she should keep her door shut to foreign firms.[971] With a prudent economic policy and given its free market economy, Oman stands to gain from free international trade. However, Oman's economy is not yet fully integrated with the international economic system and needs as matters stand. The benefits resulting from

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[968] Ibid, p192.

[969] For more reading on this issue see generally, Petersmann, E.U., "Challenges To The Legitimacy And Efficiency Of The World Trading System: Democratic Governance And Competition Culture In The WTO", *Journal of International Economic Law,* Vol 7, Issue 3, 2004, pp 585-603.

[970] Cornford, A.J., *Selected Features Of Financial Sectors In Asia And Their Implications For Services Trade,* UNCTAD Discussion Papers Number 129, September 1997, p 20.

[971] Fischer, S., *Liberalization Of Global Financial Services,* Institute For International Economics, Washington 2002, consulted on 19 May 2004 from, http://www.iie.com

liberalization of international trade may consequently be limited in the short term, especially as crude oil is not yet covered under the WTO rules.[972]

In order to secure satisfactory economic development in Oman, mutual and complete coordination between the foreign trade sector and the other production sectors is necessary. This requires a trade policy oriented to economic development. The macro economic policy framework should be focused on maintaining sustainable macro economic policies, particularly monetary and fiscal policies, which create a favourable environment for industrial development. The focus of monetary policy should be to achieve price stability, while fiscal policy should be directed towards the reduction of fiscal deficits to avoid crowding out of private investment. Policy actions to promote domestic saving would be particularly beneficial. The size and the role of the governments will have to be reassessed in the light of the evolving situation. Privatisation may need to be accelerated. Public policies should pay particular attention to building modern physical infrastructure and encouraging private sector development. Restructuring of the economy and macro economic adjustment has been advocated to facilitate transfer and absorption of new technologies and development of relevant technical know-how. Deregulation would be conducive to market expansion. All of these endeavours depend on a sound institutional framework. This means removing legal and bureaucratic restraints that impede the growth of both product and financial markets, filling gaps in the legal and juridical framework, more clearly defining property rights and promoting a sound business culture. Strict observance of terms and conditions of contracts, clear understanding and enforcement of the rights and responsibilities of all part pants in production and financial activities, a clear mechanism for prompt wind up or restructuring of a bankrupt entity, and transparency in financial and business transactions, are all essential components of such a culture.[973] Moreover, given that the huge investment requirements of the country cannot be financed by domestic savings alone, more foreign investment will have to be attracted. Up to now, foreign investment flows to Oman have been small in relation to the size of the economy. To improve the flow of FDI, portfolio investment needs to be attracted, and this in turn requires proper policies at national level, to ensure a well-developed and organised financial market, as well as efficient functioning of stock markets with

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[972] Al Balushi, Y.H., "Analysis Of Oman Foreign Trade Indicators 1993-2002", *Al Markazi,* Vol 28, Special Issue 2003-2004, pp 31-41 at p 38.

[973] Al Raisi, A.H., "Globalisation Opportunities And Challenges For Oman", *Al Markazi,* Vol 26, Issue 2, 2001, pp 7-12 at pp 10-11.

transparent trading activities which are effectively overseen by strong regulatory and supervisory authorities.[974]

Consideration has been given in this thesis to the potential consequences arising from the accession of Oman to the WTO, and to how it may achieve the target set in the vision for Oman 2020 and gain advantages from integration into the regional and global economy. Compliance with WTO rules of trade in goods, as well as encouragement of domestic production activities, necessitate policies that address such issues as import duty, surcharge, certificate of origins, customs procedures and trade promotion. Financial policy will be an important tool of economic management, especially in relation to WTO accession process, and the associated obligations to tariff reduction, removal of non-tariff barriers and trade liberalization. This means that financial policies must be formulated that are oriented towards sustainable development of the industry and that comply with WTO rules. In order to promote industrialization and modernization, priority should be given to the acquisition of highly educated intellectuals, and of advanced science and technology, in order to increase productivity and quality, if Oman is to compete effectively in domestic and international markets. To achieve this goal, integrated programmes and plans will be needed for the development of human resources with the required professional skills.[975] Furthermore, to maximize the benefit to Oman from accession to the WTO, Oman should work closely with other GCC States to deepen the economic integration between them, and aim to negotiate with other Members as one bloc.[976] In addition, it must keep up-to-date and involved with developments in the WTO and its agreements. Thus, Oman will need to address each of the issues raised in the WTO, in light of her own national economic interests, given the basic division in the WTO between the developed countries and developing countries. Oman is one of a number of newly acceded countries in the WTO which have already, on entry, given more concessions and commitments than most other Members, and should not be required to make further sacrifices by additional reductions in tariffs on non agricultural goods or further concessions in the services sector and so on. Although the extensive market access commitments already made by the newly

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[974] Ibid, p 11.

[975] *Industry: Strategy Toward WTO Accession,* consulted on 11 May 2004 from, http://www.worldbank.org.vn/WTO/paper%20MOI.pdf

[976] However, there has been slow progress over sensitive economic matters to integrate the bloc recently things have started moving in right direction with the WTO regime and FTAs with different parties such as United States and European Union giving much needed impetus to push the region towards tough market competition from regional as well as global economies.

acceding countries were noted at Doha, the ministerial declaration did not give them special recognition and provision, as was done for DCs and LDs. Although the newly acceded countries do not constitute a homogeneous group, Oman would be well advised to make a common cause with these countries to assert their interests.[977]

The question of what happens now that Oman has officially entered the WTO is multifaceted. For example, it has to be asked, what will happen domestically to Oman's reform process and its economy? It also needs to be asked what will happen to her relationship with the other partners in the GCC. What is certain is that Oman as yet has little impact on the world trading system. However, in the march towards a free, open and prosperous multilateral system of trade and competition, Oman's accession to the WTO is clearly the biggest step yet.[978]

Although the Sultanate was formerly able to finance huge government expenditure from oil revenue, reserves are expected to be depleted after in the comparatively near future, necessitating measures to diversify the economy away from oil.[979] With this in mind it formulated its *Vision 2020,* a plan for rapid national socio-economic advancement, accelerated growth and enhanced prosperity. The plan focuses on economic and financial stability, reshaping the role of the government in the economy and broader private sector participation, diversification of the economic base and sources of national income, globalization of the Omani economy, and human resource development. [980] This blueprint constitutes a timely, much needed and ambitious strategy, pursuit of which will require selective attention by policy-makers, and periodic review in light of changing conditions.[981] In addition to trade policy reform, policy makers will have to consider the impact of WTO accession on production, employment and incomes in specific industries and firms. Economists may be tempted to offer precise statistics on effective rates of protection within and across industries, in

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[977] Sen, A.C., *WTO Ministerial Conference In Mexico: Issues And Prospects,* 2003, pp 11-12, unpublished; obtained by personal communication with the author.

[978] Alexandroff, A.S. & Gomez, R., conclusion in Ostry, S. et al., *China And The Long March To Global Trade: The Accession Of China To The World Trade Organization,* Routledge, London, 2002, p 234.

[979] Treichel, V., "Stance Of Fiscal Policy And Non-Oil Economic Growth", in Mansur, A. & Treichel, V., *Oman Beyond The Oil Horizon: Policies Toward Sustainable Growth,* International Monetary Fund, 1999, p 50.

[980] Innovating strategic possibilities ahead: towards a dynamic and forward looking industrial sector in Oman, unpublished study prepared by Oman House for Economic Consultancy (Oman); Advanced Business Consultants (Dubai); and Apex Management Consulting Group Private Limited (India), June 2001, p7. The study is available from the Ministry of Commerce and Industry (Oman).

[981] *The GCC Manufacturing Sector: Performance Under The Unified Industrial Development Strategy,* Study Prepared By Gulf Organization For Industrial Consulting, 2002, Number 4, p 79.

order to predict how trade reforms may affect production and employment, in order either to micro-design adjustment support measures or to allocate compensatory incentives on political economy grounds.[982] However, such an endeavour is complicated by the considerable overlap of liberalization and growth, exports and trade orientation.[983] It should also be recognized that policy reforms and trade liberalization need to be accompanied by appropriate environmental policies. This principle applies even for countries where environmental benefits are anticipated from policy reforms and trade liberalization, as they environmental policies can be used to correct some market failures that will inevitably remain, despite reform.[984]

With all what this theses discussed in mind, it is possible to consider the future challenges, which are no doubt difficult. For example, the Sultanate of Oman is facing an important economic challenge in the increase of population that has reached 2,331,391 according to a 2003 consensus[985]; A reduction in oil reserves which the Omani economy still relies on; Despite the Omani economy benefiting from the relative global increase in oil prices, there are no guarantees that prices will remain this high. The Sultanate of Oman will therefore not benefit from that once its oil reserves deplete; The main local factor lies in decreasing the level of investments and relying on attempts at diversifying the economy; Also, the multi-party agreement on intellectual property rights tops the list of agreements whose negative challenges on the Omani economy outweigh the positive ones; The challenges of main public issues-water, education, science, information technology, production and organizational competence in government organs, developing revenues from sources other than oil-which affect the growth of the national economy in its difficult sectors and the long-term goals of economic development in the Sultanate of Oman; Moreover, challenges in achieving diversification in productivity and finding sustainable economic growth, thus, opening up its markets presents great challenges for achieving benefits in opening up on the one hand and attempting to protect some sectors from unfair competition until the required level of development is achieved on the other hand; and finally, the Sultanate of Oman, like other GCC States, faces a challenge in the transfer and nationalization of

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[982] Greenaway, D. & Milner, C., "Effective Protection, Policy Appraisal And Trade Policy Reform", *The World Economy,* Vol 26, Issue 4, 2003, pp 441-456 at p 451.

[983] Greenway, D. et al., "Trade Reform, Adjustment And Growth: What Does The Evidence Tell Us?" *The Economic Journal,* Vol 108, Issue 450, 1998, pp 1547-1561 at p 1551.

[984] Lankoski, J., *Environmental Effects Of Agricultural Trade Liberalization And Domestic Agricultural Policy Reforms,* UNCTAD Discussion Papers Number 126, April 1997, p 13.

[985] Statistic from Ministry of National Economy, Oman, 2004.

technology, a unified strategy for industrial development, the activation of economic integration and responding to current and future challenges.[986]

It seem that Oman has to made some domestic reforms, in addition, it seem that supporting the economic integration with the other GCC States is inevitable for the Omani economy if there as there is no room for success in achieving sustainable development and defending the interests of national economy if these countries remain working as individuals. It can be said that the slogan for international commerce and economy has become "survival and development for the more competent, competitive and strong".[987]Therefore, this chapter provides some recommendations for Oman in order to face the potential negative consequences arising from the accession to the WTO, and to maximize the benefits from this accession. Oman should make some administrative reforms (section one), accord the private sector a greater role (section two), and co-ordinate its economic policies with those of other GCC States (section three).

6.2. Administrative Reforms

It is claimed by some economists that lack of abundant natural factors can be an advantage in economic development, since the nation thereby avoids the temptation of over-reliance on such advantages. If this is the case, the prospect of depletion of Oman's oil resources may be seen as an opportunity, rather than a threat. Dependence on a non-renewable physical resource will have to be abandoned, and this may encourage a diversion of attention to the development of human and knowledge resources. If it can successfully meet this challenge, Oman will have a stable basis for global interaction and for sustainable and environmentally sound economic growth and development. In order to achieve this, Oman must be able to create an economy with differentiated products and services, an advanced data and telecommunications infrastructure, and a multi-skilled and highly educated workforce.[988] The necessary policy reforms will essentially be political decisions,[989] made on the basis of a calculation of relative costs

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[986] Fahemah, S.D., *Aleqtesad Al Seyasy Le Atanmeyah,* (The Political Economic For Development In The 21 Century), Lebanon, 2002 at p 132.

