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**THE PARTICIPATION OF ARAB MEMBERS OF THE WORLD TRADE  
ORGANISATION IN THE DECISION-MAKING AND DISPUTE  
SETTLEMENT SYSTEMS**

A thesis submitted to City, University of London for the degree of PhD Law in the Faculty of Law

2019

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## Abstract

This thesis will look at the implications of multilateral, regional and bilateral trade agreements entered into by the countries of the Middle East and North Africa. The countries included in this study are those that are members of both the Arab League and the World Trade Organisation. The twelve countries looked at have joined the WTO as relatively recent members, and are also involved in a parallel effort to increase bilateral trade agreements. The outcome of this dual approach has been mixed. On the one hand, it has been permitted by Article XXIV of the GATT either as encouragement towards the fostering of regional trade which might in turn increase overall trade according to some authors, or as a more pragmatic measure aimed at minimising obstacles to potentially global membership of the WTO. This thesis will argue that increased trade links have been shown to increase trade volume as has been encouraged by Article XXIV of the GATT. On the basis of regime theory an increase in trade would be viewed as absolute gains, and Arab members of the WTO in order to reap the maximum benefit from their membership at the organisation in the form of absolute gains should increase their participation in the organisation, in conjunction with the pursuit of regional and bilateral trade agreements to the extent these do not conflict with each other and subsequently affect the positive benefits they might otherwise have presented.

To date, only Egypt, Morocco, Qatar, Saudi Arabia, Bahrain, and the United Arab Emirates have been active participants in a WTO dispute as respondents. Qatar is the only Arab member of the WTO to have been a claimant. The reasons behind this lack of participation are multiple and range from a lack of financial means to enable any meaningful presence or active representation in the WTO, a reticence to engage in what is seen as a costly and highly specialised legal setting, a cultural reticence towards legal confrontation as a means to resolve disputes, and political and economic considerations that might make the MENA members of the WTO hesitant to become embroiled in a trade dispute that might result in undesirable consequences with important trade partners. There is further nuance, however, to add to the general observation that Arab WTO members are not actively participating in the organisation. There is evidence of some increased form of activity, essentially on part of the Gulf countries, as third parties to disputes. This pattern of behaviour could be significant if it marks a conscious approach to increasing participation in the WTO through observation prior to active participation in a relatively low risk manner. The new levels of activity could alternatively mark a policy of forming trade alliances through coalitions and supporting trade partners in their own disputes. There is also, however, more recent evidence of the participation of the Gulf countries in dispute settlement, but against one another which could be viewed in a positive light as an overall increase in participation, or in a negative light considering

this might potentially annul any positive moves observed recently in terms of concerted action should this affect regional trade and consequently, the level of absolute gains achieved.

With regards to decision-making, there is evidence of Arab country membership to various working parties, some quite active and influential. It is difficult, however, to determine exact levels of participation of the Arab countries within these working parties in the absence of freely available records of meetings for all these working parties.

With regards to bilateral trade agreements, these have given rise to legal difficulties for the Arab members of the WTO as their numbers increase, leading to an already existent risk of clashing legal obligations. In addition, the lack of a coherent global approach to the negotiations of these extra regional agreements have proven problematic in light of the generalised imbalance of negotiation power between the MENA signatory and its often economically more influential trade partner. Regional trade agreements have overall lead to little increase in trade, with the exception of the Gulf Cooperation Council which despite past success appears threatened by mounting regional tensions. Whether regional trade, and nascent cooperation between Arab countries will be able to survive both within the WTO and outside the organisation is yet uncertain. What remains evident, however, is that an alternative to the previously individualistic approach to trade in the MENA region is preferable if these countries are to improve the flow of trade both with their regional and global trade partners, and that a concerted and long-sighted policy is necessary if the Arab members of the WTO are to adopt overlapping trade obligations so as to reap the benefits of WTO membership, in conjunction with regional and bilateral trade in the pursuit of absolute rather than relative gains.

## List of Abbreviations

AMU	Arab Maghreb Union
EUROMED	European Mediterranean Partnership
FTA	Free Trade Agreement
GAFTA	Greater Arab Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GCC	Gulf Cooperation Council
IMF	International Monetary Fund
LDC	Least Developed Country
MEFTA	Middle East Free Trade Initiative
MENA	Middle East and North Africa
OPEC	Organization of the Petroleum Exporting Countries
OIC	Organisation of Islamic Cooperation
WTO	World Trade Organization
UAE	United Arab Emirates
UN	United Nations

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## **Chapter I: Introduction**

### **1. Introduction and Methodology:**

The Middle East and North Africa<sup>1</sup>, which comprises the Arabic speaking region grouping the Eastern Mediterranean basin know as the Levant, the Gulf and North Africa, is a region of the world often commented on, but little understood due to the complexity and the long history that defines the region. With regards to trade, it is quite the opposite in the sense that trade in the region, especially its multilateral form, is relatively little commented on. This chapter will set out the proposed methodology of this thesis in section 1, while section 2 will provide definitions and background information on the MENA region. Section 3 will then provide background information on the MENA countries included in this research topic. Conclusions will be presented in section 4.

#### **1.1 Research question:**

The central question of this research is whether the participation of the Arab members of the World Trade Organisation<sup>2</sup> on two levels: Their involvement in the decision-making process, as well as their participation in the dispute settlement system of the WTO is conducive to fully benefiting from their membership at the WTO?

This starting point has been selected due to the fact that there is an established link between participation and getting the full benefits of membership to the WTO. To benefit from an increase in trade, however, the available research suggests not only is active membership to the WTO necessary, it must be supplemented with external regional and bilateral trade as permitted by Article XXIV of the GATT, in order for member countries to benefit from an overall increase in trade.

#### **1.2. Methodology and objectives:**

The main source of information obtained in the research of this thesis question is from the available literature, which has been complemented by information obtained through discussions, telephone conversations, and emails with current and former Arab WTO delegates, as well as Arab trade experts.

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<sup>1</sup> MENA

<sup>2</sup> WTO

Assuming the 164 members of the WTO have joined the organisation in the hope of increasing trade with other member countries, including the thirteen Arab members of the WTO who have also joined, this thesis will look at the participation of the Arab members of the WTO in processes that involve decision making, such as participation in working groups, coalitions, and voting, as well as their participation in WTO dispute settlement. These areas will be looked at based on the premise that increased participation leads to a greater use of the benefits membership has to offer, in this case access to a virtual world-wide trading market, as well as the flexibility permitted to pursue external trade opportunities such as those permitted under Article XXIV, use of the WTO as an active diplomatic venue for trade negotiations, and use of an efficient and effective dispute settlement mechanism. Once levels of participation, and how to increase them have been addressed, levels of activity in regional and bilateral trade agreements will be discussed to once again ascertain how successful these two areas of trade permitted by the WTO have been for the Arab members. Based on the notion that an increase in trade is dependant on participation at the WTO level, as well as the active pursuit of regional and bilateral trade opportunities, this thesis will look at why increased levels of participation in these three trade domains would result in a largest possible overall trade increase.

The 13 Arab members of the WTO will be looked at as a bloc because there is historical evidence that will be discussed in this thesis that they have previously attempted to form economic blocs, but failed to do so. Further, if compared to other regional blocs active at the WTO such as the EU, there is evidence that such blocs have larger resources and have been more active in pursuing multilateral and bilateral trade agreements. Without suggesting the Arab countries are near forming such a unified bloc, arguments are nevertheless made in this thesis as to the benefits of pooling resources, experience, and concertation in achieving greater participation in the WTO and beyond. The cultural links that tie the Arab WTO countries together will also be discussed. They are not presented as a reason for cooperation or a substitute for common economic interests. Rather, should there be a political will for further regional economic cooperation or integration, there are already elements in place that should ease this transition rather than hinder it.

Contributing factors that affect trade in the MENA region, such as political economy, history, economics, and culture will also be discussed to the extent they directly affect trade outcomes, in an effort to accurately understand what is currently driving the trade policies of these countries. It seems difficult to decontextualise these countries if a true understanding is to be reached as to motivations and possible hindrances to optimal trade policy. These elements will be used to understand current trade policy, in contrast with optimal trade policy which could be achieved by overcoming current limitations, to the extent possible, in order to benefit from increased participation.

As mentioned in the research question above, this thesis will look at whether the Arab members of the WTO are participating in the organisation on the two levels of decision making and dispute settlement at their full potential. To do so, this thesis will first look at how decisions are made at the WTO, in order to ascertain whether the current approach of the Arab members of the WTO has been successful in effectively

giving them influence over decision making processes that affect them through involvement in working parties, coalitions, as well as dispute settlement. According to the available literature, the rates of participation of the Arab members of the WTO are relatively low. Comparing the literature with the cases studied however, it becomes apparent that although there are indeed relatively low levels of participation, participation in the negotiations processes has not been insignificant, and there is a visible rise in involvement in the dispute settlement mechanism that is of particular note. Possible reasons behind this low level of participation as well as increased recent activity will be looked at by reference to the relevant literature on difficulties faced by developing countries wishing to participate in the WTO, with conclusions drawn as to how to remedy them, including the possibility of cooperation through coalitions either amongst each other or with non regional actors sharing similar trade interests.

As a theoretical model, this thesis will refer to regime theory<sup>3</sup> which proposes the idea that countries are motivated to participate in international organisations and cooperate with other countries in the pursuit of absolute gains. Absolute gains are understood to mean an absolute advantage to all the countries involved, so that each individual country may benefit from a larger portion of the reward. If absolute gains should be understood in the context of the WTO as an increase in trade, then it stands to reason that member countries should pursue a trade policy conducive to absolute gains in the form of increased overall trade. The criticism of regime theory proposed by Grieco is also useful in conceptualising the behaviour of Arab countries especially with regards to regional trade, but also within the WTO in more recent times. Grieco's counter-argument that countries do not pursue absolute gains, but rather relative ones vis-a-vis other countries would indicate that such a policy, which in the case of Arab countries usually finds its roots in political rivalries, frustrate the original objective of WTO membership which is the pursuit of absolute gains in the form of increased trade.

The areas of focus of this thesis can therefore be divided into three sections. Firstly, relevant concepts that reappear throughout the thesis and concepts that are useful in discussing the participation of Arab members at the WTO such as development will be defined. Secondly, the context of Arab trade will be laid out to understand any factors particular to the countries included in this study such as culture, history, economy, or political economy, that help in gaining insight into their current choices with regards to trade policies. Thirdly, analysis of participation in decision making processes, which for the purposes of this thesis, will be understood to mean participation in working parties and negotiation coalitions will be made. Participation of Arab WTO members in the Dispute Settlement mechanism will also be discussed. Because there are relatively few cases due to low participation, all the relevant cases involving an Arab WTO member either as claimant, respondent, or third party will be summarised and any relevant deductions made. There is a second advantage of laying out all the cases, which is that in the long term, as more cases are added to the list, any patterns with regard to areas of interest for the Arab members of the WTO, or patterns in cooperation with certain countries will become apparent. This information would be missed should only the central cases where Arab countries are either claimants or respondents be described. Application of Article

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<sup>3</sup> Joseph M. Grieco, 'Anarchy and the Limits of Cooperation' (1988) 42 *International Organization*, 485-508

XXIV of the GATT with regard to regional trade agreements, and bilateral trade agreements involving Arab members of the WTO will also be included in this study.

### 1.3 Structure:

Chapter II of this thesis will act as an outline of the key concepts that reoccur with regards to the WTO and its Arab members. These concepts will be kept brief as they are relevant to discussions on the WTO, but not central to the research question at hand. In instances where these concepts are indeed central, such as in the case of the WTO, they will be elaborated upon further in the thesis in Chapter III. This chapter will therefore act as more extended definitions of important terms and concepts to this thesis. The concept of development will be clarified since all Arab members of the WTO fall into this category, despite the fact that some benefit from high oil revenues. Indeed there are different definitions and measures of what constitutes a developing country. The term is used in this thesis in conformity with the denomination the WTO itself uses, such as Least Developed Nations, and Developing Countries working group although these usefulness of these terms in understanding the economic category countries belong to is not uncontested<sup>4</sup>. Globalisation and neoliberalism can be grouped for their inclusion in this thesis on the basis they are often discussed in WTO related literature as the ideological underpinnings of the WTO, which is relevant to understanding the main precepts that drive the organisation such as trade liberalisation. Regionalism in this chapter will be defined as relevant to the regional trade agreements of the Arab members of the WTO, and will be addressed in further detail in Chapter III. The concepts of bilateralism and multilateralism are included as this has been a relevant question raised by academics in ascertaining what the advantages and disadvantages are of each in terms of countries looking to pursue trade relations. The last two concepts can again be grouped together as they are technical concepts in the case of efficiency on what the optimal trade model is in terms of internal trade so as to be able to efficiently compete in an external market. The hierarchy of norms is a legal concept that sets out the rules of treaty interpretation and is useful in this context to explaining how differing trade obligations interact with one another as has occurred in the case of the Arab members of the WTO.

Chapter III will pertain to the history of international organisations and various theories behind what leads them to be created in the first place, as well as what motivates their members to cooperate. This will lead to the discussion of regime theory which will be used to underpin the argument made in this thesis that countries seek absolute gains when they cooperate, as that will result in greater individual gains for the country itself. The counterargument to regime theory that countries do not act to obtain absolute gains, but rather relative ones will also be discussed in this chapter with regards to the trade practices of the Arab members of the WTO. Both arguments will be shown not to be mutually exclusive and countries have been shown to behave in both ways, at times pursuing absolute gains, and at others, typically when underlying tensions are present, they instead seek relative gains so as to undermine the benefits to what they view as their competitors. This chapter will then address, by discussing the mechanisms which determine effective decision making at the WTO, as well as regionalism and the effects these have in increasing trade, we can

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<sup>4</sup> Hans Rosling, Anna Rönnlund, Ola Rosling, *Factfulness: Ten Reasons We're Wrong about the World--and why Things are Better Than You Think* (Flatiron Books, 2018), 7

argue why in the context of WTO, cooperation and participation amount to increase in trade, which from the viewpoint of membership to a trade organisation can be considered the absolute gain.

Chapter IV will discuss the fact that the twelve Arab members of the WTO have made repeated efforts towards increasing regional trade although, looking at the numbers, little increase has been effectively achieved for a number of possible reasons that will be discussed. This chapter will look at the legal systems present in the countries included in this study, their legal cultures including any historical or religious influences that would be relevant to the wider picture of how they approach trade law, as well as elements or attitudes that might impact on trade policies or the approach of Arab members of the WTO to dispute settlement at least during the earlier part of their membership to the WTO .

Chapter V will discuss participation of Arab members the WTO, starting from their bids for membership to their involvement in decision making through working parties and coalitions, to their track record in dispute settlement. For instance, only Qatar has so far instigated a dispute settlement. Egypt, Bahrain, Saudi Arabia, Qatar, and Morocco are the only Arab countries to have been a direct participants in a dispute, but only as a respondent. Of these nine disputes, only one has gone through the full dispute resolution procedure so far<sup>5</sup>, the remaining four cases having either been settled by mutual agreement, or not yet having passed the stage of consultations<sup>6</sup> or as is the case with *Morocco — Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey*<sup>7</sup>, the dispute is still in progress. It is more difficult to assess the extent of Arab member participation in policy-making negotiations as access to notes of working groups are not readily available, but membership can provide an indication of issues relevant to Arab countries and measure the level of involvement in decision making through negotiations and joining of coalitions.

Chapter VI will discuss the individual trade agreements the Arab members of the WTO are involved in outside the organisation, looking directly at the original Arabic text of the predecessor to GAFTA. The comparison with the current version of GAFTA provides insight into how impending membership to the WTO has helped shape the updated document and had an effect on Arab regional trade. This chapter will then seek to ascertain the impacts on trade these agreements have had on Arab trade, whether these are regional and have been under-utilised, or involve external trade partners which present challenges of their own with regard to power imbalance in trade negotiations.

Chapter VII will conclude with a summary of the findings of each of the previous chapters, as well as answering the original question of whether current Arab participation in the WTO is at present conducive

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<sup>5</sup> Panel Report, Egypt — Definitive Anti-Dumping Measures on Steel Rebar from Turkey, WT/DS211/R, adopted 1 November 2002, DSR 29 August 2003

<sup>6</sup>Egypt — Import Prohibition on Canned Tuna with Soybean Oil, WT/DS205, In consultations on 22 September 2000

Egypt — Measures Affecting Imports of Textile and Apparel Products, WT/DS305, settled or terminated 20 May 2005

Egypt — Anti-Dumping Duties on Matches from Pakistan, WT/DS327, mutually agreed solution on 27 March 2006

<sup>7</sup> Morocco — Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey, WT/DS513, panel composed on 17 May 2017

to reaping the full benefits of membership. This chapter will reassert the idea that in order to do so, they must increase their participation in the organisation, as well as improve regional trade and actively pursue bilateral trade interests in a tactical manner. An important way of doing so, other than pooling their resources together either with regional or non regional trade partners, is to also make use of the WTO as a diplomatic forum for the pursuit of trade opportunities, leaving non-economic considerations aside that might frustrate the pursuit of absolute gains.

This thesis will look at the obstacles, real or perceived, to further participation, what the possibilities are for further participation in the WTO, whether this is even an objective, as well as why many of the Arab members of the WTO seem to have engaged in a parallel system of bilateral trade agreements with perhaps unforeseen consequences<sup>8</sup>. When tackling the question of the participation of Arab members in the Dispute Settlement and Negotiation processes of the WTO, it quickly appears that these questions could only be approached after gaining a global understanding of the economic, political, and intra-regional backgrounds of these countries in order to understand how they operate, in what context, and what the relevant issues are to them. For this reason, this thesis has been divided into the following topics which are relevant to the central question of Arab participation at the WTO. As a contextual framework, globalisation and efficiency will be addressed in chapter II. The theoretical framework regarding regime theory will be discussed in chapter IV. The Political relations and economies of Arab States will be discussed in chapter IV. The theory of trade negotiation/litigation will make up Chapter V, Arab participation in the WTO will be discussed in chapter V, and finally the conclusion will be contained in Chapter VII.

## **2. Arab members of the World Trade Organization:**

It would appear from the available sources on the topic, that the participation of Arab members in the aforementioned two processes at the WTO is relatively limited, although there is evidence of increasing participation. To date, only thirteen out of twenty two Arab countries are currently members of the WTO or engaged in the accession process. Seven Arab countries are at various stages in a stalled accession procedure, and two; Palestine and Somalia are neither members although Palestine is seeking to gain observer status. At a time where the WTO is nearing universality in its membership, with 164<sup>9</sup> out of 196 countries party to the General Agreement on Tariffs and Trade<sup>10</sup>, the Arab World alone constitutes a fair proportion of the total number of countries not yet members of the organisation.

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<sup>8</sup> K. Mohamadih, 'Free Trade agreements In The Arab Region', (*Proceedings report of a regional workshop, The Arab NGO Network for Development*, December 2006) <<http://www.annd.org/data/item/pdf/1.pdf>> accessed 12 May 2015.

<sup>9</sup> Members and observers [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm) Accessed 10 September 2017

<sup>10</sup> GATT

This section will give an overview of the dynamics and historical context (1.1) to understanding the Arab countries that are members of the WTO, before delimiting which countries will be included in this study and discussing their history with regards to the organisation (1.2).

## **2.1. Background and history of the Arab countries of the WTO:**

This section will look at the various characteristics that are significant in making the MENA region what it is today with relation to trade. The section will first discuss the security situation and the inextricable nature of the political situation on trade, amongst other things (1.1.1), as well as cultural aspects of the MENA region that define it in current times (1.1.2) and country profiles of those states included in this thesis (1.1.3).

### **2.1.1. Fluctuations in stability:**

The MENA region counts a population of roughly 335 million people<sup>11</sup>. It spans both Africa and Asia covering a territory stretching from Morocco in the east to Iran in the west. The MENA region accounts for 60%<sup>12</sup> of the world's oil reserves, and 45%<sup>13</sup> of the world's natural gas reserves. Eight out of fifteen OPEC countries are found within this region<sup>14</sup>. It is therefore a geographical region of significance to the rest of the world for all the previously cited reasons, and more; and yet tragically this region is perhaps most associated with instability arguably due to its wealth of resources rather than in spite of it. At the time of publishing, 6 out of 22 Arab countries are in a state of ongoing conflict namely, Palestine, Iraq, Yemen, Libya, Sudan and Syria. Of the remaining 16 countries, 6 are in a state of political instability to various levels, some due to repeated coups such as Egypt, others due to military engagement against terrorist incursions into their own territory from bases set up in neighbouring countries that have fallen into lawlessness following political unrest as is the case with Tunisia and Algeria<sup>15</sup>. It is difficult to grasp the extent of this violence and its devastating effects on the region. As a parallel, it would be comparable to roughly half the European Union members either being in a state of active warfare, or subject to instability. The most recent such situation to come to mind where a similar scenario was the case is the Second World War, lasting from 1938-1945. Compared to the instability in the Middle East, this is a much shorter time period, and yet the chaos, destruction and loss of life caused by the second world war were staggering. It

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<sup>11</sup>The World Bank, 'Population of MENA' (*search result*) <<http://www.worldbank.org/en/search?q=population+of+MENA&currentTab=1>> accessed 23 November 2016.

<sup>12</sup> Pew Research Centre, 'Mapping the Global Muslim Population' (*Demographic study*, October 7, 2009) <<http://www.pewforum.org/2009/10/07/mapping-the-global-muslim-population/>> accessed 24 November 2016.

<sup>13</sup> The World Bank (n 11)

<sup>14</sup> Organization of the Petroleum Exporting Countries, 'Member Countries' <[https://www.opec.org/opec\\_web/en/about\\_us/25.htm](https://www.opec.org/opec_web/en/about_us/25.htm)> accessed 25 October 2018.

<sup>15</sup> Y. Alexander, 'Terrorism in North Africa and the Sahel in 2014', (*Inter-University Center for Terrorism Studies sixth annual report*, 2015), 7-10.

paints an even bleaker picture of the situation in the MENA region during the last eight decades, and of how long-term unrest leads to devastating effects in all aspects of government and civil society.

The turmoil in the MENA region spans from the independence movements of these countries in the 1920's in some cases and continues almost a hundred years on to the present day. Evidently, it is difficult to determine a cut off point for when unrest was offset, and it arguably predates the respective independence movements of these countries, but for the purposes of this thesis the time period will be limited to the period in modern history that has had a direct impact on MENA countries as they operate at present, especially with regards to trade. Arguably, many of these countries have not been in a continuous state of warfare during this entire period and enjoyed long periods of relative stability and growth. This does not detract from the fact that in that time frame, there were always pockets of intermittent warfare and violence in the region. Furthermore, even peaceful times were characterised and tainted by military and oppressive rule that used intimidation and violence to maintain power.

The MENA region has historically enjoyed periods of peace and coexistence interspersed with bouts of violence and unrest varying in their scale and impact. It is often forgotten that this region is home to a multitude of minority cultures, traditions, languages and religions in a manner that has become commonplace in our modern globalised times, but was unique to the region when other geographical regions were typically more homogenous in their populations. It would be safe to say that at the best of times, the MENA region represented the best of humanity as the birthplace of many major religious and spiritual movements, a hub of learning and exchange, and the incarnation of what peaceful coexistence could look like. At its worst, it has been the backdrop of incalculable violence, internal and external wars, and a steady cultural decline. A common saying 'Baghdad writes, Beirut prints, Cairo reads'<sup>16</sup> aptly illustrates the changing circumstances of the MENA region which has fallen from a height of intellectual and cultural innovation in the Middle Ages, to a state where illiteracy rates are rife and academic institutions are relatively few<sup>17</sup>. Sadly neither Baghdad, Beirut or Cairo presently are in a situation where writing, printing and reading are realistic priorities. Just as education has fallen down the list of priorities when basic survival is not guaranteed, it would seem that for at least a portion of the Arab world, trade or its optimisation has similarly been relegated to the bottom of the list of priorities when faced with war and poverty. The MENA region has witnessed first hand that '(...)in modern warfare, fought on any considerable scale, there can be no possible economic gain for any side. Win or lose, there is nothing but waste and destruction.'<sup>18</sup>

### **2.1.2. Historic ties of the MENA region:**

Although Arab countries have always experienced an interconnectedness to various degrees throughout history, whether as far back as the Phoenician settlement of Carthage, linking modern day Lebanon and Tunisia in pre-Arab times, the Muslim conquests which spread from the Arabian Peninsula to the Levant and North Africa and Europe changing the face of these territories for centuries to come with the

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<sup>16</sup> S. Antoon, 'Bending History' (2010) 257 MER, 29-31.

<sup>17</sup> N. Bontis, 'National intellectual capital index: The benchmarking of Arab countries' in Ahmed Bounfour and Leif Edvinsson (eds), *Intellectual capital for communities* (Routledge 2005), 124-149.

<sup>18</sup> Lester B. Pearson

spread of Islam and the Arabic language, or Greater Syria which existed as a single territory during Ottoman rule only to be divided into separate states during Anglo-French colonisation<sup>19</sup>. The 1919 Inter-Allied Commission on Mandates in Turkey which began as an outgrowth of the 1919 Paris Peace Conference to be led by French, British, Italian and American representatives, and ended as an official investigation solely by the United States government, after the other countries withdrew to avoid the potentially embarrassing situation of being handed recommendations by their own delegates that would contradict the policies they sought to undertake. It is essentially a situation where the decision not to pursue a reunification of Arab territory was already made prior to the poll being conducted. It was arguably a tragedy with significant consequences for the future of the MENA region that the express will of its people was ignored and sacrificed for the geopolitical gains of other nations.

The Commission, which was appointed by President Woodrow Wilson, comprised Henry Churchill King and Charles R. Crane, and was conducted to inform American policy about the region's people and their desired future in regard to the previously decided partitioning of the Ottoman Empire and the League of Nations Mandate System. The Commission visited areas of Palestine, Syria, Lebanon, and Anatolia in what is now modern day Turkey. The commission surveyed local public opinion in order to assess views on the best course of action for the region according to the preferences of the local population. The Commission's work was undertaken in three months and its findings submitted in a report on the 28th August 1919 in Paris. Its publication was initially suppressed for various reasons<sup>20</sup>, namely that it conflicted with the ambitions of certain Allied countries to claim parts of the MENA territory. Modern day Iraq, for instance, was not included in the poll as this would have put the British government in a delicate situation when it ultimately moved to establish a presence there. It was later reported by the State Department that publication 'would not be compatible with the public interest'<sup>21</sup>. It would seem safe to assume the public interest in question is not Arab public interest. The Commission's report was ultimately published in the December 2, 1922 edition of the *Editor & Publisher* magazine. In an irony of circumstance, James Zogby, founder of the highly regarded Zogby poll, himself of Lebanese descent, would describe the 1919 Inter-Allied Commission on Mandates in Turkey as being the first poll conducted to ascertain Arab public opinion, as being largely ignored<sup>22</sup>. The poll does however provide a record of a clear popular will, as early as 1919 for Arab political and territorial unity.

By the time the Commission's report was submitted, the Paris Peace Conference had largely determined the area's future and set the wheels in motion for what would become a very tumultuous relationship between a number of Arab countries and the Allied countries of Great Britain, France, the United States, and the USSR during the socialist movements that would later sweep the MENA region. Problematic political relationships ultimately leading to violence would not be limited to an East/West divide. As countries were established in what had formerly been Greater Syria, local candidates scrambled to establish a new-found seat of power in these newly distinct national entities. A few years after the fall of the Ottoman

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<sup>19</sup> A. Hourani, *A History of the Arab Peoples* (Faber and Faber Limited, London 2002), 282, 315-322

<sup>20</sup> D. Fromkin, *A Peace to End All Peace* (Owl Books 1989) 396-397

<sup>21</sup> Letter from Undersecretary Henry Fletcher to Secretary of State Leland Harrison (April 7, 1922).

<sup>22</sup> J. Zogby, *What Arabs Think: Values, Beliefs and Concerns* (Zogby International 2002).

Empire, and after a number of Arab countries had achieved independence from British and French colonisation, there was suddenly an opportunity to overthrow the *ancien regime* that had been viewed, whether accurately or not as having been complacent to Western rule. In a period of great change, leaders and administrators inherited from the Ottoman dynasty were deposed in favour of new nationalistic movements, typically ones that had played an active role in the struggle for independence. The Bey of Tunis was thus deposed by future president of the the Republic of Tunisia, Habib Bourguiba, ending over three centuries of rule by the Hussainid dynasty in former *Ifriqiya*, the historic name of Tunisia that would later give its name to the African continent. Similarly, the Hashemite dynasty which had ruled Mecca in Saudi Arabia since the 10th century, and claims to be descended from Hashim ibn Abd Manaf, the grandfather of prophet Mohammad, lost their hold on power and were replaced in 1924 by the Al-Saud clan which continues to rule Saudi Arabia to this day. Brothers Abdullah and Faisal Bin Al Hussein of the Hashemite clan, finding themselves dispossessed of a kingdom, entered an agreement with their British counterparts present in the Levant at the time, whereby each of the brothers would be attributed a new kingdom in return for the role their father played in the uprisings against the Ottomans during the First World War<sup>23</sup>. The Hashemite clan continues to rule Arab capitals to this day. The King of Morocco traces his ancestry to the same roots originating in the Arabian Peninsula, Jordan is currently ruled by the heir of King Abdullah, the first Hashemite leader of Jordan. Iraq, however, was lost to the Hashemites in 1952 after a coup deposed King Faisal II who was later murdered by his political adversaries<sup>24</sup>.

It is clear that populations inhabiting what are now known as Arab countries have always intermixed at some level<sup>25</sup>. Many of these countries having access to the sea, mainly the Mediterranean and Atlantic Ocean, means they have equally mixed and interacted with their neighbours including European populations to a great degree. The main instigator of this contact was predictably profit through trade. Trade has always been central to the 'Arab' way of life and economy even before the concept of Arabism came to mean a whole region rather than the original more modest territory now recognised as the Arabian Gulf<sup>26</sup>. Aided by the spread of Islam at a later point, it would help spread an ideology, and a common Arabic language from the Arabian Peninsula to the entire MENA region. The Prophet Muhammad notoriously worked as a Caravan trader for his first wife, Khadija, a prosperous business woman, and trade with Asia was arguably the main source of income for the traders of Medina, the birth town of the Prophet Muhammad. It is not insignificant that the dominating religion in the MENA region, and one of the third largest in the world had for its final Prophet a tradesman renowned for his honesty, and a first convert that was a business woman with remarkable business sense. Trade therefore has a long and solid anchoring in the Middle East and North Africa prior to Islam, and although international organisations such as the WTO might be a novel concept for those recent Arab members of the organisation, trade most certainly is not.

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<sup>23</sup> Y. Alon, *The Making of Jordan: Tribes, Colonialism and the Modern State* (London: I. B. Tauris, 2007), 13

<sup>24</sup> Hourani (n 18), 363

<sup>25</sup> W.L Cleveland, M. Bunton, *A History of the Modern Middle East*. (Hachette UK, 2016), 57-58

<sup>26</sup> P. Frankopan, *The Silk Roads: A New History of the World* (Bloomsbury, 2016), 65

### 2.1.3. Political ties between the Arab countries of the MENA region.

As stated in the section above, cultural and historical ties amongst the countries of the MENA region have always been strong, and have transcended political and popular discourse to translate into concrete political enterprises. It appears as though throughout the modern history of the MENA region, its political leaders and governments have been attempting to recreate the historic unity, or at least a semblance of unity, that existed in historic MENA, to little avail. The ideal of a unified Arab World as had existed to various extents throughout history were shattered first by the Ottoman conquests during which the MENA territories were under the foreign rule of Constantinople. World War One was seen as an opportunity for the countries of the Arabian Peninsula and the Levant to finally return to autonomy by ousting Ottoman rule. Their attempts to do so, in partnership with the Allied countries attempting to engage them against their perceived common Ottoman enemy ended with bitter disappointment for the Arabs after the Sykes-Picot Agreement of 1916 dividing the former Ottoman territories between Great Britain, France and Russia effectively put an end to efforts to establish a united and independent Arab union<sup>27</sup>. The ultimate goal of creating an Arab Union was not put to rest at the outset of World War One, and the region has since seen many attempts, some failed and some successful, at reunification.

The United Arab Republic, the first of such attempts, was a short lived political union between Egypt and Syria from 1958 to 1961. The union was brought to an end by the 1961 Syrian coup carried out by the Syrian Army to bring an end to a union which was largely unpopular in Syria due to the perceived overreaching rule of Gamal Abd el Nasser, then president of Egypt and a major promoter of pan-Arabism, an Arab nationalist movement which sought the reunification of Arab lands and the end to foreign rule in the region<sup>28</sup>. Abdel El Nasser's autocratic rule took a central role in the Union, effectively relegating Syria to a province until the coup established the sovereignty of the Syrian State. A second loose confederation was created in the same year, 1958 between the United Arab Republic and the Mutawakkilite Kingdom of Yemen, a territory that corresponds to northern Yemen. Yemen, which had unclear border demarcations with its neighbour Saudi Arabia, a point of tension leading to a first conflict between the two countries in 1934, was seeking the support of Egypt against its much larger rival. This union was also disbanded in 1961 at the same time the United Arab Republic ceased to be.

In the meantime, and in response to the creation of the Arab Union, the Arab Federation which was a confederation between Iraq and Jordan was also created in 1958 by King Abdullah of Jordan and his Hashemite cousin King Faisal of Iraq. The Hashemite Kings felt threatened by the expanding sphere of influence and power wielded by Abd El Nasser who promoted as part of his vision for Pan-Arabism a region that was free of foreign and specifically European interference, the very interference that had allowed Faisal and Abdullah to ascend to power<sup>29</sup>. In addition, Abd El Nasser promoted land reform, the adoption of

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<sup>27</sup> E.L. Rogan, *The Arabs: A History* (Basic Books, New York, 2009)

<sup>28</sup> M. Mufti, *Sovereign creations: Pan-Arabism and political order in Syria and Iraq*. (Cornell University Press, 1996), 61

<sup>29</sup> Y.M. Choueiri, *Arab nationalism: a history: nation and state in the Arab world* (Blackwell, Oxford, 2000), 167

socialist policies and the dissolution of the ruling monarchies such as those in Iraq and Jordan<sup>30</sup>. The Arab Federation lasted a mere six months and was brought to an end by the coup which ended the rule of King Faisal II of Iraq.