[987] Mohamed, L.S., *Alwehdah Al Eqtesadyah Alarabia,* (The Arabic Economy), Cairo, 1986, pp 397-398.

[988] *In Search Of An Industrial Policy For The Pos-Oil Era In The Sultanate Of Oman,* United Nations International Development Organization (UNIDO), Project Number SF/OMA/99/001, 2000 at p 2.

[989] Nelson, J., "The Politics Of Stabilization", in Feinberg, R & Kallub, V., *Adjustment Crisis In The Third World (US-Third World Policy Perspectives),* New Brunswick, NJ: Transaction Books, 1984, pp 99-118.

and benefits.[990] Such reforms, directed towards establishing macroeconomic and fiscal stability and freeing trade, are the foundation of integration into the global economy.[991] Such measures can play a supportive role during stabilization by mobilizing resources for government, and so helping close the fiscal gap.[992] In addition, as there are different kinds and causes of inequality in the Omani market, policy reforms (market-friendly policy measures) can simultaneously promote greater equity and greater efficiency.[993] It may indeed be wondered why policy-makers in many developing countries continued with interventionist policies, in the face of clear evidence that they were not succeeding in bringing about growth. Krueger explains this phenomenon in terms of the opportunities created for rent-seeking. This not only imposes current costs on society as it encourages wasteful use resources for the sole purpose of capturing these rents, but it also creates groups with a vested interest in the continuation of the restrictions, which therefore tend to become self-perpetuating.[994]

Today, the role in trade played by unprocessed resources is decreasing in favour of manufactured goods and services. In terms of industrial structure, domestic vertical integration and locally-based supplier networks are giving way to cross-boarder networks, often made up of small and medium-sized enterprises, leaving large companies to concentrate on high value-added activities. Investment decisions depend not only on market access, but on a conducive environment and access to technology. These developments mean that traditional policy tools and instruments cannot guarantee Oman's economic growth. Traditional economic stimulus packages lead to greater imports, instead of promoting domestic growth, now that economies are open. The increasingly competitive environment resulting from the global search for markets and quality investment is a major challenge which the Omani government must face.[995] Globalization brings a flow of goods, services, capital and labour across national and regional borders. Thus, the external sector plays a major role in promoting growth and

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[990] Banerjee, S.G., "Does Foreign Aid Promote Privatization? Empirical Evidence From Developing Countries", *World Development,* Vol 31, Issue 9, pp 1527-1548 at p 1531.

[991] Graham, C., "Winners And Losers: Perspectives On Globalization From The Emerging Market Economies", *The Booking Review,* Vol 19, Issue 4, 2001, pp 22-25 at p 23.

[992] Rodrik, D., "The Limits Of Trade Policy Reform In Developing Countries", *The Journal of Economic Perspectives,* Vol 6, Issue 1, 1992, pp 87-105 at p 97.

[993] "Economic Development, Technological Change And Growth", *Journal of Economic Literature,* Vol 37, Issue 3, 1999, pp 1286-1297 at p 1292.

[994] Mudambi, R., "Political economy of policy reform in developing countries", *The Economic Journal,* Vol 105, Issue 428, 1995, pp 198-199 at p 198.

[995] Maclaren, R., "Government's New Role In Globalization", *Business Quarterly,* Vol 59, Issue 2, 1994, pp 89-93 at p 90.

development. Policy-makers therefore, rely heavily on foreign trade indicators in assessment of economic developments. The need to improve export facilities, both qualitatively and quantitatively, is an urgent priority for the Sultanate. Expansion of exports is essential for stimulating the production process, particularly given the small size of the local market. Successive five-year developmental plans in Oman have been oriented towards the diversification of the sources of the national income, and particularly development of the non-oil production sectors (manufacturing industries, etc.) in order to expand the export base.[996] However, the effective implementation of export strategy requires a consensus among the key stakeholders who will collectively be responsible for implementing it: the Ministry of Commerce and Industry, the Ministry of National Economy, the Omani Centre for Investment Promotion & Export Development, the Oman Chamber of Commerce and Industry, the Public Enterprises Industry Establishment, etc. Representatives of these (and other relevant government entities) and key promoters from industry/finance sectors, should ideally be brought together in a task force to guide and monitor the overall implementation.[997]

The condition of the labour market is generally regarded as a reliable indicator of the health of the national economy. Reduction of unemployment is seen as a cause for celebration, while its increase gives cause for concern as to the strength of the economy. It may surprise outsiders to learn that citizen unemployment exists in the GCC States, in which millions of foreign workers are employed. Governments in these States are implementing concerted efforts to replace foreign workers with local ones.[998] Such intervention has been prompted by two main factors. First, the decline in oil prices revenues when prices fell in the mid 1980s forced governments to cut costs in order to reduce the budget deficit, and they sought to reduce remittances by foreign workers. Secondly, despite a lack of official unemployment data, it is widely acknowledged in official circles that locals have increasing difficulty in finding jobs.[999] In the 1980s,

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[996] Al Balushi, Y.H., 2003-2004, op. cit., pp 31 & 33.

[997] *An Export Strategy Development For Non-Oil Omani Origin Products,* unpublished study prepared by Avalon Consulting (New Delhi), available from Omani Centre for Investment Promotion & Export Development (OCIPED), 2003, p 60.

[998] The problems presented by unemployment for the GCC states were highlighted in a recent address to a conference in Dubai on economic development in the region by Kuwaiti economist Jasim al-Sadoun. He said that current demographic trends indicate that by the year 2010 there will be 8 million new entrants into the labor market in the GCC states. "Planners and decision makers must then attempt to create enough jobs for the newcomers or face the alternative-severe unemployment with possibilities of social and political extremism. All available signs point to the latter happening.... People think that because of the large number of expatriates it will not be difficult to replace them with national manpower. The reality is otherwise," he said.

[999] Mellahi, K., 2000, op. cit., p 70.

GCC governments and state-owned enterprises embarked on a policy of preference to nationals in recruitment. The consequent rapid nationalization of the public sector labour force went some way towards containing unemployment pressures. By the early 1990s, nationals constituted more than 80% of the civil service and about half of all employees in state-owned enterprises in some GCC States. More recently, attention has turned towards nationalization of the private sector workforce. This was necessary because governments realized that they could not indefinitely take the lead role in employment of national workers, particularly in light of the need for professionals and experts in such fields as education and health, because of population dynamics. GCC governments have therefore introduced mandatory measures for nationalization of the private sector workforce, including quantitative targets or quotas on the proportion of nationals employed by private companies in specific professions or sectors. Some states have pursued such a strategy since the early 1990s. However, the absorption of national workers by the private sector is impeded by the practical difficulty of enforcing the targets for each and every firm, and by the availability of unlimited expatriate labor at internationally competitive wages.[1000] The economies of the GCC States rely heavily on migrant labour from the Indian subcontinent and south Asia, who work for lower wages than nationals and perform jobs that are socially unacceptable to local people. Restrictions on immigration could, therefore, have serious effects on industry and commerce.[1001]

Oman, like other GCC States, started to suffer seriously from increasing levels of unemployment in the early 1990s, a problem which goes beyond the mere issue of supply and demand for manpower, reflecting deeper internal disturbances and imbalance in the economic structure. Such disturbances may be related to the country's development philosophy, its financial educational and industrial policies, the political administration, popular participation, mechanisms followed for the distribution of surplus income and prevention and control of monopoly. All of these could significantly influence labour market trends. The problem will not be resolved through small, piecemeal measures to substitute of expatriate labour with national manpower in certain marginal sectors of the economy, through the creation of more jobs in an already overmanned public sector. In this context, Oman can learn from the experiences of countries such as Singapore, Malaysia, South Korea and Thailand in facing this

[1000] Fasano, U. & Goyal, R., *Emerging Strains In GCC Labor Markets,* International Monetary Fund, Working Paper Number WP/04/71, 2004, p 16.

[1001] "Arab Countries: Gulf States Tighten Rules On Immigrant Labour", *International Labour Review,* Vol 132, Issue 3, 1993, pp 303-309 at p 304.

problem.[1002] It is noteworthy that Oman is the only GCC State to set formal targets for employers to achieve localisation depending on the sector, with a minimum 10% localisation expected in all cases. In view of the scale of the local unemployment problem, the need for such measures can be appreciated. However, the government will need to review them periodically, according to changing development needs and the skills available in the national work force.[1003] Previous efforts at Omanization proved unsuccessful and were opposed by the private sector, because of the adverse impact on productivity and service quality. Despite almost twenty years of policy, the number of foreign workers in the private sector has continued to increase, reaching 548,000 in 2002, a rise of 1.8% over the previous year. By comparison, figures from the Public Authority for Social Insurance showed just 66,000 Omanis as working in the private sector in 2002. In short, although expatriates make up just 24% of the total population, they account for 89% of the private sector workforce. Employers assert that if they are to be forced to take on more Omani workers, either subsidies or training should be provided by the government to defray the costs. As a step in that direction, in July 2003, specialized training was provided for nearly 1,000 Omanis in areas such as information technology, retail sales, heavy vehicle operation, and tourism, at a cost to the government of nearly $6.75 million.[1004] However, it is recommended that the government should consult the private sector, before undertaking any new step on the omanisation front.[1005] Another concern is that despite the enormous progress already achieved in education, educational achievement in Oman, judged even by traditional criteria, is still modest when compared to the achievements of other countries, even developing ones.[1006] If Oman is to reap the full benefit of the new era of WTO-led globalization, her youth must be equipped with the relevant educational background and skills. Some reforms have already been initiated, for example, a reform of school syllabus with an emphasis on English, mathematics and computers. This policy should be accelerated and all the sultanate's schools brought within the net by the year 2020.

[1002] Al Jahwari, M.R., "Economic Determinants Of The Labour Market Situation In The Sultanate", *Al Markazi,* Vol 28, special issue 2003-2004, pp 21-30 at pp 21 & 30.

[1003] *Comparative Analysis Of GCC States,* unpublished study prepared by KPMG Company, available from the Omani Centre for Investment Promotion and Export Development (OCIPED), 2001 at p 9.

[1004] *Oman Country Forecast: Comment & Analysis,* Political Risk Yearbook: Oman Country Forecast, January 2003, pp11-14, consulted on 25 October 2004 from, http://www.prsgroup.com/yearbook

[1005] *Oman Model For Other GCC Countries,* consulted on 12 May 2004 from, http://www.keralamonitor.com/july11.html#om

[1006] "How The Arabs Compare: Arab Human Development Report 2002", *The Middle East Quarterly,* Vol 14, Issue 4, 2002, pp 1-6 at p 2.

Knowledge and skill gaps need to be identified by a nation-wide survey, in collaboration with the private sector. Sultan Qaboos University should be encouraged to identify and introduce new programmes and courses to meet the demand of industry, and it may be necessary on some programmes to expand the admission quota.

Attention also needs to be paid to Oman's interaction with and participation in the WTO itself. Clear articulation of its policy positions will need an effective domestic policy formulation process, preparation and submission of appropriate documentation, and a clear understanding of the various responsibilities of Ministry of Commerce and Industry, the representative office in Geneva, and other competent ministries and affected bodies in the capital. As yet, Oman's interaction with the WTO is impeded by unclear lines of communication, inadequate systems for consultation of stakeholder, and shortage of resources.[1007] Oman will not reap the full benefit of WTO and globalization as long as even Members of the government lack awareness and knowledge. This could be overcome by special seminars and training programmes for the government ministries/departments. The Ministry of Commerce and Industry needs to accelerate and expand its programme of seminars on different aspects of WTO. Awareness of the WTO and its implications also needs to be spread among the general public, for example through print and electronic media, such as newspaper Articles/supplements, telecast seminars, interviews/discussions with experts on various aspects of WTO, and general knowledge quiz programmes on Radio/TV for students. In addition, a chapter in secondary school text books could be devoted to "WTO, the new era of globalization and Oman."

One of the main challenges to confront Oman is training. If Oman is to participate effectively in WTO, it will need a team of skilled and knowledgeable officials, particularly in the Ministry of Commerce and Industry, the main interface between Oman and the WTO, but also in other ministries. Moreover, their knowledge and skills in matters covered by WTO Agreements will need to be regularly updated. Regular training of officials and their constant exposure to international experience will be essential, and Oman would be well advised to seek technical cooperation with and assistance from other industrialised and developing countries and from the WTO, as well as other international institutions. [1008] Among the areas where such training is

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[1007] Hoekman, B. & Roy J., *Benefiting From WTO Accession And Membership,* Paper Presented During Regional Course On Global Integration And The New Trade Addenda For Central Asian Countries, held in Ankara, Turkey on June 20-29-2001, consulted on October 2002 from, http://www.worldbank.org/wbi/attackingpoverty/everty/events/Turkey_0601/hoekman.pdf

[1008] Ganesan, A.V., op. cit., p 79.

indicated are IPR matters- search and enquiry procedures for TRIPs laws violations etc. Customs is another area where numerous training needs can be suggested, such as the law, procedure and techniques for customs officials, importers and custom brokers, and harmonised classification for customs/computerization. Training programmes for various categories of staff could be established with the assistance of WTO/WIPO, Geneva, Paris and Berne Conventions for IPR, World Customs Organization (WCO) Brussels and International Trade Centre (ITC) Geneva. In the case of IPR/Customs etc. joint collaboration with other GCC States would be desirable[1009]

Consideration should also be given to the mechanisms of Oman's participation in the WTO. This would be facilitated by appointment of a permanent ambassador exclusively to WTO, supported with adequate staff in Geneva. Oman should also, in order to protect her interests and have a voice in future decisions, participate effectively in all important WTO meetings on diverse topics. This would be a costly undertaking, but the burden could be reduced by an arrangement with other GCC States and also Arab League Countries to negotiate a common position and to share attendance at meetings in the same way that the Nordic States (Sweden, Norway etc.) have done.

In addition to all the above suggested reforms, Oman will need to develop some of her laws and rules, and a variety of policies and mechanisms could be adopted for this purpose. Among the changes needed is a review of laws and procedures related to commercial agencies, in order to remove obstacles to contracting. The commercial and industrial coordination committee needs to be revitalised and economic and financial laws and rules will have to be reviewed and amendments made to ensure consistency among them, and with the new economic policies. Certain procedures would benefit from simplification. For example, commercial and investment licensing procedures could be streamlined by creation of a one-stop-shop system where all official procedures could be handled. This would help to make a more conducive climate for the investment needed to reduce dependence on oil and diversify the sources of national income.

Currently, activities undertaken in relation to the WTO are coordinated and supervised by the Ministry of Commerce and Industry, headed by a director general named by the Directorate General of Organizations & Commercial Relations, which was established pursuant to the Royal Degree No. 15/2003, issued on 22 February 2003. The Directorate's responsibilities, however, are not confined to the WTO, but extend to all international organizations, such as Arab and Islamic Organizations, as well as all

[1009] Sen, A.C., op. cit., 2000, p 20.

agreements and joint committees which fall within the jurisdiction of the Ministry and are not covered by other directorates. The functions of the Directorate are as follows: *To follow up the activities of the Arab, Islamic and International Organizations, participate in the meetings and follow-up the implementation of their recommendations and resolutions. To study, analyse and appraise the different cooperation agreements in the field of trade prior to their conclusion. To prepare for the meetings of the joint committees and their preparatory meetings headed by the Ministry. To prepare for participation in the meetings of the GCC committees follow up the times and places of such meetings in coordination with the concerned agencies within and outside the Ministry according to the adopted rules. In addition, prepare the documents and reports required for such meeting and follow-up the implementation of the decisions and recommendations issued by such meetings within the Ministry's jurisdictions.*[1010] In view of its wide-ranging responsibilities, it can be argued that the energies of the Directorate are diffused, weakening its role in relation to the WTO, more especially as the directorate has only a small staff, most of whom lack experience and expertise in WTO-related matters. If Oman is to be an active and effective participant in the WTO and to gain the maximum advantages from Membership, a much stronger secretariat function is required. This could best be achieved by establishment of an independent body directly reporting to the Council of Ministers. For convenience, in the following discussion, such a body is referred to as the WTO Centre (WTOC).[1011] It should be emphasized that the proposed WTOC is not expected to provide a complete solution to the establishment of a suitable administrative framework for WTO activity. Such a framework should also include private sector consultative bodies and a "transparency institution." Nevertheless, it is worth paying particular attention to the suggested organization and functions of the proposed WTOC, which would have the major role in WTO-related activity. The WTOC should be headed by a president (under secretary level), directly accountable to the Council of Ministers. The WTOC would receive reports from Oman's permanent representative to the WTO in Geneva, and would coordinate with the various ministries on all WTO-related issues. The permanent representative would be the WTOC's link with other WTO Members and the WTO Secretariat. The Geneva office would be instructed by the government, through the WTOC, as to the positions that should be taken in WTO meetings; and would send

[1010] See the Royal Decree number 15/2003.

[1011] The idea and functions of WTOC are derived from Hoekman, B. & Roy, J., op. cit.

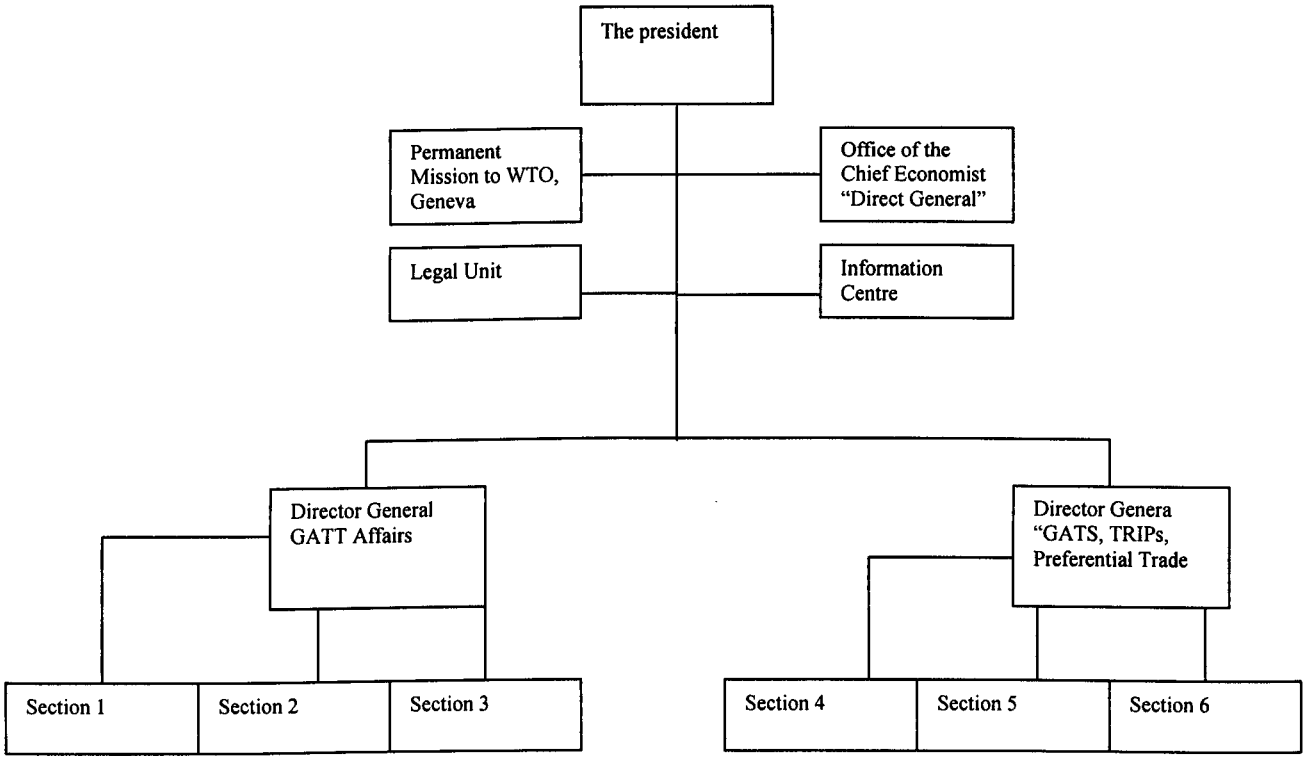
information and briefings to the WTOC, for onward transmission to the government bodies concerned, and to other stakeholders.

The Geneva office should be of a sufficient size to enable Oman to participate in all major WTO committees and meetings. Its role would be to communicate, promote and defend Oman's stance on specific issues, seek the support of other major trading nations, and keep the WTOC up-to-date on the positions taken by other WTO Members. These activities should be supplemented with an ongoing close inter-relationship with WTOC staff at headquarters. One way to facilitate this would be to have a system of periodic relation of officers between Muscat and Geneva. To ensure that the government has a strong and influential presence in Geneva, the office should have at least two professional staff at the counsellor or first secretary level, in addition to the Ambassador.

Among the functions of the WTOC would be to act as the secretariat for an inter-Ministerial Working Group (IMWG) which should be established to coordinate activity on issues that involve several ministries. Indeed, in addition to the preparation of all papers that are to be submitted to WTO bodies, coordination and consultation with concerned Ministries and Agencies, as well as the private sector, would be an essential part of the WTOC's role. Some issues may concern matters of a technical nature that lie within the competence of other bodies. In such cases, the WTOC should request such entities to prepare position papers or factual reports, as required. The terms of reference for such requests would be agreed with the Geneva office. The WTOC can also be entrusted with the task of preparing economic analyses of policy issues as they arise and with the development of trade policy proposals. In other words, the WTOC would be the centre of activity and expertise on all matters relating to trade policy and the WTO. For this purpose, it would be composed of various functional units. Some would provide advisory/support services and report to the Head of WTOC, including an Economic Department, a Legal Advisory unit, and an Information Centre. Other units would have operational responsibilities and report to the Head of the WTOC through two Directors Generals (see Figure below). Economic analyses and trade policy would be the responsibility of an Economics Department, led by a professional Chief Economist. This department would also provide economic input, where necessary, into the preparation of papers and reports relating to WTO issues. All draft submissions to the WTO should be subject to perusal and comment by the Chief Economist, in order to ensure that likely economic consequences have been considered. This office would also be responsible for assisting and reacting to WTO Trade Policy Reviews, and be given

responsibility for following "new" issues for which the WTO might establish rules in the future (e.g., competition or investment policy). The Economic Department staff should have access to commonly-used tools for trade policy analysis such as the Global Trade Analysis Project (GTAP) databases and general equilibrium simulation software, as well as the major on-line databases (such as the UN's COMTRADE). As yet, Oman suffers a shortage of well-qualified analytical policy-oriented economists in the civil service, and it is likely that outside consultants would need to be brought in for specific research tasks, especially those involving complex economic modelling, and a budget should be allocated for this purpose. This would be more cost-efficient than the training and employment of personnel to perform such tasks in-house.