The end of monarchical rule in Iraq brought an opportunity for Abd El Nasser to attempt a second political union with an Arab state, not having been discouraged by the failure of a first union with Syria. In 1964 an agreement was made by the Egyptian President, Abdul Salam Arif the second president of Iraq, and Abdullah As-Sallal president of North Yemen<sup>31</sup>. The intention was to pursue a gradual merger of the three territories, which ultimately failed once again due to political turbulence in the countries engaged. After a failed coup attempt by the Nasserist Primer Minister of Iraq, against President Arif, the former fled Iraq for Egypt and the first successful attempt at unification was ended in 1966. Similarly, the agreement between Egypt and North Yemen, after much *ingerance* by Nasser in the Yemeni military, was ended by the overthrow of As-Sallal. By 1971 Muammar Gaddafi had taken over as the heir of Nasserist pan-Arabism, and in keeping with the ideal of forming a unified Arab state, the Federation of Arab Republics was created in January 1972 to include Libya, Egypt and Syria<sup>32</sup>. This differed from similar previous attempts as it was a federation rather than a merger into a single state, and was rather democratically entered into by referendums held in the three states. The confederation lasted until 1977 when relations between Anwar Sadat, the Egyptian president, and Muammar Gaddafi broke down<sup>33</sup>. During the same period as the establishment of the Federation of Arab Republics, Gaddafi attempted to stretch the union further to include North Africa this time. In 1974, The Jerba Declaration was signed by Gaddafi and Bourguiba to create the Arab Islamic Republic which would unify Libya and Tunisia as one state. The move was hugely unpopular in Tunisia due to concerns over the loss of Tunisian sovereignty, and also uncertainty over what Gaddafi's ambitions were regarding its neighbour. After considerable backlash from his own party, Bourguiba was forced to rescind the agreement less than a month after signing it<sup>34</sup>.

There is therefore a long list of failed political attempts at Arab unity, and it does appear that despite the will to cooperate and integrate the countries of the MENA region on a deeper level, most of these attempts have failed. This leads to questioning over whether Arab cooperation is even possible with regards to trade, if it has failed on so many occasions in the past with regards to political unions. There are three elements that need to be taken into account when considering this matter. Firstly, it appears that the lack of cooperation, and eventual failure of attempts to unify Arab countries are more related to personal rivalries of the respective rulers of the countries than anything else. It is important to understand, in a region where democracy has little hold, rulers are often unelected, or might be elected but then overstay their mandate. This implies is that in many cases, rulers are motivated by the obtention and preservation of power, rather

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<sup>30</sup> J.P. Jankowski, *Nasser's Egypt, Arab Nationalism, and the United Arab Republic*. (Lynne Rienner Publishers, 2002), 41

<sup>31</sup> W.L. Cleveland, M. Bunton, *A history of the modern Middle East*. (Hachette UK, 2016), 345

<sup>32</sup> *ibid*.

<sup>33</sup> Hourani (n 18), 417

<sup>34</sup> *ibid*.

than viewing themselves as answerable to the public, in whose best interest they must act<sup>35</sup>. This is a central feature of the current geopolitical and cultural situation of the MENA region and helps understand a number of decisions or manoeuvres that would not make sense from a purely economic perspective. A second point to take into consideration is that often political turmoil such as coups interfere with the realisation of the agreements entered into. This is equally a recurrent theme of Arab trade and something that applies to economic agreements as well as political agreements, a subject that will be discussed in further detail in chapter IV. Finally, and another recurrent theme that will reappear in subsequent chapters is the lack of detail in these political agreements. It is safe to say that for both political and trade agreements, a general feature of the agreements that failed is that they appear more as political declarations of intent, as though the idea of Arab unity were appealing for all parties involved, but without much prior thought for the details regarding enforcement, the details being where most disagreements occurred. It therefore appears that Arab unity and cooperation, whether in the political or economic sphere is mostly driven by a Pan-Arab ideal of returning to an idealised state when the MENA region was unified rule and at the peak of its intellectual, military and political height.

Modern attempts to reinstate this perceived ideal have mostly failed<sup>36</sup>, due perhaps to the simple fact that the interests of the newly formed independent Arab states pragmatically do not align, both politically and with relation to trade, or at least are viewed by their political leaders as such. Although this argument does hold in relation to economy and trade to a certain extent, as will be discussed in Chapter IV, it also appears as though perhaps as strong a reason for the failure of these agreements as previously stated, is the divergence of the political interests of the various rulers of the MENA region, which do not automatically align with national interests. Further evidence pointing to this possibility is the fact that the absence of democracy does not automatically negate the possibility of a ruler acting in the national interest, and in instances where closer political unity has been pursued, with the presence of political will and conducive set of circumstances, success has been achieved. The same can be observed with regards to economic agreements entered into by the MENA countries to be discussed in Chapter V.

Despite a long list of failed political unions, and economic ones to be discussed later, there are still successful examples of both being achieved within the MENA region. Notable examples are the United Arab Emirates, a federation of the seven emirates of Ajman, Dubai, Fujairah, Ras al-Khaimah, Sharjah and Umm al-Quwain formed in 1971<sup>37</sup>, and the unification of Yemen in 1990. The Kingdom of Saudi Arabia is another example, and only came into existence in 1933 when the Al-Saud family came to a truce with their rivals the Wahhabis. This agreement created the modern nation state of Saudi Arabia as it is known today, it also set the train in motion for what would become the country's outlook on the region and its role within it. Since there is no separation between religion and the state in Islam in the same way that exists in Christianity, the Al Sauds effectively ruled Saudi Arabia politically, but their purpose, as guardians of the two most Holy Sites in Islam, was also to act as defenders of the Islamic faith. Their own take on how the Muslim religion

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<sup>35</sup> R.W. Grant and R. O. Keohane, 'Accountability and Abuses of Power in World Politics' (2005), *APSR* 99(1), 29-43.

<sup>36</sup> J. G. Mellon, 'Pan-Arabism, Pan-Islamism and inter-state relations in the Arab World' (2002), *Nationalism and Ethnic Politics* 8(4), 1-15.

<sup>37</sup> I. Abed, P. Hellyer, *United Arab Emirates: a new perspective*. (Trident Press Ltd, 2001), 6

should be interpreted has been labelled as Wahhabism, a school of thought originating and native to Saudi Arabia. The ultra Orthodox interpretation of Islam does not allow for any form of diversion from the literal and strict interpretation of Islam, based on the Quran, and the traditions of the Prophet as recorded by his companions<sup>38</sup>. This helps to explain the historical and antagonistic relations between Riyadh and Tehran, as opposite poles competing for regional supremacy. The former representing a strict Sunni interpretation of Islam, and the later a Shiite one. As previously mentioned, this long standing conflict has existed for centuries, and can be likened to some degree with the schism between the Orthodox and Catholic Churches, although with regards to the level of violence the Catholic and Protestant branches of Christianity might be a more apt comparison. The deep history of the region will also explain why some trade combinations are possible for MENA countries, and why others, although they make sense from an economic perspective, are not considered viable options for these states.

To add to the complicated picture which this thesis will not delve into, apart from the Shia and Sunni divide that exists in the MENA region, there are also internal rivalries within these camps<sup>39</sup>. In very simplified terms, Saudi Arabia has allegedly sought to claim the role of regional superpower, and its considerable oil resources have given it great clout in the political arena. It was once supportive and involved with the Muslim Brotherhood based in Egypt, who espoused a similar view to Wahhabism in that the state and religion are intertwined, and that their role is to propagate an Islamic state throughout the MENA area and restore a caliphate free of foreign rule and influence<sup>40</sup>. Their paths would later divide, however, and the Muslim Brotherhood would come to be seen as a threat by Riyadh in its more radical political positions opposing the current form of rule in Arab countries.

Trade in the MENA region has therefore suffered as a direct consequence of political rivalries and conflict within the region<sup>41</sup>, this is without even accounting for the considerable external interference in the region that has equally caused all forms of the region's development to be put on hold as more pressing issues were put ahead of commerce during warfare. The MENA region cannot be understood without looking at its history and current political situation as an understanding of the actions and motivations of the countries of this region, cannot be understood, including with regards to trade, without the necessary contextual framework. Later chapters will show that MENA trade agreements do not always make sense in a purely economic way, the way other international trade agreements might, and that politics will often but not always be prioritised over the economy. It must be noted that often these two factors are interlinked however. The cultural, political and historical profile of the MENA region is therefore just as crucial to understanding how and why the MENA countries conduct themselves the way they do with regards to trade, and at the WTO. This also brings to light the further question that if the politics and the economy are inextricably

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<sup>38</sup> A. Black, *The history of islamic political thought: From the prophet to the present*. (Edinburgh: Edinburgh University Press, 2001), 37

<sup>39</sup> P.M. Holt, A.K. Lambton, B. Lewis, B. eds., *The Cambridge history of Islam* (Vol. 2). (Cambridge University Press, 1977), xiv

<sup>40</sup> Rogan (n 25)

<sup>41</sup> A. Alesina, S. Özler, N. Roubini and P. Swagel, 'Political instability and economic growth' (1996), *Journal of Economic growth* 1(2), 189-211.

linked in the MENA region, whether trade can truly be capitalised without the resolution of political hindrances, and whether the WTO might offer a politically neutral arena to be able to some extent, separate the politics from the trade to concentrate solely on trade decisions that benefit the trade partners.

## **2.2. Countries of the Arab League and the WTO:**

The criteria used to determine which countries are to be looked at in this research project are twofold. Firstly, the country must be a member of the Arab League, and secondly, it must be a member of the WTO. The reason these two parameters have been chosen is to limit the larger scope evoked when one thinks of the Middle East that effectively encompasses a much wider geographical surface encompassing non Arab countries. Amongst the countries that share membership of both the Arab League and the WTO, only countries that are currently members of the WTO are considered due to the fact that the activity of those countries without representation at the WTO cannot be measured. Therefore, although Algeria, Libya, Syria, Mauritania, Iraq are involved in the accession process, they can neither vote nor present disputes before the Panel at present. It is of note that the status of these countries within the WTO might change, although most have stagnated within the application process and have not seemed to actively pursue membership in recent times.

The intention is therefore to focus on countries with an Arab heritage, meaning they are linked by a common language. Arguably, the commonality of language is the main definitive common factor when discussing countries in the Arab World, in addition to a large extent to cultural ties due to geographical proximity as well as historical and political interconnectedness.

The limitation of the number of countries is both for practical reasons as well as reasons of methodology. In order for the scope to be defined, it had to be limited in a coherent way in order to make research within a set period of time practically feasible. The methodological reason for the criteria is that the organisational link between the Arab and non-Arab countries of the MENA region within the WTO is not as pronounced as those between Arab members. This is not to say that strong political, economic and historical ties do not exist between Arab and non Arab MENA countries, rather that they do not form any organised or official political or economic bloc in the manner that the Arab countries of the MENA do via the Arab League, or the Gulf Cooperation Council, for instance. Bilateral agreements certainly exist between the Arab and non-Arab MENA countries reinforcing their WTO ties with bilateral ones, and the Arab and non Arab MENA countries often have strong economic and political relations due to their geopolitical placement. The unifying feature that is the use of a single language, Arabic, is not shared, however. In addition, although the MENA region is home to hundreds of religions, many for which it is a birthplace, the Arab countries which are both members of the Arab League as well as the WTO are without exception Muslim-majority countries. Of these countries, not all are Sunni majority countries Bahrain and Iraq being Shia majority countries<sup>42</sup>.

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<sup>42</sup> CIA World Factbook, 'Bahrain' <<https://www.cia.gov/library/publications/resources/the-world-factbook/geos/ba.html>> accessed 6 June 2017.

CIA World Factbook, 'Iraq' <<https://www.cia.gov/library/publications/resources/the-world-factbook/geos/iz.html>> accessed 6 June 2017.

As a result of the above mentioned dual conditions, the twelve countries looked at in this thesis are Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, Mauritania, Djibouti, the United Arab Emirates, Tunisia, Morocco, Jordan and Egypt. When speaking of the nature of Arab trade and their economies, one must point out that no uniform pattern exists when it comes to the MENA region. Arab countries vary considerably in their resources, imports and exports. We can, however, distinguish, in broad terms, between oil producing countries, and non-oil producing countries, as these subcategories tend to group countries with generally similar economies. Oil producing countries, predictably, tend to rely heavily on oil exports, although the extent to which this is the case will vary once again from country to country. Algeria, Bahrain, Iraq, Kuwait, Libya, Mauritania, Oman, Qatar, Saudi Arabia, Sudan, Yemen, and the U.A.E, all have oil and minerals export rates well over half of total exports. The oil resources of the U.A.E. vary from Emirate to Emirate, and overall constitute over half of the country's exports, a sizeable albeit reduced proportion compared to many of its neighbours. This means that a staggering majority, if not all of their exports are based exclusively on fuels and mining products<sup>43</sup>: Algeria: 98.6%, Bahrain: 80.2%, Kuwait: 92.3%, Iraq: 97.7% (as of 2008), Oman: 73.1%, Libya, 89.4%, Yemen: 75.1% in 2008, U.A.E.: 53.6% in 2008, 35% in 2010, Sudan: 88%, Saudi Arabia: 84.2%, Qatar: 84.9%, and Mauritania: 75.6%. to quote some figures.

On the other side of the spectrum, other Arab economies with little or no oil resources have had to rely on alternate sources of income. In this category, we find Comoros, Egypt, Jordan, Lebanon, Morocco, Syria, and Tunisia. These countries tend to have more diversified economies with exports including agricultural products, fuels and mining products, manufactures, and services. The stark contrast in the economies of these two categories of Arab countries has naturally led to a number of consequences and differences in the way these countries conduct trade. The oil-rich countries of the Gulf are traditionally open to trade, as this allows them to export their much sought-after primary resource, which to date is governed more by the rules of the OPEC, than those of the WTO<sup>44</sup>. This means there is little risk for these countries of seeing their exports subjected to outside regulation, and also offers opportunities for enhancing the much-needed import of manufactured goods. The second category, however, has a more complex relationship with international liberalised trade. Many of these countries were early members of the GATT, eager to find markets for their mostly agricultural exports. They soon found the sword to be double-sided, however, as membership of the GATT indeed opened to them new markets, but also constituted a risk of competition with their own internal markets. This has often led these countries to be the most vocal and active Arab members at the WTO, as negotiation and lobbying with similar interest groups was vital to their national interests<sup>45</sup> as many Arab countries that cannot rely on oil have had to develop diversified economies. Oil seems to be a decisive factor in shaping the economies of Arab countries that do possess it, creating specifically distinct policies from those of non-oil exporting countries. This is all to be considered in relative

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<sup>43</sup> World Trade Organization < <http://stat.wto.org>.> accessed 12 January 2012

<sup>44</sup> J. Harrigan, H. El-Said (eds), *Globalisation, Democratisation and Radicalisation in the Arab World*, (Palgrave Macmillan 2011) 16; B. H. Malkawi, 'Anatomy of the Case of Arab Countries and the WTO' (2006), *Arab Law Quarterly* 20(2), 115.

<sup>45</sup> US Central Intelligence Agency website <<https://www.cia.gov/index.html>> accessed 31 January 2012  
B. Hoekman, K. Sekkat, 'Arab Economic Integration: Missing Links' (2010), *Journal of World Trade*, 44(6), 1281.

terms as to date no Arab country has been a claimant in a WTO dispute. Activity in this case is measured by membership in various WTO interest groups.

Arab countries, whatever their economic profiles, are therefore no strangers to the concept of international liberalised trade. It would seem that from the instigation of the GATT, a number of Arab countries were amongst the founding members of the treaty<sup>46</sup>. At the signing of the GATT 1947, Syria and Lebanon, having just gained effectual independence from France<sup>47</sup>, were amongst its members<sup>48</sup>. Syria had been recognised as an independent republic in 1944, but French troops only evacuated in 1946. Similarly, Lebanon was declared independent on November 22<sup>nd</sup> 1943, but French troops evacuated the country in 1946. Both countries later withdrew from the GATT, however, in 1951. One suspected reason for Lebanese and Syrian withdrawal (the official reason given was the need for ‘readapting’) was the consideration of Israel to join the GATT. Malkawi points out, however, that Lebanon and Syria could have remained party to the GATT and invoked article XXXV vis a vis Israel. Article XXXV would have meant that the GATT would not apply between a contracting party (Lebanon and Syria) and an acceding one (Israel) if either one of them did not agree to its application to the other party at the time of accession. This was effectively done by India in 1948 with respect to South Africa, and by Egypt, Morocco and Tunisia with respect to Israel upon their accession. Lebanon and Syria did not attempt to rejoin the WTO until 1999 and 2001, respectively<sup>49</sup>. Since the establishment of the WTO in 1995, thirteen Arab countries have since become involved with the organisation<sup>50</sup>. Bahrain, Djibouti, Egypt, Kuwait, Mauritania, Morocco, and Tunisia all joined in 1995. Qatar and the U.A.E. a year later in 1996, followed by Jordan and Oman in 2000, Saudi Arabia in 2005 and Yemen in 2014. In addition, seven Arab countries: Algeria, Comoros, Iraq, Lebanon, Libya, Sudan, Syria, are all currently observers pending their eventual membership of the WTO. This raises the next question regarding the nature of the WTO and what attracts so many Arab countries to seek its membership.

### **3. Country profiles:**

As previously stated above, the MENA countries that will be looked at in this thesis are Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, Mauritania, Djibouti, the United Arab Emirates, Tunisia, Morocco, Jordan, Yemen and Egypt. This section will look at the trade profiles of these countries to determine what markets are central to their national interests, and which topics would be most relevant to them both within the WTO and with regards to bilateral trade agreements. This section will therefore be divided by country, to better understand the economies and trade interests of these WTO members.

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<sup>46</sup>Malkawi (n 42), 116

<sup>47</sup>Hourani (n18), 356-357

<sup>48</sup>Malkawi (n 42), 115-116

<sup>49</sup>ibid, 116-117

<sup>50</sup> World Trade Organisation, ‘Members and Observers’ (*Understanding the WTO*) <[https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm)> accessed 10 September 2017.

### 3.1 The Kingdom of Bahrain

Bahrain is an archipelago situated in the Persian Gulf. It has a total area of 760 sq km and a population of 1,378,904 as of 2016, 50% of which are immigrants.<sup>51</sup> Bahrain is a small country often caught in the geopolitics of its much larger neighbours, Saudi Arabia and Iran. In 1783, the Sunni Al-Khalifa family took power in Shia-majority Bahrain. In order to secure these holdings, it entered into a series of treaties with the UK during the 19th century that made Bahrain a British protectorate. The archipelago attained its independence in 1971. Bahrain has also historically been close to its Saudi Arabian neighbour eager to keep the Sunni ruling family in power to avoid having a Shia majority and Shia ruled country, other than Iran, at its doorstep. The Shia opposition is often viewed with suspicion as being under the influence of Tehran by the Bahraini ruling elite and Saudi Arabia<sup>52</sup>. The situation is far more complex, however, with Bahraini laws being deemed discriminatory towards the majority Shia population who feel persecuted by a small but wealthy and powerful minority. The Arab Spring in 2011 reignited the long stemming animosity between the two parties and discussions between the government and opposition members failed to reach a satisfactory conclusion by 2014, since which Bahrain has experienced sporadic clashes between security forces and demonstrators. Bahrain is also home to a major regional US military base explaining the continuous presence of US military personnel. Bahrain's political allegiances will to a great extent go on to explain its regional trade policy with regards to the Gulf Cooperation Council, as well as its approach and track record of bilateral trade agreements as will be discussed in Chapter IV.

Bahrain was a regional pioneer in that a steady decline in oil production and reserves since 1970 prompted Bahrain to take steps to diversify its economy much earlier than its GCC neighbours that were at the time relying exclusively on oil<sup>53</sup>. As a result, Bahrain successfully developed petroleum processing and refining, aluminium production, and hospitality and retail sectors. Before the rise in profile of the United Arab Emirates, Bahrain was also considered the leading regional banking centre, especially with respect to Islamic finance. In recent times, low oil prices have generated a budget deficit of at least \$4 billion in 2016, nearly 14% of GDP. GDP per capita has also seen a steady decrease in the last few years from \$63.19 in 2014 to \$66.37 in 2016. Government attempts to cut spending and reduce the deficit have been largely unsuccessful. In addition to addressing its current fiscal woes, Bahraini authorities face the long-term challenge of boosting Bahrain's regional competitiveness—especially regarding industry, finance, and tourism—and reconciling revenue constraints with popular pressure to maintain generous state subsidies and a large public sector. Over the past year the government has lifted subsidies on meat, diesel, kerosene, and gasoline and has announced new higher prices for electricity and water, although it plans to roll these increases out more gradually than previous subsidy cuts, the moves have been unpopular and lowered the standard of living for its citizens.

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<sup>51</sup> Rogan (n 40)

<sup>52</sup> R.S. Zahlan, *The Making of the Modern Gulf States: Kuwait, Bahrain, Qatar, the United Arab Emirates and Oman*. (Routledge, 2016), 49

<sup>53</sup> Hourani (n 18), 425

Oil still comprises 86% of Bahraini budget revenues, despite past efforts to diversify its economy and to build communication and transport facilities for multinational firms with business in the Gulf. Other major economic activities are production of aluminium - Bahrain's second biggest export after oil - finance, and construction. Bahrain continues to seek new natural gas supplies as feedstock to support its expanding petrochemical and aluminium industries. Bahrain therefore has an economy very similar to that of its GCC neighbours in that it relies mainly on fossil fuels. It is consequently very different to the economics of non-GCC Arab economies that have modest or no income from fossil fuels, and rely heavily on agriculture and textiles, amongst other things, instead.

### **3.2. Kuwait:**

Kuwait borders the Persian Gulf between Iraq and Saudi Arabia with a total size of 17,818 sq km. It has a population of 2,832,776 as of 2016, 69% of which are immigrants and a majority Muslim population at 76.3%<sup>54</sup>. It is a common feature of the GCC to have proportionally very large levels of immigrants, who make up a large portion of the labour force. GCC countries are resultantly very cosmopolitan and diverse in their populations, albeit the naturalisation of immigrants is very controlled and limited so as not to overwhelm the local/immigrant population balance. It must be remembered that many of the oil rich states are rentier states to a great degree, local populations therefore have an interest in limiting the number of citizens government aides and subsidies are granted to in order not to dilute the sometimes considerable financial advantages they receive from the state. This is also a political pact between the ruling elite, in many cases a single family, and the rest of the population, which in the case of the GCC is composed of various tribes<sup>55</sup>. The rent system allows the ruling family to keep their position and the favour of other tribes through a redistribution of the oil wealth .

Kuwait despite its diminutive size has a wealthy and relatively open economy with crude oil reserves of about 102 billion barrels which account for more than 6% of total world reserves and plans to increase production. Petroleum is overwhelmingly the main source of Kuwaiti income. It accounts for over half of GDP, 92% of export revenues, and 90% of government income. In 2015, Kuwait, for the first time in 15 years, realised a budget deficit after decades of high oil prices; in 2016, the deficit grew to 16.5% of GDP. Kuwaiti authorities announced deeply unpopular cuts to fuel subsidies in August 2016, provoking political discord in the National Assembly, which has been dissolved seven times in ten years. This raises questions as to the further political stability of states like Kuwait, and other GCC economies who have so far been funded by oil revenues, and are now seeing their incomes and resources of fossil fuels dwindling<sup>56</sup>. The GCC, which has for the last four decades been one of the most stable, and by far richest sub-region in the MENA , might now witness pockets of turbulence between the government and its citizens over deeply unpopular but unavoidable economic reforms. The fact that most of these countries have failed to diversify

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<sup>54</sup> CIA World Factbook, 'Kuwait' <<https://www.cia.gov/library/publications/resources/the-world-factbook/geos/ku.html>> accessed 4 June 2017.

<sup>55</sup> Zahlan (n. 50)

<sup>56</sup> J. Crystal, & Cambridge Books Online EBS. *Oil and politics in the gulf: Rulers and merchants in Kuwait and Qatar* (Cambridge: Cambridge University Press.1990), 111

their economies is equally concerning as it will effectively mean that once fossil fuel resources are exhausted, they will have very little trade to fall back on. In the case of Kuwait, however, the government has somewhat offset the impact of lower oil prices, by annually saving at least 10% of government revenue in the Fund for Future Generations.

Similarly to Bahrain, Kuwaiti GDP per capita has seen a decrease in recent years from \$301.1 billion in 2014, to \$290.4 billion in 2016. In addition to the failure of economic diversification, Kuwait faces challenges such as a poor business climate and a large public sector that employs about 76% of citizens. Reforms proposed by the executive branch have been consistently challenged by the National Assembly effectively blocking most economic reforms and despite a long term-term economic development plan being passed in 2010, little progress has been made in its implementation in order to diversify the economy, attract more investment, and boost private sector participation in the economy. Many of the projects have not materialised due to the uncertain political situation as well as delays in awarding contracts. Again to its oil focused economy, even more so than Bahrain, Kuwait will have trade interests aligned with the rest of the GCC and different to those of the rest of the MENA countries outside the Arabian Gulf. Another common feature of the GCC states is that since they do not produce industrial goods on any significant scale, most of their internal market demands are satisfied by imports. This equally would help explain who Kuwait and the GCC's main trade partners are.

### **3.3. The Sultanate of Oman:**

Oman is flanked by Yemen and the UAE and counts a surface area of 309,500 sq km and a population of 3,355,262 as of July 2016, 40% of which are immigrants<sup>57</sup>. Oman and the surrounding area have long prospered from Indian Ocean trade and has since the late 18th century, when the newly established sultanate in Muscat signed the first in a series of friendship treaties with Britain which would evolve over time to signify Oman's increasing dependence on British political and military advisors, stopping short of becoming a protectorate as was the case with Bahrain.

In 1970, Qaboos bin Said Al-Said came to power after overthrowing his father, and has since ruled as sultan.<sup>58</sup> His rule has brought extensive modernisation programs that have opened the country to the outside world, including with regards to trade. Oman has fared well compared to its regional neighbours with respect to its foreign policy which is globally non interventionist and focused on maintaining good relations with neighbouring countries. This approach has wisely allowed Oman to prosper when the economies of other regional actors have been blighted by internal and external conflict. In January 2011 the Arab Spring led to demonstrations in Oman, with some Omanis calling for the government to provide more jobs and financial aids, as well as an end to corruption. In response, Sultan Qaboos has pledged to implement economic and political reforms, such as granting legislative and regulatory powers to the Majlis al-Shura and

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<sup>57</sup> CIA World Factbook, 'Oman' <<https://www.cia.gov/library/publications/resources/the-world-factbook/geos/mu.html>> accessed 4 June 2017.

<sup>58</sup> Hourani (n 18), 409

increasing unemployment benefits. Additionally, in August 2012, the Sultan announced a royal directive mandating the speedy implementation of a national job creation plan for thousands of public and private sector Omani jobs. As part of the Omani government's efforts to decentralise authority and allow greater citizen participation in local governance, Oman successfully conducted its first municipal council elections in December 2012. Prior to that in 2011, the municipal councils were given the power to advise the Royal Court on the needs of local districts across Oman's 11 governorates on a consultative basis<sup>59</sup>. The outcome of the Arab Spring so far has been that those governments that were seen as conceding to public demand, at least to some degree have been able to restore order. Other governments that have adopted a hardline approach of refusing any concessions have either been overthrown or have tragically entered into civil war as is the case of Syria<sup>60</sup>. Oman, despite being on a positive pathway with regards to political stability and strong economic performance faces its biggest threat in the ailing health of its ageing ruler who has as of yet not appointed an heir. This could potentially leave the country in chaos should there be a vacuum of power in the near future that might almost certainly negatively impact stability, and by extension, trade.

Oman is heavily dependent on its dwindling oil resources, which generate 84% of government revenue. In 2016, low global oil prices drove Oman's budget deficit to \$11.5 billion, or approximately 19% of GDP. Again, GDP per capita has decreased but to a lesser extent than Bahrain and Kuwait being \$43,700 in 2016 and \$44,300 in 2014. Oman's plan for tackling the looming loss of oil revenue is twofold. Firstly, it is attempting thorough enhanced oil recovery techniques to boost production, and secondly it has pursued a parallel development plan that focuses on diversification, industrialisation, and privatisation, with the objective of reducing the oil sector's contribution to GDP from 46% at present to 9% by 2020 in accordance with Oman's ninth five-year development plan which include tourism and gas-based industries as key potential sectors for growth.

Ironically, it might be the political and economic concessions made to protestors in 2011 that might set Oman back the most in following its development plan and cutting down on state expenditure. High social welfare benefits, which have increased since 2011 have meant that in order to balance the budget, Omani officials have had to impose unpopular austerity measures to its gasoline and diesel subsidies in 2016, with further subsidy cuts planned for electricity and liquid petroleum gas. Although the need for spending cuts is required in the GCC region due to the lowering number of oil resources, the implementation of austerity measure is in fact a global phenomenon since the economic crisis triggered in 2008. The crisis can arguably be said to have caused considerable political shifts in the west, with the effects being potentially amplified in the MENA region which already suffers from long-term instability.

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<sup>59</sup> Zahlan (n. 50)

<sup>60</sup> S. Colombo, *The GCC Countries and the Arab Spring. Between Outreach, Patronage and Repression* (2012), IAI Working Papers (12).

### 3.4. Qatar:

Qatar has been ruled by the Al Thani family for almost two centuries, and has within the last 60 years undergone considerable and sudden change<sup>61</sup>. As is the case with many of the GCC countries that have transitioned in a very short period of time, Qatar went from a small economy based mainly on pearl diving, to an independent state after the end of the British protectorate with considerable oil and natural gas revenues. The poor management and siphoning of petroleum revenue by certain members of the ruling elite, had in the past stunted Qatar's growth when compared to its neighbours. In response, the Prince or Amir Hamad bin Khalifa Al Thani overthrew his father in a bloodless coup in 1995, and ushered in an era of political and media reforms, unprecedented economic investment, and a growing Qatari regional leadership role, played in part through the first uncensored Arab news network Al-Jazeera, although the free press coverage did not extend to Qatar itself. Qatar also played the role of mediator in a number of regional conflicts in an effort to play a greater regional role, as well as bidding to host the Fédération Internationale de Football Association<sup>62</sup> World Cup in 2022 to increase its international profile. This is diametrically opposite to the cautious foreign policy adopted by Oman as discussed above, and quite remarkable in a region that had so far counted only one uncontested regional superpower in Saudi Arabia. .

In the 2000s, Qatar was headed towards improved political stability after successfully resolving its longstanding border disputes with Bahrain and Saudi Arabia. Stability seemed to go hand in hand with economic prosperity and by 2007 Qatar had attained the highest per capita income in the world. Compared with the previous GCC countries discussed, Qatar is the first country so far to see an increase in GDP per capita for the same time period between 2014 and 2016, with an increase from \$314.4 billion to \$334.5 billion. It appears as though Qatar was shielded from the domestic unrest fuelled in so many MENA countries in the aftermath of the Arab Spring by strong economic performance and resultant general citizen satisfaction<sup>63</sup>. Therefore, although Doha has been spared from any direct effect of the Arab Spring, it did experience a souring in its diplomatic relations with a number of MENA countries that accused it of directly fuelling various post 2011 movements in their own countries, mainly through what was seen as anti-government coverage by the Al Jazeera news channel. Qatar's involvement, whether real or perceived lead to strong tensions with its GCC neighbours who viewed the overthrow of long established authoritarian regimes at best as a dangerous overhaul of the status quo, and at worst as a threat to their own existence. Qatar's relations with Bahrain, Saudi Arabia, and the United Arab Emirates consequently suffered when the three countries temporarily recalled their respective ambassadors. The discord has blown to even greater proportions with certain countries of the GCC as well as Egypt taking unprecedented measures against Qatar imposing a diplomatic and trade blockade on Qatar, and demanding the country, amongst other things, dismantle its controversial news station. The visible effects on regional trade have been immediate with Qatar, which previously imported 40% of its food from Saudi Arabia forced to turn to Iran and Turkey for supplies instead. A move which has further infuriated Riyadh which accused Doha of maintaining good

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<sup>61</sup> J.L. Gelvin, *The modern middle east: A history* (2nd ed.). (Oxford: Oxford University Press, 2008)

<sup>62</sup> FIFA

<sup>63</sup> Colombo (n. 58)

relations with its self-declared regional enemies in Tehran and Istanbul. In the long term, the Qatar crisis could potentially spell an end, or at least an exclusion of the Qatari state from the GCC, which has so far been by far the most closely integrated regional group and successful free trade area.

At present, Qatar's oil and natural gas resources are still the country's main source of income allowing Qatar's high economic growth and per capita income levels, state spending on public entitlements, and considerable infrastructure construction costs particularly in the run up to the 2022 World Cup. Qatar has recently responded to low oil and natural gas prices by decreasing state spending in order to counter its \$12 billion budget deficit in 2016 amounting to 7.8% of GDP. Qatar is at present still mainly reliant on fossil fuels for its income, especially as it has some of the highest reserves in the world. Natural gas reserves have been confirmed to exceed 25 trillion cubic meters, 13% of the world total, and oil reserves exceed 25 billion barrels, which would allow production to continue at current levels for approximately 56 years<sup>64</sup>. Qatar has nevertheless made significant gains in diversifying its economy through sectors such as manufacturing, construction, and financial services.

### **3.5. The Kingdom of Saudi Arabia:**

With a territory spanning 2,149,690 sq km, Saudi Arabia is one of the largest of the GCC countries both in size and with regard to the influence it exerts. With a population of 28,160,273, 30% of which are immigrants, Saudi Arabia still has a considerable foreign population when considered globally, but less than many of its immediate neighbours<sup>65</sup>. This is perhaps reflective of the country's more conservative policies, although with regards to trade it is quite open to the rest of the world, most probably due to its heavy reliance on imports in order to satisfy internal market demands. This is a recurrent feature of many GCC countries with an oil based economy that ideally want to export their fossil fuels and be able to import most of its agricultural and industrial goods. These countries are as such ideal candidates in a global system that encourages trade liberalisation as they have little domestic production to protect or compete against imports, and a vested interest in opening their market both to be able to export oil and import various goods more freely. Again, this would put Saudi Arabia and other GCC oil based economies at opposite ends of the spectrum to their MENA counterparts that find trade liberalisation more of a challenge for their internal production markets.

Needless to say, Saudi Arabia is a majority Muslim country with Sunni Islam officially accounting for 85% to 90% of its population and 10%-15% of Shias although other sources place the Shia community at nearer 20%. Saudi Arabia also unsurprisingly has an oil-based economy and possesses approximately 16% of the world's proven petroleum reserves. It is the largest exporter of petroleum, and consequently plays a leading role in the Organisation of the Petroleum Exporting Countries<sup>66</sup> which regulates oil production

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<sup>64</sup> CIA World Factbook, 'Qatar' <<https://www.cia.gov/library/publications/resources/the-world-factbook/geos/qa.html>> accessed 4 June 2017.