Possible structure of a WTO Centre



An Information Centre could be set up to disseminate information within the government on WTO-related issues, facilitate communications between the WTOC and the Geneva Office, and provide access to the WTO, UN, and other global trade information networks. The centre would manage both text and statistical databases, which should be linked to the nation's statistical agencies in order to provide WTOC staff with on-line access to national trade and national accounts statistics. Also necessary is a Legal Advisory unit, which would help in drawing up proposals to WTO

committees and negotiating groups, answering queries and legal challenges from other Members, and if necessary, bringing cases within the WTO dispute settlement mechanism.

The economic, legal and information units described above would support the operational departments in the WTOC, as well as the Permanent Mission in Geneva. Each of these operational entities would deal with particular WTO subjects as well as the various non-WTO dossiers with relevance to trade-policy, such as managing preferential trade relations. Each "section" or division would be required to compile reports on their respective subjects for all IMWG meetings would be responsible for consultation as necessary with other concerned Ministries/agencies and the private sector. Section leaders should be charged with preparing a consolidated government view on queries raised by WTO Members regarding the subjects for which they are responsible. Operational units or sections should be headed by and accountable to senior officials, e.g., at the Director General level. A division of responsibilities would be needed to handle the complexities of WTO-related matters. For example, GATT matters could be handled separately from issues arising under the GATS and TRIPs Agreements. Each Director General would be expected to play a prominent role in the IMWG discussions, supported by the specialist staff concerned with each specific subject.

6.3. ACCORD THE PRIVATE SECTOR A GREATER ROLE

The capital input to an economy is classified into two sectors, private and public, according to ownership.[1012] A recent trend in public management has been the adoption in public administration of the so-called "business model," based on typical private-sector strategies and a focus on economy and efficiency. Globalization is strongly associated with administrative reform.[1013] Government may intervene in the economy in various ways, through influence, regulation and mediation, distribution, production and planning, depending on the particular economic problems faced and the objective of state intervention. Since the early 1990s, in Oman, the government has been strongly involved, not only identifying priorities for the development process, but also through direct involvement in economic activities. However, with the liberalization of the economy, a strong relationship between the government and the private sector is

[1012] Bosca, J.E., et al., "Rate Of Return To Public And Private Capital: New Estimates Using Nonlinear Euler Equations", *Applied Economics,* Vol 36, 2004, pp 1225-1232 at p 1226.

[1013] Hays, S.W. & Plagens, G.K., "Human Resource Management Best Practices And Globalization: The Universality Of Common Sense", *Public Organization Review,* Vol 2, Issue 4, 2002, pp 327-348 at pp 327-328.

necessary to strengthen the competitive ability of the export sector, and to cope with the impact of the globalization process on the Omani economy generally.[1014]

One area in which the private sector plays a key role is global regulation. Industries in new technological fields cannot afford to wait out lengthy government regulation processes and set standards themselves. Government regulators themselves rely on industry studies. Telecommunications is a good example of an industry where the private sector has contributed significantly in standard-setting. Global companies already operating to high standards want to see those standards extended, so that the costs are similar for everyone. They sometimes even seek greater international governmental regulation or encourage norms of higher standards inside the countries in which they operate.[1015]

According to Kofi Anan, the previous Secretary General of the United Nations, in the world today the private sector represents the prime generator of value and administrative resource. If the private sector cannot ensure economic value and economic opportunities around the world, peace and social equity will not be achieved.[1016] The private sector has a fundamental responsibility to cooperate with the government in promoting development. It must be open and interact with development and change, and to contribute actively and positively in it. However, the role which the private sector could play depends on the how this sector evaluates the benefits to be gained, in relation to risks incurred.[1017] In Oman's case, the private sector is just thirteen years old, which is not long enough to put it on a par with the huge global companies with their regulative, administrative and marketing capacity. In such a position, the private sector is still looking to the government for help to continue growing by preparing a suitable climate, for example by reducing taxes; multiple tariffs; reducing the prices of some basic services; and streamlining administrative procedures. Thus, in any evaluation of the WTO Agreements from the general overview of the private sector,

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[1014] Adnan, M.A. et al., "Globalization Challenges And Competitiveness: The Role Of The State And Private Sector In Malaysia", *Managerial Finance,* Vol 22, Issue 5/6, 1996, pp 59-69 at p 60.

[1015] Rosabeth, M. K., "Global Competitiveness Revisited", *The Washington Quarterly,* Vol 22, Issue 2, 1999, pp 39-58 at p 54.

[1016] Al Namany, N.A., T*aheel Al Keta Al Kase Lemowakbate Etefaqyat Al Tegarah Al Almeyah Wa Almofawdate [Encouragement Of Private Sector To Complywith The World Trade Organization Agreements],* unpublished paper presented to the seminar of Arabic Business Society and World Trade Organization Agreements, Beirut 3-4 June 2002 at p 1.

[1017] Mai, D.S, *Dower Al Estethmar Al Araby Al Kase Fe Al Takamul Al Eqtesady Fe Dell Threer Al Tegarah Al Almeyah [Role Of The Private Arabic Investment In The Shadow Of Global Trade Free],* unpublished paper presented to the seminar of Arabic Business Society and World Trade Organization Agreements, Beirut 3-4 June 2002 at p 3.

it must be emphasised that the potential economic benefits will not be equal, due to clear differences in capability between private sectors around the world.[1018]

The current situation of the private sector in Oman is typical of a state with one main source of income, in this case, oil, produced and exported by the public sector, which hence becomes the focus of wealth generation and its allocation. According to economic theory, any expansion in one economic activity is followed by a decline in some other economic aspects. Therefore, it is not surprising that the dominant role of the public sector in the national economy and its position as the leading employees resulted in marginalizing the role of the private sector as a source of production and employment.[1019] There are a number of reasons for the weak role of the private sector in Oman's economy. It suffers from a lack of capacity, in terms of technical skills, experience, and capital. It has been characterized by a short-term perspective and a reluctance to risk involvement in long-term service and industrial projects. It has also been constrained by the attitude of the government bureaucracy, which retained for the public sector opportunities that could have gone to the private sector.[1020] As a result, the private sector in Oman has so far had a weak role in development, despite greater investment. The state still dominates the economy through its control of natural resources, development funds and legislation. In this situation, the political and economic environment has not been favourable to growth of an effective national private sector.[1021] In short, it can argue that the challenges facing the private sector in Oman lie in three inter-related areas. Firstly, the labour market is dominated by inflexibility of wages and the lack of coordination of skills in addition to institutional factors. The government trying to replace their expatriate workforce with nationals by allocating quotas to employing expatriates and increasing the costs of employing them. These policies may have negative long-term effects because the flexibility of wages, workers and skilled labourers are important for the growth of non-petroleum sectors. The obligatory procedures do not replace the flexibility of wages; and education and

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[1018] Aodah, W., *Wegahte Nazaer Alketa Al Kase Al Arabi Men Etefaqyat Moazamete Al Tegarah Al Alameyah [Arabic Private Sector View From World Trade Organization Agreements]*, unpublished paper presented to the seminar of Arabic business society and World Trade Organization Agreements, Beirut 3-4 June 2002 at p 7.

[1019] Al Jahwari, M.R., "Oman's Development Requirements For Higher Education And Qualified Manpower", *Al Markazi,* Vol 25, Issue 1, 2000, pp 15-20 at p 17.

[1020] Kassem, M.S., "Commentary Services Marketing: The Arabian Gulf Experience", *The Journal of Services Marketing,* Vol 3, Issue 3, pp 61-71 at p 64.

[1021] Al Moajil, A.H., *Adoption Of New Technologies And Industrial Policies: Linking The Arab Regional Markets With The Industrialized World,* unpublished working paper presented during the Arab Regional Industrial Forum, Cairo 6-7 November 1999.

acquiring skills are also of great importance. Secondly, the expenditure of the government on workers' wages, defence, security and subsidies and grants are a burden on their budgets. The traditional role of governments as provider of jobs and dictator of wages policy needs to be reconsidered, as does the government support for basic food, health, education, agriculture and industry. Direct government support is small by international standards (2-3% of gross domestic product), but direct support though the decreased price of energy sources and through giving long-term loans is much bigger. The levying policies also need to be reviewed, specially those that relate to the costs of public services (water, energy ..etc). In addition, consumer taxes need to be innovated. Thirdly, the framework policies concerned with diversifying the economy need continuous attention, in particular with regard to privatization since most petroleum industries still remain under government control. They should also adopt new regulatory standards for the financial market and for developing local stock market.[1022]

More recently, however, the climate has begun to change, due in part to the difficulty of devising an acceptable form of control over public enterprises, and concerns about poor financial performance and lack of public accountability.[1023] As a response to these concerns, a programme of privatization has been initiated, although progress has been slow, due to the difficulty of changing entrenched positions, inherent economic constraints.[1024] Privatization has been an increasingly popular policy option worldwide since the notable British experience of the early 1980s, and has gradually spread to developing and transition economies.[1025] However, the success of such programmes in DCs is undermined by the undeveloped state of financial markets, weak regulatory capacity, and domination of the public sector.[1026] Although privatization has been proposed by Oman's government as an answer to growing fiscal deficit, and plans have been introduced for privatization of several state owned and controlled companies, as well as for the liberalization of, for example, the energy sector, so far privatization

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[1022] Alwatan Newspaper, 13 August 2006, No 8422, Vol 36, p 22.

[1023] Wei, Y., "Corporatization And Privatization: A Chinese Perspective", *Northwestern Journal of International Law & Business,* Vol 22, Issue 2, 2002, pp 219-234 at p 233.

[1024] Nwoye, M.I., "A Focus Group Discussion Approach To The Comparative Analysis Of Private And Public Sector Enterprises In Nigeria", *Technovation,* Vol 22, Issue 8, 2002, pp 525-534 at p 525.

[1025] Brune, N. et al., "The International Monetary Fund And The Global Spread Of Privatization," *IMF Staff Papers,* Vol 51, Issue 2, 2004, pp 195-219 at p 198.

[1026] Boubakri, N. & Cosset, J.C., *Privatization In Developing Countries: An Analysis Of The Performance Of Newly Privatized Firms,* World Bank, Note Number 156, November 1998.

has been an idea more than a reality.[1027] With the new realities of globalization and WTO Membership, it would be desirable now to renew efforts private sector's role. This would require a long term strategy for carrying out requisite changes in government organizations as a precursor to privatization in order to improve productivity for customer satisfaction and achieve profits for share holders. Privatization should be seen as a long-term strategy, rather than a temporary response to falling oil prices.[1028]

Basically, the business leaders in Oman -most of them are senior officers in the government- did not support greater democratization and increased popular participation. Rather they utilized their wealth and their political access to generate more wealth and more power for themselves.[1029] Thus, it may be doubted whether the creation of a real and competitive private sector would be favoured by much of the Omani business elite, which has reaped huge benefits from prevailing situation over the last three decades. Real privatization would require significant changes in the Omani business environment, to create a real private sector. The required changes would include: (1) a more limited regulatory environment, decreasing the importance of contacts inside the government in avoiding legal problems; (2) a clear and enforceable commercial code with a judiciary able to adjudicate commercial disputes and an executive willing to enforce judicial decisions; and (3) a more open and competitive system of bidding on government contracts and licences.[1030] There is also need to create a more conducive environment to encourage export performance, for example by expediting procedures for obtaining certificates of region, transactions with commercial banks, ports and customs, as well as improving access for information about international markets. Problems of access to financing and credit, the high costs of transport, shipping and insurance and the lack of regular national transport lines to the

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[1027] Gause, F.G., *Political Economy Of National Security In The GCC States,* consulted on 8 October 2004 from, http://www.emayzine.com/lectures/pegs.htm

[1028] Al Lawati, H., "Gulf Shares: Difficulties Of Ownership And Transfer", *Al Markazi,* Vol 25, Issue 2, pp 21-25 at p 25.

[1029] Pathmanand, U., "Globalization And Democratic Development In Thailand: The New Path Of Military, Private Sector, And Civil Society", *Contemporary Southeast Asia,* Vol 23, Issue 1, 2001, pp 24-32 at p 29.

[1030] For an excellent theoretical discussion of the problem faced by states looking to privatization and liberalization as solutions for their economic crisis, see Chaudhry, K.A., "The Myths Of The Market And The Common History Of Late Developers," *Politics & Society,* Vol 21, Issue 3, 1993, pp 245-74. It is intersting to note that Chaudhry did extensive fieldwork in the Arabian Peninsula and Iraq for other projects. A similar argument about the obstacles to privatization in the GCC States has been made by Zanoyan, V., of the Petroleum Finance Company. See his "After The Oil Boom," *Foreign Affairs*, Vol 74, Issue 6, 1995.

outside world, are other constraints to be overcome, if the state is to be relieved of the financial burden of supporting these companies and the profits are to benefit more than a privileged business and political elite.

Up to now, Oman faces the problem of a lack of systematic dialogue between the private sector and the government in relation to trade. This can to some extent be attributed to weak economic structures and lack of legal and institutional capacity. The situation is, however, exacerbated by lack of knowledge and awareness, on the part of the private sector, of the rules of the multilateral trading system. The new world trading system entails huge changes, and from that perspective, the WTO has emphasised the role of the private sector and its institutions as an engine of development on the domestic, region and international levels. However, a recent study by Al Hosani found that private sector understanding of the influence of the WTO fell far short of the expected level. Of the companies surveyed, 17.4% did not anticipate that the WTO would have any influence upon the total activities of the Omani private sector, and 20.3% had no idea about the possible consequences of Oman's Membership.[1031] The private sector in Oman needs to know about the WTO rules because trade rules are increasingly governed by the WTO agreements. For example, under the WTO Agreements on Textiles and Clothing from 1st January 2005, trade in these goods been free of quotas. In these circumstances, more efficient producers will have a competitive advantage and will increase their market share. Understanding of the agreement will help private sector organizations to make appropriate decisions regarding investments, structural adjustments and export strategy. A second reason why private sector understanding of the implications of the WTO is important is the potential for a well informed private sector, through participation in dialogue with the government, to influence the government positions on multilateral or bilateral trade negotiations, and contribute in shaping the trade rules that affect it.[1032] Although, in recent years the government has introduced some policies to improve the investment and legal environment to increase the participation of the private sector, the problem of decision making still exists due to the rapid of taken such decisions and numerousness of the government bodies dealing with application of these decisions. Thus, it is not expected in the near future that the private sector in Oman will have the same role that it does in

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[1031] Al Hosani, M.K., *Al Keta Al Kahse Al Omani Fe Theal Al Mostagdate Al Alameyah Al Jadeedah [The Omani Private Sector In The Shadow Of The New Global Changes],* Oman Chamber Of Commerce And Industry, 2004, p 25.

[1032] Naray, P., "Why Business Needs To Know More About WTO Rules", *International Trade Forum,* Issue 3, 2002, pp 6-7 at p 6.

industrialized countries. It seems that the private sector will continue to be under the government's umbrella, since to most situations economic considerations are subordinate to political.[1033] At this point, however, dialogue between the private and public sector needs to be encouraged and made more effective. This will require capacity-building on both sides.[1034]

Nevertheless, despite the importance of an enhanced private sector role for the Omani economy, the government should be wary of potential negative impacts on society. To avoid these, civil society should participate in the decisions related to the private sector. Perhaps the most important external factor for ensuring socially responsible private sector decision-making would be legal provisions requiring social aspects to be taken into account during project development and approval. Such requirements could be included in the legal framework for environmental assessment, or within codes applicable to specific industries and sectors, such as mining and oil and gas, legal provisions should guarantee the involvement of interested and affected parties, in order to protect their interests and safeguard the people's rights to benefit from development, especially in the privatization programmes.[1035]

In short, one may ask what role has the WTO played in this process? While it has not played a direct role, WTO Membership affects Oman indirectly in ways that will further undermine the government's ability to control society. It can explain how WTO accession could accelerate a process of liberalization and encourage the role of private sector that has already been underway for some time: By lowering the barriers that protect state-owned industries, Oman is speeding a process that is removing government from vast areas of people's lives. In the past, every Omani citizen went to work in a factory run by the government and read newspapers published by the government, in addition, state also operated the schools where they sent their children, the clinics where they received health care. However, the people start to leave those firms before the accession to the WTO, after the accession they start to leave them faster. The Omani government no longer will be everyone.

[1033] Hamza, R. M., Dower Al Keta Al Kase Fe Altanmeya: Al Momkenat Wa Al Hodood, [The Private Sector Role In The Development: Possibly And Limitations], *Oman News Paper,* Issue 7600, 24 March 2002 at p 7.

[1034] *In Search Of An Industrial Policy For The Post-Oil Era In The Sultanate Of Oman,* Study Prepared By The United Nations Industrial Development Organization (UNIDO), Project SF/OMA/99/001, 2000 at p 8.

[1035] Mcphail, K. & Davy, A., *Integrating Social Concerns Into Private Sector Decision Making: A Review Of Coporate Practices In The Mining, Oil, And Gas Sector,* World Bank Discussion Paper Number 384, 1998 at p 10.

6.4. Co-Ordination Of Economic Policies With Other GCC States

Since the early 1990s, the GCC States have sought to play a more prominent role in the global economy. This means that they are increasingly forced to confront the fierce competition generated by the enlarged market. It also means that they face constraints on their national economic, monetary, fiscal and labour policies. One impact of the need to compete internationally is that GCC governments have been forced to reduce regulatory mandates on the private sector that might increase costs.[1036] Wages for comparable work are becoming closer.[1037]In addition, there have been important changes in economic policy and development strategy to reduce reliance on government spending to support non-oil activities. The oil sector still predominates, but efforts are being made to diversify the GCC States' economies.[1038]

The development of a "modern" GCC economy can be traced to the mid-1970s, when oil prices rose dramatically. As a result of the oil revenues, structures of production and exchange were gradually changed, living standards improved and popular consumption and saving patterns were altered. Another influential factor was the influx of expatriate workers, who had different consumption and saving propensities. However, the fluctuations in oil prices caused income instability and magnified the impact on GDP of miscalculations on the part of policy-makers.[1039] The formation of the GCC, while political in origin, brings significant economic advantages, broadening and stimulating trade, particularly in light of the GCC States' gradual liberalization of their markets, and this is conductve to economic growth. In particular, given the similarities between the Members of the GCC in per capita incomes and demand structures for quality goods, there is scope for increased trade within the region. Another potential advantage of the GCC is the possibility for Members to work as a bloc to secure their interests in the new trading environment and they would be well advised to do so, instead of acting individually in their interaction with the WTO. This is important for Oman, in order to minimize the cost of accession to the WTO. The importance of economic integration between similar countries, is in fact recognized and

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[1036] Mellahi, K., "Globalization And Employment Of Local Workers In Gulf Co-Operation Countries", *Management Research News,* Vol 23, Issue 2-4, 2000, pp 70-71 at p 70.

[1037] Parnell, M.F., "Globalization: Organised Capitalism And German Labour", *European Business Review,* Vol 98, Issue 2, 1998, pp 80-86 at p 83.

[1038] Fasano, U. & Wang, Q., *Fiscal Expenditure Policy And Non-Oil Economic Growth: Evidence From GCC Countries,* International Monetary Fund, Working Paper Number WP/01/195, 2001 at p 13.

[1039] Zind, R.G., "Income Determination In The GCC Member States", *OPEC Review,* Vol 23, Issue 4, 1999, pp 341-354 at p 351.

expressed in the 2002 Arab Human Development report, which is infused with a pan-Arab spirit and highlights the need for Arab economic integration as one of the main strategies facilitating development and facing the challenges posed by globalization.[1040]

Certainly, the GCC States have in recent years recognized the need to accelerate their efforts toward economic integration, which had hitherto made little tangible progress. Concerns in this regard have established the customs tariffs early 2003, and looking to introduce a single GCC currency by 2010. The establishment of a customs union so far has brought some increase in the attractiveness of the GCC States to investors and gives further impetus to economic reforms in the region to reduce dependence on oil revenues.[1041] A popular trend in the pursuit of this goal is privatization. The governments recognize the need to reduce their expenditure, and encouragement of the private sector plays a key role in this endeavour.

The Gulf market is becoming increasingly lucrative, and the entry of foreign investors will stimulate it further. However, the legal framework in some of the GCC States may pose obstacles to the creation of capital markets with active foreign investors. They will have to address such legal and regulatory issues as disclosure by companies listed on stock markets, market manipulation and insider trading if they are to attract substantial funds from overseas.[1042] In this context, Hammoudeh & Aleisa argue that, with the exception of the Saudi market, the GCC States capital markets do not have strong daily explanatory or predictive power for each other. It is likely that the barriers to foreign entry that characterize these markets have contributed to this result.[1043] It is suggested by some commentators that the legislation in the GCC States has so far been focused on investment coming into the particular GCC States, rather than on protecting investors in their investments elsewhere. Despite these legal and other difficulties, however, it seems likely that the GCC will offer increasing potential for investment in the future.

Cooperative strategies have long attracted much research attention in the international business field, and a particular area of interest in recent years has been

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[1040] Baroudi, S.E., "The 2002 Arab Human Development Report: Implications For Democracy", *Middle East Policy,* Vol 11, Issue 1, 2004, pp 132-141 at p 132.

[1041] Looney, R.E., "The Gulf Co-Operation Council's Cautious Approach To Economic Integration", *Journal of Economic Cooperation,* Vol 24, Issue 2, 2003, pp 137-160 at p 159.

[1042] Pittaway, J., "Privatization And The Growth Of Financial Markets In The Gulf", *International Financial Law Review,* Vol 14, Issue 2, 1995, pp 23-25 at p 24.