<sup>65</sup> CIA World Factbook, 'Saudi Arabia' <<https://www.cia.gov/library/publications/resources/the-world-factbook/geos/sa.html>> accessed 4 June 2017.

<sup>66</sup> OPEC

amongst its 14 members<sup>67</sup> thus greatly affecting oil prices around the world. The petroleum sector accounts for roughly 87% of budget revenues, 42% of GDP, and 90% of export earnings<sup>68</sup>. Saudi Arabia is encouraging the growth of the private sector in order to diversify its economy and to employ more Saudi nationals in an economy that relies heavily on foreign labour and high levels of local unemployment. The unemployment problem and budget deficit of 13.6% of GDP, has meant internal stability in the kingdom has been somewhat compromised, fuelled by unpopular austerity measures adopted by the government seeking to curb public expenditure and budget deficit and prepare for future oil revenue cuts due to dwindling supplies. Plans have been put in place to introduce a value-added tax and reduce subsidies on electricity, water, and petroleum products. This could shake the delicate power balance in the Kingdom with regards to balance of power as taxation might lead to calls for further representation, including with the expatriate community.

In January 2016, Crown Prince and Deputy Prime Minister Muhammad Bin Salman announced plans to list shares of the state-owned and controlled Saudi Arabian Oil Company<sup>69</sup> petroleum company in a move to increase revenue and foreign investment. The government has also considered privatisation and diversification of the economy more closely in the wake of a diminished oil market. Historically, Saudi Arabia has focused diversification efforts on power generation, telecommunications, natural gas exploration, and petrochemical sectors. More recently, the government has approached investors about expanding the role of the private sector in the healthcare, education and tourism industries. While Saudi Arabia has attempted to diversify its economy in recent times, the rate of diversification has failed to keep up with decreasing oil supplies which might lead to the government having to resort to more immediate and drastic measures. Saudi Arabia has nevertheless experienced a slight increase in GDP per capita in recent years going from \$53,700 in 2014 to \$54,100 in 2016.

### **3.6. Mauritania:**

Mauritania has a territory spanning 1,030,700 sq km and a population of 3,677,293 as of 2016<sup>70</sup>. It has a homogenous 100% Muslim population but is ethnically and linguistically diverse due to its long history with the Maghreb region and other African nations. Although the previous countries discussed in their section were equally culturally diverse, this was mostly due to large numbers of immigrant populations. The diversity in Mauritania is native to the country. Mauritania also differs from the countries above in that it is recognised by the WTO as being eligible for the category of Least-developed Country<sup>71</sup> which in turn means countries like Mauritania would be able to exercise their right to special and differential provisions under GATT Article XVIII(4):

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<sup>67</sup> Algeria, Angola, Ecuador, Equatorial Guinea, Gabon, Iran, Iraq, Kuwait, Libya, Nigeria, Qatar, Saudi Arabia, UAE, Venezuela.

<sup>68</sup> Colombo (n 58)

<sup>69</sup> Saudi Aramco

<sup>70</sup> CIA World Factbook, 'Mauritania' <<https://www.cia.gov/library/publications/resources/the-world-factbook/geos/mr.html>> accessed 4 June 2017.

<sup>71</sup> LDC

4. (a) Consequently, a contracting party, the economy of which can only support low standards of living and is in the early stages of development, shall be free to deviate temporarily from the provisions of the other Articles of this Agreement, as provided in Sections A, B and C of this Article.

(b) A contracting party, the economy of which is in the process of development, but which does not come within the scope of sub-paragraph (a) above, may submit applications to the CONTRACTING PARTIES under Section D of this Article<sup>72</sup>.

Amongst these provisions established by the Doha Declaration and compiled by the WTO Secretariat are longer time periods for implementing agreements and commitments; measures to increase trading opportunities for developing countries; provisions requiring all WTO members to safeguard the trade interests of developing countries; support to help developing countries build the capacity to carry out WTO work, handle disputes, and implement technical standards; and provisions related to least-developed country Members.

With a GDP per capita of \$4,400 in 2014 and \$4,400 in 2016, Mauritania's economy is dominated by extractive industries, fisheries and agriculture. Half the population still depends on farming and raising livestock, even though many nomads and subsistence farmers were forced into the cities by recurrent droughts in the past few decades. Recently, GDP growth has been driven largely by foreign investment in the mining and oil sectors although for the time being they are not comparable to the volume extracted by the GCC states. Mauritania's extensive mineral resources include iron ore, gold, copper, gypsum, and phosphate rock, and exploration is ongoing for tantalum, uranium, crude oil, and natural gas. Although it is resource rich, it suffers from fluctuations in extractive commodity prices, is vulnerable to drought, lacks infrastructure, institutional capacity and human capital. Mauritania is also at risk of insecurity from neighbouring Mali, and is still heavily dependant on foreign aid and investment. Mauritania's coastal waters are among the richest fishing areas in the world, and the fishing sector accounts for about 20% of budget revenues and 45%<sup>73</sup> of foreign currency earnings but overexploitation by foreign and national fleets threaten the sustainability of this key source of revenue. Mauritania has sought additional IMF support by focusing efforts on poverty reduction through investment in agriculture and infrastructure. Chapter V of this thesis will reveal that trade wise, Mauritania has quite distinct trade concerns from its Arab neighbours due to the nature of its economy. In addition, as with many Arab nations, Mauritania is a cultural blend of populations that dwelled in the same territories before their Arabisation and Islamisation. Local dialects often illustrate the cultural layering found in the MENA region and Mauritania is no exception to that, its dialect being heavily based on the Berber language. Standard or formal Arabic is what unites the Arabic speaking countries, however, regardless of dialectic variation. Furthermore, despite economic, cultural or even linguistic diversion between MENA countries, what perhaps most unites them is self identification as an Arab country consolidated by membership to Arab-focused organisations such as the Arab League and its various branches.

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<sup>72</sup> GATT, Article XVIII (4)

<sup>73</sup> Colombo (n 58)

### **3.7. Djibouti:**

Djibouti comprises a territory of 23,200 sq km and a population of 846,687 as of 2016. It has a lower GDP per capita than Mauritania which was of \$3,100 in 2014 and \$3,400 in 2016<sup>74</sup>. Djibouti's economy is based on service activities connected with the country's strategic location as a deepwater port on the Red Sea. There is a severe population imbalance with three-fourths of Djibouti's inhabitants living in the capital city; the remainder of the territory suffering from scant rainfall rendering little of the total land arable. Food supply is a considerable problem for Djibouti and most supplies must be imported. Djibouti's main economic activity is therefore service based both for regional and international transshipment and refuelling. Imports, exports, and re-exports represent the majority of activity of Djibouti's container terminal. Reexports primarily consist of coffee shipments from landlocked neighbour Ethiopia. Djibouti, like Mauritania qualifies as a Least Developed Country within the WTO, and although they share a same economic country, the similarities end there between resource rich Mauritania, and resource poor Djibouti. What this entails is that once again with the MENA members of the WTO there is a parting of trade interests. Although Mauritania and Djibouti are both part of the LDC group, their economic profiles are otherwise very different. They also differ considerably from the rest of the MENA countries that are members of the WTO. This raises the question of whether collaboration between the MENA countries at the WTO is intuitive, or whether it would be artificially structured around a shared Arab identity. This could also suggest that a more fruitful way forward for both Djibouti and Mauritania would be to work in parallel with their Arab counterparts and with other LDC nations, as well as African nations, that are quite active on the working party front within the WTO. Working parties are essentially special interest groups which group WTO members whose trade interests are aligned, and a diverse economy not solely reliant on trade would grant them access to these dynamic groups.

### **3.8. The United Arab Emirates:**

The UAE is a federation of seven emirates established in 1971 as previously stated, comprised of Abu Dhabi, Ajman, Al Fujayrah, Sharjah, Dubai, Ra's al Khaymah, and Umm al Qaywayn. The UAE spans a territory of 83,600 sq km and counts a population of 5,927,482 as of 2016, a staggering 88% of which are immigrants. Due to the considerable number of foreign inhabitants of the UAE, the federation which has a 76% majority Muslim population nevertheless is home to a diverse number of religions<sup>75</sup>.

In line with the diversity of its population, the UAE has an open economy with a high GDP per capita of \$67,500 in 2014 and \$67,500 in 2014, and a sizeable annual trade surplus. Successful efforts at economic diversification, perhaps the only in the GCC, have reduced the portion of GDP from the oil and gas sector to 30%. The UAE like many GCC states has undergone rapid transformation in the span of a few years from impoverished desert principalities to booming urban settings that attract foreign workers and

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<sup>74</sup> CIA World Factbook, 'Djibouti' <<https://www.cia.gov/library/publications/resources/the-world-factbook/geos/dj.html>> accessed 4 June 2017.

<sup>75</sup> CIA World Factbook, 'United Arab Emirates' <<https://www.cia.gov/library/publications/resources/the-world-factbook/geos/ae.html>> accessed 4 June 2017.

investments. The government has increased in creating jobs and infrastructure expansion, and is opening up utilities to greater private sector involvement. The country's free trade zones are a further lure for businesses and foreign investment.

The UAE as a whole has prospered economically and used its oil revenues wisely to create a diverse and sustainable economy over the long term<sup>76</sup>. There are, however, points of tension that might in the long term challenge the continued economic performance of the UAE. Being a federation of emirates, these entities do not always share a global vision and internal politics do exist within the federal structure. Sharjah, for instance is far more conservative an emirate than its neighbours in Abu Dhabi and Dubai and is often resistant to any measures that would be deemed contrary to its religious sensibilities. Dubai has built a reputation as a global trade and tourism hub, and its outwards looking policies have generally resulted in the successful optimisation and diversification of its economy, and against the odds as it only benefitted from a comparatively modest oil revenue. Abu Dhabi does in effect possess far more fossil fuel resources, and its economic standing means it equally has more political clout within the federation. It was the case, for example when Abu Dhabi funded a \$20 billion bailout to help Dubai meet its debt obligation in the aftermath of the 2008 financial crises that saw Dubai property prices collapse. Dubai was now financially obligated towards its neighbours which perhaps forced its hand when accepting to participate in the military offensive led by Saudi Arabia, an unpopular war in the Dubai emirate seen to result in the unnecessary loss of life, as well as having negative effects on business which by and large is the main focus of the trade orientated emirate. Similarly, the UAE appears to operate within the GCC bloc to a great extent at the WTO as will be discussed in Chapter V, despite not all of the emirates of the federation having oil based economies that would tie them to the other GCC states.

The UAE's dependence on oil is a significant long-term challenge despite successful diversification. Low oil prices have prompted the UAE to cut expenditures by reducing fuel subsidies and introducing excise and Value Added Taxes by January 1, 2018 for the first time. In addition to internal tensions this might result in, the UAE faces the further challenge of trying to navigate the traitorous political challenges of the region to avoid instability and conflict that would likely be detrimental to economic growth. The GCC has greatly increased its prosperity in recent years, in most part due to considerable oil revenues of course, but also because stability allowed for growth, construction, and long-term planning, a situation that is reversed in times of war when resources are funnelled towards conflict rather than growth. In light of recent events involving Qatar, it remains to be seen whether the GCC and consequently the UAE will be able to navigate the diplomatic row with finesse thus avoiding further conflict in the region.

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<sup>76</sup> Colombo (n 58)

### 3.9. Tunisia:

Tunisia is surrounded by its much larger neighbours, Algeria and Libya, and covers a surface of 163,610 sq km for a population of 11,134,588 as of 2016<sup>77</sup> of which up to 1 million Libya refugees in recent years. The 2011 uprisings have resulted in significant population movements across the open Tunisia-Libya border, with a large number of Libyan fleeing violence in their country finding refuge in Tunisia, as well as a sizeable Tunisian workforce previously employed in Libya forced to return across the border. Tunisia's diverse, market-oriented economy has long been cited as a success story in Africa and the Middle East by the International Organisations to which it has adhered, but many issues did not come to light until the 2011 Arab Spring revolution brought them to the forefront. Tunisia suffers mainly from slow economic growth and high unemployment. In recent years, Tunisia embarked on a successful strategy focused on bolstering exports, foreign investment, tourism, textiles and apparel, food products, petroleum products, chemicals, and phosphates, with about 80% of exports bound for Tunisia's main economic partner, the EU. Tourism, which accounts for 8% of GDP but is an important source of foreign currency and employment has been severely crippled by terrorist attacks in 2015.

Tunisia's liberal economic strategy modelled on the recommendations of the World Bank, International Monetary Fund<sup>78</sup>, and WTO, coupled with investments in education and infrastructure resulted in decades of high economic performance and a 4-5% annual GDP growth. Tunisia currently has a GDP per capita of \$11,600 in 2014 and \$11,700 in 2016 which has been decreasing in recent years for the first time in decades. Despite the opening of its market and apparent economic gains, Tunisia's economy was riddled by cronyism and corruption. This is not uncommon in the MENA region and effectively leads to an oversight of the available qualified workforce in favour of a system of social connections, to be further discussed in Chapter IV. Unemployment rose among the country's growing ranks of university graduates, and along with corruption these grievances contributed to the January 2011 overthrow of President Zein el Abidine Ben Ali, sending Tunisia's economy into an uncertain future as tourism and investment declined sharply.

Tunisia's government remains under pressure to boost economic growth quickly to mitigate chronic socio-economic challenges, especially high levels of youth unemployment, which has persisted since the revolution in 2011 and is difficult to alleviate in a climate of economic decline. Previously mentioned terrorist attacks targeting the tourism sector, and worker strikes in the phosphate sector, which combined account for nearly 15% of GDP, slowed growth to less than 1% of GDP in 2015 and 1.5% in 2016. Tunis is seeking increased foreign investment and working with labor unions to limit labor disruption in addition to undertaking extensive anti-corruption campaign to tackle the significant problem of black or parallel markets that take place between the Tunisian and Libyan borders, and drain government coffers which lose out on tax revenue as well as subsidies when subsidised Tunisian goods are sold in neighbouring Libya. The anti-corruption campaign is equally targeting institutionalised corruption within the business and government

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<sup>77</sup> CIA World Factbook, 'Tunisia' <<https://www.cia.gov/library/publications/resources/the-world-factbook/geos/ts.html>> accessed 4 June 2017.

<sup>78</sup> IMF

sectors. Because of its diverse economy Tunisia potentially has common points of interest with a number of MENA countries, despite its main export market overwhelmingly being the EU.

### **3.10. Morocco:**

Also located in the North Africa region known as the Maghreb, Morocco spans 446,550 sq km and has a population of 33,655,786 as of 2016<sup>79</sup>. It has a significant Berber population, the indigenous inhabitants of North Africa, who speak variants of the Berber language rather than Arabic. Morocco has managed to create a diverse, open and market economy focusing on its EU neighbour to the north. Key sectors of the economy include agriculture, tourism, aerospace, automotive, phosphates, textiles, apparel, and subcomponents. Morocco has been diligently implementing economic reforms recommended by the IMF in the last few decades which have seen a resulting diversification of its market. Morocco has also invested in maritime as well as inland infrastructure and transport to position itself as a an access point to business in Africa. The main struggle Morocco faces is therefore not a lack of economic diversification as is the case in most GCC countries, but the diversification of its markets. To counter Morocco's heavy economic reliance on the European market, the country entered into a bilateral Free Trade Agreement with the US in 2006 as well as an Advanced Status agreement with the EU in 2008. Also similarly to the rest of the MENA region, Morocco has had to implement a series of austerity measures to cut spending and in 2014 eliminated subsidies for gasoline, diesel, and fuel oil. Subsidies on butane gas and certain food products remain in place.

Morocco's economy is therefore progressing well in theory, and yet the country that had a GDP per capita of \$8,000 in 2014 and \$8,400 in 2016<sup>80</sup> still suffers from uneven wealth distribution, high unemployment, poverty, and illiteracy, particularly in rural areas. It appears that Morocco has taken positive steps with regards to opening its economy and is active on many trade negotiation fronts, but must now invest on internal institutions to improve the competitiveness of its work force and see the benefits of its trade policy on a wider level.

### **3.11. Jordan:**

Jordan is a territory with its only maritime access point located in the port of Aqaba to the south of the country. It spans 89,342 sq km and has a population of 8,185,384 as of 2016<sup>81</sup>. Jordan has a unique demographic makeup as it comprises an ethnic Jordanian population descended from tribes already in the region at the time of the creation of the Jordanian state, as discussed previously. The other half of the population is composed of a long established Palestinian community, originally descended from refugees, and more recently, over one million Syrian refugees.

The MENA region's geopolitical situation has had an especially high impact on Jordan which already suffers from a short supply of natural resources, unemployment, budget deficits and government

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<sup>79</sup> CIA World Factbook, 'Morocco' <<https://www.cia.gov/library/publications/resources/the-world-factbook/geos/mo.html>> accessed 4 June 2017.

<sup>80</sup> *ibid.*

<sup>81</sup> CIA World Factbook, 'Jordan' <<https://www.cia.gov/library/publications/resources/the-world-factbook/geos/jo.html>> accessed 4 June 2017.

debt. Despite significant economic reforms implemented by the Jordanian government since the mid 1990's, with the aim of expanding foreign trade, privatisation and attracting foreign investment which resulted in average annual economic growth of 8% for 2004 through 2008, the global economic slowdown and regional turmoil contributed to slower growth from 2010 to 2016. Jordan, like Tunisia and Morocco was part of a group of MENA countries to espouse economic reforms and trade liberalisation of the mid 90's, during the time they joined as WTO members. These three countries have in effect opened their markets and have seen improvements to growth and GDP, and yet it would seem liberalisation on its own has not solved many of the economic problems of these countries. Jordan has at present a GDP per capita similar to that of Tunisia, \$11,000 in 2014 and \$11,100 in 2016 but faces the significant task of solving its refugee crisis on limited means. At present, it is aided in its efforts by specialised international agencies such as the United Nations High Commissioner for Refugees<sup>82</sup> United Nations Relief and Works Agency for Palestinian Refugees in the Near East<sup>83</sup> that provide Jordan's sizeable refugee population with rudimentary housing and services, often in refugee camps that are meant for temporary use but inevitably turn into permanent dwellings for the thousands of most vulnerable refugees that inhabit them. Jordan received a \$723 million Extended Fund Facility from the International Monetary Fund in 2016 that aims to build on the three-year, \$2.1 billion IMF program that ended in August 2015 with a perspective of helping Jordan correct budgetary and balance of payments imbalances. Jordan is therefore at a trying time economically, and although it has an outward looking trade policy, it is uncertain how much of a priority trade agreements will be for the country at present.

### **3.12. Egypt:**

The major challenge Egypt faces, apart from the obvious political and security issues affecting it at present, is demographics. Egypt has a territory of 1,001,450 sq km for a population of 94,666,993 as of 2016<sup>84</sup>, putting considerable strain on the resources and public services of the country. Egypt is the most populous Arab country. Efforts to control population growth have resulted in some success, which has plateaued in recent years. Current governments have not appeared to prioritise family planning putting Egypt at risk of undoing past progress. The GDP per capita stands at \$11,800 in 2014 and \$12,100 in 2016, which puts it in the mid developing country range of Arab countries seen so far, although Egypt suffers similarly to Morocco from great wealth inequality with a large population living at or beneath the poverty line.

Egyptian economy has undergone large scale decentralisation in the decades since Gamal Abd El Nasser, as well as economic reforms aimed at attracting foreign investment. Poor living conditions and limited job opportunities are a major factor leading to the January 2011 revolution that ousted President Hosni Mubarak. The uncertain political, security, and policy environment since 2011 has caused economic growth to slow significantly, damaging tourism, manufacturing, and other vital sectors and aggravating levels of unemployment. Weak growth and limited foreign exchange income due to lost earnings from

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<sup>82</sup> UNHCR

<sup>83</sup> UNRWA

<sup>84</sup> CIA World Factbook, 'Egypt' ,<https://www.cia.gov/library/publications/resources/the-world-factbook/geos/eg.html>> accessed 4 June 2017

tourism and the trade deficit have lead Egypt dependent on high interest loans and financial aid from Gulf allies as well as the US. This has not only carried political repercussions for Egypt, but also trade ones as will be discussed in Chapters IV and V. In 2015-16, higher levels of foreign investment injected some growth into the Egyptian market after a particularly depressed post-revolution period. In 2016, Cairo enacted a value-added tax, implemented fuel and electricity subsidy cuts, and floated its currency, which led to a sharp depreciation of the pound and corresponding inflation in an attempt to cut spending but which might resultantly cause further discontent and social unrest. The short term solution open to Egypt seems to be further borrowing, and in November 2016, the IMF approved a \$12 billion, three-year loan for Egypt, naturally raising questions on long-term sustainability<sup>85</sup>. The political and economic situation of Egypt might set its current trade strategy, including at the WTO, since it will be more inclined to cooperate and accommodate various donors that keep its economy afloat<sup>86</sup>. Although it appears an unavoidable situation, it might put Egypt in difficult positions where it cannot manoeuvre without causing the ire of at least one of its allies, as has occurred at the WTO in the past, a situation that will be discussed in Chapter V.

### **3.13. Yemen:**

Yemen, which is between the GCC countries of Saudi Arabia and Oman spans 527,968 sq km, and has a population of 28, 036, 829. It has a mainly Arab population that is 99.1% Muslim, 65% of which are Sunni and 35% of which are Shia. With a GDP per capita of \$1,300, it qualifies as an LDC within the WTO. The low income of Yemen is compounded by a disastrous war pitting Houthi rebels against the Saudi lead coalition that has cost the country great loss of population as well as infrastructure. The war has effectively halted the country's exports a year after it gained accession to the WTO. Prior to the war, the Yemeni economy was heavily reliant on dwindling oil and gas reserves. In an attempt to diversify, the government at the time undertook economic reforms including the elimination of fuel subsidies in an attempt to remedy repeated budget shortfalls. Consequently, in 2014 the IMF approved a three-year, \$570 million Extended Credit Facility for Yemen<sup>87</sup>. The disastrous humanitarian situation in Yemen, which is likely to worsen with the outbreak of a Cholera epidemic decimating the most vulnerable members of the population, and the lack of available food and water means that this newest of Arab members of the WTO will have grave and pressing internal concerns to address in the near future.

### **3. Conclusion:**

The history of the MENA region is an inescapable factor in understanding the way the region works today. The history and politics of the countries that compose the region still dictate the economy and trade

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<sup>85</sup> *ibid.*

<sup>86</sup> Y. Farouk, 'More than Money: Post-Mubarak Egypt, Saudi Arabia, and the Gulf' (*Gulf Research Center*, 2014), 3

<sup>87</sup> CIA World Facebook, 'Yemen' < <https://www.cia.gov/library/publications/the-world-factbook/geos/ym.html>> accessed 19 October 2018

policies of these states to a large degree. There is a popular ideal held of Arab unity, and the return to a united Arab territory in the form of a Caliphate for those following the religious movements such as the Muslim Brotherhood, or a secular pan-Arab political union as envisioned by Abd El Nasser and his supporters. This ideal transpires in all aspects of Arab trade as will be seen in later chapters of this thesis, whether with regards to regional trade agreements, bilateral trade agreements, or multilateral trade agreements. The overarching theme is a recurrent political will that aims for greater economic integration, amongst other things, the reality however, almost invariably falls short. Most political and economic attempts at greater integration in the MENA region have seemed to fail, with a few notable exceptions such as the GCC despite recurring tensions, and a number of successful national unification of territories. These success stories are a minority of the overall number of similar attempts, and even successful schemes are fragile and prone to dissolution in the event of sustained internal political conflict. The factors play an important role in frustrating greater economic integration at the regional level which represent a loss of opportunity for the MENA states to increase trade links through greater participation in the WTO and full use of Article XXIV of the GATT. Multiple factors are interlinked in the complex setting of the MENA region, and conflict is often linked to the coveting of valuable resources in the region, and the political systems in place, which not always, but often prioritise the preservation of power by the heads of state rather than the pursuit of national interest.

The history and current political situations of the MENA member countries of the WTO also explains to a certain extent the action, or rather inaction of these countries at the WTO. Other non geopolitical factors to be taken into account will be addressed in Chapter V. Political instability and conflict have consistently been detrimental to the economies of these countries, and can undo in a short amount of time years of economic progress, growth, and infrastructure, in addition to affecting the future work force of these countries with interruptions to essential education programmes. The MENA countries that have done the best economically, and are the most successful and active on the trade front, whether regional, bilateral or multilateral, are unsurprisingly the ones that have enjoyed relative stability. Furthermore, it can be said that a close relationship exists between trade and stability in the MENA region, for those countries that have prospered or progressed in regards to trade have enjoyed stability as a result of general content on behalf of the respective populations of these countries. The cycle continues as stability allows for further economic growth to continue. Inversely, poor economic growth has often lead to discontent, which has in turn affected stability and consequently the economies of these countries in which poor economic performance have often degenerated into political antagonism and institutional breakdown. It is therefore vital for the Arab members of the MENA region, despite competing priorities they face, and the understandable accompanying difficulties, to focus on economic development and trade as a means in itself, but also as a means to stability and further growth.

Membership to the WTO is already a step in the right direction in this respect, and despite many institutional flaws and challenges the MENA countries face as members of the organisation, the WTO might still present MENA countries with a neutral backdrop in which to focus on trade and its optimisations away from more treacherous frameworks in which political tensions have tended to overtake economic concerns. Differing economic profiles and resulting interests must understandably be taken into account, but should not negate the need for cooperation, whether on a regional basis or other economic basis as the potential

advantages of increased active involvement and cooperation far outweigh the challenges of coordination and diplomacy as seen with countries that have adopted this approach. Although the MENA trade experience has been rife with failed experiments and disappointments, there are nevertheless a number of successful examples of integrated regional trade and openness to world markets that prove these ambitions are not futile. In fact, the results of these successful enterprises give assurance that the rewards for continued determination are worth pursuing and can drastically improve the economies of the countries involved, and consequently, the standard of living of their inhabitants.

The GATT started, like many of the major modern institutions in the aftermath of the second World War in 1947 at the behest of the United States and its allies. The ideology behind the creation of GATT, which can be found in its preamble is firmly based on the concept that increased trade benefits all nations, and prosperous nations are more likely to be peaceful nations<sup>88</sup>. The idea at the core was that injustice in the realm of trade in the form of imposed restrictions, tariffs, and non-tariff barriers could lead to animosity between nations, which could potentially develop into political strife and eventually warfare. It goes without saying that in the aftermath of a global war that claimed millions of civilian and non-civilian lives, it would be a natural intuitive reaction on the part of the heads of governments around the world to want to prevent such a catastrophic scenario from ever reoccurring. The GATT was therefore a creation firmly ensconced in a particular time and place, and along with other major international organisations such as the United Nations, the World Bank, and the International Monetary Fund, sought to increase international cooperation and facilitate economic prosperity. The GATT as well as the other institutions born in the same era out of the Bretton Woods system, which established monetary, economic, and financial relations between the major economic players in the 20th century<sup>89</sup> would shape international trade and economic relations, albeit not without challenge for the rest of the century and the next.

The core principles of the GATT laid the cornerstones for its successor, the WTO. Although the principles of free trade had been successful and were implemented to a great degree since 1947, reducing the level of tariffs on industrial goods in developed countries from 40% to 4% by 1994; There still existed barriers to trade in the form of non-tariff barriers. By the mid 1990's, it was fast becoming evident that the GATT had run its course and it was time to rethink the model that had begun to show its limitations, or face an internal crumbling of the system. Arguably the biggest limitation of the GATT, and by consequence the greatest achievement of the WTO in 1995 was the establishment of a legal framework for the resolution of disputes that arise between member states. Under the GATT 1947, it was fast becoming evident that the absence of an efficient, predictable and binding means of resolving differences was fast creating tensions between members that could lead to consequences both in the realms of trade and politics.

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<sup>88</sup> B. Hoekman, 'The WTO: Functions and Basic Principles', in B. Hoekman, A. Mattoo, P. English (eds), *Development, Trade and the WTO* (The International Bank for Reconstruction and Development / The World Bank 2002), 41

<sup>89</sup> Western Europe, the US, Canada, Australia and Japan.

## Chapter II- Concepts and Theory

### Introduction:

This chapter will outline eight general concepts and theories that are recurrent themes throughout this thesis. They afford a theoretical context to the research question regarding the participation of Arab members in the WTO, in the same way that Chapter IV will provide an economic, political and legal context to the question at hand. In addition, this chapter will define key concepts relevant to the Arab countries that are members of the WTO.

The first concept to be discussed will be the WTO as an organisation and vessel for multilateral trade (1), and the concept of a developing country (2). This section will also discuss how globalisation (3), which as the word suggests, is an international phenomenon, has come to affect the MENA region in particular by influencing current MENA trade agreements. Secondly, this chapter will look at the link between globalisation and neoliberalism (4), with once again a focus on how trade liberalisation has affected the MENA countries. This chapter will go on to discuss the concept of regionalism (5), as a running theme in the attempts of the MENA region to develop their trade, in parallel to their involvement in bilateral and multilateral trade agreements. This brings us directly to theories on multilateralism and bilateralism (6), and how efficiency relates to MENA trade (7). Finally, this chapter will also look at how the hierarchy of norms affects the multiple trade agreements entered into within the MENA region (8), before drawing conclusions (9).

### 1. The WTO:

The WTO operates on two levels, on the one hand the General Council, specialised councils and working parties are responsible for the day to day activity that support the decision-making process, and on the other, the Dispute settlement body handles disputes that arise on trade-related issues amongst member states<sup>90</sup>. The structure of the WTO positions it as a multilateral organisation, where decisions are made on the basis of a universal vote, with a reverse majority needed to pass a decision. Unlike other organisations, the vote allocation at the WTO is a one vote per country system, which technically means all member countries have an equal vote and that economic standing does not affect the weight of a country's vote. In reality, what this means is that there are often arrangements made prior to the vote being carried out amongst members, to assure support or opposition to a particular measure being voted on. This is often carried out in a less than transparent way, with what are known as 'green room meetings' occurring between a select number of delegates behind closed doors prior to a vote. During these meetings, deals are made in order to bolster support for particular measures. This system arguably undermines the multilateral nature of the WTO, and

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<sup>90</sup> *ibid.*

has received fierce criticism particularly from representatives of developing countries who felt that as a result, they were effectively pushed out of the decision making process at the WTO<sup>91</sup>.

Although the Doha Development agenda has attempted to address a number of grievances, restrictive groups still exist within the decision making process of the WTO, as the closed circle decisions are often viewed as being more practical and achievable than a single negotiation process involving 164 members. Although this is a valid argument, it raises the question of how democratic the decision making process can be if it is limited to a small number of active delegations with the necessary resources to be able to follow through with advancing their trade interests. Critics of the WTO decision making process have argued that this effectively means decisions promoting the interests of a few more powerful countries are thus passed, with a bottom down effect, applying to all members of the WTO whether or not the decision aligns with their interests. There is admittedly an opportunity for the countries that oppose a specific measure to have their voice heard at the voting phase, but this thesis will later address why this is not always a practicable option, due in part to restricted means meaning countries with less resources will typically have much smaller delegations that struggle to keep up with all ongoing meetings and general council sessions. In addition, trade relations are taken into consideration with a keen awareness on the part of delegates not to damage relations with various key trading partners whose discontent might cost them in trade opportunities.

The dispute settlement system was created<sup>92</sup> to maintain good relations between members who are provided with a reliable, impartial, efficient and enforceable system for settling trade disputes<sup>93</sup>. As a legislative body, it is remarkably successful in that it completes exactly the task for which it was intended and arguably, allows the WTO to keep functioning in light of less efficient systems put in place like the decision making process. The Dispute Settlement mechanism has been criticised however, for a perceived lack of accessibility. This is not directly related to the panels themselves, but rather, the legal complexity of the process that requires WTO members that do not have a dedicated legal team, to hire specialised law firms at an often exorbitant cost. This often locks developing countries out of the dispute settlement system in case of a dispute with another WTO member. Remedies have been put into place by the WTO however, in the form of the WTO technical cooperation services which can assist any developing country member requesting assistance<sup>94</sup>. The Institute for Training and Technical Cooperation presently employs one full-time official, and two part-time independent consultants for this purpose. As a division of the WTO Secretariat, these experts must assist the developing country member in a way that respects the continued impartiality of the Secretariat. This means that they can only give technical and procedural advice to member countries so as not to be seen as favouring one party to a potential dispute over another. Although the position is understandable, limitations on what consultants are able to do, as well as the limited time they are able to

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<sup>91</sup> P. Van den Bossche, *The law and policy of the World Trade Organization: text, cases and materials*. (Cambridge University Press, 2008), 149

<sup>92</sup> DSU

<sup>93</sup> T. Sattler, G. Spilker, T. Bernauer, 'Does WTO Dispute Settlement Enforce or Inform?' (2014), *British Journal of Political Science* 44(4), 877.

<sup>94</sup> WTO Dispute Settlement Understanding, Article 27.2.

allocate to each case due to the small size of the team, mean their usefulness to developing countries looking to bring a complaint, or acting as a respondent is limited. The WTO Secretariat also provides training opportunities and courses on the dispute settlement system through technical cooperation activities in Geneva and various international locations based on demand<sup>95</sup>. These courses, however, are quite general in their scope and do not provide the depth necessary for more technical knowledge.

There are therefore existent issues with regards to access to the dispute settlement system for developing countries. This directly affects the Arab members of the WTO as they are all classed as developing countries as will be discussed in the following section. Despite these difficulties, the dispute settlement system still represents an attractive option for developing countries in that one way to manoeuvre the prohibitive cost is to form coalitions in which member states with a same complaint or aligned interest can group their resources in support of a claimant and attach themselves as third parties to the dispute<sup>96</sup>. This would allow smaller countries or countries with limited means to participate in a process that they would otherwise not have access to. In addition, the dispute settlement system has the added advantage of being a neutral forum in which the complaint is evaluated solely on the basis of WTO regulation by a neutral third party, it is thus impartial and eliminates the imbalance of power that exists in the context of a negotiation setting when a more economically powerful party has an advantage over a less economically powerful party<sup>97</sup> that might not be able to absorb the cost of retaliatory measures. In addition, acting in coalitions protects individual countries from the threat of retaliatory behaviour that they might otherwise be exposed to, addressing an issue that often dissuades developing countries from making a complaint against a more economically powerful trade partner.

## **2. Developing Countries:**

A developing country by definition, is a country with little industrial and economic activity and where the general population have low incomes<sup>98</sup> relative to more industrialised and economically advanced nations. Although there is no universally agreed criteria for what makes a country developed, there are certain indicators that are often used to assess the development stage of a country. Different criteria will yield different results regarding which countries are classed as developing. Other non economic criteria can equally contribute to the classification of a country as developing depending on life expectancy, the quality of the education system, literacy rates, and fertility rates.