[1043] Hammoudeh, S. & Aleisa, E., "Dynamic Relationships Among GCC Stock Markets And Nynex Oil Futures", *Contemporary Economic Policy,* Vol 22, Issue 2, 2004, pp 250-269 at p 252.

strategic alliances.[1044] Currently, the globe is being carved into regional blocs, which provide Members with access to a large market and greater investment opportunities. In such a climate, states that remain isolated are at a disadvantage. In addition, from a military perspective, the Gulf War has clearly demonstrated the vulnerability of the GCC States to external threat. Economic integration would give them greater political and defensive strength.[1045] Indeed, in the last decades, the GCC States have taken significant steps towards regional economic integration. WTO accession offers an opportunity for the harmonisation of regional trade and the creation of investment-related policies, laws and measures. Although the six Members are individually relatively small, and even together have fewer than 28 million persons, their collective total income (over $250 billion), per capita income (approximately $12,000), exports (some $110 billion) and imports (approximately $85 billion) make the GCC a potentially powerful bloc. Due to the limited domestic productive capacity, the GCC States import most of their needs of consumer and capital goods.[1046] The other GCC States are Oman's major trading partners. The removal of tariffs between the GCC States is likely to stimulate additional trade. It is also likely to promote efficiency in Oman and to enhance the private sector, which are particular concerns of the Oman government, in light of the new financial realities as oil revenues decline.[1047] Moreover, given that negotiation is the basis of international business. Oman's bargaining position would be strengthened by working out a common stance within the GCC.[1048]

Oman has not yet achieved sustained economic growth independent of oil revenues, and in order to achieve the necessary rate of sustained growth, regional cooperation and economic integration with the other GCC States may be essential.[1049] Progress in the macro-economic framework of Oman would require intensive efforts and careful planning. There is a need to harmonize policy and

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[1044] Bernhard, N., "Review Of Cooperative Strategies And Alliances", *Journal of International Business Studies,* Vol 34, 2003, pp 489-491 at p 489.

[1045] Al-Khatibe, J.A. et al., "The Free Trade Agreement Between The European Union And The Gulf Cooperation Council: An Overview And Implications", *Managerial Finance,* Vol 26, Issue 1, 2000, pp 14-25 at p 23.

[1046] Metwally, M.M. & Tamaschke, R., "Trade Relationships Between The Gulf Cooperation Council And The European Union", *European Business Review,* Vol 13, Issue 5, 2001, pp 292-296 at p 292.

[1047] The price of oil hit a 12-year low; it hit its lowest point in real terms in 25 years. *The Economist,* London, 28 November 1998.

[1048] Agmon, T., "Who Gets What: The MNE, The National State And The Distributional Effects Of Globalization", *Journal of International Business Studies,* Vol 34, 2003, pp 416-427 at p 426.

[1049] Kubursi, A.A., *Oil, Industrialization & Development In The Arab Gulf States,* Croom Helm, Beckenham, 1984, pp 1-2.

procedures with the other GCC States so that parallel channels of development can be pursued. Oman in her relations with the other GCC States is at the threshold of important stage of economic integration through the implementation of the customs union and the preparations for the monetary union. It is necessary to accelerate the pace of progress towards these goals, and to overcome any obstacles facing them, as they have important implications for economy of Oman. They can help in creating and encouraging a stable climate for development of inter-regional trade between Oman and the other GCC States, and for enhancing the capabilities of the Omani economy to adapt to the new economic developments. Moreover, a single currency among GCC States will bring trade advantages for Oman, especially as Oman and the other GCC States have very similar interests, especially vis-à-vis the international market. On the internal level, a single GCC currency would be more stable in relation to other currencies, and which would in turn be attractive for investors.[1050]Similar advantages can be gained from regional cooperation in other respects. The Member countries of the GCC have common interests and complementarity in terms of natural resources and factor endowment, so coordinated efforts among them will be more effective in achieving competitive advantage. The formation of the GCC has provided the basis for such cooperation, and its effectiveness is demonstrated by the increases, over the years, in intra-regional trade, capital and technological flows and labour movement. More recently, initiatives have been undertaken to coordinate on macro-economic issues, such as harmonisation of tax and tariff systems, illustrating the willingness to cooperate at the regional level. By pursuing further this complementarity and economic integration with the other GCC States, Oman stands to benefit from industrial linkages, a wider market, technical cooperation and consultancy, and regional economies of scale.[1051]

One area in which collaboration among the GCC States would be desirable in presenting a united position in WTO fora is agriculture. The GCC States are all net food importing countries, and so have no reason to support reduction of agricultural subsides. By joining together, they could enhance their bargaining position in order to gain concessions and assistance in exchange for support. For instance, in light of the Singapore Ministerial Decisions (non-binding), they may be able to secure financial and technical assistance to compensate for the higher food prices which would result from the reduction of agricultural subsidies. They could also solicit financial aid or technical assistance to develop their domestic agriculture/horticulture. Oman could benefit from

[1050] Coordinating Arab Gulf Finance, *Gulf Economics,* 7/7/2001.

[1051] Al Raisi, A.H., op. cit., 2001, p 12.

cooperation among the regional states, in relation to other areas such as investment and government procurement, where they have a commonality of interest. In many new non-trade issues, it may not be in the interests of Oman and GCC States to support a degree of flexibility on issues such as investment (where they have already agreed on very liberal regimes) would enhance their bargaining power.[1052]

Oman would be well advised to cooperate with the other GCC States to develop common economic, technology, and education policies, in order to gain advantage from the GCC as an economic bloc.[1053] This would include measures to create a legal and economic environment favourable to private entrepreneurship and economic activity based on market forces, and the expansion and liberalization of trade relations with fellow Members, bearing in mind Oman's international obligations and the principles of the WTO. Such enhancement of intra-regional trade could be facilitated by exchange of information on foreign trade, removal of trade barriers, exchange of views on conditions for free and undistorted competition; information-sharing in the field of services; and co-operation in the area of intellectual property rights. Moreover, Oman should work with the other GCC States to encourage and stimulate business contacts, notably between enterprises and organizations concerned with foreign trade, with the aim of developing their mutual trade. In addition, it could improve the conditions for the implementation of private sector industrial co-operation projects, by creating favourable conditions conducive to capital flows and investment in all economic sectors of mutual concern. From another perspective, could Oman benefit from the relationship between the GCC and EU, by concentrating on signing long-term agreements in establishing joint-ventures, and by working to increase the effectiveness of the relations between the Gulf-European companies, to constitute a pressure factor on the EU. For this purpose, Oman could suggest creation a joint-Gulf body to represent the Gulf companies in dealing with the EU companies. In addition, Oman should actively pursue the establishment of the Gulf common market, in order to deal with the European bloc; create an effective Gulf banking presence in the EU region; and put more pressure on the EU through emphasising the application of the WTO Agreements.[1054]

In short, an appropriate way to Future strategies that should set by the GCC States to deal with the WTO has to base on several principles: Strengthening the degree

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[1052] Sen, A.C., op. cit., 2000, p 14.

[1053] Rice, G. & Mahmoud, E., "Trends In International Business Thought And Literature: The Arabian Gulf Countries", *The Internationa Executive,* Vol 38, Issue 5, 1996, pp 715-730 at p 728.

[1054] "Evolution Of EU-GCC Partnership", *Gulf Industrial Bulletin,* Vol 2, Issue 12, 2001, pp 1-2 at p 1.

of economic integration among the council countries, as the organisation promotes the creation of micro economic communities within its Members. Restructuring the gulf economies, to handle the challenges that will face the gulf council because of opening the market to foreign products and fierce competition in international, region, and local markets as required by the clauses of the WTO.

An appropriate way to conclude this thesis is with the Prophet Mohamed's saying: *if any of you does any job he should excel in it.* The significance of this saying, in the present context, is that Oman has taken an excellent step by accession to the WTO; however, it has to complete the job by working hard to earn the benefits of this accession and reduce its costs. The message conveyed in this thesis is that Oman needs to improve its policy making and dialogue, and benefit from support in the form of statistical research and studies, in order to make maximum use of unilateral and multilateral tracks of trade and investment liberalization. These could be the best routes to closer national integration with the world economy, provided that non-discrimination is the basis of all policy.[1055] In short, it can be said that good institutions improve efficiency and accelerate growth, and that the positive effect of institutional quality is further enhanced by the mutual reinforcing support of economic freedom. Institutional development would help Oman to grow faster to achieve a favourable economic position. The suggestions above offer a number of useful insights to guide policy makers in Oman. Economic development should be seen as a multidimensional process that requires investment in four basic areas. First, human capital formation to help control quantity, while improving quality of the labour force through education and on-the-job training. Second, physical capital formation and technological changes to enhance productive capacity and ultimately facilitate improved flow of goods and services. Third, freedom to engage in social, economic, and political activities, free of constraints, including government interference. Fourth, institutional support to effectively create a legal, procedural, and organizational environment conducive to trade, invest, and innovate.[1056]

This study has discussed the consequences arising from the accession of Oman to the WTO, which are little known and until now have received little research attention. Hopefully this study will help to broaden understanding of the accession of Oman to the WTO, and the consequences arising from it. Finally, it is hoped that this study will

[1055] Sally, R., "Developing Country Trade Policy Reform And The WTO", *Cato Journal,* Vol 19, Issue 3, pp 403-423 at p 420.

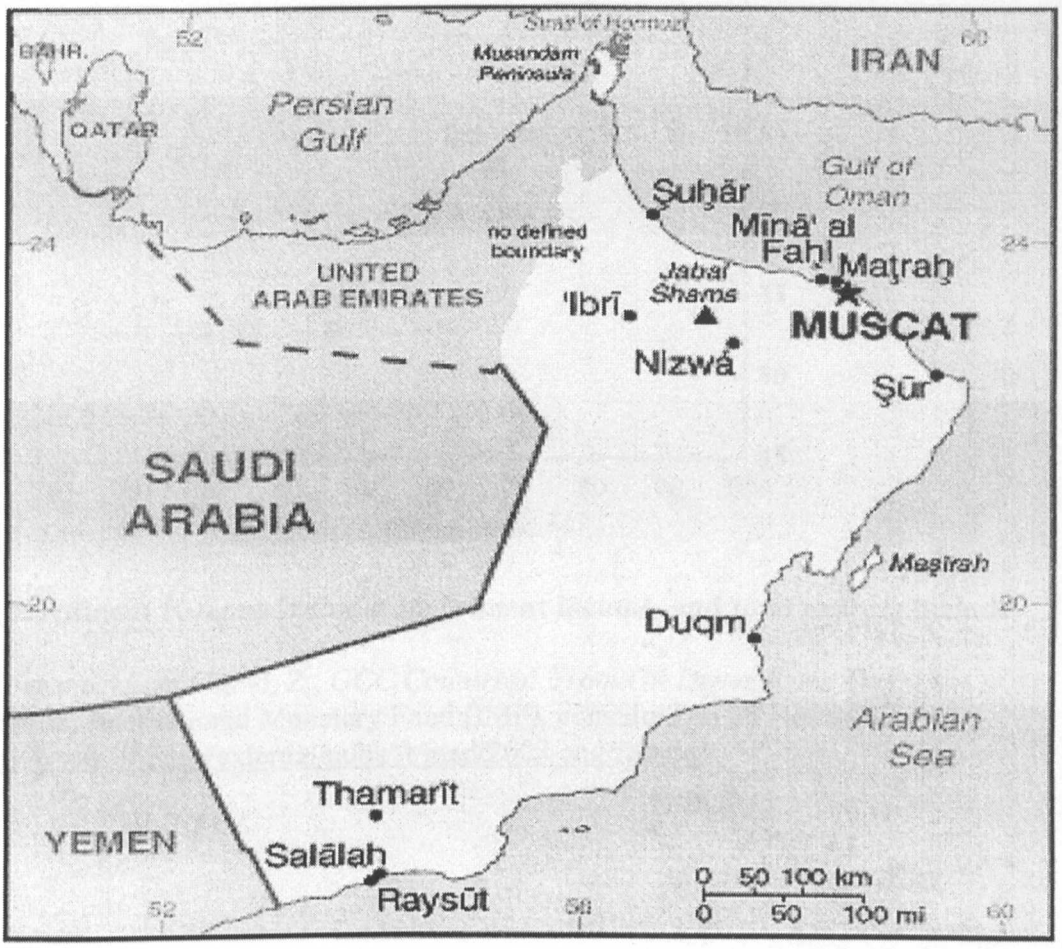
[1056] Djeto, A. & Grammy, A., "Institutional Framework And Economic Development: International Evidence", *Applied Economics,* Vol 35, 2003, pp 1811-1817 at p 1816.

guide and inspire others and be a prelude to further scholarly research about Oman in this field.