The World Trade Organisation itself does not provide or refer to a definition of the term developing country. Instead, the WTO gives its members the choice to define and declare themselves a developing

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<sup>95</sup> *ibid.*

<sup>96</sup> S. Rolland, 'Developing country coalitions at the WTO: in search of legal support' (2007), HILJ 48, 483

<sup>97</sup> J. Odell, ed. *Negotiating trade: Developing countries in the WTO and NAFTA*. (Cambridge University Press, 2006), 13

<sup>98</sup> Cambridge Dictionary online, 'Developing country' (definition) <<http://dictionary.cambridge.org/dictionary/english/developing-country>> accessed 10 June 2017.

country for the purposes of applying WTO obligation. This categorisation has significant implications for the countries it concerns, and potentially allows the developing country in question to make use of concessions provided for in the GATT, such as longer transition periods and access to technical assistance. For this reason, other WTO member states are permitted to challenge the decision of a member to declare itself a developing country if it felt the appellation was unjustified, in order to prevent the member in question from gaining an undue advantage through the use of preferential provisions available to developing countries. Furthermore, Least Developed Countries<sup>99</sup> are also eligible for specific entitlements such as exemption from the Most Favoured Nation<sup>100</sup> rule through the Generalized System of Preferences<sup>101</sup>. In essence what this means is that the MFN requires all WTO members to extend all trade concessions made to one member, to all other members as the appellation ‘most favoured’ would suggest. An exception to this rule is made for LDCs, which allows them not to extend a tariff preference to all other WTO members, with the objective of lowering tariffs for LDC’s without having to lower them for developed countries. Two Arab countries currently fall into the category of Least Developed Country, Djibouti and Comoros.

Despite the common perception that certain Arab countries, namely the oil rich nations of the Gulf region, are extremely wealthy, all Arab countries fall into the category of developing countries. This is primarily due to the criteria chosen by the International Monetary Fund to define development based on per capita income level; degree of integration into the global financial system, and diversity of exports, which automatically excludes all oil exporters with a high GDP but who rely mainly on oil as an income. A number of Arab countries would be indeed considered ‘developed’ if judged on different criteria such as those proposed by the World Bank which does not take into account diversity of trade<sup>102</sup>. At present, there is no list provided by the WTO of developing countries as is the case with LDCs. Egypt and Tunisia, however, are members of NAMA 11, a working party formed by a coalition of developing countries seeking flexibilities to limit market opening in industrial goods trade. It would be safe to assume, therefore, that these two countries are definitely classed and accepted by other members as developing countries. The official WTO status of the remaining Arab members of the WTO is likely to be the same, but requires confirmation. The status of the GCC members is more uncertain as it could vary depending on the criteria used. The fact that Arab countries are classified and treated as Developing countries is significant in that it carries a certain number of regulatory advantages as discussed above, that the MENA countries could make use of. This is provided other members do not challenge their self-appointed status.

### **3. Globalisation:**

The term ‘globalisation’ has been widely used to mean a number of things in the past couple of decades since the terms popularisation. Globalisation can be seen to mean anything from access to countries

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<sup>99</sup> LDC

<sup>100</sup> MFN

<sup>101</sup> GSP

<sup>102</sup>The World Bank uses Gross National Income (GNI) per capita, rather than GDP.

and peoples across the globe, to a phenomenon of close integration among peoples, companies, and governments driven by international trade and aided by information technology.<sup>103</sup>

For the purposes of this thesis, this section will apply the second meaning onto the WTO model. It is indeed clear how the organisation would appear to be seen as a global one that encourages and represents globalisation in action. The WTO effectively brings together 164 members with different economies, governmental systems and cultural backgrounds to a single negotiating table based on common rules and regulations, in the interest of trade and under the assumption that increasing trade will increase prosperity for all<sup>104</sup> and encourage good relations amongst nations. Since it is difficult to give a single meaning to the term globalisation, it is consequently equally difficult to measure its significance and perceived impact as it will undoubtedly mean different things to different people. It can take on positive connotations when considered in light of access and sharing of information, experiences and development; or deeply negative ones that imply unbridled capitalism, the domination of large corporations, and the imposition of a single model of liberal economic regulations on countries at different stages of developmental growth, with potentially catastrophic consequences for more vulnerable economies<sup>105</sup>. To place globalisation in the context of Arab WTO membership, we must first briefly identify the two opposing viewpoints on globalisation, before embarking on the topic of how this affects Arab members of the WTO.

The viewpoint that Globalisation is a positive force for all countries, whether developed or developing was originally debated by a number of authors, amongst which are Thomas Friedman<sup>106</sup> and Francis Fukuyama<sup>107</sup>. Friedman, put forward the 'Golden Arches' theory with the idea that globalisation would bring positive economic growth to all countries involved, resulting in more prosperity and ultimately, peace amongst nations aspiring to greater economic growth and stability, and averse to the countering effects of war on infrastructure and economic stability. His theory has since been disproven by a number of wars refuting the Golden Arches Theory, and Friedman has admitted to the phenomenon of 'Brazilification' created by neoliberalism which might in itself cause the instability and upheaval Friedman was so keen to avoid.

Although the main arguments and debates pertaining to globalisation occurred amongst scholars over a decade ago, there seems to be a resurgence of interest in the topic in light of current world events in the realm of politics and economics. For better or for worse, it would also seem that the viewpoint that globalisation has overwhelmingly detrimental effects has always been adopted to some extent by various academics<sup>108</sup>, and presently, to a far larger extent by members of the public in countries where it is perceived

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<sup>103</sup> U. Beck, *What is globalization?* (John Wiley & Sons, 2015), 19

<sup>104</sup> Preamble to the GATT 1947

<sup>105</sup> J.E. Stiglitz, *Globalization and its discontents* (Penguin 2002), 248-249

<sup>106</sup> T.L. Friedman, *The Lexus and the olive tree: Understanding globalization* (Macmillan, 2000), 33

<sup>107</sup> F. Fukuyama, *The end of history and the last man* (Penguin 1993), 30

<sup>108</sup> B. Milanovic, 'Global inequality: A new approach for the age of globalization' (2016), *PANOECONOMICUS* 63.4, 493-501.

to have played a negative role in the deterioration of quality of life. Whether or not this attribution is supported by fact is a fascinating question, but will not be addressed here due to the extensive nature of the question itself, and its lack of direct relevance to the topic of this thesis.

#### **4. Neoliberalism:**

The definition and usage of the term neoliberalism has come to change over time, but was originally a resurgence in the 20th century of laissez-faire economic theory of the 19th century led by Adam Smith and his theory of ‘the invisible hand’ that regulates market economies. The main proponents of the neoliberal theory are extensive economic liberalisation policies such as privatisation, fiscal austerity, deregulation, and free trade. Presently the term has come to be synonymous with corporate dominance over the state and extreme deregulation. The association of globalisation with neoliberalism in the late 1990’s became so negative as to warrant mass protests at the Seattle Round and tainted the image of the WTO for years to come. The impact of the publicity was such that the WTO was seen to either have to adapt or face capitulation, which eventually led to reforms brought forward by the Doha Round, mainly in favour of a fairer system for all WTO members. The changes are a start, but as illustrated by the experience of the Arab members of the WTO in their capacity as developing countries, has not brought about the dramatic change in the system that many members were campaigning for.

Although as stated above globalisation and neoliberalism have often been associated with one another, although neoliberalism ultimately represents a certain vision of the wider concept of globalisation. In generic terms, neoliberalism is widely seen to have been the pursuit of profit by large multinational corporations, that have essentially replaced governments and national legislation by market international institutions, which have contributed to the spread of its key concepts. With time, neoliberalism has also become associated with globalisation, especially by its opponents. Henry James, for instance, does not believe that globalisation is a given, and quotes George Soros who predicted the “Imminent disintegration of the global capitalist system” which would “succumb to its defects”.<sup>109</sup> This idea is in no way novel and was strongly supported by both Max Weber and Karl Marx and are echoed by various other authors who are deeply convinced of the potential disastrous effects of un-checked neoliberalism. Gray, for example believes that rather than a self-regulating functioning world market, unbridled capitalism would result in social unrest and economic upheaval.<sup>110</sup> For Harvey, who strongly opposes the neoliberal school of thought, neoliberalism is the victory of the will of the economic elites over the masses. Indeed, according to Joseph Stiglitz, neoliberalism offers very few advantages for developing countries. He argues that embracing it too soon could result in negative effects on the development of these countries, and potentially cause their economic ruin. Stiglitz believed neoliberal World Bank and IMF policies to be behind the financial crises in East Asia

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<sup>109</sup> H. James, *The End of Globalization: Lessons from the Great Depression* (Harvard University Press 2001), 12

<sup>110</sup> J.Gray, *False Dawn: The Delusions of Global Capitalism* (new edn, Granta Books 2009), 6

and Argentina. A number of reports seem to conclude, similarly, that aggressive policies towards opening developing country markets might have negative consequences on the development of these countries<sup>111</sup>.

Although the approach of the Arab countries seems to be shared by a majority of the international community, the idea that free-trade in its neoliberal form, is an unavoidable reality, is not unanimous<sup>112</sup>. Indeed, neoliberalism has been adopted by powerful international institutions, which have contributed to the spread of these concepts. Neoliberalism, despite strong resistance to it, has remained at the forefront of major economies until now despite being threatened numerous times, most recently by the financial crisis of 2008<sup>113</sup>.

Most MENA countries have seen the impact of neoliberalism as negative on their economies. In light of the uprisings of the Arab Spring, some authors have claimed that these movements were indeed aimed at curbing corruption and expressed frustration with the lack of the ability of governments to provide employment opportunities, but were also as a backlash against unpopular liberalisation policies that were adopted by some MENA governments<sup>114</sup>. It would seem that in the case of MENA, the combination of liberal policies with regards to trade and a less interventionist approach domestically is what constituted the tipping point for these countries<sup>115</sup>. In effect, lower middle income countries such as Tunisia saw its fragile critical domestic industries such as agriculture deeply affected by trade agreements mainly with the EU which imposed quotas on the quantities of agriculture products to be imported from the Mediterranean country. Imports from the EU in other sectors, however, were subjected to no such quota and competed directly with local products. This process had started in the early 1990's and by 2011 the economic situation regarding standard of living was considered no longer sustainable by the section of the population looking to depose president Ben Ali. The governments of the GCC members of the WTO only just fared better and have been somewhat protected by their high income levels due to oil revenues, although austerity measures in the GCC region have equally met with great discontent. In the aftermath of the 2011 uprisings, a number of governments took token measures to quell mounting unrest such as subsidising electricity prices as was the case in Jordan.

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<sup>111</sup> Stiglitz (n 104); Mohamadieh (n 9); SIA-EMFTA Consortium, '*Sustainability Impact Assessment of the Euro Mediterranean Free Trade Area* (2007)' (Final Report of the SIA-EMFTA Project).

<sup>112</sup> A. Cemron, R. Palan, *The Imagined Economies of Globalization* (Sage Publications 2004) 2-3

<sup>113</sup> P. Mirowski, *Never let a serious crisis go to waste: How neoliberalism survived the financial meltdown* (Verso Books, 2013), 361-363

<sup>114</sup> S. Zemni, *Returning to the Tunisian Revolution: Some Reflections on Political Change during the Arab Spring. Non-western encounters with democratization: imagining democracy after the Arab Spring* [Ashgate Publishers 2015] 51-66.

<sup>115</sup> K. Bogaert, 'Contextualizing the Arab Revolts: The Politics behind Three Decades of Neoliberalism in the Arab World' (2013), *Middle East Critique* 22.3, 213-234

## 5. Regionalism:

Regionalism is understood as a geographically discriminatory trade policy which involves open market access to various degrees. A Free Trade Agreement<sup>116</sup> is formed by removing tariffs on trade among member nations and leaving members with autonomy in setting their tariffs on trade with non-member countries. A customs union, as in the case of the GCC, applies a common tariff structure to trade with non-members. A common market as in the case of the EU permits free movement of factors of production, as well as goods and services, between member states.

Regionalism as a concept and its advantages or disadvantages has been extensively commented upon by academic writers. Keynes thoughts on the matter were as follows:

My strong reaction against the word ‘discrimination’ is the result of feeling so passionately that our hands must be free...[T]he word calls up and must call up...all the old lumber, most-favoured-nation clause and all the rest which was a notorious failure and made such a hash of the old world. We know also that it won’t work, It is the clutch of the dead, or at least the moribund, hand.

[The proposed policies] aim, above all, at the restoration of multilateral trade...the bias of the policies before you is against bilateral barter and every kind of discriminatory practice. The separate blocs and all the friction and loss of friendship they must bring with them are expedients to which one may be driven in a hostile world where trade has ceased<sup>117</sup>

The colourful imagery and dramatic reversal in position illustrated by Keynes’s two statements summarise the extensive debate around the concept of regionalism in trade. It has been both declared as violating the Most Favoured Nation rule, and hailed as a means of benefiting overall trade. Support for regionalism has occurred in waves, the first ending in the 1960’s with the failure of the ‘first wave’<sup>118</sup> of regionalism and the dissolution of the North Atlantic Free Trade Agreement, not to be confused with the North American Free Trade Agreement<sup>119</sup>. Baghwati claims a second wave occurred in the mid 1990’s<sup>120</sup> which if we are inclined to agree, would perhaps mean this second wave is now equally coming to an end with the advent of the Brexit vote and the apparent US intention to shift to a trade policy based on bilateralism. Despite these visible changes, regionalism at present still plays a large part in trade negotiations at all levels. The EU, for instance negotiates trade agreements as a single bloc whether at the WTO or through bilateral trade agreements. This in effect means that Arab members of the WTO when negotiating on

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<sup>116</sup> FTA

<sup>117</sup> J. Bhagwati, ‘Regionalism and multilateralism: an overview’ (1993) in Jaime De Melo and Arvind Panagariya, *New Dimensions in Regional Integration* (Cambridge University Press 1993), 51.

<sup>118</sup> *ibid.*

<sup>119</sup> NAFTA

<sup>120</sup> Hourani (n 18)

an individual level with the EU in this instance, are faced with a negotiating partner with considerable resources, expertise, and experience of trade negotiations.

Although regional trade agreements are discriminatory and appear contrary to the Most Favoured Nation rule in that they grant more favourable treatment to members over non-members, they are nevertheless admitted and even encouraged but the GATT under Article XXIV. The reason behind this is the recognition that regional economic integration and trade liberalisation, even when limited to only some WTO members, can be achieved faster and to a greater degree on a regional level than on a global scale. The idea therefore follows that faster trade liberalisation will ensue if it is pursued simultaneously within regional blocs. Equally, the likely outcome of regional trade liberalisation is increased trade and economic growth in the concerned region, which in turn will generate more trade with the rest of the world. This notion is both defended<sup>121</sup> and rejected<sup>122</sup> by various authors. There are other considerations that might lead countries to enter into regional trade agreements, however, such as political reasons to pursue deeper economic integration and trade liberalisation to avert the risk of war as in the case of the EU<sup>123</sup>. In the case of MERCOSUR<sup>124</sup>, the intention was to shore up democracy in member countries. Of particular interest, however, is the successful use of regional trade agreements to facilitate the participation of developing countries in the WTO<sup>125</sup> such as in the case of COMESA<sup>126</sup>, with obvious implications for the MENA members of the WTO with regards to facilitation of their own participation in the WTO.

Article XXIV seeks to strike a balance with regards to regionalism in order to balance the interests of the country pursuing closer economic integration, with those of countries excluded from the group. This is achieved by ensuring regional trade agreements create more trade than they divert, which is determined on a case by case basis through early announcement of negotiations to create a regional trade agreement<sup>127</sup>, or newly signed regional trade agreement which is then presented for consideration.

The issue of whether regionalism is always beneficial to trade, as mentioned above, has been extensively debated. The issue is particularly relevant to the MENA countries of the WTO as they are engaged at a substantial level in FTA's with both the EU and US, which together account for a considerable

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<sup>121</sup> I. Soloaga, L. Alan Wintersb, 'Regionalism In The Nineties: What Effect On Trade?' (2001) *The North American Journal of Economics and Finance* 12.

<sup>122</sup> R.E. Baldwin, E. Seghezza 'Are trade blocs building or stumbling blocs?' (2010) *Journal of economic integration* 276

<sup>123</sup> Van den Bossche (n 90)

<sup>124</sup> *ibid.*

<sup>125</sup> S. Bilal and S. Szepesi, 'How Regional Economic Communities can Facilitate Participation in the WTO: the Experience of Mauritius and Zambia', in P. Gallagher, P. Low and A. Stoler (eds.) *Managing the Challenges of WTO Participation: 45 Case Studies* (Cambridge University Press, 2005), 389-90

<sup>126</sup> The Common Market for Eastern and Southern Africa

<sup>127</sup> Van Den Bossche (n 90)

proportion of world trade. Both the EU and US through NAFTA have liberalised their regional trade substantially more than they have liberalised trade with the rest of the world<sup>128</sup>. This undoubtedly affects the countries they trade with outside of their own regions. Not all regional trade agreements yield equal results, however, and there is some question as to whether regional trade agreements underperform in developing countries<sup>129</sup>, although other sources correlate success of economic integration not with level of development but to distance between countries<sup>130</sup>. Furthermore, there is a theory surrounding 'hub and spoke FTA's' which refers to cases where countries are involved in intersecting regional trade agreements. According to this theory<sup>131</sup> if the U.S. For instance has NAFTA membership, as well as bilateral FTA's, it is identified as the hub. The countries with which it has entered into FTA's are the spokes. In such a model, the trade benefit to the hub would be superior than to the spoke. This theory could help explain the apparent skewed benefits gained through EU and US FTA's by the Arab members of the WTO as will be discussed in Chapter VI. Furthermore, in such an arrangement, greater distance from the hub, which represents a larger market, also skews trade outcomes in favour of the hub<sup>132</sup>. One proposed way to counter the undesired effects of this tendency, however, is through increased participation in reciprocal trade negotiations and increased trade liberalisation which would as an overall affect increase trade<sup>133</sup>. In the specific case of the WTO MENA countries, this would amount to increased participation in the WTO, as well as the pursuit of greater regional trade integration and bilateral trade agreements.

## 6. Bilateralism and multilateralism:

Most of the Arab countries are involved in bilateral agreements with the EU, either through the Euro-Med initiative, or the EU-GCC agreements. The US is also present in the region, but on a more selective basis, preferring to sign Free Trade Agreements and Trade and Investment Framework Agreements on an individual basis.<sup>134</sup> Although these agreements have the advantage of opening lucrative markets to Arab exporters and importers, they also cause confusion and limitations when it comes to their application. The US's FTAs impose stricter conditions than the EU Agreements some of the Arab countries have also

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<sup>128</sup> R.E. Baldwin, A.J. Venables, 'Regional economic integration' (1995). *Handbook of international economics* 3, 1597-1644.

<sup>129</sup> A. De la Torre, A. M.R. Kelly, 'Regional trade arrangements' (1992) *International Monetary Fund* 93

<sup>130</sup> J.C. Brada, J.A. Mendez, 'Regional economic integration and the volume of intra-regional trade: a comparison of developed and developing country experience.' (1983) *Kyklos* 36.4, 589-603.

<sup>131</sup> R.J. Wonnacott, 1996. 'Trade and investment in a hub-and-spoke system versus a free trade area' (1996) *World Economy*, 19.3, p.237-252.

<sup>132</sup> M. Fujita, P.R. Krugman, A.J. Venables, *The spatial economy: Cities, regions, and international trade*. (MIT press, 2001), 45

<sup>133</sup> A. Subramanian, S.J. Wei, 'The WTO promotes trade, strongly but unevenly' (2007) *Journal of international Economics*, 72.1, 151-175.

<sup>134</sup> (n 9)

entered into, which results in a conflict between these two types of agreements. In addition, both the EU and US Agreements tend to be more demanding and restrictive than the GATT.

The cumulative effect of membership to the WTO and participation in bilateral trade agreements is that Arab countries are involved in world trade on various fronts, but with none giving them much say in the terms trade is to be conducted on. This situation is common to most developing countries who lack any meaningful bargaining power either during bilateral negotiations with economically powerful trade partners, or in organisations where they are overpowered by wealthier nations<sup>135</sup>. Both the bilateral and multilateral routes nevertheless have advantages and disadvantages for developing Arab countries<sup>136</sup>. To begin, one of the main problems involving bilateral trade agreements is the unequal footing the parties are on when entering into negotiations. Oftentimes, these agreements are additional to pre-existing agreements, such as the GATT, and seek to obtain concessions that the trade partner failed to achieve through the multilateral system represented by the WTO<sup>137</sup>. Such agreements will, for example, try to eradicate escape clauses and flexibilities that developing countries are granted by the WTO. The problem of unequal bargaining power is also found in multilateral trade negotiations, where developing countries, due to a lack of economic and legal means, are unable to fully participate in the decision-making process. The consequence is that they find themselves tied to regulations they had very little say in, which are at best neutral, and at worst, contrary to their interests:

The WTO's international law is an imperfect would have law; the rules are derived from bargaining, including bargaining between the rich and the poor countries, and in that bargaining it is the rich and powerful that typically prevail. In enforcement is asymmetric—a threat of trade restriction by the United States against a small country like Antigua will elicit a response, but the United States does not pay much attention if Antigua threatens a trade restriction. Only when the practice affects a large number of countries—such as in the case of the cotton subsidies that the United States doles out to its farmers—is the threat of retaliation even credible. Even so, in imperfect rule of law is better than none.<sup>138</sup>

As described by Stiglitz, multilateral negotiations are conducted as bargains, with weaker countries forced to uphold their end of the agreement, without any real way of ensuring the other party does the same<sup>139</sup>. During the Uruguay Round, developed countries made assurance to liberalise trade in agriculture and textiles and in return, developing countries would agree to reduce tariffs and accept a range of new rules and obligations on intellectual property rights, investments, and services. In hindsight, many developing countries feel they have been misled into agreeing to the bargain when the developed countries did not keep

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<sup>135</sup> Zemni (n 114)

<sup>136</sup> All Arab countries fall into this category.

<sup>137</sup> (n 9)

<sup>138</sup> Stiglitz (n 104) 76

<sup>139</sup> *ibid.* 77

their side of the deal. The effects of these agreements run deep and affect the internal dynamics of the involved countries.

In both bilateral and multilateral trade agreements, the Arab countries are put under significant pressure to open up their markets and change their national policy regimes. This means reforms often have to be imposed by the governing class with sometimes dramatic socio-economic implications.<sup>140</sup> These scenarios, however, are specific to situations where there is a power imbalance in the negotiation, which is not always the case. If a bilateral trade agreement is entered into by two developing countries or developed countries, the element of pressure is eliminated<sup>141</sup>. In such a case, concessions made would be presumably met by concessions gained in a way that would leave both parties satisfied. In this context, bilateral trade appears as an optimal tool as it allows countries to further deepen trade relations past the standard expectations achieved through multilateral trade, with the aim of increasing the overall volume of trade exchanged between them. In addition, bilateral trade would also present the added advantage of speeding up negotiations as a deal between two countries eliminates the considerable time and effort needed to conclude more complex multilateral agreements<sup>142</sup>. With regard to multilateral agreements, there are equally alleviating factors that can stem from the imbalance that might occur if a weaker party is consistently not able to make its interests heard. The first such factor is that the very nature of multilateral trade is that the bar for concessions is consistently placed at the lowest standard possible to avoid blockages in the voting procedure. Concerns that policies implemented in a multilateral context will be consistently detrimental to a country's trade prospects is therefore unlikely. This could still occur, of course, on an ad hoc basis, in particular if the said country does not seek participation in matters that most matter to its economy. A second alleviating factor is the possibility in multilateral trade negotiations to form groups with aligned interests that will have a better chance at successfully putting across the views of its members than these members acting individually<sup>143</sup>.

Despite bilateral trade agreements being significantly more straightforward to achieve, a considerable setback is that they must be repeated, as many times as necessary to cover all the trade agreements a specific country wants to enter into<sup>144</sup>. This factor in itself could potentially cancel out its usefulness as a faster gateway to trade. One way to counter this drawback, however, is to group bilateral trade agreements on some level, whether regional or per sector, so that there is essentially a single deal that is offered many times over to different trading partners, with the necessary adjustments made on an ad hoc basis. This would be an effective way of upping trade concessions on a particular point, from the starting point of a lower GATT requirement. The limitations of such an approach, however, would be that the scope

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<sup>140</sup> (n 9)

<sup>141</sup> S. Goyal, S Joshi, 'Bilateralism and Free Trade' (2006), *International Economic Review* 47(3), 749-778.

<sup>142</sup> A. Thompson, D. Verdier, 'Multilateralism, Bilateralism, and Regime Design' (2014), *International Studies Quarterly* 58.1, 15-28.

<sup>143</sup> (n 94)

<sup>144</sup> A. Uilenreef, 'Multiple Bilateralism' within the European Union: the Dutch Coalition-Building Network during the Budget Negotiations, *Journal of Common Market Studies* 54(2), 426-443

of the agreement would either have to be quite limited to be able to apply to a larger number of trade partners, or a more specific agreement could be drafted but limited to a few strategic trade partners.

Arab countries of the WTO have been seen to increase their involvement in bilateral trade agreements, mirroring a more global trend that at present seems to be witnessing a preference for what is seen as the simplified route of bilateralism as opposed to the more laborious avenue of multilateralism. These Arab countries have not however, initiated these agreements and are often faced, in their specific case, with a more economically powerful country that comes to the negotiating table with an essentially ready-made agreement that does not allow for much discussion or negotiation<sup>145</sup>. Refusing an invitation to enter into a free trade agreement is however, not an option for a country that wishes to maintain good relations with the economic partner in question, with the prospect of increasing trade between them. At this stage it is already too late for the weaker party to try and step back from the proposed agreement, and unless diplomacy can effectively be used to manage the situation, they will have caused damage to their trading prospects either way, whether by agreeing to terms that would be detrimental to their own trade market, or by potentially losing a valuable trading partner and the prospect of increased trade that was on offer.

For these many reasons, and although bilateral and multilateral trade both present advantages and disadvantages in certain context, when an imbalance of power exists between the parties to the agreement, the optimal choice for developing countries would be to go down the multilateral route. This is because the advantages of bilateralism are negated for the weaker party in an imbalanced pairing<sup>146</sup>, and maintained, if not enhanced for the stronger party that can potentially obtain better terms in addition to the practical advantages of speed and efficiency. It is natural, consequently, that countries that would benefit from such arrangements would seek to promote them in their own self interest. This is perhaps not the ideal solution for either party, however, in the long term, as an imbalanced agreement would potentially result in resentment on behalf of the party that has felt deprived of a fair opportunity. This carries various risk factors of which are the stagnation of the trade relationship between the two parties to the agreement through the unwillingness of the weaker party to expand trade with the trade partner in question for fear of once again obtaining an unsatisfactory result. In extreme cases, the level of discontent could be so high as to create animosity between the parties to the agreement that would negatively affect trade between them. There is also the added but ever present risk of a subsequent government renegeing on the agreement in question if it is particularly unpopular.

Keeping in mind the GATT was created with the intention of maintaining good relations between nations through free trade which would potentially minimise instances of animosity between nations due to real or perceived unfair treatment. Both bilateral and multilateral trade can potentially reach this ideal, and rather than the nature of the negotiation, it appears that the context and intention of the parties are of greater

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<sup>145</sup> K. Saggi, H.M. Yildiz, 'Bilateralism, Multilateralism, and the Quest for Global Free Trade' (2010), *Journal of International Economics*, 81(1), 26-37.

<sup>146</sup> G. Maggi, 'The Role of Multilateral Institutions in International Trade Cooperation', *American Economic Review* 89(1), 190-214.

significance. Either form of negotiation can be fair if the objective is the increase of trade through the maintenance of good relations and sustainability, and inversely, the opposite is also true.

## **7. Efficiency:**

In the context of trade, efficiency refers to the fact that a country should specialise in production activities in which it can operate more efficiently than other entities. This concept is known as comparative advantage and states that the worldwide production output is maximised when each country concentrates on producing goods for which it has lower costs. These lower costs are engendered from differences in factor endowments, and technological progress. Factor endowments which are resources available to the country can come in the form of land, capital, labour, natural resources and entrepreneurship. Technological progress, can also bolster the comparative advantage of a nation by giving it an edge on competition through better designed or more efficient machinery and technology. David Ricardo developed the classical theory of comparative advantage in the 19th century, to explain why countries engage in international trade even though their own workers can produce goods more efficiently than those of the other country. Ricardo demonstrated that if two countries capable of producing the same commodity engage in the free market, then each country will increase its overall consumption by simultaneously exporting the good for which it has a comparative advantage, and importing the other identical good, provided that there exist differences in labor productivity between both countries. Ricardo's theory implies that comparative advantage rather than absolute advantage is responsible for much of international trade.

The theory of comparative advantage, however, is criticised in the context of development since while a country may initially be comparatively disadvantaged in a given industry, the situation can change over time if the industry in question is sheltered and invested in, until reaching a global level of competitiveness. What this entails for Arab countries is that they should capitalise on sectors they have a comparative advantages in at present, without neglecting to invest and nurture in new sectors that over time could yield positive results and increase trade. For example, the GCC states such as the UAE have reinvested income from oil into diversifying their sectors of trade, by investing in infrastructure that has allowed it to build a booming tourism industry that is competitive globally. Saudi Arabia, has one of the largest desalination plants, in the world, the technology for which was once again purchased through oil revenue. In a region that suffers from chronic water shortage, desalinated water is a priceless commodity, and depending on productions levels, can cover the needs of the domestic market, in addition to becoming a tool for export. Comparative advantage for MENA countries would also be improved in a larger market, in which trade with main partners such as the US and EU was complemented by higher levels of regional trade. The experience of the GCC shows that the fact certain MENA countries have similar economies, is not necessarily a deterrent to increased regional trade, and indeed comparative advantage suggests the opposite is true. The MENA market represents a potential 300 million consumers and a relatively educated labour force that is cheaper than in developed countries.

## 8. The hierarchy of norms:

In a context of multiple trade obligations in the form of membership to multilateral trade organisations such as the WTO, bilateral trade agreements, and regional trade agreements, a legal system needs to be put into place to manage any possible conflicts between the laws. There are different ways in which to approach the problem. The first is to give precedence to rules emanating from one source over another. The second is to make later rules prevail over earlier rules. This technique cannot be applied, however, in the case where the later rule derives from a lower source than the earlier rule, unless the authority that issued the earlier rule specified that it could be repealed by a later rule from a lower source. The third technique consists of making a specific rule prevail over a general rule. All these techniques can be applied in international law, and there are no strict guidelines as is the case in national jurisdictions<sup>147</sup>. The hierarchy of norms looks to become more relevant to MENA countries in time as they accumulate ever greater numbers of trade agreements. The added complication, however, might reveal itself to be a logistical and legal conundrum. There is already evidence that conflicting agreements signed by MENA countries with various trade partners exist. For example, Egypt which has signed an FTA with the US and the EU has effectively exposed itself to two different conditions for Rules of Origin. It therefore has to potentially apply different procedures to a same product destined for export to different markets in order to avoid violating either one of the agreements. Applying the hierarchy of norms in this context would not be a viable option as it would effectively lead to a violation of the agreement itself should it be put aside in favour of another agreement.

A number of conflicts of norms between WTO obligations and other sources of obligations can be manoeuvred by way of Article XXIV. For instance, in the case of measures influenced by religious or moral principles, or matters pertaining to national security. The limitation, however, would be that if a regional agreement conflicts with WTO obligations, the agreement itself would be permissible under GATT General Exceptions<sup>148</sup>, but its terms, if in violation of GATT obligations will not be covered by Article XXIV. Such a situation arose when GAFTA 1998 was drafted to be compatible with GATT at a time where a number of MENA countries had just joined the WTO.

## 9. Conclusion:

Various concepts shape the identity of the Arab members of the WTO and define the parameters in which they operate. As members of a multilateral trade organisation, they have been exposed to the mechanisms of the organisation, and how to navigate it so as to maximise their trade interests, both as developing countries and as newer members of the the WTO seeking to gain experience. Arab members of the WTO joined the organisation after it had already undergone considerable transformations that have lead it to change from a post war institution seeking to foster goodwill between nations through trade to an organisation with near global membership, and a highly sophisticated and efficient legal system, that has shaped the basis of contemporary international trade. The GATT underwent a learning curve similarly to

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<sup>147</sup> M. Akehurst, 'The Hierarchy of the Sources of International Law' (1976), *British Yearbook of International Law* 47(1), 273-285.

<sup>148</sup> GATT, Article XXIV

GAFTA, and emerged in 1995 as a better version of its predecessor, having addressed critical flaws in its structure. The main challenge with the GATT was its non-legal framework which did not provide for a fair, efficient, and enforceable dispute settlement system.

The advent of the Dispute Settlement System afforded WTO members with a system that could effectively resolve disputes based on clear regulations, by an impartial third party with the authority to enforce the decision. The dispute settlement system though efficient, does present issues with regards to access. This is especially true for developing country members whose self-declared status, that must be unchallenged by other WTO members to qualify them to be eligible for concessions provided by the WTO such as longer transition periods, and crucially for the dispute settlement system, and technical assistance. Many Arab members of the WTO would almost certainly succeed in claiming developing country status, and could therefore access technical cooperation services which might assist them with regards to participation on dispute settlement. The Institute for Training and Technical Cooperation would not be able to act on behalf of the developing country in question as due to its restricted size, it simply does not have the capacity. In addition, being a division of the WTO Secretariat, it must maintain its neutrality. Developing countries, in addition to technical assistance available to them, can also chose to enter the dispute settlement system as a group. This would effectively allow developing countries to pool their resources and knowledge and access a system that might have been daunting or impracticable had they entered it as a single state. Forming blocs presents the added advantage of shielding the developing country participants from the threat of retaliatory measures.

With regards to WTO negotiations, member countries have one vote each, regardless of economic status. In addition, the system adopted by the WTO is one of reverse unanimity. This form of voting has arguably been chosen for practical reasons as requiring a unanimous vote on all decisions would make the passing of policies very difficult. Reverse unanimity, however, implies a continued presence at WTO proceedings, an option that is not practicable for a majority of its members who simply do not have the resources to post a delegate on an exclusive and full time basis. As is the case with dispute settlement, there is still an opportunity for developing countries to effectively participate in negotiations, and that is through the working parties which group members with the same trade interests that go on to negotiate and campaign for or against specific measure that affect their trade.

In addition to the multilateral trading system, alternative paths to trade exist in the form of bilateral trade agreements. Bilateralism as opposed to multilateralism is less concerned with gaining the consensus of multiple parties to an agreement, and more with completing faster and more specialised agreements with other parties. Bilateral trade negotiations can fall into two categories, balanced or imbalanced. In the first instance, both parties to the agreement have equal bargaining power and can hopefully arrive at a mutually beneficial agreement. In the event that the bilateral trade negotiation is imbalanced, it means one party is the more powerful and wields greater bargaining power often to the detriment of the weaker party. Due to the high incidence of imbalanced bilateral trade agreements that MENA countries have been exposed to, this option does not appear ideal for developing countries.

In addition to their activity at the WTO and bilateral trade agreements, MENA countries have sought to optimise the conditions for regional trade that are not necessarily thwarted by the fact that MENA

economies in the sub regions can sometimes be too similar to be considered complimentary. The theory of comparative advantage suggests that countries, even if they produce the same thing, will still trade in that product amongst themselves provided there is a difference in labor productivity between the two countries, which seems to be what occurred in the GCC. This would produce an opportunity for the MENA region to widen an underused market, without violating its multilateral obligations since regional trade agreements are provided for under Article XXIV of the GATT. Any ensuing difficulties that might arise with regards to the complexity of the obligations countries that are trading on three levels would need to be addressed through various rules on the hierarchy of norms. The situation has already occurred where an Arab member of the WTO, in this case, Egypt, has been subjected to opposing regulations that have their source in different bilateral agreements signed between Egypt and the EU as well as the US. Such entanglements, in practice, would be detrimental to Egypt's own trade as the implementation of multiple regulatory systems increases the complexity and perhaps the cost of production, and puts Egypt in a delicate situation with either one of its trade partners should it violate the terms of one agreement in favour of another. In the long-term, therefore, the best apparent solution would be to avoid these situations occurring in the first place and ensuring all agreements are compatible with each other before entering into effect, as was the case with the GAF

### Chapter III- Theoretical forces driving cooperation

#### Introduction:

This chapter will discuss how international organisations have become an important legal source regulating relations between countries in various fields, and in this specific case how the WTO and GATT have become the legal framework setting the general principles of trade law which govern trade between member states, this based on the theoretical framework academics have put forward to justify how international organisations work. The argument on the merits of this situation is not the focal point of this discussion, rather the dominance of the system will be treated as a *de facto* system states operate within at present<sup>149</sup>. Having looked at the theoretical and legal framework that the Arab members of the WTO need to operate within, one can then surmise an optimal strategy for them taking into account the particularities of their situation<sup>150</sup>. This chapter will therefore discuss the main theories regarding the creation and function of international organisation, before focusing on regime theory, as well as the criticism of regime theory as a theoretical model to be tested against the legal and economic model the Arab members of the WTO have adopted with regards to trade to be discussed in Chapter V.

The WTO has a far reaching impact in the sense it also affects trade outside its direct scope in setting the minimum standard of trade concessions granted to other countries as a result of the Most Favoured Nation Rule, barring any exceptions to the MFN Rule as permitted by the GATT as addressed in Chapter VI. As a result, bilateral treaties act as additional legal sources limited in their scope to the parties to the agreement and complying with the general principles which are decided at the multilateral level. This legal framework which all WTO members, including the Arab members, have to operate within therefore represents a system which has emerged alongside a number of various international organisations regulating specific aspects of international law, and which have come to define the dominant and mainstream system implemented by most governments. To step outside of the system is to be considered, in many cases, a rogue state at best isolated and at worst excluded from trading with the almost worldwide market represented by the WTO. None of the countries in this category have been able to prosper economically, although arguably economic sanctions are a result of political enmity rather than purely trade related differences amongst countries that have accepted the broad principles which define the WTO by joining the organisation.

Trade necessarily being an area requiring inclusion rather than exclusion, as complete economic self-sufficiency is usually an imposed state meted out by way of sanctions rather than being a matter of choice. Not operating within the framework of international organisations therefore has serious consequences for nations ranging from missed opportunities through lack of access to potential trade partners, to the most extreme form of exclusions by way of economic sanctions. This is of course, the extreme end of the stick but it is of note that inclusion is a powerful incentive that lead numerous Arab countries to join the WTO in order to be able to participate in the global trade community. This chapter will look at the nature of international organisations to argue the case that although inclusion is a necessary first step, it is not sufficient in obtaining the true benefit of membership due to the nature of these organisations and how they operate according to regime theory, due to their adherence to a very particular economic view propagated mainly by economically powerful nations that emerged as the new world order post 1945. Nations that do not fit into this category

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<sup>149</sup> J. Bhagwati, 'The Case for Free Trade' (1993), *Scientific American* 269(5), 42-49;  
J. Bhagwati, *Free trade today*. (Princeton University Press, 2003).

<sup>150</sup> Robert Hunter Wade, 'What Strategies Are Viable for Developing Countries Today? The World Trade Organization and the Shrinking of 'Development Space'', *Review of International Political Economy* 10(4), 621-644

seemingly have to adapt their tactics to gain the most positive results possible given their situation as the weaker economic parties. The Arab members of the WTO are just such countries.

This chapter will not argue the merits of such organisations or the ideologies that they put forward other than to say that there is extensive literature to argue both for and against the merits of the economic order driven by international organisations such as the World Bank, IMF and WTO<sup>151</sup>. With regards to the WTO, one advantage lies in the mechanics of the organisation which is based at least in theory on consensus, and a one vote per state voting system, although convincing criticism of the lack of transparency in the decision making processes does exist<sup>152</sup>. Although these features are important, what perhaps is of most relevance to the Arab members of the WTO is the dynamic nature of the various working parties represented at the WTO, and the opportunity this creates for developing countries to consult with each other and possibly group together in the defence of their trade interests, a task they have little chance of achieving on their own. One of the arguments that would appear in favour of the increased participation of Arab countries as developing country members of the WTO would be to try to have their voices heard with regards to specific concerns and trade interests in a system that was not necessarily built with their category of country in mind, but which nevertheless represents the dominant framework to operate within at present. In the present context which regulates trade amongst most countries of the world, this chapter will discuss the broader theory of international organisations, first discussing their historical accession into the body of international law and how they have come to shape international law and govern the way countries, as well as member states of various organisations interact legally (1). This chapter will then go on to discuss the theories proposed to understand why it is that countries cooperate within the realm of international law and organisations, and what drives them (2), how this translates to the WTO decision making-process (3) before reaching a conclusion as to how these theories help us understand the motivations of members states, as well as what outcomes different approaches may yield (4).

## **1. International organisations:**

This section will discuss the rise of international organisations in the West, understood here as Europe and North America. The scope will be limited for two reasons. Firstly, the much wider topic of the rise of international organisations worldwide although interesting in its own right, might not contribute to understanding the precursors to current international organisations like the WTO which was created within the context of the Bretton Woods agreement and the GATT. The second reason is the necessity to limit the scope of the thesis to directly relevant topics to be covered in a limited time frame.

It is of interest perhaps, that in historical terms Arab countries and their Western counterparts were at opposite ends of the spectrum with regards to the formation of nation states. Whilst Europe saw a consolidation of much smaller territories into larger entities over time that eventually formed a national identity, Arab populations at the equivalent time were part of larger territories which have only relatively recently been divided into smaller entities to become nation states<sup>153</sup>. An interesting question would be to ask whether the need for international organisations would be so pronounced if there were less trans-national interaction between nation states rather than administrative issues more internal in their nature and relating to internal management of a vast territory

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<sup>151</sup> P. Bond, *Against global apartheid: South Africa meets the World Bank, IMF and international finance* (Palgrave Macmillan, 2003); J.R. Vreeland, *The International Monetary Fund (IMF): politics of conditional lending* (Routledge, 2006), 3

<sup>152</sup> Kent Jones, 'Green Room Politics and the WTO's Crisis of Representation' (2009), *Progress in Development Studies* 9(4), 349-357

<sup>153</sup> J. Crawford, *The creation of States in International Law*. (Oxford University Press, 2006), 10

## 1.1. The origins of international organisations:

In historical terms, international organisations originally sought to regulate practical aspects of the coexistence of sovereign states in cases where the delineation of their sovereignty needed to be addressed so as not to overlap with the sovereignty of a neighbouring state<sup>154</sup>, as for instance where maritime borders, diplomatic relations, and specific procedures such as extradition are concerned.<sup>155</sup> Such norms did not resemble the body of law we currently understand has originated from the rise of international organisations, which meets an apparent need created by the far greater interconnectivity of the modern world aided in large part by modern technologies whether in the fields of trade, education, crime, travel, defence, etc. International organisations in such a context are at least theoretically instruments which seek to create a representative body of nations which establish the norms to be adopted in order to regulate a specific field with any trans-national impact.

In the case of Europe, and the tumultuous wars that have marked its history, the need for international organisations did not become manifest until there was a certain level of interaction and cooperation<sup>156</sup> between the concerned nations brought about to some degree by the Peace of Westphalia in 1648<sup>157</sup>, which marked the end of religious wars that had plagued Europe, although evidently Europe has since seen a number of wars fought on religious and ethnic lines. The next significant historical development towards the creation of international organisations is the Congress of Vienna in 1815 which was an attempt to maintain peace in the follow up to the Napoleonic wars. The scope of countries involved in such negotiations was widened by the peace conferences of the Hague in 1899 and 1907 in which smaller states participated and the move towards almost universal participation, a stark contrast to previous such agreements that typically involved a handful of countries making unanimous decisions. The sheer number of participants made the beginning of the majority vote a necessity. In the 19th century, international organisations such as the Rhine Committee became a regular feature and occurrence in order to regulate issues of navigation and pollution in 1815, giving rise to a number of river commissions throughout Europe<sup>158</sup>.

The first mention of the term ‘international organisation’ was attributed to Scottish jurist James Lorimer<sup>159</sup> who was one of the founders of the Institut de Droit International which began to see a popularisation of the term and the creation of various international organisations regulating transport and communication amongst other things. The creation of international organisations that reflected a need for cooperation rather than mere coexistence<sup>160</sup> grew exponentially, particularly after the end of the first World War and the call by the President of the US Woodrow Wilson to create a ‘general association of nations...

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<sup>154</sup> W. Friedmann, *The Changing Structure of International Law* (Columbia University press 1964)

<sup>155</sup> J. Klabbbers, *An Introduction to International Organizations Law* (Cambridge University Press 2015), 16

<sup>156</sup> C. Archer, *International Organizations* (2nd edn, London, 1992), 4-5

<sup>157</sup> G. J. Mangone, *A Short history of International Organization* (McGraw-Hill Book Company Inc. 1954), 40

<sup>158</sup> Bhupinder Singh Chimni, *International Law and World Order: A Critique of Contemporary Approaches* (New Delhi, 1993), 234-5

<sup>159</sup> P. B. Potter, ‘Origin of the Term International Organization’ (1945), *American Journal of International Law* 39(4), 803-806.

<sup>160</sup> (n 54) 18

under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike'.<sup>161</sup> What this call created is the precursor to some of the major international organisations that still exist today: the ill-fated League of Nations which would later give rise to the United Nations, and the International Labour Organization. The impetus to boost cooperation between nations, in a valiant effort to end the loss and destruction of wars between superpowers was furthered in the aftermath of the second World War which savaged much of Europe and resulted in millions of lives lost. The Atlantic Charter<sup>162</sup> set out a number of objectives drafted by the Allied Powers for the Post World War world, amongst which are the reduction of trade restrictions and global cooperation to secure better economic and social conditions for all<sup>163</sup>, at least according to the official agenda according to certain commentators<sup>164</sup>. These last two points are the most relevant to the future creation of the WTO as they would lead to the Bretton Woods Agreement which emphasised the need for cooperation in monetary and trade matters eventually leading to the creation of the IMF and GATT.

What these background facts reveal that is of interest to the topic at hand is firstly, why international organisations were created and why they have become so prominent a means of regulating economies and trade, and secondly how the system was shaped. The central argument in this thesis is not to argue the merits of these elements, a great deal has indeed been written on development and globalisation and how these factors have interacted or seemingly clashed with a world order which doesn't appear to cater to the majority, but rather the powerful few. Instead, this thesis takes the current framework as the current reality within which countries have to operate, this is not to say the framework will not change, or is indeed changing at present. Rather, the aim is to capitalise on tools the Arab members of the WTO have within their reach at present to maximise the benefits of membership to the WTO. After all, looking at the objectives of the Atlantic Charter as well as the preamble of the GATT, it is not unreasonable to argue that as members of the WTO, Arab countries if they employ an appropriate and focused strategy should be able to minimise trade restrictions imposed by trading partners, and secure better economic and social conditions for themselves, as sought by the founders of the GATT. The key issue behind whether this is a likely outcome or not is what is motivating their behaviour at present, as will be discussed in the following section.

## **2. Theories behind international organisations:**

This section will look at some of the most widely discussed theories relating to international organisations to be discussed by various academics, as well as criticisms of these theories in sections 2.1, 2.1.1, 2.1.2, 2.1.3, 2.1.4 and 2.1.5. These theories provide a framework for understanding the rationale behind the creation and functioning of international organisations, as well as providing possible reasons that might lead countries to cooperate, or not, within the context of international organisations. The theory this chapter will most concern itself with is regime theory to be discussed in section 2.2

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<sup>161</sup> R. Hofstadter, C. L. Ver Steeg, B. K. Hofstadter, eds. *Great issues in American history I*, (Vintage Books, 1958).

<sup>162</sup> I. Clarck, *Globalization and Fragmentation: International Relations in the Twentieth Century* (Oxford, 1997)

<sup>163</sup> *ibid.*

<sup>164</sup> N. Chomsky, *Who rules the world?* (Metropolitan Books, 2016).

## 2.1 Realism:

The previous section briefly touched upon the reasons behind the creation of, and need for international organisations, namely a practical need for a system that will regulate interaction in specific fields such as post, transportation, etc as well as a less concrete objective which has arisen in the 20th century of using international organisations as a preventative measure to conflict<sup>165</sup>. This section will look at various schools of thought that shed light on the question of why international organisations exist, and what drives countries to join them and cooperate with one another, as well as what this tells us about the legal order they establish.

A good starting point is the theory of realism or neo-realism<sup>166</sup>, according to which the world is viewed through the lens of a power struggle in which nations try to ensure other competitors do not gain power, in addition to trying to dominate those same competitors<sup>167</sup>. Such a theory seems to presuppose cooperation will either be temporary, or is the result of coercion.<sup>168</sup> Although they are useful in explaining military alliances such as NATO, for example, they are more problematic when it comes to international organisations such as the WTO and explaining why, from a realist perspective, a country would act contrary to apparent self-interest<sup>169</sup>. An example would be the case in which countries might cooperate to tackle problems requiring a joint effort or where the immediate benefit to the individual country might not be evident, but the action is carried out with longer-term or wider benefits in mind.

### 2.1.1 Idealism:

Another school of thought that presents itself as the antithesis to realism is the idealist theory which presupposes that countries seek cooperation and goodwill, and that the existence of international organisations and the joint efforts they might require are evidence of this<sup>170</sup>. As is the case with the theory, the limitation of idealism is opposite to that of realism in as much as it is difficult to explain why international cooperation should fail in certain instances<sup>171</sup>. Yet another theory develops idealism further and purports not only that democracies are naturally inclined to cooperate, but also that they are at least not inclined to go to war with each other. Going even further, the 'democratic peace' thesis goes so far as to discourage all ties with non-democracies in order to maintain peaceful relations.<sup>172</sup> The problematic with this particular theory in the context of the WTO is the obvious fact that not all members of the organisation are democracies and that democracy does not appear to be a prerequisite to trade, or to peace for that matter<sup>173</sup>.

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<sup>165</sup> J. Samuel Barkin, *International Organisation: Theories and Institutions* (Springer, 2015), 4

<sup>166</sup> E.H.Carr, *The Twenty Years' Crisis 1919-1939* (Macmillan 1981)

<sup>167</sup> H. J. Morgenthau, *Politics Among Nations. The Struggle for Power and Peace* (Alfred A. Knopf 1955), 209

<sup>168</sup> Klabbers (n 153), 28

<sup>169</sup> *ibid.*

<sup>170</sup> M. Frost, *Ethics and International Relations: A Constitutive Theory* (Cambridge, 1996), 53-5

<sup>171</sup> J. Goldsmith, S.D. Krasner, 'The limits of idealism' (2003). *Daedalus*, 132(1), 47-63

<sup>172</sup> F. Teson, *A Philosophy of International Law* (Westview Press, 1998), 1-3

<sup>173</sup> J.R. Oneal, B. Russett, B. 'Comment: Why "an identified systemic model of the democracy–peace nexus" does not persuade' (2003) *Defence and Peace Economics* 11(1), 197-214.

### 2.1.2. Restraint in exchange for participation:

Another theory that is perhaps useful in explaining the dynamics of the WTO according to some authors<sup>174</sup>, is the theory according to which dominant states make a bargain to not exercise blind power with regard to other states in return for their participation<sup>175</sup>. To achieve this, they create and operate international organisations through which they exert their influence. This theory is of interest for a number of reasons. Firstly, it is true that many international organisations, and namely the WTO, were founded mainly by countries that are economically dominant. Secondly, the nature of trade being based on exchange requires participation for access to various markets. Whether or not the bargain actually includes the restraint of the exercise of blind power, however, is a matter that can be debated as although the official channels of interaction in an organisation might indeed denounce unduly coercive measures, such measures can still be sought by dominant states through different channels<sup>176</sup>. An example would be the threat of withdrawal of financial aid from an economically dependent state should it take action within an international organisation that vexes the donor.

### 2.1.3. Republican Liberalism:

Another theory to emerge that would help explain the rationale of states for joining an international organisation such as the WTO, or a regional one in the case of the Arab states is that that a weak democracy might join an organisation in order to strengthen their own positions<sup>177</sup>. This argument makes sense in the context of the Arab members of the WTO and is used to justify amongst other organisations, the creation of the Arab League. The argument is also applicable in the context of the WTO with a wave of Arab countries seeking to join the organisation in the mid 1990's in an attempt to establish themselves in the global trading market. Reversing the theory also helps us to understand the motivation behind the desire by the Arab

members of the WTO to join the organisation, that the cost of not joining would be too high<sup>178</sup>, especially in the case of an economic organisation such as the WTO or one with a broader agenda such as the Arab League. A further theory that attempts to understand the way states act with regards to international organisations is one that purports that states join international organisations with the intent of 'ticking the boxes', but without a real intention of participation and that such posturing would be used by the government

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<sup>174</sup> H. Steinberg, 'In the Shadow of Law or Power? Consensus-Based Bargaining and Outcomes in the GATT/WTO', *International Organization* 56(2), 339-374.

<sup>175</sup> J. Ikenberry, 'Institutions, Strategic Restraint, and the Persistence of American Postwar Order' (1998-9) *International Security* 23, 43-78.

<sup>176</sup> T.J. Farer, 'Political and Economic Coercion in Contemporary International Law' (1985) *American Journal of International Law*, 79(2), 405-413.

<sup>177</sup> A. Moravcsik, 'The origins of human rights regimes: Democratic delegation in postwar Europe' (2000). *International Organization* 54(2), 217-252.

<sup>178</sup> n 154; Gruber, L., 'Power politics and the free trade bandwagon' (2001). *Comparative Political Studies*, 34(7), 703-741.

in question to be seen as proactive, and fulfilling the additional purpose of being able to be used as a scapegoat in case of policy failure<sup>179</sup>.

This last theory seems unconvincing, however, in the case of the Arab members of the WTO for a number of reasons. Firstly, the theory would be credible in its first assumption that membership of the WTO is performed as a formality as part of a wider objective of being accepted into the fold by countries dominating the global trading market, although at present this category of countries appears to be in flux. The limitation of the theory in its application to the Arab members of the WTO, however, finds a limitation in the fact that given the substantial effort and involvement required of these countries in pursuing accession to the WTO, as well as regional and bilateral trade agreements as in the example of Saudi Arabia for which the WTO accession process took a lengthy 12 years, the argument that these efforts were merely for the sake of appearances appears unconvincing. Secondly, the argument that participation in various organisations could be used as a scapegoat by a country's government does not seem to hold in the context of a democracy, in which case the government would be penalised for any failed policies at the ballot, although admittedly the blame could be shifted onto the previous governments who had taken the decision to join the organisation. In Arab countries where the democratic factor is not as well established, widespread discontent especially if affecting poor economic performance would result in an uprising as was the case during the Arab Spring.

#### **2.1.4. Constructivism:**

A constructivist approach to the nature of international organisations moves the source of power from states to the organisations themselves arguing that these organisations take on a role of their own<sup>180</sup> and are not merely the scene for power struggles between states. Indeed, organisations in such a context are seen to shape the rules and framework that countries operate within in the scope of that organisation<sup>181</sup>. This approach is an interesting one with regards to the WTO and would put forward the question of whether it is the WTO or its member states, whether all or a handful of them that ultimately shape the rules of global trade. The answer to this question is an extensive one that this chapter will not attempt to address directly in order to stay within the scope of the question at hand. One can say, however, that in either case, the Arab members of the WTO would seemingly have an interest in being a part of that formative process in the interest of having their own interests represented, and being in control as much as possible of decisions affecting them whether the system is indeed organisation based or state lead.

#### **2.1.5. Functionalism:**

According to this theory of functionalism, states cooperate in order to give effect to certain functions and that this dynamic is by nature apolitical<sup>182</sup>. The idea behind functionalism, as the name suggests, is that

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<sup>179</sup> M. Wight, 'Why Is There No International Theory?' (1966), in James Der Derian (ed), *International Theory* (Palgrave Macmillan 1995), 15-35.

<sup>180</sup> R. Murphy, *Diplomat Among Warriors* (Doubleday & Co 1964).

<sup>181</sup> I. Johnstone, *The power of deliberation: international law, politics and organizations*. (Oxford University Press, 2011)

<sup>182</sup> P. Reinsch, *Public International Unions: Their Work and Organization, a Study in International Administrative Law* (Ginn and Company 1911).

organisations exist to perform certain functions and achieve certain goals<sup>183</sup>. In the case of the WTO these would be to facilitate trade between member states and to reduce any tariff and non-tariff barriers to trade. This theory does not appear to give rise to glaring controversies, unless considered in a case where there is a blatant failure to justify the existence of a particular organisation through functionalism if it is obviously not performing the functions it was intended to fulfil. In such a case, the organisation might be deemed to perform functions different from those originally intended by its founders which might be difficult to justify in terms of functionalism unless one accepts that the original function does not necessarily have to coincide with actual function as long as the organisation is not dismantled for this reason.

## 2.2 Regime theory:

A similar theory from which the prerequisite that the founding states of international organisations be dominant states is absent is 'regime theory'. Regime theory gained ground in the latter half of the 20th century, and claims that states cooperate on the basis of enlightened self interest<sup>184</sup>. As such, by striving for the greater good, the state would benefit from a larger share of the rewards to be reaped. In the case of the WTO, arguably cooperating with other member states and complying with WTO rules would increase global trade, and presumably result in greater trade for the individual country concerned, although the question of whether free trade actually does increase trade activity in individual countries is not universally agreed upon<sup>185</sup>. At the very least, however, it would seem reasonable to assume that for the Arab members of the WTO, the mere joining of the organisation would presumably increase their volume of trade, either through the organisation directly or as a result of ensuing bilateral trade agreements that require joining the WTO as a prerequisite .

The limitation to regime theory is an argument made by Joseph Grieco<sup>186</sup> and which is of particular interest in the case of the Arab members of the WTO. Grieco argues that contrary to claims made by supporters of regime theory that countries act in order to increase their absolute gains, they in fact act in order to increase their relative gains vis-a-vis other countries<sup>187</sup>. As such, a country would prefer an absolute decrease which would grant them a relative increase than the contrary. This brings rise to interesting questions with regards to Arab members of the WTO. Grieco's theory fits the current pattern of Arab behaviour within the WTO as well as with regard to bilateral trade agreements and regional trade agreements. There is a general lack of cooperation or at least consultation with regards to a possible concerted strategy. The rationale for this, however, is difficult to glean. One cannot with any certainty know whether the reason is as Grieco suggests, because the individual Arab countries are more interested in the relative gains they might make even if the overall result is suboptimal, or whether the current situation is due to a lack of a common long-term strategy that would be the result of consultations amongst high level officials whether within the region or outside of it. The theory could convincingly be used to ascertain the current behaviour of several Arab members of the WTO in the context of political tensions where it would make sense for these countries to prefer a relative gain that would disadvantage their perceived foe, than an

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<sup>183</sup> P. Kazansky, 'Premiers Elements de L'Organisation Universelle' (1897), *Les. Rev. Droit Int'l & Legis. Comp.* 29.

<sup>184</sup> R. O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton, 1984), 49

<sup>185</sup> S. L. Baier and Jeffrey H. Bergstrand, 'Do Free Trade Agreements Actually Increase Members' International Trade?' (2007), *Journal of international Economics* 71(1), 72-95.

<sup>186</sup> J. M. Grieco, 'Anarchy and the Limits of Cooperation' (1998), *International Organization* 42, 485-508.

<sup>187</sup> K. N. Waltz *Man, the State, and War* (New York, 1959), 198

absolute gain that would be mutually beneficial. This theory, however, does not dismiss the possibility of cooperation with other trade partners that are seen as allies, or within a block sharing similar trade interests.

A further point of relevance is that a number of regions, such as the Latin American countries through MERCOSUR and the EU to an even higher degree, had at one point fit the same 'Grieco model' the Arab members of the WTO seem to fit at present, meaning it would appear that the end goal whether or not it is relative advantage, is certainly not absolute advantage for the member states of the region. This is not due to a lack of efforts, indeed many Arab regional trade agreements have attempted greater integration as will be discussed in Chapter VI. The argument that perhaps the Arab countries are not destined to operate as a bloc, either with each other or with other developing countries can, it appears, be challenged on this basis. Furthermore, it would seem it is not ease of cooperation that seems to motivate countries to cooperate together, but rather political or economic motivation to either increase the absolute or relative gains.

Therefore, if looking at existing examples of countries which seemingly have at least as much, or even less in common than the Arab members of the WTO, meaning commonality of language, economy, culture, majority religion it seems the confluence or absence of these factors cannot be used to determine the level of success to which a group of countries can cooperate in the economic field<sup>188</sup>. For the purpose of clarity, this thesis does not propose treating the Arab countries of the WTO as a bloc on the basis of any underlying factors that would render them unique, the commonality in history due to having for a large part been part of a single unit that was subsequently divided following the end of colonial rule, and the geographic proximity that means political problems with an economic impact often overflow and overlap are preexisting facts. Rather, what this thesis seeks to achieve is to demonstrate that the lag in economic performance which a majority of the Arab countries suffer from is not innate to the region<sup>189</sup>, but a situation that can be remedied, as has been done in other regions of the world<sup>190</sup>, through positive action in the form of greater involvement in the existent trade mechanisms that currently determine their trade opportunities.

Using regime theory as a point of reference, one can argue that what motivates countries to cooperate is the pursuit of an increase in absolute gains. This can be held as an 'ideal situation' in terms of the most positive form of cooperation. Inversely, however, even the critique of regime theory proposed by Grieco does not detract from the argument that countries must be motivated by personal gain in order to cooperate, even if the motivation is relative rather than absolute gains. Indeed Grieco's argument is not only useful in offering a possible explanation for the current situation of Arab members of the WTO, it is also useful in perhaps offering a theoretical reasoning for the multiple failures of regional trade agreements to be discussed in Chapter VI. Indeed, it would seem that in some instances between feuding countries, the burnt earth logic or relative gains seems to have been pursued at the expense not only of regional advantage, but personal advantage for the individual state concerned. A relevant example is the current ongoing dispute involving GCC countries and the isolation of Qatar. The merits or criticism of this political campaign will not be debated in this thesis as they are external to the topic at hand, except to say that they represent a net loss in terms of trade and economic performance for the GCC as a political bloc and a shift from the pursuit of absolute gains to the pursuit of relative gains.

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<sup>188</sup> J.J. Lewer, H. Van den Berg, 'Religion and International Trade: Does the Sharing of a Religious Culture Facilitate the Formation of Trade Networks?' (2007), *American Journal of Economics and Sociology* 66(4), 765-794.

<sup>189</sup> E.W. Said, *Orientalism: Western Conceptions of the Orient* (Penguin 1995), 33

<sup>190</sup> Rosling (n 3)

The next argument that comes to mind is whether cooperation is even a prerequisite for economic success<sup>191</sup> or more specifically for the purposes of this thesis, is a valid end goal for the Arab members of the WTO. This thesis will argue that it is for two reasons. Firstly, looking at the facts and figures in chapters I and VI, it is apparent that as a region, the Arab countries underperform in terms of regional trade. The reason this is of relevance is that any loss of potential trade can be considered a loss of absolute gains for the region in line with regime theory. This raises the question of whether a lack of regional trade might be justified by the pursuit of relative gains for individual countries of the region. Secondly, this thesis will argue that in purely economic terms as related to trade, this approach appears detrimental to the successful increase of trade for the concerned countries. Furthermore, there appear to be two conflicting targets the Arab members of the WTO could adopt. A short term pursuit of relative gains that is detrimental to greater economic success, as opposed to a long term pursuit of absolute gains for the individual Arab members of the WTO and the MENA region as a whole. The question of how to pursue the second option with regards to the long term pursuit of absolute goals will be addressed in Chapter VII. The counterargument that the Arab members of the WTO might replace the loss of regional trade partners with external ones is valid, but does not detract from the fact that there is a loss of potential partners in absolute terms, that at the very least would amount to missed opportunities in terms of trade that impact the overall volume of trade for the concerned countries. Furthermore, the Arab members of the WTO in this situation typically rely on one or two main trade partners when a sign of a strong and healthy economy is the lack of dependence<sup>192</sup> on a single or very limited number of trade partners, who are often in a position of dominance within an unbalanced trade relationship.

### **3. Decision making at the WTO:**

The normal decision making process at the WTO is particular in that it is a consensus based system set out in Article IX:1 of the WTO Agreement which states that: “The WTO shall continue the practice of decision-making by consensus followed under GATT 1947. Except as otherwise provided, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. At meetings of the Ministerial Conference and the General Council, each Member of the WTO shall have one vote...Decisions of the Ministerial Conference and the General Council shall be taken by a majority of the votes cast, unless otherwise provided in this Agreement or in the relevant Multilateral Trade Agreement”<sup>193</sup>.

This signifies that the normal decision-making procedure is for members to take a decision by consensus, meaning no member present at the meeting has formally objected to the proposed decision. It is only if there is an explicit objection that a vote takes place, and once again a single country can block the decision by deciding to vote against it. In addition to normal procedure, there are a number of special procedures provided for in various areas of WTO decision making. This section will not outline all of these procedures but give two examples of how special procedures are used either by the Dispute Settlement Body, for authoritative interpretations, for accessions, waivers, amendments, and the annual budget and financial regulations.

Decisions on the accession of new members are taken by the Ministerial Conference, or if in between sessions, by the General Council. Pursuant to Article XII:2 of the WTO Agreement, decisions on accession are to be taken by a two-thirds majority of WTO members. However, in November 1995, the General Council agreed that for decisions concerning accessions, they would first try to reach consensus

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<sup>191</sup> J.A. Frankel, D.H. Romer, *Does Trade Cause Growth?* (1999), *American Economic Review* 89(3), 379-99

<sup>192</sup> C. Chase-Dunn, ‘The Effects of International Economic Dependence on Development and Inequality: A Cross-National Study’ (1975), *American Sociological Review*, 720-738.

<sup>193</sup> Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994

before eventually resorting to a two-thirds majority vote should consensus fail to be reached<sup>194</sup>. Particularly complex is the special procedure for amendments according to Article X:1 of the WTO Agreement. Either an individual member or one of the three specialised councils can initiate the amendment procedure by submitting an amendment proposal to the Ministerial Conference or the General Council. Either of these bodies must try to reach a consensus within 90 days. If this cannot be achieved, the Ministerial Conference or General Council, must vote at a two-thirds majority. The proposed amendment, accepted either by consensus or by vote is then submitted to the Members for acceptance in accordance with their national constitutional requirements and procedures. The amendment then takes effect if two thirds of Members have accepted it, until then it is only effective in respect to those members that have accepted it. This procedure is separate from that required for the amendment of fundamental provisions such as the MFN principle under the GATT or the GATT 1994 tariff schedules, for example, which would have to be accepted by consensus<sup>195</sup>. Without going into further detail, it quickly becomes evident that the consensus based system of decision-making is highly time consuming and arguably unnecessarily complex.

What this means in practice is that although the WTO decision making process appears democratic, allocating one vote per member, it is difficult to implement in practice. Ironically, amending the amendment procedure, would be almost impossible due to difficulty gaining consensus on the highly sensitive issue of consensus-based decision making, which in the minds of its proponents, is closely linked to the the legitimacy of the decision<sup>196</sup>. What occurs, more often than not, is that member states will prioritise issues, and only oppose a decision if it represents a vital national interest so as not to deadlock procedure<sup>197</sup>. The consensus system therefore poses significant problems with regards to the ability to make quick decisions and adapt as any decision would need to be unopposed in order to be adopted. In addition, the current consensus-based decision making process is particularly taxing on developing country members who feel marginalised by the procedure which makes their continued presence at protracted negotiations logistically challenging , and difficult for understaffed delegations. One suggestion for countering this disadvantage was for developing countries to coordinate their actions in a common ‘positive agenda’ outlining their objectives and interests with respect to all issues up for negotiation<sup>198</sup>, a useful tool for the Arab members of the WTO.

Compounding these difficulties, WTO decisions are negotiated as single undertakings, meaning nothing is agreed until everything is agreed. What this translates to in practice is the combined effect of a consensus based system, paired with the all or nothing style negotiations which have burdened an already struggling system. Calls for reform have regularly been made, and the argument is that the system must be reviewed or it will cease to function. John Jackson is one of the authors that has suggested a possible alternative to the current consensus-based system in the form of plurilateral undertakings:

“There is also a concept partly embedded in the WTO Charter of “plurilateral agreements” (Annex 4 to the WTO Charter), which contemplates certain kinds of agreements or measures that might be adopted by a sub-group of the total membership, and then only applying to that sub group. This raises important questions regarding the MFN clause (non discrimination). In addition, and unfortunately (in the author’s view), a

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<sup>194</sup> Van Den Bossche (n 90)

<sup>195</sup> *ibid.*

<sup>196</sup> M. Krajewski ‘Democratic legitimacy and constitutional perspectives of WTO law’ (2001) *J. World Trade* 35, 167.