FIGURES

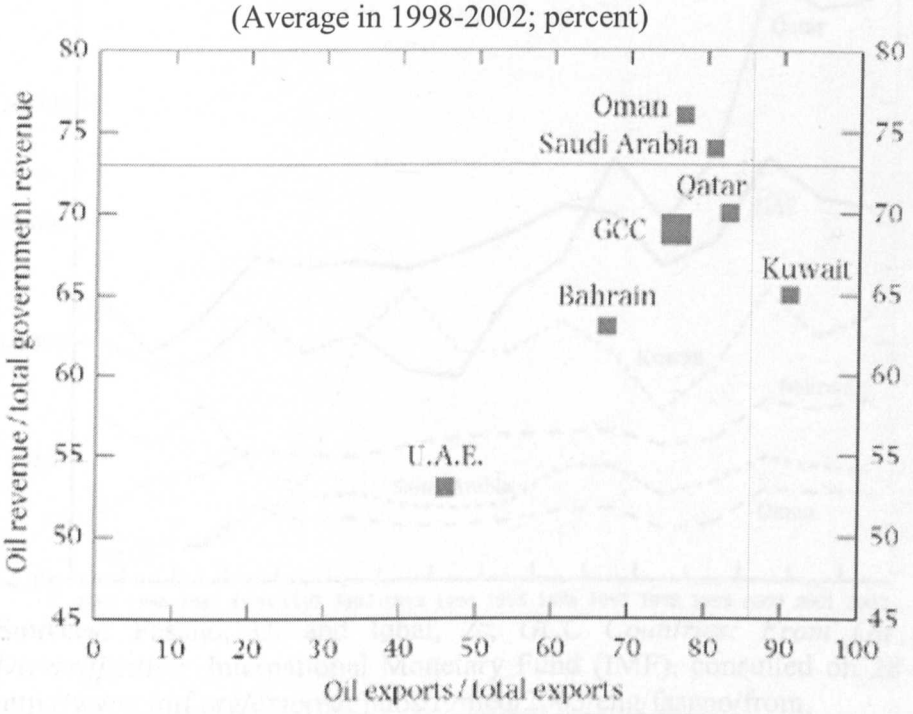
Figure 3.1

OMAN MAP



Sources: http://www.omanet.com

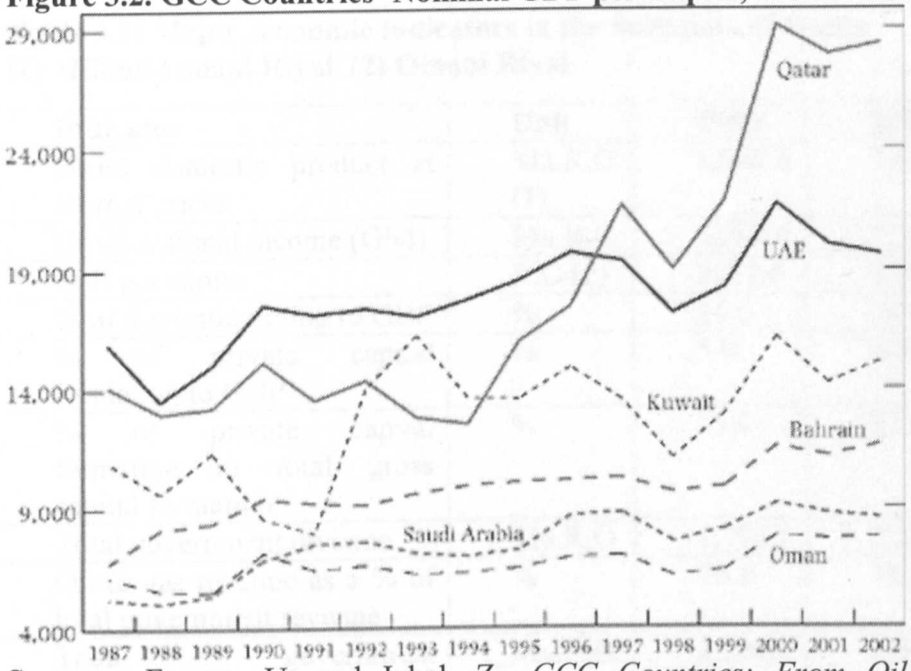
Figure 3.1. GCC States: Oil Dependency



1-Total government revenue includes investment income, and total exports include reexports.

Sources: Fasano, U. and Iqbal, Z., *GCC Countries: From Oil Dependence To Diversification,* International Monetary Fund (IMF), consulted on 28 November 2003 from, http://www.imf.org/external/pubs/ft/med/2003/eng/fasano/

Figure 3.2. GCC Countries' Nominal GDP per Capita, 1987-2002



Sources: Fasano, U. and Iqbal, Z., *GCC Countries: From Oil Dependence To Diversification,* International Monetary Fund (IMF), consulted on 28 November 2003 http://www.imf.org/external/pubs/ft/med/2003/eng/fasano/from,

Table 3.1: Major economic indicators in the Sultanate of Oman
(1) Million Omani Riyal (2) Omani Riyal

Indicator	Unit	1999	2000	2001
Gross domestic product at current prices	Mn.R.O (1)	6,040.6	7,622.8	7,669.4
Gross national income (GNI)	Mn.R.O	5,763.6	7,331.8	
GNI per capita	R.O (2)	2479.0	3052.0	
% of domestic saving to GDP	%	26.0	39.8	
% of private capital formation to GDP	%	5.0	4.4	
% of private capital formation to total gross capital formation	%	33.4	37.1	
Total government revenue	Mu.R.O	1,796.1	2,289.9	2,512.5
Oil & gas revenue as a % of total government revenue	%	70.1	78.4	77.5
Total government expenditure	Mu.R.O	2,269.0	2,656.2	2,768.5
Average daily production oil	(000) BBL	904	955	956
Average oil price	US $	17.35	26.71	23.00
Total merchandise exports of which non-oil exports (Omani origin)	Mu.R.O Mu.R.O	2,783.3 201.4	4,352.0 247.8	4,258.0 365.8
Total merchandise imports	Mu.R.O	1,846.0	1,972.8	2,229.3

Source: Monthly Statistical Bulletin, Published by Ministry of National Economy (Oman), V0l 13, 2002, Issue 5, p 2.

5.4. AGRICULTURAL SECTOR

This section contains two sub-sections. The first one gives a general overview of the agricultural sector in Oman, while the second one discusses the impacts of WTO Agreements on this sector.

5.4.1. General Overview

Oman relies for food predominantly on imports, although she is making efforts to become self-sufficient in major staples. In an attempt to promote the agriculture and fisheries sectors to the level of international competitors, several incentives have been introduced to entice foreign investors, including tax exemptions, utilities discounts, soft (concessional) loans, and tariff protection. The government also offers assistance in exporting food products. The greatest scope for development is in the area of high-tech, high-yield agriculture. Other concerns to be addressed in the agricultural sector include the increasing salinity of table water and water supply pressures. [789]

Food security is the most discussed of "non-trade concerns," particularly in developing countries, but also in a significant number of developed countries. [790] Agriculture is the key to alleviating rural poverty. It employs more than half of the total labour force in developing countries and almost three quarters in lower-income developing countries. Most of the world's poorest rely on agriculture for their sustenance. For example the rural population was 16 percent of the total population in Oman in 2000, and the agriculture population was 36 percent of the total population in the same period.[791] Agriculture in Oman has existed for thousands of years, as shown by the existence of the *falaj* irrigation system. Thus, Sutton stated that "the *falaj* systems of Oman have provided communities with water for irrigation and domestic purposes for 1,500-2000 years." In addition, Oman is endowed with considerable areas of fertile land

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[789] *Oman Sector Analysis,* Arab Commercial Directory, consulted on 12 May 2004 from, http://www.guidearab.com/ArabCountries/oman/sector.htm

[790] Diaz-Bonilla, Diao, and Robinson have a good discussion of the various submissions to the WTO on this subject by both developed and developing countries. See their paper *"Thinking Inside The Boxes: WTO Agricultural Negotiations And The Development And Food Security Boxes"* presented in The International Conference: Agricultural Policy Reform And The WTO: Where Are We Heading?, University of Calabria, 23-26 June, 2003.

[791] *Rural Development: Some Issues In The Context Of The WTO Negotiations On Agriculture*, consulted on 23 December 2003 from, http://www.fao.org/DOCREP/005/Y3733E/y3733e04.htm

Table 3.2.B: Sector relative shares to GDP (%)

Activity	1995	2000	2020
Oil	33.5	25.9	9.0
Gas	1.5	5.0	10.0
Agriculture	3.0	3.5	3.1
Fishing	1.1	1.0	2.0
Mining & Quarrying	0.6	0.6	2.0
Manufacturing	5.4	6.8	15.0
Electricity & Water	1.7	4.3	2.0
Building, Construction & Real	3.2	6.9	10.0
Trade & Tourism	14.1	17.8	18.0
Transportation & Communication	7.0	8.6	8.0
Banks, Insurance and Financial Services	7.9	4.3	8.0
Other Private Services	8.3	3.2	5.0
Public Services	13.9	12.6	10.0
Other Services*	-1.2	-5.0	-2.1
Gross Domestic Product	100.0	100.0	100.0

Source: Ministry of National Economy (Oman), 1996.