<sup>197</sup> J. Jackson, *The World Trade Organisation: Constitution and Juridprudence* (Royal Institute of International Affairs, 1998), 46

<sup>198</sup> R. Ricupero, ‘Rebuilding Confidence in the Multilateral Trading System: Closing the Legitimacy Gap’, in G. Sampson (ed.), *The Role of the World Trade Organisation in Global Governance* (United Nations University Press 2001), 39-40

consensus is required even to add an agreement negotiated by a subset of the total membership of the WTO to Annex 4 so that it would operate as a plurilateral agreement but still be under the umbrella of the WTO (and thus, for example, probably subject to the dispute settlement system).<sup>199</sup>

It remains to be seen whether such reforms will be able to be implemented, it would seem that whatever reservations some members had, changes might be inevitable in order to be able to move forward at all. The reform would likely be advantageous to more active WTO members eager to push through negotiations effectively, and opposed by countries which will struggle to keep up and have a lesser spree of influence through negotiations. What this would entail for the Arab members of the WTO, is that should a move to plurilateralism come into effect, participation, and coordination with other members will become more important than ever if they are not be excluded from agreements made within subgroups.

#### **4. Conclusion:**

This chapter discussed the rise and increase in international organisations over time in the west to eventually become an integral and key component of international law. The gradual shift from a structure allowing for necessary transnational connotation has over time given place to far more integrated structures that have seemed to increase with the increase in cooperation amongst nations. This brings forward the interesting notion that peace and international organisations are inextricably linked as without cooperation there would be no functional need for international organisations, but that inversely international organisations increasingly were created with the maintenance of peaceful relations in mind. This is of particular relevance to the Arab members of the WTO, and might be reflective as to why regional trade agreements have so far given rise to little success. Despite any cultural or geographical ties that might have facilitated trade amongst Arab countries, it is arguably the political will to implement cooperation that is at times lacking despite repeated efforts and the presence of some evidence that cooperation is a projected goal by certain countries at certain times. The distinguishing feature, however, is the apparent interference of long term goals such as the success of a trade agreement with shorter term ones such as an existent dispute.

In concordance with the rise of international organisations as a source for international law, the changing ways in which these organisations, the WTO in particular, operate, is also of relevance. Faced with an ever-increasing membership, the WTO appears to have reached crisis point with regards to its decision-making process based on consensualism which is no longer practicable. A possible move away from the current decision-making system to plurilateralism will make it even more important for developing countries including the Arab members of the WTO to participate in WTO negotiations, or risk being excluded from agreements that will not apply to them as non-parties. Whilst this can be a safety measure against unwanted agreements being imposed on non-participating parties, it will put pressure on members to participate in all small-group negotiations in which they have an interest. Whether this is realistically practicable is debatable considering the limited resources of most developing country members, and arguably cooperation will become a necessity and not an option moving forward.

This chapter furthermore observed theories behind international organisations that aide the understanding of the motivations behind the existence of organisations, and in this particular instance the WTO, as well as what motivates members to join them. Realism is useful in explaining the power struggles present at the WTO, and would justify from the point of view of the detractors of the organisation the overlying aim of the founders of the organisation which in the view of neo-realism would be dominance of the founding members over the other members, in which case cooperation is temporary and participation is driven by coercion. Although this does seem to explain certain controversial elements of the WTO system

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<sup>199</sup> J. Jackson Sovereignty, *The WTO, and Changing Fundamentals of International Law* (Cambridge University Press, 2006), 70

that certain authors have argued is skewed in favour of developed nations<sup>200</sup>, it falls short of explaining why if the sole purpose of membership were dominance certain countries have been hindered from joining. It would stand to reason that if domination were the objective, or sole objective, the dominating countries would wish to impose it on all candidates for membership.

Idealism takes on the opposite approach and rejects the assumption that members of an international organisation seek to dominate one another, but rather that they are driven by the natural desire to cooperate. Although again this theory can be convincing in explaining why many aspects of the WTO appear conciliatory in nature, for instance preferential market access extended to least developed nations, it does not hold to scrutiny when discussing those measures that do not seem compatible with goodwill such as the litigious nature of dispute settlement. An adaptation of the realist theory is one according to which a pact is made between dominant and less dominant countries by which the former agree not to exercise blind power in exchange for the participation of the later. Again, this theory appears credible in understanding the dynamics of member interaction at the WTO, although once again a limitation exists in the inability of this theory to justify the possible existence of dominance despite participation, and the apparent survival of the organisation despite the apparent violation of the pact.

Republican liberalism is an interesting concept as it has indirectly been suggested by various authors as a reason why the Arab members of the WTO might have joined the organisation, and that countries will sometimes join organisations in order to advance their own positions rather than for the sake of actual participation in the organisation. This is a useful theory in explaining the possibility some countries might not appear to be active at the WTO for the reason that they never intended to, and that membership was a gateway to acceptance into the larger trade community, or as a prerequisite for unrelated bilateral trade agreements<sup>201</sup>. The next two theories, constructivism and functionalism share a more technical nature in the sense they remove the political element from international organisations and the relations between their members. In the case of constructivism, the international organisation is deemed to take on an identity of its own separate from that of its founders that is by nature apolitical. A criticism of this theory with regards to the WTO, however, would be that an organisation based on an ideology such as the WTO which finds its ideological roots in liberalism and the concept of free and open trade is by nature political. Functionalism is

similarly technical in that it claims somewhat simply that an international organisation is simply created and exists in order to fulfil the functions for which it was created, again with an identity separate from its creators. While logical, the question arises as to how to define these functions and how to decide whether they have indeed been fulfilled.

Regime theory, and its criticism stand out from the above list of proposed theories in that it is not limited to a technical understanding of international organisations, nor does it stop at describing the possible motivations that drive the need for international organisations. The added parameter this theory affords, and the reason it is useful in understanding the behaviour of the countries discussed in this thesis, is that it provides a standard against which to measure the possible outcomes pursued by the Arab members of the WTO. Using regime theory, one can argue that the objective of WTO membership and ideal outcome for Arab members of the WTO would be the pursuit of absolute gains, understood as an overall increase in trade volume, whether regional, extra-regional or with existing privileged trade partners. This would in turn shape the strategy adopted by these countries in an effort to maximise chances of greater overall trade through greater participation in the WTO, through working parties, participation in coalitions, exercise of the vote,

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<sup>200</sup> S. E. Rolland, *Development at the WTO*. (Oxford University Press, 2012), 36

<sup>201</sup> H. Horn, P.C. Mavroidis, and A. Sapir, 'Beyond the WTO? An Anatomy of EU and US Preferential Trade Agreements' (2010), *The World Economy* 33(11), 1565-1588.

and participation in dispute settlement to remedy obstructions to achieving absolute gains for the individual country concerned. Furthermore, this would appear to be the preferred trade outcome for the countries concerned from an economic perspective.

The criticism of regime theory, according to which countries are not motivated by the pursuit of absolute gains but rather relative gains compared to other countries is also useful in theorising the current behaviour of a number of Arab members of the WTO. If the pursuit of relative gains is deemed preferable by certain countries despite a loss of absolute gains, this would impact and explain the strategy they would adopt with regards to their trade policies. For instance, such countries might display less of a tendency to participate in working groups, coalitions, or dilute settlement and instead focus on preserving existing key trade partnerships in an overall more conservative approach to participation. Although this theory is helpful in understanding possible motivations for current patterns of behaviour, it remains in absolute terms a less positive outcome for Arab members of the WTO due to the fact that both individual and collective advantage is decreased in comparison with an approach seeking to pursue absolute gains. As such, this thesis argues that regime theory can be used as a model to justify why increased participation in the WTO and greater cooperation with regional and non regional trading partners offers the most positive potential outcome from a trade perspective for the Arab members of the WTO.

## Chapter IV- Political Economy and the Legal culture influences on Arab Trade

### Introduction:

This chapter aims to put into context the economic and political situations of the Arab countries that are essential to understanding how they function with relation to trade. While Chapter VI will look in detail at the legal terms of the trade agreements countries of the MENA region have entered into, this chapter seeks to explain why simply looking at the terms of these agreements is sometimes insufficient to understanding how, concretely, these agreements are implemented in practice.

Arab countries share a great deal in common from a cultural point of view, the fact that these countries are amassed in a single geographical area does not, however, equate to economic homogeneity. While the Gulf countries have a high GDP per capita, with the UAE, for example having a GDP of 17.935 US dollars per capita, East African Arab countries have some of the lowest internationally. Yemen's GDP per capita amounts to 893\$, one of the lowest in the region. This disparity is also reflected in the Human Development Indicator<sup>202</sup>. Four Arab countries; Bahrain, Kuwait, the UAE and Qatar are within the high human development class and are positioned in the position 40s globally. Four others, Yemen, Djibouti, Sudan and Mauritania, are within the low HD class and within the 130s positions globally. The remainder of the Arab countries are positioned in the medium HD class. There is, therefore a great deal of disparity between the wealthiest and most developed Arab countries, and the poorest least-developed Arab countries, in addition to a wide range of countries in between<sup>203</sup>. This is not to say that the economies of the Arab World are not inter-related, as some deeply integrated regions of the Arab world, namely the GCC have enjoyed a relatively high level of local trade as a result of their gradual move towards a customs union.

The high political volatility that has plagued many of the Arab countries has shown that political and economic turmoil tend to spread with a domino effect throughout the region and invariably affect trade. For all the cultural, linguistic, and historical interconnectedness that exists in the MENA region discussed in Chapter I, this has not translated into a strengthening of inter-Arab Trade for any extensive and continuous period of time<sup>204</sup>. The typical pattern is that an agreement is drawn up in times of peace with great ambitions, and attempts are made to bolster regional trade. For example after the Arab Spring uprisings in which Tunisia and Libya sought to revive bilateral trade, or as part of the GCC where Qatar effectively imported 40% of its food products from neighbouring Saudi Arabia. Even the best efforts and intentions are lost, however, when

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<sup>202</sup> HDI

<sup>203</sup> Y.A. Sayigh, *The Economies of the Arab World (RLE Economy of Middle East): Development Since 1945*. (Routledge, 2014), 666

<sup>204</sup> M.H. Al-Atrash and T. Yousef, 'Intra-Arab Trade - Is It Too Little?' (2000), International Monetary Fund Working Paper.

tension or instability close borders and cut off trade routes, frustrating attempts to reverse underdeveloped inter-Arab trade already struggling from a lack of economic viability.

This chapter aims to discuss the Trading patterns associated with Arab States, and how this might explain their behaviour within the WTO. The first issue to be discussed will be Inter-Arab trade and the practical challenges that arise in its implementation (1), as well as legal culture parameters to take into consideration (2), before moving on to current Arab Trade practices outside the region (3) and the Conclusion (4).

## **1. Inter-Arab Trade:**

This section will look at attempts to bolster Arab trade occurring before the signing of the Greater Arab Free Trade Area in 1981 (1)

### **1.1 Arab trade in context:**

Initial attempts to foster economic integration amongst Arab countries started soon after the creation of the Arab League in 1945. It seems logical that in the aftermath of an attempt at political homogeneity, a plan for a corresponding economic model would ensue. Firstly, there came a Treaty on Transit Trade<sup>205</sup>, which was the first agreement targeting the facilitation of inter-Arab commercial exchanges through the creation of preferential tariffs for certain agricultural and industrial products. A second attempt to foster inter-Arab trade cooperation was signed in 1964 by Jordan, Syria, Egypt, Iraq and Libya, with Libya joining in 1975 in which it was agreed that an Arab Common Market would be created by the signatories. A further agreement for the facilitation and promotion of intra-Arab trade, signed in 1981, included the establishment of a Free Trade Area through a gradual liberalisation of trade in order to achieve a Customs Union<sup>206</sup>. Due to economic and political constraints, all these initiatives had a very limited effect.

It bears mention that the years covering these three failed attempts at an Arab Free Trade Area correspond to a not uncommon period of political and military upheaval for the countries involved, including wars of independence ending years of French or British colonialism preceded by a campaign to gain independence from Ottoman rule. At this point in history, there is not an all-encompassing attempt at Free Trade across the whole of the MENA region as will occur later in time, but rather a more modest temporal and geographically limited attempt by a number of key allies at the time, to solidify their political unity with economic measures. As such, Egypt and Syria had formed a union in 1958. Now known as the United Arab Republic, this attempt at a political and economic union would end prematurely by 1961<sup>207</sup>. Other such failed attempts at forming unions between Iraq and Jordan, and Tunisia and Libya never came to fruition.

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<sup>205</sup> 1953

<sup>206</sup> M. Legrenzi, *Beyond Regionalism?: regional cooperation, regionalism and regionalization in the Middle East*. (Routledge, 2016), 115

<sup>207</sup> S.H. Steinberg (ed), *The Statesman's Year-Book*, (Palgrave Macmillan 1960), 1517-1535.

This is perhaps unsurprising as these countries, having newly acquired their independence, were reluctant to dilute it in any way.

Another important factor to take into consideration when assessing the possible reasons behind the failure of previous attempts to create an Arab free Trade Zone<sup>208</sup> is the absence of binding targets and schedules for completion. This is perhaps linked to the aforementioned political discord that reigned at the time, which would have meant theoretical economic schemes were low on the priority list of the leaders and governments in office. These agreements tended to be grandiose political statements of unity built on a perceived common identity, rekindled at the end of foreign rule, but with little practical content or basis.

The first successful attempt at creating an Arab Free Trade Area would occur in February 1997. An initiative of the the Arab Economic Union, a body which emerged in 1957 as part of the framework of the Arab League, the Arab Economic Union decided to create an Arab Free Trade Area by the year 2008<sup>209</sup>. Eighteen of the twenty-two members of the Arab League signed, and the Agreement which sought to eliminate all trade barriers through a gradual decrease by 10% per annum of trade customs duties, as well as the gradual removal of trade barriers was ratified in February 1998. Renewed political momentum orchestrated by the heads of Arab states occurred in March 2001 at the Arab Summit held in Amman, Jordan. By September of the same year, the Arab League's Economic and Social Council, which monitored progress made on the agreement, met in Riyadh and successfully decided to bring forward the end of the gradual transition period to early 2005<sup>210</sup>.

There were several objectives targeted by GAFTA to be detailed in Chapter V. Mainly, the agreement sought a larger and more homogenous market better capable of attracting foreign direct investments to the region; and to increase inter-Arab Trade using the differing economies and exports of the Arab countries as a strength, rather than a weakness. Another objective, which has not been successful thus far, was to promote stability and security in the region through economic growth and cooperation. One GAFTA objective of particular note was to strengthen the MENA region as a block in order to increase its negotiating power when dealing with bilateral trade agreements with other powerful economic blocs such as the EU, or multilateral trade forums such as the WTO. There was therefore an awareness of a new found need to position these countries on the global trading market, and at least formally, the consensus appeared to be that unity, or at least cooperation would improve their prospects.

The plan appears sound in theory, and GAFTA managed to avoid the pitfalls that had condemned previous attempts at implementing an Arab Free Trade Agreement. A detailed schedule was adhered to and

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<sup>208</sup> Legrenzi (n 205)

<sup>209</sup> J. Zarrouk, 'The Greater Arab Free Trade Area: Limits and Possibilities', in Bernard Hoekman and Jamel Zarrouk (eds), *Catching up with the Competition: Trade Opportunities and Challenges for Arab Countries*, (University of Michigan Press 2000), 285-305.

<sup>210</sup> J. Abedini and N. Péridy, 'The Greater Arab Free Trade Area (GAFTA): an estimation of its trade effects' (2008), *Journal of Economic Integration*, 848-872.

attempts made to reach out to the private sector with the work of local chambers of commerce having a positive impact through twice-yearly publications recording challenges faced by traders dealing with customs. This marks a shift from the previous purely political statements produced by the leadership of these countries to a more practical approach seeking to achieve implementation in actual terms. The GAFTA is still lacking, however, in the kind of detail that would put it on par with similar successful trade agreements, which perhaps explains why twelve years after the elimination of tariffs, little difference has been made to the overall volume of goods traded internally in the MENA region<sup>211</sup>. According to the Arab Monetary Fund (Table 1 below), ratios for Inter Arab Trade when compared to total External Trade in the ten years between 1990 and 2000 ranged from 3.05% to 65.56%, although most were under 20%.

**Table 1: Inter Arab Trade 1990-2000:**

Country	1990			1995			2000		
	Total Inter-Arab Trade	Total External Trade	Ratio IAT-TET %	Total Inter-Arab Trade	Total External Trade	Ratio IAT-TET %	Total Inter-Arab Trade	Total External Trade	Ratio IAT-TET %
Jordan	1.056	3.504	30,13 %	1.496	5.467	27,37%	1.081	6.496	16,65 %
UAE	2.236	33.389	6,7%	3.291	52.389	6,28 %	6.682	82.879	8,06 %
Bahrain	2.203	7.547	29,19 %	2.169	7.83	27,7 %	1.967	10.312	19,08 %
Tunisia	0.775	9.684	8%	0.991	13.676	7,25 %	1.151	14.229	8,09 %
Algeria	0.469	20.689	2,27 %	0.560	21.042	2,66 %	0.553	29.223	1,89 %
Saudi Arabia	5.772	68.498	8,43 %	6.473	78.128	8,29 %	9.249	109.055	8,48 %
Sudan	0.535	1.819	29,41 %	0.537	1.789	30,02 %	0.535	3.359	15,93 %
Syria	0.937	6.602	14,19 %	1.298	8.595	15,10 %	1.357	9.072	14,96 %
Somalia	0.111	0.545	20,37 %	0.185	0.447	41,38 %	0.146	0.576	25,39 %
Iraq	1.578	16.839	9,37 %	0.714	1.089	65,56 %	1.05	16.843	6,23 %
Oman	3.581	8.235	43,49 %	2.142	10.313	20,77 %	3.359	16.694	20,12 %
Qatar	0.386	4.988	7,75 %	0.572	5.609	10,19 %	1.269	14.779	8,59 %
Kuwait	0.535	12.231	4,37 %	1.263	20.616	6,12 %	1.44	27.193	5,30 %

<sup>211</sup> *ibid.*

<b>Lebanon</b>	0.643	2.972	21,62 %	0.733	7.376	9,94 %	1.058	6.944	15,24 %
<b>Libya</b>	0.792	19.541	4,06 %	1.135	13.697	8,29 %	1.04	16.095	6,46 %
<b>Egypt</b>	0.481	11.801	4,07 %	0.924	15.18	6,09 %	1.919	18.469	10,39 %
<b>Morocco</b>	1.405	12.142	11,57 %	1.145	13.245	8,64 %	1.008	20.375	4,95 %
<b>Mauritania</b>	0.027	0.857	3,15 %	0.037	1.214	3,05 %	0.035	1.095	3,22 %
<b>Yemen</b>	0.552	3.946	14%	0.738	3.521	20,97 %	1.045	6.418	16,28 %
<b>TOTAL</b>	<b>24.073</b>	<b>245.829</b>	<b>9,79 %</b>	<b>26.404</b>	<b>281.225</b>	<b>9,39 %</b>	<b>34.107</b>	<b>410.106</b>	<b>8,32 %</b>

By 2015, the volume of inter-Arab trade had seen little increase, reaching 8% of total trade, where total trade represents regional and external trade combined. This is amongst the lowest percentage of regional trade internationally<sup>212</sup>. The exception to this is the internal trade between members of the GCC which rose from \$15 billion in 2005 to \$115 billion in 2015 marking an increase of 667%. This would indicate that successful regional economic integration in addition to the removal of tariff barriers is potentially extremely beneficial to regional Arab trade. By way of comparison, trade between European countries reaches nearly 70%, while in Asian and African countries it reaches up to 40 % and 30 % respectively.<sup>213</sup> In concrete terms, this represents lost potential revenue for Arab countries of as much as \$40 billion for each 1% drop in inter-Arab trade<sup>214</sup>.

## 1.2. Inherent flaws of Arab regional trade agreements:

Although GAFTA has successfully addressed a multitude of issues that were affecting regional Arab Trade, it has not provided the hoped for solution to low rates of inter-Arab trade as it fails to successfully address non-tariff barriers which appear to be at the root of the increase in regional trade costs. Factors such as the inadequacy of transport infrastructure, prolonged administrative procedures and a lack of cohesiveness in sanitary and phytosanitary, as well as customs procedures have been pointed out as factors leading to the high cost of inter-Arab trade. Sub-regional trade, such as that among the Gulf Cooperation Council, is even weaker than large-scale, inter-Arab trade<sup>215</sup>. This is despite a more robust trade agreement that eventually developed into a customs union. In the particular case of the GCC, the problem is more economically based as these countries with oil-based economies produce little else to be able to trade with each other. Overall, complex tax and protectionist measures on trade-related services seem to be two main reasons for sub-

<sup>212</sup> T. A. Warrad, WTO Chair holder, speaking at the Fifth Conference of the WTO Chairs Programme

<sup>213</sup> D. Al Emam, 'Inter-Arab Trade "Weak" as Challenges Remain Unaddressed', *The Jordan Times* (7 October 2015).

<sup>214</sup> *ibid.*

<sup>215</sup> n 212 (Quoting Nahil Saqfelhait, Associate Professor of Economics at the University of Jordan)

optimal inter-Arab trade exchange, with political unrest on the top of the list. Total inter-Arab trade volume in 2013 was as low as 2% of the region's overall trade transactions, excluding oil<sup>216</sup>.

A further point of contention with GAFTA as the only pan-Arab trade agreement, is that although it sought to increase the negotiating power of the Arab region when trading as a bloc, in practice, there has been little, if any progress made in this direction. Whether at the bilateral or multilateral levels, Arab countries continue to act, for the most part as a disparate agglomeration of countries who just happen to share a same geographical location. Chapter VI will look in greater detail at the particulars of Arab diplomacy and negotiation at the WTO, but for the most part concertation seems episodic and lacks a formal capacity or global vision. The same approach is seen with regards to bilateral trade agreements where there is a general lack of cohesion, with a few exceptions such as the GCC. Even this closest of Arab coalitions has a record of diverging from the official agreed approach and negotiating trade agreements on an individual basis.

In addition to those first attempts at international liberalised trade, regional efforts at creating a free trade area were widespread and endure to this day. Many of these efforts stemmed from the creation of the Arab League in 1945, an ambitious move with plans for Arab countries to cooperate on political and economic matters, including currency and customs.<sup>217</sup> Several treaties were created under the umbrella of the Arab League: the Joint Defence and Economic Cooperation Treaty among Member States of the League of Arab States in 1950, the Convention for facilitating Trade and Regulating Trade Transit in 1953, the Arab Economic Unity Agreement in 1957. From the Arab Economic and Social Council of the Arab League flowed a number of treaties, the most notable of which is the Greater Arab Free Trade Area<sup>218</sup> established in 1997, entered into force on January 1<sup>st</sup> 1998. In addition, there exist a number of noteworthy sub-regional agreements, such as the Agadir Agreement<sup>219</sup>, the Gulf Cooperation Council<sup>220</sup>, and the Arab Maghreb Union. The Agadir agreement was signed on February 25<sup>th</sup> 2004, member states of which are Egypt, Jordan, Morocco, and Tunisia. The GCC was signed on the 25<sup>th</sup> of May 1981. The GCC member states are Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the U.A.E. The statuses of Morocco and Jordan are unknown, they have been invited to join the GCC in 2011 after the onset of the Arab revolutions but have yet to do so. Finally the Arab Magreb Union was signed in 1989. Its members are Algeria, Libya, Mauritania, Morocco, and Tunisia.

All these treaties have in common a desire to set-up a free trade area amongst member states, the most ambitious of which is the GAFTA which includes almost all Arab League members. Algeria and

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<sup>216</sup> World Bank Logistics Performance Index.

<sup>217</sup> B. Malakawi, 'Regional Integration: Whither the Arab Free Trade Area?', *Legal Issues of Economic Integration* 20(2), 232.

<sup>218</sup> GAFTA, <<http://www.bilaterals.org/spip.php?rubrique169>> accessed 31 January 2012

<sup>219</sup> Agadir Agreement <<http://www.bilaterals.org/spip.php?rubrique168>> accessed 31 January 2012

<sup>220</sup> GCC <<http://www.bilaterals.org/spip.php?rubrique141>> accessed 31 January 2012

Comoros are both members of the Arab League but not of GAFTA. All, except for the Agadir Agreement, go beyond the economic sphere to include political, and in some instances military cooperation and monetary unions. For the purposes of this thesis, however, the economic aspects of these agreements are what will be focused on.

The widest ranging Arab Regional Trade Agreement, the GAFTA, was novel in that it included specific commitments<sup>221</sup>, whereas previous attempts had failed, in part due to a lack of specific measures to be undertaken and the absence of a schedule<sup>222</sup>. For example, the agreement laid out a time schedule whereby there was to be a 10% reduction in customs fees each year as well as the gradual elimination of trade barriers. In March 2001, it was decided to speed up the liberalisation process, and on 1 January 2005 the elimination of most tariffs among the GAFTA members was enforced. These commitments included the full trade liberalization by January 1<sup>st</sup> 2005, of goods through the full exemption of customs duties and charges having equivalent effect between all Arab countries members of the GAFT. Exceptions include Sudan and Yemen, least developed countries where customs duties and charges having equivalent effect will be reduced by 16% annually as of January 1<sup>st</sup>, 2005 to reach full exemption by the end of 2010 (pursuant to the resolution of the Arab League Council at its 14th meeting in Beirut regarding offering less developed Arab countries preferential treatment). In practice, most but not all tariffs have been eliminated<sup>223</sup>. Some countries, mainly Gulf states, have relatively low tariffs, whilst others have as yet failed to lower their own tariffs<sup>224</sup>. This is the case mainly with the countries of the Levant<sup>225</sup> and North Africa. One wonders if the difference in the approaches of the Arab countries is related to their different economies: it would make sense for countries producing goods to apply protectionist measures to shield their own markets, while the interest of Gulf countries, product import markets, with the notable exception of hydrocarbons, their main export product, would be to lower tariffs<sup>226</sup>. In addition, a number of other factors have presumably contributed to the stunted progress of the GAFTA, namely the abundance of opportunities the agreement contains allowing members to opt out of a tariff free zone:

“The most serious shortcomings of the GAFTA program pertains to loopholes in the safeguard measures that give members the right to exclude from immediate liberalisation certain industrial and agricultural products...Moreover, the transition period (to last for as long as four years) for the excluded industrial products allows for pressure from interest groups to resist market opening, thereby reducing the ability of GAFTA to realise its full potential for regional trade expansion. Similarly, the right to suspend from the liberalisation scheme certain agricultural products during the crop/harvest seasons and for the full transitory period- ten years until the

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<sup>221</sup> Malakawi (n 217)

<sup>222</sup> Zarrouk (n 208)

<sup>223</sup> Malakawi (n 217)

<sup>224</sup> Zarrouk (n 208)

<sup>225</sup> Term of reference to the historic ‘Greater Syria’ or ‘Fertile Crescent’ which includes Syria, Lebanon, Palestine and Iraq; Hourani (n 18), 91

<sup>226</sup> Zarrouk (n 208), 290

time for full elimination of tariffs- substantially limits the liberalisation of intraregional agricultural trade.”<sup>227</sup>

The many sector specific exceptions included in the GAFTA agreement, and indeed in most of the regional agreements previously mentioned are an indication of what seems to be an institutional tendency to use unqualified language in the various treaties, and the general aversion towards an aggressive approach to negotiation. Indeed, Arab political tradition calls, at least in appearance, for negotiation rather than confrontation<sup>228</sup>. Even the approach during negotiations appears relatively complacent, with parties reluctant to impose ‘inconvenient’ restrictions on each other. For example, Lebanon and Tunisia which both have important agricultural sectors, expressed concerns regarding the liberalisation of agricultural trade. As a result, the GAFTA programme incorporated an ‘Agricultural Calendar’ according to which any member may decide not to reduce tariffs on agricultural products during peak harvest seasons by listing these products on the said calendar. Limitations were put into place to prevent these exceptions becoming widespread: products could only be listed for a maximum duration of seven months, and a country could not list more than 10 products at any one time. These limitations were widely overlooked and the exceptions were made permanent by practice.<sup>229</sup> It could also help to explain why many of the regional agreements relevant to the Arab world lack the authority to make them enforceable, and in this respect, vary considerably from similar bilateral agreements between Arab and non-Arab trade partners:

“An important shortcoming of regional integration efforts in the MENA region has been that virtually all RTA’s have been declarations of intent on the part of the country signatories. They were not binding or comprehensive; coverage was determined through negotiations following a product-by-product approach. Countries could pick and choose manufactured products with tariff exemptions. None of the agreements laid out time schedules for the elimination of tariffs and trade barriers.”<sup>230</sup>

The GAFTA also includes dispute settlement measures and sanctions, but which were never effectively put into place. Interestingly, it would seem that the text of the agreement emulates the GATT in its set-up of a trade-regulating body, but not put into practice as it appears ill-adapted to local customs and usage. Arab members of the WTO will often prefer to negotiate differences and have, apart from Egypt, never participated in the dispute-settlement process. This is indeed due to culture, but can also be attributed to the need for considerable financial resources and legal expertise in order to go before the panel<sup>231</sup>.

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<sup>227</sup> *ibid.* 292

<sup>228</sup> B. Malakawi, ‘Regional Integration: Whither the Arab Free Trade Area?’ , *Legal Issues of Economic Integration* 20 (2), 232

<sup>229</sup> *ibid.* 236

<sup>230</sup> Zarrouk (n 208), 286

<sup>231</sup> Malakawi (n 42), 129-131

### 1.3. External factors detrimental to trade:

Although the absence of enforceable measures constitutes a considerable obstacle to expanding Arab regional trade, a number of other factors are not to be neglected. Amongst them are the unstable political situation in the region, and a number of non-tariff barriers<sup>232</sup>. Naturally, a country overshadowed by a near-constant threat of war will have the political and military agendas as its main priority, at the expense of the economy, health, education, etc. This is without even considering the considerable damage to economy, infrastructure, and civil society that the onslaught of actual war brings<sup>233</sup>. The Gulf war in 1991 and the Lebanese civil war and war with Israel in 2006, and ongoing conflict in the West Bank and Gaza are testaments to this fact: Political tensions and war have at least in part, impeded the efforts of some countries in the region at regional and international trade. These factors might also help to explain the sometimes significant lapses in time between meetings to finalise certain trade agreements, or panel meetings for accession to the WTO. To be sure, a more stable political situation would aid, if not solve, the economic difficulties of these countries, helping them to focus more on building their economies, rather than merely surviving. One might hope the recent uprisings across the Arab world enforce this tendency by forcing newly elected governments to address pressing social and economic issues. It is yet to be determined whether potentially more democratic regime changes might have positive consequences in the long-term for Arab economies and trade.

In addition to international conflict, the impact of regional tensions on Arab trade is non-negligible<sup>234</sup>. Whether it is the lack of political stability that hampers trade, or the poor economic conditions that encourage instability seems almost indiscernible. It would seem, however, that the rules of the Democratic Peace Theory, which holds that democratic and economically prosperous countries will not go to war with each other, does not hold the Middle East due to its complicated web of political, religious, and territorial disputes (e.g. Israel-Lebanon war in 2006, Invasion of Iraq in 2003, etc.) A number of Arab countries have strained relations with their neighbours, a factor that evidently hampers trade between them<sup>235</sup>. To name a few cases, the Moroccan and Algerian borders are closed over disputes involving the Western Sahara, Syria and Lebanon have had tense relations ever since the assassination of Prime Minister Rafiq Al Hariri in 2005 and Bahrain and Qatar went to arbitration on a border dispute over the Hawar Islands. This has come to affect specific regional agreements, such as the Arab Maghreb Union<sup>236</sup>, where the hostility between two of its five members, Morocco and Algeria lead to the eventual cessation of activity of

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<sup>232</sup> Malakawi (n 227), 237.

<sup>233</sup> International Committee of the Red Cross, 'Opinion survey and in-depth research in eight countries', (*Report*, 9 February 2010) <<https://www.icrc.org/eng/resources/documents/report/research-report-240609.htm>> accessed 31 January 2012.

<sup>234</sup> Friedman (n 105)

<sup>235</sup> Al Jazeera Online, 'Morocco renews call to mend ties with Algeria', (31 July 2011) <<https://www.aljazeera.com/news/africa/2011/07/201173023491155603.html>> accessed 30 January 2012; Al Jazeera Online, 'Al-Hariri murder probe implicates Syria', (21 October 2005) <<https://www.aljazeera.com/archive/2005/10/2008410162537532179.html>> accessed 30 January 2012

<sup>236</sup> AMU

the Union over a territorial dispute over the Western Sahara<sup>237</sup>. In the Gulf Cooperation Council<sup>238</sup>, disagreement between Saudi Arabia and the U.A.E. over where to establish headquarters, as both countries vied for the position of monetary centre of the GCC, ultimately no member received the privilege as the currency project was abandoned due to the inability of both countries to reach an agreement and the GCC as a whole arguably suffered the loss of a potentially strong single currency<sup>239</sup>. Furthermore, although historical and cultural ties amongst Arab members are strong, one must not neglect the fact that many of these countries are former colonies which to this day, rely heavily on their former colonisers as export and import markets, and as political and military allies. Well-established trading ties might therefore seem an easier option in some cases, explaining the greater success of Arab-US or Arab-EU trade relations in comparison with regional ones<sup>240</sup>.

The second reason for the underperformance of Arab countries with regard to trade<sup>241</sup> is a number of non-tariff barriers arising from the internal structure of trade:

Key elements of market economies, the competition in the economy and the self-regulating force of the market are today absent. While competition does exist in the Arab world, it can be found in the 'diwan' (the Arabic term for a room where a committee meets or for an advisory council) in the form of rent-seeking for the establishment of personal ties, and not in the market place. Rent-seeking behavior may seem at first view irrational, yet upon closer inspection may be efficient. The characteristics of informality and the maintenance of economic networks through 'wasta' (the Arabic term for intercession and mediation), captured by Schlumberger in the adjective 'patrimonial', set the economic systems currently found in the Arab Middle East structurally apart from liberal, competition-based market economies. Viewed from a political economy perspective, it is not surprising that structural adjustment programs in the Arab region, initiated a decade ago, have not created performing market economies and sustained development. These economic reforms were pursued not according to an economic logic, but according to a political logic of status quo maintenance, and given that this political logic has increased overall transaction costs, this lead to sub-optimal outcomes. This seemingly trivial finding offers interesting policy conclusions to the current economic situation. Given that the very initiation of economic reforms was driven by a political logic of regime stability and the maintenance of political power in the hands of ruling elites, nothing less could have been

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<sup>237</sup> (n 216) , Al Jazeera Online, 'Morocco renews call to mend ties with Algeria'

<sup>238</sup> GCC

<sup>239</sup> Bilaterals.org, 'GCC close to meeting monetary union plan', (Saudi Gazette article, 17 June 2010) <<http://www.bilaterals.org/spip.php?article17591>> accessed 30 January 2012

<sup>240</sup> Mohamadieh (n 9), 7; Malakawi (n 216), 231-232

<sup>241</sup> B Hoekman, *The World Trade Organization, the European Union, and the Arab World*. (The World Bank, Washington D.C., 1999)

expected for the continuation of these policies.<sup>242</sup> It would seem as though the WTO, despite promoting a market economy, encompasses members with a wide range of economic regimes. In the case of Arab countries, very few, if any are truly open markets. Many of these countries were nevertheless considered model pupils. Tunisia, for instance, was praised by the WTO, IMF and World Bank for compliance and a 3-4% annual growth rate during ousted president, Ben Ali's rule. The country, however, rife with corruption and plagued by high unemployment which eventually led to the revolution of January 14<sup>th</sup> 2011.