* *Custom Duties & Imputed Business Services*

Table 4.3: The eight GATT trade rounds and the areas of trade they covered

The GATT Rounds			
Year	**Place**	**Subjects Covered**	**Countries**
1947	Geneva	Tariffs	23
1949	Annecy	Tariffs	13
1951	Torquay	Tariffs	38
1956	Geneva	Tariffs	26
1960-1961	Geneva (Dillon Round)	Tariffs	26
1964-1967	Geneva (Kennedy Round)	Tariffs and anti dumping measures	62
1973-1979	Geneva (Tokyo Round)	Tariffs, non- tariff measures, " Framework" agreement	102
1986-1994	Geneva (Uruguay Round)	Tariffs, non-tariff measures, rules, services, intellectual property, dispute settlement, textiles, agriculture, creation of WTO, etc	123

Source: WTO website from, www.wto.org

Table 4.4: THE LEGAL TEXTS AGREEMENTS CONTAINED IN THE FINAL ACT

- Agreement establishing the World Trade Organization
- Annex 1: contains the following
  1- Annex 1A: Agreement related to trade in goods (GATT 94), including:
    A- Agriculture
    B- Sanitary and Phytosanitary Measures
    C- Textiles Barriers to Clothing
    D- Technical Barriers to Trade
    E- Trade-Related Investment Measures (TRIMS)
    F- Anti-dumping (Article VI of GATT 94)
    G- Customs valuation (Article VII of GATT 94)
    H- Preshipment Inspection
    I- Rules of Origin
    J- Import Licensing
    K- Subsidies and countervailing measures
    L- Safeguards
  2- Annex 1B: General Agreement on Trade in Services (GATS)
  3- Annex 1C: Trade-Related Aspects of Intellectual Property Rights (TRIPs)
- Annex 2: Dispute Settlement Understanding
- Annex 3: Trade Policy Review Mechanism
- Annex 4: Plurilateral Trade Agreements, include:
  1- Annex 4A: Agreement on Trade in Civil Aircraft
  2- Annex 4B: Agreement on Government Procurement
  3- Annex 4C: International Dairy Agreement

NOTE: this agreement was terminated end 1997

4- Annex 4D: International Bovine Meat Agreement

NOTE: this agreement was terminated end 1997

Source: WTO website from, www.wto.org

Table 5.1. The status of the new proposed gas based industrial projects in Oman

A- Oman India Fertiliser Company SAOC

Shareholders	Oman Oil Company. SAOC 50% IFFCO Ltd, India 25% Krishak Bharati Co-op. Ltd, India 25%
Plant capacity	5060 tons per day Ammonia/Urea
Capital cost	US$ 969 million
Location	Sur
Proposed production date	February 2005

B- Sohar International Urea & Chemical Industries SAOC

Shareholders	Suhail bin Salim Bahwan 96% Ahmed bin Suhail Bahwan 2% Saad bin Suhail Bahwan 2%
Plant capacity	3,500 tons per day Ammonia/Urea
Capital cost	US$ 650 million
Location	Sohar Industrial Port Area
Proposed production date	September 2005

C- Oman Methanol & Derivatives Company

Shareholders	Oman Oil Co. SAOC 33.33% Omzest 33.33% Ferrostaal, Germany 33.33%
Plant capacity	5000 tons per day Methanol
Capital cost	US$ 500 million
Location	Sohar Industrial Port Area
Proposed production date	November 2005

D- Oman Smelter Project

Shareholders	Oman Oil Co. SAOC 24.5% / power plant 50% Abu Dhabi Water & Electricity Authority 24.5% / power plant 50% Alcan Inc 51%
Plant capacity	Aluminium smelter 630,000 tons per annum Power plant 1,200 MW
Capital cost	US$ 2,242 million for smelter & US$ 567 for power plant
Location	Sohar
Proposed production date	Year 2006

E- Engro Fertiliser Project

Shareholders	Oman Oil Co. SAOC 30% Engro Chemical Co; Pakistan 70%
Plant capacity	850,000 tons per year Ammonia/Urea
Capital cost	US$ 250 million
Location	Sohar
Proposed production date	Year 2006

Source: Ministry of Commerce and Industry (Oman), A glance at Industry in Oman, 2003.

Table 5.2. EU: tariff rates on petrochemical imports from the GCC Countries and Scheduled reduction under Uruguay Round Agreement

	1995	2000	2005
Ethylene Bi Glycol	8.0	5.5	5.5
Ethylene	0.0	0.0	0.0
Melamine	8.5	6.5	6.5
Mergyltert. Butylether (MBTBE)	7.4	5.5	5.5
Methanol	13.0	9.25	5.5
Propylene	0.0	0.0	0.0
Styrene	6.0	0.0	0.0
Polyethylene LDPE-LLDPE-HDPE	12.5	9.5	6.5
Polystreme & Poly-vinychloride (PVC)	12.5	9.5	6.5
Ethylene Glycol	13.0	9.25	5.5

Source: Joint Arab Economic Report, September 2000, p139

Table 5.3. Total number of establishments in manufacturing sector in Oman by Industrial activity (1997-2001)

Industrial activity	1997 No. of establishment	1998 No of establishment	1999 No of establishment	2000 No of establishment	2001 No of establishment
Food product & beverages	138	147	153	167	169
Ready garments	20	20	21	22	19
Products of wood except furniture	80	65	67	65	59
Products of paper	6	10	10	8	10
Printed materials	30	34	36	36	41
Refined petro-products& liquefied gas	8	8	9	10	12
Chemical/chemical products	22	28	30	35	34
Rubber & plastic products	23	28	29	29	36
Other non-metallic products	280	262	258	257	243
Basic metals	6	56	6	7	10
Fabricated metal product	125	131	131	139	135
Machinery & equipment nec.	12	14	18	18	16
Office, accounting/comp. Machinery	2	2	2	2	2
Electrical machinery/apparatus	9	11	11	13	12
Medical precision/optical intr.	1	1	2	2	1
Parts of motor vehicles	2	5	6	5	9
Other transport equipment's (fishing vessels)	8	10	9	9	4
Furniture manufacturing	30	39	37	40	42
*Other manufacturing	10	12	11	12	8
Total	812	832	846	876	862

*includes (17) textiles, (19) dressed leather/handbags and (37) recycling. Note: census covered only industrial establishments with capital investment five thousand R.O. and above. (Source: Ministry of Commerce and Industry (Oman), A glance at industry in Oman, 2003.

Table 5.4. Volume of investment (capital formation in the manufacturing industrial sector (1997-2001) Unit 000-O.R. in Oman

Industrial activity	1997	1998	1999	2000	2001
Food product & beverages	86,145	90,883	110,309	109,530	115,644
Ready garments	6,728	6,646	5,664	3,620	3,678
Products of wood except furniture	2,381	2,041	4,719	1,736	1,073
Products of paper	4,510	6,602	8,398	4,171	8,613
Printed materials	16,576	14,105	16,157	16,776	12,876
Refined petro-products& liquefied gas	44,541	56,475	54,010	635,508	784,816
Chemical/chemical products	11,711	31,410	35,479	31,088	41,684
Rubber & plastic products	7,538	17,520	19,666	19,882	27,240
Other non-metallic products	63,567	62,078	140,030	169,128	171,762
Basic metals	13,679	13,374	58,138	58,329	62,178
Fabricated metal product	11,631	15,976	18,420	19,586	17,808
Machinery & equipment nec.	5,221	4,604	8,084	5,160	5,772
Office, accounting/comp. Machinery	68	54	126	110	69
Electrical machinery/apparatus	12,298	12,604	13,362	11,806	12,180
Medical precision/optical intr.	153	17	8,192	8,971	12,863
Parts of motor vehicles	466	1,282	813	929	1,715
Other transport equipment's (fishing vessels)	199	270	98	125	88
Furniture manufacturing	5,310	9,318	6,351	7,613	8,946
Other manufacturing	8,208	10,002	10,574	12,505	7,651
Total	292,722	345,259	518,590	1,116,573	1,296,656

Source: Ministry of Commerce and Industry (Oman), A glance at Industry in Oman, 2003.

Table 5.5. Number of factories and size of investment in the factories in which foreign contributes capital as percentage from total manufacturing sector in the GCC States (2000)

Industrial activity	No of joint factories	Total factories	% of joint factories	Investment in the joint factories	Total investment	% of joint investment
Food, beverages & tobacco industry	142	1,095	31.0	1,490	6,607	22.5
Fiber, garments & leather industry	149	505	29.5	151	1,268	11.9
Wood & furniture industry	79	473	16.7	107	754	14.1
Paper, printed and publication industry	70	483	14.5	426	1,940	22.0
Chemical & plastic products industry	357	1,428	25.0	34,370	48,758	70.5
Non-metallic product except oil	152	1,189	12.8	2,623	9,352	28.0
Basic metals industries	23	102	22.5	2,349	6,418	36.6
Fabricate metal products & machinery & equipment nec.	390	2,018	19.3	2,266	7,737	29.5
Other manufacturing	40	194	20.6	92	343	27.0
Total	1,402	7,487	18.7	43,893	83,177	52.8

Source: Industrial Data Bank, Gulf Organization for Industrial Consulting, 2000.

Table 5.6. Main imports and exports of agricultural products

	1998	1999	2000	2001	1998	1999	2000	2002
	1000 Metric Ton				Million US$			
Imports								
Total merchandise trade					**5680,0**	**4672,5**	**5038,0**	**5796,2**
Total Agriculture products					**973,7**	**1071,3**	**1056,1**	**1286,8**
Cigarettes	25,5	30,8	37,7	35,1	232,9	317,0	385,8	477,8
Dry whole cow milk	10,3	11,3	9,3	32,4	27,4	23,5	21,9	73,1
Wheat	194,2	253,4	303,8	289,3	28,1	46,6	36,6	50,5
Rice, Milled	105,2	114,2	136,2	110,4	50,6	57,5	58,2	50,5
Chicken meat	42,7	43,1	24,6	46,4	54,6	51,7	24,0	49,1
Fatty acids	56,2	56,2	56,2	27,1	46,0	46,0	46,0	46,9
Goats*	1184,6	1222,4	1227,3	1113,8	29,6	28,5	24,8	30,6
Food preparations NES	...	...	...	...	24,8	18,4	19,7	23,6
Sheep*	530,9	477,9	499,4	460,8	19,3	20,0	19,1	20,7
Cheese of sheep milk	4,9	5,6	6,0	7,0	15,4	17,6	17,6	19,8
Exports								
Total merchandise trade					**5519,8**	**7235,8**	**11315,2**	**11070,8**
Total agriculture products					**299,2**	**301,9**	**335,3**	**615,6**
Cigarettes	12,9	9,8	11,6	27,9	112,1	102,7	133,1	385,0
Dry whole cow milk	1,4	23,0	13,0	29,2	3,7	45,3	24,8	63,0
Flour of wheat	60,8	54,3	119,4	127,1	18,6	12,9	29,5	29,8
Goats*	1026,9	1027,7	854,6	1027,4	23,7	22,3	20,3	27,9
Pastry	5,6	6,8	6,8	10,4	10,3	10,7	10,8	17,7
Oil of maize	23,8	15,1	13,9	26,1	23,1	13,4	10,8	15,0
Food preparations NES	...	...	...	...	7,8	4,1	11,6	8,4
Beverage, non-alcoholic	21,0	8,6	12,0	9,8	9,7	5,5	7,1	7,4
Wheat	24,7	24,3	30,8	33,4	7,4	4,1	5,0	5,9
Dates	11,4	7,7	9,9	13,0	5,7	3,2	4,6	5,0

* thousand heads

Source: Ministry of National Economy in Sultanate of Oman, 2002.

INTERVIEWS

Interview conducted by the researcher with Abdullah Al Shebely the director of GCC Department in the Ministry of Commerce and Industry in Oman on 16 March 2005.

Interview conducted by the researcher with Dr Abdulmalik Al-Hinai, Under Secretary of Ministry of National Economy for Economic Affairs in Oman on 16 March 2005.

Interview done by the researcher with Kalfan Al-Rahabi, the director of Conferences and Organization in the Ministry of Commerce and Industry in Oman on 21 March 2005.

Interview conducted by the researcher with Mohammad Saleem (WTO Advisor, former Director of GATT/WTO) the advisor of the government of Oman on 21 March 2005.

Interview done by the researcher with Mr Hamood Al Anbury, Vice President Banking Control Departments & Legal Affairs, in Central Bank of Oman on 9 April 2005.

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