The above might help to explain why Saudi Arabia, which gained accession to the WTO in 2005, went through a twelve year process in order to do so. Saudi Arabia, which has a history of economic openness, as addressed in chapter 1 should have had a far easier time joining the WTO than many other Arab countries. Internal segmentation of the public and private sectors, which brought into question competition issues meant, however, that large-scale reforms were pushed through in a top-down fashion by the Saudi leadership.<sup>243</sup> The oil-rich countries of the Gulf are in no way unique, however, and most Arab countries face a similar need for internal reform in order to improve competitiveness, whether on the administrative, logistical, or governance front.

Examining the overall performance of Arab countries on a regional level, the unfortunate conclusion is reached that their performance shows much room for improvement despite the GCC achieving at least some of its charter requirements and GAFTA being fully implemented as of 2005. Underperformance can be attributed to a variety of reasons. Poor resources such as inadequate infrastructure which increase the cost of transportation are a factor, but preventable causes are also to blame: Administrative procedures in Arab countries are infamously complicated and customs authorities create unnecessary obstacles to economic integration. Ultimately, these amount to non-tariff barriers. This, in turn, has affected their ability to expand their economies and effectively trade on a regional level. The failure of almost all regional trade agreements<sup>244</sup> for the various reasons previously mentioned, including, regional instability, lack of specific commitments and schedules, and the existence of non-tariff barriers, does not imply that the efforts of the countries involved have ceased. As recently as 2004, the Agadir Agreement was signed. Its current members are Jordan, Tunisia, Egypt and Morocco. The Agadir Agreement came into effect in 2007. This particular agreement represents a novelty compared to other similar agreements, in that it seems to suggest that sluggish patterns of regional trade might be energized by the influence of external trade agreements such as the Barcelona Process, the GATT treaty, and GAFTA. Membership to the Agadir Agreement was open to all Arab country members of the Arab League, the GAFTA, and countries linked to the EU through an Association Agreement or an FTA. Its main purpose was to facilitate integration between Arab states under the broader EU-Mediterranean process.

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<sup>242</sup> R. Schwarz, 'Introduction: Resistance to globalization in the Arab Middle East' (2008), *Review of International Political Economy* 15(4), 4-5

<sup>243</sup> *ibid* 5-6.

The Agadir Agreement<sup>245</sup>, before the GAFTA superseded it in 2005, aimed to gradually include all eligible Arab countries. Specifically, the Agadir Agreement is a free trade agreement which attempted to increase trade between the four member countries, as well as between those member countries and the EU through the use of Euro-Med (Barcelona Declaration) rules of Origin. This is an interesting application of GATT and European regulations, which Arab member countries of the WTO and those involved in the Barcelona Declaration<sup>246</sup> have attempted to use as a catalyst to improve regional trade. The Barcelona Declaration is a project established by the European Union in 1995 involving countries of the southern Mediterranean. One of the main objectives of the project is to create a free trade area between the 27 EU members and 12 Mediterranean non-member countries. Participating Arab countries are: Algeria, Egypt, Jordan, Lebanon, Morocco, the Palestinian Authority, Syria, and Tunisia. The League of Arab States and the Arab Maghreb Union (AMU) were also invited, as was Mauritania (as a member of the UMA).

Despite continuous efforts, the rate of regional trade in the Arab world does not exceed 10% at present.<sup>247</sup> Faced with this less-than-encouraging figure, it would seem that Arab countries have had to find alternative solutions in order to keep their economies afloat: As regional trade has borne little success, other trade partners had to be found and pre-existing ties consolidated. This would explain not only the recent increase in the number of Arab WTO members, but also the flurry of bilateral trade agreements contracted between Arab countries, with mainly European and US partners.

Since the creation of the WTO, thirteen<sup>248</sup> Arab countries have become members of the organization, with another seven<sup>249</sup> countries on the path to accession. This signifies that of the twenty-two members of the Arab League, half are current members, with the rest aiming to obtain membership<sup>250</sup>. Somalia has not sought membership although the Palestinian Authority has shown an interest in joining the WTO. It would seem that recognition of the need to join the WTO and the increase in bilateral trade agreements, so as to take part in the global economic market, is an indication that free-trade has become an accepted fact amongst Arab nations. As developing countries, Arab countries appear to have accepted that if they wish to participate in world trade, they must embrace the concept of international liberalised trade as represented by major international institutions such as the WTO, World Bank, and IMF.

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<sup>245</sup> Agadir Agreement (n 217)

<sup>246</sup> Barcelona Declaration and Euro-Mediterranean partnership, <[http://europa.eu/legislation\\_summaries/external\\_relations/relations\\_with\\_third\\_countries/mediterranean\\_partner\\_countries/r15001\\_en.htm](http://europa.eu/legislation_summaries/external_relations/relations_with_third_countries/mediterranean_partner_countries/r15001_en.htm)> accessed 30 January 2012.

<sup>247</sup> Limam, I. and Abdalla, A., *Inter-Arab Trade and The Potential Success of AFTA*, Arab planning institute, Kuwait.

<sup>248</sup> Bahrain 1995, Djibouti 1995, Egypt 1995, Jordan 2000, Kuwait 1995, Mauritania 1995, Morocco 1995, Oman 2000, Qatar 1996, Saudi Arabia 2005, Tunisia 1995, U.A.E. 1996, Yemen 2104 <[http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm)> accessed 30 January 2015.

<sup>249</sup> Algeria, Comoros, Iraq, Lebanon, Libya, Sudan, Syria. <[http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm#observer](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm#observer)> accessed 30 January 2015.

<sup>250</sup>Malakawi (n 42)

## 2. Cultural issues influencing Arab trade:

A number of issues shape the legal framework through which trade is conducted in the Arab world. This section will discuss the Arab approach to liberalisation in trade (2.1), the Arab legal culture (2.2), as well as traditional regional approaches to negotiation (2.3).

### 2.1. The Arab approach to liberalised trade:

Although the approach of the Arab countries seems to be shared by a majority of the international community, the idea that free-trade in its neoliberal form is an unavoidable reality, is not universally held<sup>251</sup>. Indeed, neoliberalism has been adopted and promoted by influential international institutions, which have strongly contributed to the spread of these concepts<sup>252</sup>. The ‘Washington Consensus’ imposed by institutions such as the World Bank and International Monetary Fund as the economic norm to be followed by developing countries. With time, neoliberalism has also become associated with globalisation, especially by its opponents. As previously discussed in Chapter II, Henry James for instance, does not believe that globalisation is a given, and quotes George Soros, a prominent business man and investor, who predicted the “Imminent disintegration of the global capitalist system” which would “succumb to its defects”.<sup>253</sup> This idea is in no way novel and was strongly supported by both Max Weber and Karl Marx and are echoed by various other authors who are deeply convinced of the potential disastrous effects of un-checked neoliberalism<sup>254</sup>. Gray, for example believes that rather than a self-regulating functioning world market, unbridled capitalism would result in social unrest and economic upheaval.<sup>255</sup> This prediction seems uncanny in light of the recent Tunisian revolution, which instigated a wave of uprisings across the Middle East, and some would say, beyond.<sup>256</sup> For Harvey, who strongly opposes the neoliberal school of thought, neoliberalism is the victory of the will of the economic elites over the masses<sup>257</sup>. The author further believed neoliberalism would offer very few advantages for developing countries. He argues that embracing it too soon could result in negative effects on the development of these countries, and potentially cause their economic ruin. Stiglitz holds neoliberal World Bank and IMF policies to be behind the financial crises in East Asia and Argentina. A number of reports seem to conclude, similarly, that aggressive policies towards opening developing country markets might have negative consequences on the development of these countries.<sup>258</sup>

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<sup>251</sup> Cameron and Palan (n 111)

<sup>252</sup> M.B. Steger and R.K. Roy. *Neoliberalism: A Very Short Introduction* (Oxford University Press, Oxford. 2010) 10

<sup>253</sup> James (n 108)

<sup>254</sup> Stiglitz (n 104); D. Harvey, *A Brief History of Neoliberalism*, (Oxford University Press, Oxford 2007); Gray (n 109); M.B. Steger and Roy (n 251)

<sup>255</sup> Gray (n 109)

<sup>256</sup> The Occupy Wall Street movement.

<sup>257</sup> Harvey (n 253)

<sup>258</sup> Stiglitz (n 104); Mohamadieh (n 9) ; SIA-EMFTA Consortium (n 111)

As previously stated, it appears that the Arab governments have nevertheless decided to join the fold, by adhering to these various international organisations. They have come to accept Globalisation as an economic reality to be accepted if one wants to access the global trading market<sup>259</sup>. It would seem this logic is equally what encouraged Arab countries to enter into various bilateral trade agreements. Arab countries nevertheless shared in the general discontent of developing countries at the WTO. The Doha Round, regardless of varying opinions as to its effectiveness, represented an opportunity to explore the concerns of less economically prosperous nations in the WTO, with development being at the forefront. It would seem that alternatives to the Washington Consensus, such as the Beijing Consensus, which promotes emphasis on sustainable development and quality of life rather than GDP alone, were being explored. Very few Arab states would be able to enforce this approach however, as most lack the political leverage which China and Russia are able to wield in their economic negotiations. Furthermore, following the 1973 oil crisis, dependence on Arab oil was decreased to ensure such a scenario would never repeat itself, effectively ending possibilities of oil being used as a bargaining chip.

Most of the Arab countries are involved in bilateral agreements with the EU, either through the Euro-Med initiative, or the EU-GCC agreements<sup>260</sup>. The stronger negotiating party often has the upper hand and can impose terms that are preferable to its own economy. For example, the EU has successfully protected its own agriculture and textiles markets from non-EU Mediterranean partners, without giving any comparable concession in return. The US is also present in the region, but on a more selective basis, preferring to sign Free Trade Agreements and Trade and Investment Framework Agreements on an individual basis.<sup>261</sup> Although these agreements have the advantage of opening lucrative markets to Arab exporters and importers, they also cause confusion and limitations when it comes to their application. For example:

The EU allows its Mediterranean FTA partners to cumulate value-added. This means that it turns a blind eye to where value was added, for the purpose of preferential tariffs, as long as it was in an FTA partner country. The US, apart from special arrangements like those applying to export processing zones, only considers value added domestically in the country exporting to the US... Barely two weeks after it entered into force, conflicts between the Agadir Agreement and the US-Morocco FTA emerged. Under the US FTA, Morocco agreed to refrain from lowering tariffs on certain agricultural imports from third parties that are not net exporters of those products<sup>262</sup>.

The US's FTAs impose stricter conditions than the EU Agreements some of the Arab countries have also entered into, which results in a conflict between these two types of agreements. In addition, both the EU and US Agreements tend to be more demanding and restrictive than the GATT<sup>263</sup>.

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<sup>259</sup> Friedman (n 105); Fukuyama (n 106)

<sup>260</sup> Mohamadieh (n 9)

<sup>261</sup> *ibid.*

<sup>262</sup> Agadir Agreement (n 217)

<sup>263</sup> Mohamadieh (n 9)

The cumulative effect of membership to the WTO and participation in bilateral trade agreements is that Arab countries are involved in world trade on various fronts, but with none giving them much say in the terms trade is to be conducted on<sup>264</sup>. This situation is common to most developing countries who lack any meaningful bargaining power either during bilateral negotiations with economically powerful trade partners, or in organisations where they are overpowered by blocs of wealthier nations<sup>265</sup>.

According to the literature<sup>266</sup>, both the bilateral and multilateral routes have advantages and disadvantages for developing Arab countries<sup>267</sup>. The proliferation of bilateral Trade Agreements seems to suggest they are easier to negotiate. After all, negotiating on a one-to-one basis is far simpler than trying to reach an agreement with 152 parties. Nevertheless, results, rather than efficiency should be the most important factor for developing countries when it comes to trade agreements. One of the main problems faced with bilateral trade agreements is the unequal footing the parties are on when entering into negotiations. Oftentimes, these agreements are additional to pre-existing agreements, such as the GATT, and seek to achieve interests that developed countries failed to achieve through the multilateral system represented by the WTO<sup>268</sup>. Such agreements will, for example, try to eradicate escape clauses and flexibilities that developing countries are granted by the WTO. The problem of unequal bargaining power is also found in multilateral trade negotiations, where developing countries, due to a lack of economic and legal means, are unable to fully participate in the decision-making process. The consequence is that they find themselves tied to regulations they had very little say in, which are at best neutral, and at worst, contrary to their interests:

“The WTO’s international law is an imperfect would have law (sic); the rules are derived from bargaining, including bargaining between the rich and the poor countries, and in that bargaining it is the rich and powerful that typically prevail. In enforcement is asymmetric—a threat of trade restriction by the United States against a small country like Antigua will elicit a response, but the United States does not pay much attention if Antigua threatens a trade restriction. Only when the practice affects a large number of countries—such as in the case of the cotton subsidies that the United States doles out to its farmers—is the threat of retaliation even credible. Even so, an imperfect rule of law is better than none.”<sup>269</sup>

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<sup>264</sup> *ibid.*; Stiglitz (n 104)

<sup>265</sup> Stiglitz, (n 104)

<sup>266</sup> SIA-EMFTA Consortium (n 110); Malakawi (n 42), 119, 123; Mohamadieh (n 9)

<sup>267</sup> All Arab countries fall into this category according to the IMF’s 2011 World Economic Outlook Database; International Monetary Fund, ‘Emerging and developing countries’ (search result) <<http://www.imf.org/external/pubs/ft/weo/2011/02/weodata/weoselco.aspx?g=2200&sg=All+countries+%2f+Emerging+and+developing+economies>> accessed 30 January 2012.

<sup>268</sup> Mohamadieh (n 9)

<sup>269</sup> Stiglitz (n 104)

As described by Stiglitz, multilateral negotiation are conducted as bargains, with weaker countries forced to uphold their end of the bargain, without any real way of ensuring the other party does the same<sup>270</sup>. The effects of these agreements run deep and affect the internal dynamics of the involved countries<sup>271</sup>. In both bilateral and multilateral trade agreements, the Arab countries are put under a lot of pressure to open up their markets and change their national policy regimes. This means reforms often have to be imposed by the governing class with sometimes dramatic socio-economic implications.<sup>272</sup>

Despite the claims of some that neoliberal globalisation, in its current form, is fundamentally destructive to developing economies, the belief that they are gateways to development is still firmly held by the institutions of which many Arab countries are now members. The question is whether this rise in membership has also lead to a rise in active participation. It would appear, at first glance, that the answer is negative. Of twelve current Arab WTO members, only seven currently sit in any negotiating group<sup>273</sup>, and it is difficult to ascertain whether they are regular contributors, or simple spectators. Only Egypt, out of all the Arab member countries has been directly involved in the dispute settlement system, and always as a defendant<sup>274</sup>. The creation of an Arab working party is a promising development, but at present, no literature refers to its activity, and on-location research is necessary to observe how active the group is<sup>275</sup>. One element of note worth investigating would be to examine whether more Arab countries join the G-20 and adopt the 'coalition approach'<sup>276</sup> to negotiations which has proven beneficial to a number of developing countries in the WTO, namely India and Brazil<sup>277</sup>. The notion that forming a coalition of developing countries with a common interest or objective, is more efficient than each of these developing countries fighting on an individual front against developed countries. This was the case, for instance during the Hong Kong Ministerial meeting when some progress was made by developing countries on issues of interest to them. The coalition was formed by smaller developing nations and led by larger developing countries such as India, Brazil and Egypt. The idea of forming developing-country coalitions was instigated after the widespread discontent expressed at the Seattle Ministerial Conference of 1999, which led to the Doha Round, and represents a promising opportunity for developing countries to align their positions and try to

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<sup>270</sup> *ibid.* 77

<sup>271</sup> Mohamadieh (n 9)

<sup>272</sup> *ibid.* 7

<sup>273</sup> African, Caribbean, and Pacific countries with preference in the EU: Djibouti, Mauritania; African members of the WTO: Djibouti, Egypt, Mauritania, Morocco, Tunisia. G-90: Djibouti, Egypt, Mauritania, Morocco, Tunisia; Least-developed countries: Djibouti, Mauritania; Recent new members: Jordan, Saudi Arabia; G20: Egypt, Nama-11: Egypt, Tunisia; "W52" sponsors: Djibouti, Egypt, Mauritania, Morocco, Tunisia; World Trade Organisation, 'Groups in the negotiations' <[http://www.wto.org/english/tratop\\_e/dda\\_e/negotiating\\_groups\\_e.htm](http://www.wto.org/english/tratop_e/dda_e/negotiating_groups_e.htm)> accessed 30 January 2012.

<sup>274</sup> World Trade Organisation, 'Egypt' (Profile, 2018) <<http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=EG>> accessed 30 January 2012.

<sup>276</sup> Rolland (n 95)

<sup>277</sup> Cross, KH, 'King Cotton, Developing Countries and the 'Peace Clause': the WTO's US Cotton Subsidies Decision' (2006), *Journal of International Economic Law* 9(1), 149-195.

better represent their interests as a unified bloc. It remains to be seen, however, whether Arab countries will embark on this process.

## 2.2 Legal culture:

There are two elements to Arab legal culture that will be discussed in this section: firstly the legal cultures these countries belong to and how this is apparent in the trade agreements they enter into. Secondly, the manner in which local culture is translated into the approach towards negotiation and dispute resolution of this region.

### 2.2.1 The concept of legal culture:

This section is not intended as a discussion of comparative law. Instead it seeks to examine the different legal systems in place in the relevant MENA countries, and how their legal systems, both in positive terms, as well as practical terms shape the way these countries trade and deal with disputes.

A legal culture as a concept is not specifically defined<sup>278</sup>. It can be distinguished from a legal system in the sense that it encompasses more than the positive law of the land, to include a system of values, customs and beliefs that shape the way the law is applied and approached<sup>279</sup>. It can contain tendencies that are seen to define the way a particular legal system conducts itself, or is modeled<sup>280</sup>. As such, Arab legal systems are a reflection of their pasts to a great extent. Systems in the region vary between Civil Law in the former French colonies and protectorates, common law for the former British colonies mainly in the Gulf, and religious law. The following table gives a global idea of the formal legal systems dealt with in the MENA countries covered in this thesis.

**Table 1. Legal systems in the MENA countries with membership to the WTO:**

Country	Legal systems/influences
Bahrain	mixed legal system of Islamic law, English common law, Egyptian civil, criminal, and commercial codes; customary law
Kuwait	mixed legal system consisting of English common law, French civil law, and Islamic religious law
Oman	mixed legal system of Anglo-Saxon law and Islamic law
Qatar	mixed legal system of civil law and Islamic law (in family and personal matters)

<sup>278</sup> R. Cotterrell, 'The Concept of Legal Culture', in David Nelken (ed), *Comparing Legal Cultures* (Dartmouth Publishing 1997).

<sup>279</sup> D. Nelken (ed), *Comparing Legal Cultures* (Routledge 2017), 19

<sup>280</sup> L. M Friedman, 'The Concept of Legal Culture: A Reply', in David Nelken (ed), *Comparing Legal Cultures* (Dartmouth Publishing 1997)

Country	Legal systems/influences
Saudi Arabia	Islamic (sharia) legal system with some elements of Egyptian, French, and customary law; note - several secular codes have been introduced; commercial disputes handled by special committees
Sudan	mixed legal system of Islamic law and English common law
Djibouti	mixed legal system based primarily on the French civil code (as it existed in 1997), Islamic religious law (in matters of family law and successions), and customary law
United Arab Emirates	mixed legal system of Islamic law and civil law
Tunisia	mixed legal system of civil law, based on the French civil code, and Islamic law; some judicial review of legislative acts in the Supreme Court in joint session
Morocco	mixed legal system of civil law based on French law and Islamic law; judicial review of legislative acts by Constitutional Court
Jordan	mixed system developed from codes instituted by the Ottoman Empire (based on French law), British common law, and Islamic law
Egypt	mixed legal system based on Napoleonic civil and penal law, Islamic religious law, and vestiges of colonial-era laws; judicial review of the constitutionality of laws by the Supreme Constitutional Court
Yemen	mixed legal system based on Sharia, old Egyptian Law, and French Law

The first element that stands out when looking at the table of legal systems the Arab members of the WTO are composed of is that they can be looked at as layers, transposed in chronological order, and reflective of the past influences that have made a mark on each individual country. The recurrent legal influences are Islamic law, especially as related to family law and personal status. The English common law and French Civil law traditions are also dominant in the region due to a history of colonisation in the MENA region. Egyptian law equally features as a reminder of the pan-Arab movement popular in the area following independence movements, but which itself is a mixture of legal systems having been applied in the territory at one time or another.

These influences become apparent when looking at the texts of the agreements the Arab members of the WTO enter into, and also the way in which they conduct themselves regionally as well as with international trade partners. For instance, the formatting of the agreements themselves come from the general civil law tradition where norms are recorded in writing. This is reflective of the tradition of inscribing the law into codes, one for each discipline of the law in the Napoleonic tradition. This legal tradition is also

visible in most standard international treaties seen today, with a general format which incorporates a preamble followed by the articles of the agreement themselves. The GATT, as well as all the trade agreements that shall be discussed in Chapter V follow this format.

The effect of the Napoleonic code on the Arab countries occupied by the French is not to be underestimated as it is a trend embedded in their legal systems to this day. In addition, Egypt by far the most influential country in the region, at least historically, has facilitated the spread of the French Civil Law tradition until it has become incorporated to various degrees into almost all of the legal systems in the MENA region. For instance, former French colonies and protectorates such as Tunisia and Morocco have all but reproduced the French civil codes in their own legislation, with obvious diversions with regards to the norms themselves. This is due to the fact that these countries do not belong to an integrated system as exists with the common law where jurisprudence and case law from the commonwealth is potentially relevant in all its jurisdictions. As the MENA countries do not fit into the *France d'Outre Mer*<sup>281</sup>, also know as the *Départements d'Outre Mer*<sup>282</sup> and *Territoires d'Outre Mer*<sup>283</sup> which would be the French equivalent to the Commonwealth, the present influence that remains between former colony and coloniser is historical. Even more remarkable is that countries as culturally insular and as far removed from French influence as possible, such as Saudi Arabia in which Sharia Law governs almost all areas of the law has not escaped the civil law influence, although the influence is admittedly limited to form rather than content<sup>284</sup>. Once again, this is largely due to the role Egypt had in spreading its legal framework to other Arab countries in a time where it was widely turned to by the rest of the Arab world as a point of reference.

The second element of note is the diversity in combinations of legal systems, with no two Arab countries having identical legal systems. In addition to having no commonality in legal framework, there is obviously a difference in content with each country subject to different norms. There is no unified regional system as exists to some degree in a number of civil law countries or common law countries<sup>285</sup>. This has undoubtedly complicated matters for the MENA region with regard to trade as all regional agreements entered into required countries to adapt existing law in order to comply with the agreement in question. This was the case notably with the GATT. As a means of comparison, trade within single markets such as the EEC was much facilitated in part due to the homogeneity of the law which allowed for the smooth flow of trades from one country to the other. Varying norms inevitably either slow down trade during the period during which norms must be adapted, as was the case with GAFTA which will be discussed in Chapter V, or slow trade in the long term, also as seen with GAFTA and other regional trade agreements where national variances in matters such as sanitary and phytosanitary standards can effectively act as non-tariff barriers to trade.

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<sup>281</sup> Overseas France

<sup>282</sup> Overseas Departments (territorial designation) The Common abbreviation is DOM

<sup>283</sup> Overseas Territories. The common abbreviation is TOM

<sup>284</sup> 269 A Al-Suwaidi, 'Developments of the legal systems of the gulf Arab states' (1993), Arab LQ 8, 289.

<sup>285</sup> N Saleh, 'Civil Codes of Arab Countries: The Sanhuri Codes' (1993), Arab LQ, 161-167.

What this transposition of laws tells us about the MENA region, is that despite a cultural and linguistic divide between it and essentially western countries, the legal systems of the west are not unfamiliar to the countries of the MENA region. One cannot therefore rely on the argument that the legal language of trade agreements is foreign to these countries as they are already familiar with them and have interacted with western legal norms in a historical context. This becomes evident when looking at the text of the trade agreements the Arab countries are involved in, as will be discussed in Chapter VI. The agreements for all intents and purposes at least cosmetically resemble any other global trade agreement signed between trade partners anywhere else in the western world. Where the difference lies however, is not in the legal formatting of these agreements, but in their content and also the manner in which they are enforced.

### 2.2.2 Arab legal culture:

Although all Arab countries have a majority Muslim population, they are nevertheless diverse societies which include a significant number of religious minorities which have left clear influences in the laws of their countries. This influence, however, is mostly limited to personal status and family law<sup>286</sup> which is applied according to a citizen's religious affiliation by a religious rather than civil court. For the remaining part, Islam is a heavy influence, to varying degrees, in most of the MENA countries. This is not necessarily the case with respect to Sharia law, or the actual content of the law, but more with regard to attitudes toward the law. For example, there is a wide range of legislations in the MENA region<sup>287</sup>. On one end of the spectrum sits Saudi Arabia, which is strongly dominated by Sharia law, on the other end of the spectrum, sit countries such as Tunisia where Sharia law is only applied in certain matters of family law and inheritance law. In practical terms, this means that Saudi courts, whether civil, criminal or commercial would be ruled by Sharia Law, the source of which is the Quran, the Traditions of the Prophet Muhammed, as well as the rulings of a Sharia Council, essentially a group of religious scholars. The *Majlis al Shura*, which is a consultative body can propose laws to the King and government, the King holding the sole power to then pass the proposed laws. This is in visible contrast to Tunisia where a parliamentary system exists with the legislative branch issuing the law which is subjected to a constitution. In addition, even family law which is otherwise exclusively the domain of Sharia law in all the other MENA countries, has been influenced by non religious law in matters such as the outlawing of polygamy, divorce, and custody laws. This is significant in illustrating the wide range of political, governmental and legal systems that exist in the MENA region, which is far from representing a homogenous unified bloc in terms of the law and the state.

Despite these contrasted differences, attitudes toward conflict, and their resolution are somewhat more in line across the MENA region although once again disparities exist. The very name of the *Majlis Al Shura* in Saudi Arabia stems from a Quranic verse *Wa Amruhum Shura Baynahum*<sup>288</sup>, which roughly translates into their affairs are for them to consult each other about. A verse in the same Surah, which is a chapter in the Quran refers to those:

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<sup>286</sup> M. Charrad, 'Family law reforms in the Arab world: Tunisia and Morocco', Report for the United Nations Department of Economic and Social Affairs (UNDESA), Division for Social Policy and Development, Expert Group Meeting, New York, 15-17).

<sup>287</sup> B. Dupret, M. Berger, L. Al-Zwaini (eds), *Legal pluralism in the Arab World* 18 BRILL(1999).

<sup>288</sup> Surat Al Shura, The Holy Quran

“Who avoid gross sins, and indecencies, and, when angered, are willing to forgive; who obey their Lord, attend to their prayers, and conduct their affairs by mutual consent”<sup>289</sup>

The concept of Shura was also applied in the political field at the death of the Prophet Muhammad in 632, who did not appoint a successor. The eligible candidates came to a mutual decision to appoint Abu Bakr. The second Caliph Omar, who ruled between 634-644 was appointed by the Caliph Abu Bakr by written testament, but later received the stamp of approval by the Shura. He was ultimately assassinated by his rivals, however, in what some have interpreted as a sign that consensus was not ultimately reached<sup>290</sup>. Both of Omar’s successors, Uthman Ibn Affan and Ali Ibn Abi Taleb, were also assassinated and their appointments to the role of Caliph the subject of much discord. The murder of the Caliph Ali and his descendants by Mu’awiya’s followers marks the beginning of the schism between Sunni and Shia Muslims, in a political rift that has carried over to modern times, with devastating consequences. Mu’awiya equally marks the end of the Shura tradition in terms of leadership when he instigated hereditary and absolute power, which once again have repercussions in the Muslim world to this day.

The above Quranic verse is significant in that it is central to understanding elements of the Muslim cultural approach towards dispute settlement and succinctly describes a major part of the political and legal processes in much of the Muslim world, at least in principal. With regards to dispute, there are two elements of note. Firstly the preference towards forgiveness rather than conflict or vindication, and secondly the requirement that matters be resolved through mutual consent<sup>291</sup>. This contributes to understanding why litigation in the MENA region is not the preferred choice for dispute settlement, but why alternatives such as mediation and negotiations are more popular. It would be helpful if statistics were available to illustrate exactly what the rates of litigation per capita are in the MENA region, but unfortunately this information does not appear to be publicly available. However, in a study of the most litigious countries in the world, no MENA country appears in the list 10 countries with the most litigations per capita<sup>292</sup>. Cultural preferences that help explain the preference to use litigation as a last resort also stem from the aversion to publicly airing grievances in a public environment such as a court. Although this is becoming more and more common especially with large companies where the personal element is lost, it is still common in the Gulf monarchies to see high profile local economic disputes resolved by Shura Council or the Monarch<sup>293</sup>. There are a number of illustrations for such cases but one example is an inheritance dispute in the Dubai Emirate of the UAE where a disputed inheritance between brothers from the Al Futtain family was resolved by the Emir rather

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<sup>289</sup> *ibid.* 37-38

<sup>290</sup> Michaëlle Browers, *Democracy and civil society in Arab political thought: Transcultural possibilities*, (Syracuse University Press, 2006) 28

<sup>291</sup> GN Sfeir, ‘The Place of Islamic Law in Modern Arab Legal Systems - A Brief for Researchers and Reference Librarians’ (2000), *Int’l J. Legal Info.* 28, 117.

<sup>292</sup> Christian Wollschläger, *Exploring global landscapes of litigation rates* (Baden-Baden 1998).

<sup>293</sup> K Almezaini, ‘Private sector actors in the UAE and their role in the process of economic and political reform’ (2013), *Business politics in the Middle East*, 43-66.

than the courts<sup>294</sup>. This fits into the fabric of a deeply tribal society where family ties are of paramount importance, especially in relation with the ruler.

Religion and culture are not the only elements that justify the Arab/Muslim aversion to litigation, a number of practical elements must also be factored in. Other than perhaps Tunisia, there is no existing democracy in the MENA region or the ensuing separation of powers that exists in a democracy governed by the Rule of Law. As such, there is no independence of the courts other than on a formal level. For although some of the MENA states do include independence of the judiciary as a constitutional principle<sup>295</sup>, in practice there remains a great lack of transparency. Corruption is still a widespread concern within many state sectors in the MENA region, and the courts are no exception. Whether it is bribing judges, or intimidating them to rule in favour of a particular party, there is a general sense in the region that courts are unreliable and potentially corrupt, although the extent of this belief varies from country to country.

### **Conclusion:**

A main feature of regional trade agreements in the MENA, especially the failed ones, is that they appear as declarations of intent rather than inclusive legal documents containing the necessary detail to allow for implementation. The lack of a schedule and details on specific products to be considered for exemption from a tariff free general principle, for instance, are often left to the discretion of the parties to decide amongst themselves. This is not an inadvertent omission or a lack of experience with the legal format of trade agreements. Indeed MENA countries have long been familiar with western legal culture which has coexisted alongside native forms of law such as Sharia law since the days of colonisation. In addition, MENA countries are party themselves to a multitude of trade agreements that give them exposure this form of legal agreement and are as such already familiar with the process. The omission therefore appears voluntary and is explained by elements of legal and social culture. With regards to results, what this concretely entails is a suboptimal use of instruments potentially designed to increase and facilitate regional trade. IN addition, elements of political economy mean that relative gains rather than absolute gains are often pursued, with the overall affect of reducing potential trade links for the MENA region resulting from unexploited regional potential.

Local Arab and Islamic culture favours a non confrontational approach to dispute settlement through negotiation and consultation. This would indeed explain why many Arab regional agreements had omitted specifying a dispute settlement mechanism in case of conflict between the parties to the agreement, or when one was included, why it adopted a diplomatic rather than legal route. Cultural preference does not account for all the features that distinguish Arab agreements from agreements between Arab countries and their non-Arab trade partners. The fact that schedules were not specified in earlier efforts to implement GAFTA was noted on and remedied in order to successfully implement the agreement in 1998. Non legalistic forms of

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<sup>294</sup> Schumpeter, 'Succession failure', The Economist (London, 6 February 2016) <<http://www.economist.com/news/business/21690027-family-businesses-arabian-gulf-need-address-problem-succession>> accessed 23 March 2017.

<sup>295</sup> N.J. Brown, 'Arab judicial structures' (2001), Program on Governance in the Arab Region (POGAR), United Nations Development Programme, New York

dispute settlement both for GAFTA and the GCC were nevertheless maintained. Time will ultimately reveal whether the lack of a formal legal dispute settlement mechanism will be the weak point of these agreements that will cause their failure in future. Their omission does not appear to be for purely cultural reasons, however, as courts in the MENA region tend to be not as efficient in handing out a judgement as various forms of alternative dispute settlement. In addition, the transparency and independence of the courts and legal proceedings are often seen as compromised rendering them a last resort for parties seeking to settle a dispute. Recent increased use of WTO Dispute Settlement, however, might suggest that this cultural preference for alternative methods of dispute settlement are at least partially overcome, or that confidence in the WTO Dispute Settlement system has encouraged Arab WTO member participation.

At present, there are two examples of what has worked with regards to regional trade in the MENA region, and what hasn't. The GAFTA, although implemented, has made very little difference to the overall volume of inter-Arab trade. The GCC free trade area, on the other hand, has been a clear success in terms of increasing the volume of trade between its members. The key distinction between them seems to be that there GAFTA managed to eliminate virtually all tariffs, non tariff barriers to trade such as non-coordination of regulations, administrative delays, and lack of infrastructure have not effectively facilitated trade amongst GAFTA members, nor made it cost effective. The closer economic integration of the GCC meant uniformity of regulations, sanitary and phytosanitary requirement, and freedom of movement of goods and persons, which amongst other factors effectively facilitated trade amongst GCC members. These are all elements that are not apparent when looking simply at the text of these agreements, but help to explain the successes and failures of the various regional trade agreements.

## Chapter V: ARAB PARTICIPATION IN THE WTO 1995-Present

### Introduction:

Examining the text of the GATT and its preamble, the wording of the GATT in particular indicates a striving for economic prosperity through the opening of markets, and the elimination of discriminatory treatment in commerce<sup>296</sup>:

“Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods,

Being desirous of contributing to these objectives by entering 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 commerce,”

The preamble seems to equate open markets, and fair treatment in commerce with a rise in the standard of living, and the growth of income and traffic of goods. Moreover, the relations of the GATT and its preamble in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world, expanding the production and exchange of goods, and being desirous of contributing to these objectives by entering 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 commerce. This all serves as an enticing promise for any potential member.

Such a promise could indeed have encouraged the Arab members to join the WTO in the mid nineties. It remains to be determined, however, whether their membership was borne of conviction, or whether it was viewed simply as an entryway into a larger global market with considerable trade opportunities. Yet another possibility is that they were coerced into joining by their main trade partners who were eager to set up a recognisable and orderly system in which to conduct trade<sup>297</sup>. It seems almost

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<sup>296</sup> GATT 1994:General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187, 33 I.L.M. 1153 (1994)

<sup>297</sup> Malkawi (n 42), 101-151

irrelevant, however, in light of the final outcome, why Arab members joined the WTO. For although results do vary from member to member, with some countries participating as relatively active and productive members of the Arab WTO group, the overall result seems to be that membership has had little, if any effect on Arab Trade<sup>298</sup>. This disheartening state of affairs cannot be solely attributed to the WTO, however, as other trade agreements entered by Arab countries have equally not resulted in the desired effect, a topic addressed in the following chapter.

For the purpose of analysing Arab participation in the WTOs Decision-making and Dispute Settlement processes, examination will not be made, in any detail of the Arab countries currently involved in the WTO accession process, as they are evidently not involved in either of the above mentioned two fields of interest. Of interest to note, however, would be the reasons why half of Arab countries, some of which have been involved in the accession process for decades, have not decided to go through with membership. There seems to be some consensus that political barriers or tensions are often involved, namely for countries such as Iraq, Lebanon, and Syria<sup>299</sup>. In the same line of thought, it would be of interest to ascertain, in another research thesis, whether any relation exists between the decision of the twelve Arab countries to join the WTO, and the decision of the remaining twelve Arab States that decided not to do so. Were their motivations initially the same? Were some unable to gain membership despite a desire to do so, or did they all approach it as a boon capable of facilitating their entry into the global market, with some following through, and others abandoning the project? The answers to these questions, which will not be posed in this research thesis due to time constraints, would be of interest in identifying whether the Arabs ever intended a de facto membership of the WTO. If the varying degrees of participation of the Arab members of the WTO are any indication, an argument can be made that a number have indeed intended from the outset, to become involved in the workings of the WTO, at least within the limits of their own perceived capabilities.

It thus follows that general Arab participation in the WTO has overall been lower than expected despite a recent increase in activity<sup>300</sup>. A conclusion can be made after examining the statistics relating to dispute settlement that the Arab members of the WTO have been inactive for a long period in their membership, whether intentionally or not for most of their membership from this central feature of the WTO which has been key to the way in which it resolves disputes between its members. There is, however, a noticeable increase in participation in recent times although it is too early to ascertain with certainty whether we are witnessing a growing trend. In addition, there is a worrying development with regards to certain Arab members of the WTO more recently using Dispute Settlement as a means for airing political grievances. This chapter will attempt to examine the various reasons behind the status quo with regards to dispute settlement in section 1. The Second half of this chapter, section 2, will attempt to examine whether the Arabs, absent from the Dispute Settlement front, have been more active on the negotiating front as an alternative policy to the judicial resolution of differences. This second section presents the added challenge, when compared to

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<sup>298</sup> Andrew K Rose, 'Do We Really Know That the WTO Increase Trade?' (2004) *Am Econ Rev* 94(1), 98.

<sup>299</sup> Martin R Weiss, 'Arab League Boycott of Israel' (2007) DTIC Document.

<sup>300</sup> BH Malkawi, 'Arab Countries' (under)Participation in the WTO Dispute Settlement Mechanism' (2012), *Flinders LJ* 14, 1

analysing participation in dispute settlement, that the negotiations are conducted in a more discreet or informal manner, and data pertaining to negotiations is not as readily available.

## **1. Arab members of the WTO and Dispute Settlement**

### **1.1. Surge in membership between 1995-2006:**

Relative to other WTO members, the existing Arab members of the WTO joined the organisation relatively late. Most other member countries, of various regions, had adhered to the GATT treaty long before the Arab members, which only began joining the WTO in 1995. Yemen is the most recent addition to the group having joined in 2014. The mid 90's marked a period of greater political willingness to open Arab markets, namely to the West. As such, both accession to the WTO and engagement in the Barcelona Process were undertaken in parallel.<sup>301</sup> Perhaps the intention behind such sweeping change was to counter the previously unfruitful inter-Arab trade agreements that had thus far not provided any significant increase in trade for any of the participating members.<sup>302</sup>

The years 1995 and 1996 therefore appear to be of significance to the Arab members of the WTO, marking a surge in interest and membership of the organisation, as well as opening up to new trade opportunities outside the region. It would seem reasonable to assume, given the timing of WTO accession for a number of Arab countries, that membership was viewed by the acting governments of the time as a gesture of goodwill, a token of their good faith in joining the global market. It would be of interest to know whether the intentions as to membership of the WTO were limited to a symbolic gesture, or whether there was an intention, from the outset, to become fully involved members of the organisation.

This chapter will discuss the participation of the Arab members of the WTO in the dispute settle process (1.2), and the negotiation process (1.3).

### **1.2. Arab Participation in Dispute Settlement:**

To date, three Arab members of the WTO have been recent claimants in a dispute. Although a number have been respondents, or acted as third parties. It is uncertain why this might be the case, but a variety of possibilities have been discussed in the available literature. These will be categorised into the following three groups<sup>303</sup>.

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<sup>301</sup> T. Broude, 'Accession to the WTO: Current Issues in the Arab World' (1998), *Journal of World Trade* 32(6), 147.

<sup>302</sup> A. Dennis, 'The Impact of Regional Trade Agreements and Trade Facilitation in the Middle East and North Africa region' (2006), World Bank Policy Research Working Paper No. 3837

<sup>303</sup>1.2.1 Lack of resources and expertise; 1.2.2 Cultural preference; 1.2.3 Political Considerations

When examined in conjunction, it would appear that these three reasons are inter-related. For example, one might assume that it is due to a lack of resources (1.2.1), or rather, the fact that all Arab members are developing countries, that they must take into account political considerations (1.2.3). To illustrate this point more clearly, the cases brought by Qatar will be discussed, as well as the cases involving the UAE, and Tunisia although they are all in early stages (1.2.3), as they are the only Arab WTO members to have acted as a claimant in a dispute. Cases involving Arab WTO members as respondents will also be discussed. The facts behind these disputes might help in understanding at least some of the reasons why Arab WTO members are reluctant to engage in Dispute Settlement. Of interest to note, however, are the different perspectives on the matter. For although the general consensus is largely that the above-mentioned three groups are obstacles to increased participation on behalf of Arab WTO members, an interesting argument is brought forth by Khaled Al Taweel<sup>304</sup>, who argues that rather than representing a lack of a will, or ability to participate, the low participation levels of namely Egypt at the time as the most active Arab WTO member in Dispute Settlement, and by extension other Arab WTO members with similar track records, is an intentional strategy geared through a gradual accumulation of experience using the WTOs DSU. By acting as third parties to a dispute, for example, such countries would be able to gain valuable expertise, with minimal costs and risk. The idea is an engaging one, and does present a convincing argument. The only concern, it would appear, would be whether there was any intention to accelerate the process in order to use the gained experience in a more pro active way. The recent spate of cases involving Arab WTO members would suggest this is the case, and involvement as third parties is also on the rise<sup>305</sup>. The distinction will be made, however, as to whether the recent involvement is indicative of a productive use of Dispute Settlement. Recent cases which will be discussed in this section suggest a split between some Arab countries apparently using the DSB for its intended purpose, while others are attempting to politicise its use. When examining disputes entered into by the Arab members as third parties, however, the figures present a different situation. In order to simplify matters, the disputes entered into by Arab WTO members will be classified in Table 1, and the disputes entered into by more than one Arab member of the WTO in Table 2.

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<sup>304</sup> K. El-Taweel, 'The WTO Dispute Settlement Understanding: How can Africa make better use of the system? Using Egypt as a case study' (2010) (Masters dissertation, University of Pretoria).

<sup>305</sup> World Trade Organisation, 'DS211: Egypt – Definitive Anti-Dumping Measures on Steel Rebar from Turkey' (2003)

**Table 1- Arab WTO Dispute Settlement Activity:**

Country	Date of Accession	Disputes entered into as claimant	Disputes entered into as respondent	Disputes entered into as third party	Disputes entered into as third party that went before a panel
Bahrain	GATT since 13/12/1993 WTO since 01/01/1995	0	1 case: Bahrain— Measures Relating to Trade in Goods and Services, and Trade-Related Aspects of Intellectual Property Rights	2 cases: United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China  United Arab Emirates — Measures Relating to Trade in Goods and Services, and Trade-Related Aspects of Intellectual Property Rights	3 cases: United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China European Union — Measures Related to Price Comparison Methodologies United Arab Emirates — Measures Relating to Trade in Goods and Services, and Trade-Related Aspects of Intellectual Property Rights
Djibouti	GATT since 16/12/1994 WTO since 31/05/1995	0	0	0	0

Country	Date of Accession	Disputes entered into as claimant	Disputes entered into as respondent	Disputes entered into as third party	Disputes entered into as third party that went before a panel
Egypt	GATT since 09/05/1970 WTO since 30/06/1995	0	4 cases: Egypt — Import Prohibition on Canned Tuna with Soybean Oil; Egypt — Definitive Anti-Dumping Measures on Steel Rebar from Turkey; Egypt — Measures Affecting Imports of Textile and Apparel Products; Egypt — Anti-Dumping Duties on Matches from Pakistan	12 cases: European Communities — Anti-Dumping Duties on Imports of Cotton-type Bed Linen from India; European Communities — Provisional Safeguard Measures on Imports of Certain Steel Products; Turkey — Measures Affecting the Importation of Rice; United States — Continued Existence and Application of Zeroing Methodology; China — Certain Measures Granting Refunds, Reductions or Exemptions from Taxes and Other Payments; China — Certain Measures Granting Refunds, Reductions or Exemptions from Taxes and Other Payments; Australia — Certain Measures Concerning Trademarks and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging; European Union — Cost Adjustment Methodologies and Certain Anti-Dumping Measures on Imports from Russia — (Second complaint); China — Domestic Support for Agricultural Producers; Morocco — Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey United Arab Emirates — Measures Relating to Trade in Goods and Services, and Trade-Related Aspects of Intellectual Property Rights Morocco — Anti-Dumping Measures on Certain Hot_Rolled Steel from Turkey	5 cases: Egypt — Definitive Anti-Dumping Measures on Steel Rebar from Turkey European Communities — Anti-Dumping Duties on Imports of Cotton-type Bed Linen from India; Turkey — Measures Affecting the Importation of Rice; United States — Continued Existence and Application of Zeroing Methodology; Morocco — Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey
Jordan	WTO since 11/04/2000	0	0	0	0

Country	Date of Accession	Disputes entered into as claimant	Disputes entered into as respondent	Disputes entered into as third party	Disputes entered into as third party that went before a panel
Kuwait	GATT since 03/05/1963 WTO since 01/01/1995	0	0	1 case: United States — Definitive Anti- Dumping and Countervailing Duties on Certain Products from China	1 case: United States — Definitive Anti- Dumping and Countervailing Duties on Certain Products from China
Mauritania	GATT since 30/09/1963 WTO since 31/05/1995	0	0	0	0
Morocco	GATT since 17/06/1987 WTO since 01/01/1995	0	2 cases: Morocco — Anti- Dumping Measures on Certain Hot-Rolled Steel from Turkey Morocco- Provisional Anti-Dumping Measures on School Exercise Books from Tunisia	0	0

Country	Date of Accession	Disputes entered into as claimant	Disputes entered into as respondent	Disputes entered into as third party	Disputes entered into as third party that went before a panel
Oman	WTO since 09/11/2000	0	0	<p>12cases:  China — Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum (3 disputes); Australia — Certain Measures Concerning Trademarks and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging; China — Anti-Dumping and Countervailing Duties on Certain Automobiles from the United States; Argentina — Measures Relating to Trade in Goods and Services; Australia — Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging; Indonesia — Measures Concerning the Importation of Chicken Meat and Chicken Products; China — Duties and other Measures concerning the Exportation of Certain Raw Materials; India — Certain Measures on Imports of Iron and Steel Products Morocco—Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey</p>	<p>6 cases:  China — Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum (3 disputes); China — Anti-Dumping and Countervailing Duties on Certain Automobiles from the United States; Argentina — Measures Relating to Trade in Goods and Services, Morocco— Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey</p>

Country	Date of Accession	Disputes entered into as claimant	Disputes entered into as respondent	Disputes entered into as third party	Disputes entered into as third party that went before a panel
Qatar	GATT since 07/04/1994 WTO since 13/01/1996	4 cases- Bahrain—Measures Relating to Trade in Goods and Services, and Trade- Related Aspects of Intellectual Property Rights Saudi Arabia— Measures Relating to Trade in Goods and Services, and Trade-Related Aspects of Intellectual Property Rights United Arab Emirates —Measures Relating to Trade in Goods and Services, and Trade-Related Aspects of Intellectual Property Rights Saudi Arabia— Measures concerning the Protection of Intellectual Property Rights	0	3 cases: Indonesia — Measures Concerning the Importation of Chicken Meat and Chicken Products; — Ukraine anti-Dumping Measures on Ammonium Nitrate from Russia; India — Certain Measures on Imports of Iron and Steel Products	0

Country	Date of Accession	Disputes entered into as claimant	Disputes entered into as respondent	Disputes entered into as third party	Disputes entered into as third party that went before a panel
Saudi Arabia	WTO since 11/12/2005	0	<p>2 cases:  <a href="#">Saudi Arabia—Measures Relating to Trade in Goods and Services, and Trade-Related Aspects of Intellectual Property Rights</a>  <a href="#">Saudi Arabia—Measures concerning the Protection of Intellectual Property Rights</a></p>	<p>33 cases:  United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China; China — Measures Related to the Exportation of Various Raw Materials (3 disputes); Canada — Certain Measures Affecting the Renewable Energy Generation Sector; China — Countervailing and Anti-Dumping Duties on Grain Oriented Flat-rolled Electrical Steel from the United States; Moldova — Measures Affecting the Importation and Internal Sale of Goods (Environmental Charge); Canada — Measures Relating to the Feed-in Tariff Program; China — Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States; China — Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum (3 disputes); United States — Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India; United States — Countervailing Duty Measures on Certain Products from China, DS438, China — Anti-Dumping and Countervailing Duties on Certain Automobiles from the United States; United Arab Emirates — Measures Relating to Trade in Goods and Services, and Trade-Related Aspects of Intellectual Property Rights</p>	<p>17 cases:  United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China; China — Measures Related to the Exportation of Various Raw Materials (3 disputes); Canada — Certain Measures Affecting the Renewable Energy Generation Sector; China — Countervailing and Anti-Dumping Duties on Grain Oriented Flat-rolled Electrical Steel from the United States; Canada — Measures Relating to the Feed-in Tariff Program; China — Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States; China — Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum (3 disputes); United States — Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India; United States — Countervailing Duty Measures on Certain Products from China; China — Anti-Dumping and Countervailing Duties on Certain Automobiles from the United States; Argentina — Measures Relating to Trade in Goods and Services; China — Measures Imposing Anti-Dumping Duties on High-Performance Stainless Steel Seamless Tubes (“HP-SSST”) from Japan</p>

Country	Date of Accession	Disputes entered into as claimant	Disputes entered into as respondent	Disputes entered into as third party	Disputes entered into as third party that went before a panel
				<p>Australia — Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging; Argentina — Measures Affecting the Importation of Goods; Argentina — Measures Affecting the Importation of Goods; Australia — Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging; United States — Anti-dumping and Countervailing Measures on large residential washers from Korea; United States — Certain Methodologies and their Application to Anti-Dumping Proceedings Involving China; European Union — Anti-Dumping Measures on Biodiesel from Argentina; European Union — Cost Adjustment Methodologies and Certain Anti-Dumping Measures on Imports from Russia; European Union and its Member States — Certain Measures Relating to the Energy Sector; China — Measures Related to Demonstration Bases and common Service Platforms Programmes; United States — Certain Measures Relating to the Renewable Energy Sector; China — Domestic Support for Agricultural Producers; Russia — Measures Concerning Traffic in Transit; United States — Countervailing Measures on Certain Pipe and Tube Products (Turkey)</p>	<p>Russia — Measures Concerning Traffic in Transit</p>

Country	Date of Accession	Disputes entered into as claimant	Disputes entered into as respondent	Disputes entered into as third party	Disputes entered into as third party that went before a panel
Tunisia	GATT since 19/08/1990 WTO since 29/03/1995	1 case: Morocco— Provisional Anti-Dumping Measures on School Exercise Books from Tunisia	0	0	0
UAE	GATT since 08/03/1994 WTO since 10/04/1996	1 case: Pakistan— Anti-Dumping Measures on Biaxially Oriented Polypropylene Film from the United Arab Emirates	1 case: United Arab Emirates—Measures Relating to Trade in Goods and Services, and Trade- Related Aspects of Intellectual Property Rights	3 cases: Canada — Anti-Dumping Measures on Imports of Certain Carbon Steel Welded Pipe from The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; European Union — Measures Related to Price Comparison Methodologies Morocco— Anti-Dumping Measures on Certain Hot-Rolled from Turkey	1 case: Morocco—Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey
Yemen	WTO since 26/06/2014	0	0	0	United Arab Emirate—Measures Relating to Trade in Goods and Services, and Trade-Related Aspects in Intellectual Property Rights

**Table 2- Disputes entered into as third parties by multiple Arab WTO members:**

Dispute	Arab Countries involved	Date Panel Established	Date of Resolution
United States-Definitive Anti Dumping and Countervailing Duties on Certain Products from China	Bahrain, Kuwait, Saudi Arabia	20/01/2009	31/08/2012

<b>Dispute</b>	<b>Arab Countries involved</b>	<b>Date Panel Established</b>	<b>Date of Resolution</b>
China- Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum*	Oman, Saudi Arabia	23/07/2012	20/05/2015
China- Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum*	Oman, Saudi Arabia	23/07/2012	20/05/2015
China- Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum*	Oman, Saudi Arabia	23/07/2012	20/05/2015
Australia- Certain Measures Concerning Trademarks and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging	Oman, Egypt	28/09/2012	Not resolved- Ukraine requested the Panel suspend proceedings on 28/05/2015. Panel's jurisdiction lapsed on 30/05/2016
China- Anti-Dumping and Countervailing Duties on Certain Automobiles from the United States	Oman, Saudi Arabia	23/10/2102	18/06/2014
Indonesia- Measures Concerning the Importation of Chicken Meat and Chicken Products	Oman, Qatar	03/05/2016	Panel composed on 3 March 2016

<b>Dispute</b>	<b>Arab Countries involved</b>	<b>Date Panel Established</b>	<b>Date of Resolution</b>
India — Certain Measures on Imports of Iron and Steel Products	Oman, Qatar	03/04/2017	Panel established, but not yet composed on 3 April 2017
Morocco — Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey	Morocco, Egypt	17 May 2017	Panel composed on 17 May 2017
India — Certain Measures on Imports of Iron and Steel Products	Oman, Qatar	03/04/2107	Panel established, but not yet composed on 3 April 2017
China — Domestic Support for Agricultural Producers	Saudi Arabia, Egypt	25/01/2017	Panel established, but not yet composed on 25 January 2017
European Union — Measures Related to Price Comparison Methodologies	United Arab Emirates, Kingdom of Bahrain	03/04/2017	Panel established, but not yet composed on 3 April 2017
United Arab Emirates — Measures Relating to Trade in Goods and Services, and Trade-Related Aspects of Intellectual Property Rights	Bahrain, Egypt, Saudia Arabia, Yemen	06/10/2017	Panel Composed on 3 September 2018

<b>Dispute</b>	<b>Arab Countries involved</b>	<b>Date Panel Established</b>	<b>Date of Resolution</b>
Morocco—Anti-Dumping Measures on Certain Hot Rolled Steel from Turkey	Egypt, Oman, UAE	20/02/2017	Panel Composed on 17 May 2017

\* The defendant in these three disputes was China, but the claimants were the US, the EU, and Japan, for *China — Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum*, *China — Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum*, and, *China- Anti-Dumping and Countervailing Duties on Certain Automobiles from the United States* respectively.

What these two tables illustrate, is that there has been a recent change in the rates of activity of the Arab members of the WTO. The most obvious and immediate change is the fact that during twenty three years of WTO membership for the earliest Arab members, only Egypt had been directly involved in Dispute Settlement as a third party, the remainder of Arab WTO members acting as third parties only to various disputes. Within little more than a year, there have been six claims brought forward by three Arab WTO members, and a corresponding rise in the increase of Arab WTO members acting as respondents in a case.

We can see from Table 1 that at least 3 out of the 13 Arab WTO members have had no experience whatsoever of WTO Dispute Settlement, and a few have very limited experience<sup>306</sup>. This could indicate either that these countries have been proactive in implementing the GATT so as to avoid any complaints against them, or that possible complaints against them have been resolved informally through negotiations. The other side of the coin is that these countries have never engaged in a complaint against another WTO member, and here the theory of perfect compliance becomes increasingly hard to defend. It would seem, therefore, that the possibility of being engaged in a policy of informal negotiations, whether in case of a perceived violation on their part, or a perceived violation on the part of another WTO member, is high.

Looking at involvement in disputes as a third party, again we see the same countries that have not engaged in WTO dispute settlement. In this instance, there are two possibilities: Either these countries have adopted the approach of not engaging in dispute settlement as a matter of policy, so as to avoid either direct or indirect confrontation as a claimant, a defendant, or a third party in a dispute involving trade partners of the said country; or they do not consider involvement an option due to lack of means or experience; or yet again that they never had any intention of being actively involved in dispute settlement and joined the WTO to gain an entry into the global market, so to speak. The fact that some of the earlier Arab WTO members to have joined, four of them in 1995 and Jordan in 2000 should mean that they should have a relative advantage

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<sup>306</sup> Djibouti, Jordan, Mauritania, Morocco, Tunisia.

when compared with the newer Arab WTO members, and yet they lag far behind in terms of acquiring experience and familiarity with the dispute settlement system<sup>307</sup>. It remains to be seen whether the approach of these least active countries in dispute settlement carries into their involvement on the negotiating and decision-making front; a question that will be addressed in section (2) of this chapter.

It is of interest to note when looking at Table 2 that some of the newer Arab WTO members, all of them equally members of the Gulf Cooperation Council<sup>308</sup>, seem to point to a new direction in the strategy of Arab members of the WTO. Bahrain, Kuwait, Saudi Arabia, Qatar, and Oman all appear to have worked together at one point. Again, if looking at Table 2, it is surprising to note that the most active GCC country acting as a third party on is Oman, not traditionally the most outspoken or high-profile GCC country. Oman is involved jointly with another GCC country in six out of seven disputes as a third party, which is almost on par with Saudi Arabia, generally considered to be the regional superpower.

The five Arab WTO/GCC countries seem to work with some kind of consultation, despite Qatar having recently been discarded from the group of which it was the sixth member. This makes sense if looking at the structural organisation of these countries as members of possibly the most successful Arab regional organisation to date, despite numerous reservations. It appears as though these countries have adopted a policy of increasing their experience of WTO dispute settlement, by engaging in as many relevant disputes as possible as third parties. This promises to be an encouraging approach as it allows the concerned countries to gain valuable experience with minimal cost, or risk to themselves. The fact that it is a low-cost option could equally make it a viable option for other cash-tight Arab WTO members that may not have access to the means available to the GCC/WTO countries. This approach seems to have been beneficial to the UAE which has presumably accumulated enough know-how to bring a case against Pakistan as a claimant in a WTO dispute. With regards to Qatar, whether this experience has been helpful or put to good use remains to be seen as if the claims made by Qatar are indeed political, there is a risk they will be curtailed and not allow the participating parties to gain useful experience of WTO dispute settlement.

The successful continuation of this strategy would logically depend on two factors; firstly a good entente between the involved parties, and secondly sufficient economic common interests. The first factor seems to stem from the fact that as members of the GCC, the Gulf countries involved in WTO disputes as third parties already operate in a framework of political, economic, and military cooperation. The unity of the GCC<sup>309</sup> apparently transcends to the WTO and works in favour of its members. The balance, however, is fragile, and in theory any political tension that might arise within the GCC could threaten cooperation within the WTO. In the current political context, this is unfortunately a real possibility and it remains to be seen if the conflict in Yemen will affect the fragile balance of the GCC which might then become visible in the way these countries operate within the WTO. As of yet, this does not seem to be the case, but the progression of

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<sup>307</sup> AK Merza, 'Membership in the WTO and Arab Regional Co-operation: The Case of the GCC' (2002).

<sup>308</sup> GCC

<sup>309</sup> ER Peterson, *The Gulf Cooperation Council: Search for unity in a dynamic region* (Westview Press 1988).

time, increasing casualties and costs might eventually affect the situation negatively. Already, 2017 marks a sharp change in the strategy of Saudi Arabia so far, which has abandoned its GCC partners in a number of disputes it is participating in as a third party. Whether this is coincidental or indicative of a conscious decision to distance itself from the group remains at present unclear. The same is true for Qatar.

The second factor, which is shared economic interests does not appear as potentially volatile as the trading profile of the GCC countries is unlikely to change overnight although valid concerns exist over the decreasing fuel reserves of the oil-based economies, and a change in economic policy and trade might become a reality in the medium to long term<sup>310</sup>. From the cases observed in Table 2, there does not appear to be any obvious patterns other than perhaps the reoccurrence of claims involving anti-dumping measures, and intellectual property although in this particular case the IP cases are mostly related to a same claim brought by Qatar against different parties. No particular fields of interest emerge: *United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China* and *China — Anti-Dumping and Countervailing Duties on Certain Automobiles from the United States* concern countervailing measures and anti-dumping. *Indonesia — Measures Concerning the Importation of Chicken Meat and Chicken Products* deals with sanitary and phytosanitary measures, as well as barriers to trade. *China — Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum* concern export restrictions dealt with both TRIPS and technical barriers to trade. Again, at first glance, there is no repeat pattern with regards to the goods that were the subject of these disputes which ranged from automobiles and rare earths to chicken and tobacco packagings. In order to confirm this impression, it would be useful to look at the disputes involved in further detail:

#### *United States- Definitive Anti Dumping and Countervailing Duties on Certain Products from China*

This dispute is the earliest one entered into by GCC countries as third parties. It involved countervailing and anti-dumping duties simultaneously imposed by the United States on four products originating in China following concurrent countervailing duty and anti-dumping investigations. The United States began applying its countervailing duty legislation to imports from China in 2007, after the United States Department of Commerce (the “USDOC”) determined that China's economy, albeit still not a market economy, had undergone sufficient economic reform as to enable the USDOC to identify and countervail subsidies granted by the Chinese Government. In the four anti-dumping investigations, the USDOC treated China as a non-market economy (“NME”) and determined normal value using prices in a surrogate country rather than Chinese domestic prices.

China appealed certain Panel findings regarding the USDOC's determinations on “public body”, “specificity”, “benefit benchmarks”, and “double remedies”. The Appellate Body reversed the Panel's finding that the term “public body” in Article 1.1(a)(1) of the SCM Agreement means “any entity controlled by a government”. The Appellate Body found, instead, that a public body is an entity that possesses, exercises, or is vested with, governmental authority. The Appellate Body completed the analysis of China's claims and found that the USDOC had acted inconsistently with the obligations of the United States under

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<sup>310</sup>T. Niblock and M. Malik, *The political economy of Saudi Arabia*. (Routledge, 2007).

Articles 1.1(a)(1), 10, and 32.1 of the SCM Agreement in finding, on the basis of government ownership, that certain Chinese State-owned enterprises that supplied steel, rubber, and petrochemical inputs to investigated companies constituted “public bodies”. The Appellate Body also found that the USDOC had not acted inconsistently with the same obligations in determining, on the basis of evidence relating inter alia to the Government of China's role in the banking sector, that certain State-owned commercial banks that provided loans to investigated companies constituted “public bodies”.

The Appellate Body upheld the Panel's finding that China did not establish that the USDOC acted inconsistently with the obligations of the United States under Article 2.1(a) of the SCM Agreement by determining in the OTR investigation that SOCB lending was specific to the tyre industry. With regard to the USDOC's regional specificity determination in the LWS investigation, the Appellate Body also upheld the Panel's interpretation of the term “subsidy” in Article 2.2 of the SCM Agreement and rejected China's allegations concerning a statement by the Panel about a “distinct regime” in the context of the LWS investigation, which the Appellate Body considered to be obiter in nature.

The Appellate Body upheld the Panel's interpretation of Article 14(d) of the SCM Agreement as allowing an investigating authority to reject in-country private prices if these are distorted due to the government's predominant role in the market and found that the Panel properly concluded that, given the evidence of the Chinese Government's predominant role as a supplier of hot-rolled steel, and having considered evidence of other factors, the USDOC could determine that private prices in China were distorted and could not be used as benchmarks for calculating the amount of the benefit.

The Appellate Body upheld the Panel's interpretation of Article 14(b) of the SCM Agreement and found that the Panel did not err in finding that the USDOC's decision not to rely on interest rates in China as benchmarks for SOCB loans denominated in renminbi (RMB) was not inconsistent with the obligations of the United States under Article 14(b). The Appellate Body reversed the Panel's finding that the proxy benchmark actually used by the USDOC to calculate the benefit from RMB denominated SOCB loans was not inconsistent with the obligations of the United States under Article 14(b), on the ground that, in evaluating this claim, the Panel adopted a standard of review that was too deferential and thus failed to comply with its duty under Article 11 of the DSU to make an objective assessment of the matter. Absent sufficient factual findings by the Panel or undisputed facts on the Panel record, the Appellate Body was unable to complete the legal analysis of China's claim under Article 14(b) of the SCM Agreement regarding the proxy benchmark used by the USDOC.

Finally, the Appellate Body reversed the Panel's finding that “double remedies”, that is, the offsetting of the same subsidisation twice through the concurrent imposition of anti-dumping duties based on an NME methodology and countervailing duties, are not prohibited under the SCM Agreement<sup>(2)</sup>. The Appellate Body found that “double remedies” are inconsistent with the requirement in Article 19.3 of the SCM Agreement that countervailing duties be levied in the appropriate amounts in each case. The Appellate Body completed the legal analysis and found that, by declining to address China's claims concerning double remedies in the four countervailing duty investigations at issue, the USDOC had failed to fulfil its obligation to determine

the “appropriate” amount of countervailing duties within the meaning of Article 19.3 of the SCM Agreement and that, therefore, the United States acted inconsistently with its obligations under Article 19.3 and, consequently, with its obligations under Articles 10 and 32.1 of the SCM Agreement.<sup>311</sup>

*China- Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum*

The dispute involved export restrictions on a number of rare earths, tungsten, and molybdenum. The export restrictions comprised export duties, export quotas, and certain limitations on the enterprises permitted to export the products. The Panel found that China's export duties on rare earths, tungsten, and molybdenum were inconsistent with its Accession Protocol. In its examination of this issue and China's defence under Art. XX, the Panel was mindful of the Appellate Body ruling that absent “cogent reasons an adjudicatory body will resolve the same legal question in the same way in a subsequent case”. The Panel concluded that none of China's arguments constituted cogent reasons for departing from the Appellate Body's finding in *China – Raw Materials* that the obligation in Paragraph 11.3 of China's Accession Protocol is not subject to the general exceptions in Art. XX of the GATT 1994. China appealed an intermediate finding made by the panel in reaching its conclusion that Art. XX of the GATT 1994 was not available to justify a breach of Paragraph 11.3 of its Accession Protocol regarding export duties. In upholding the panel's finding, the Appellate Body found that the Marrakesh Agreement, the Multilateral Trade Agreements, and China's Accession Protocol form a single package of rights and obligations that must be read together. However, the questions whether there is an objective link between an individual provision in China's Accession Protocol and existing obligations under the Marrakesh Agreement and the Multilateral Trade Agreements, and whether China may rely on an exception provided for in those agreements to justify a breach of its Accession Protocol, must be answered through a thorough analysis of the relevant provisions on the basis of the customary rules of treaty interpretation and in light of the circumstances of the dispute.

- GATT Art. XI (quantitative restrictions)/GATT Art. XX(g) (general exceptions – exhaustible natural resources): The Panel found that China's export quotas on rare earths, tungsten, and molybdenum were inconsistent with GATT Art. XI. The Panel also concluded that the export quotas were not justified under the exception in GATT Art. XX(g), which allows WTO Members to implement GATT-inconsistent measures “relating to the conservation of exhaustible natural resources”. China did not appeal the panel's overall finding, but appealed limited aspects of the panel's interpretation and application of Art. XX(g), in connection with its findings that the export quotas at issue were not measures “relating to” the conservation of exhaustible natural resources, and were not “made effective in conjunction with” restrictions on domestic production or consumption. The Appellate Body found that the panel rightly considered that it should focus on the measures' design and structure rather than on their effects in the marketplace, although it was not precluded from considering market effects. The

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<sup>311</sup> World Trade Organisation, ‘DS379: United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China’ (Disputes, 21 August 2012) <[https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds379\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds379_e.htm)> accessed 2 June 2017.

Appellate Body further concluded that the burden of conservation did not have to be evenly distributed, for example, between foreign consumers, on the one hand, and domestic producers or consumers, on the other hand.

- Working Party Report (trading rights): The Panel found that China maintained restrictions (minimum registered capital, prior export experience and export performance) on the trading rights of enterprises exporting rare earths and molybdenum contrary to Paragraphs 83 and 84 of China's Working Party Report. The Panel found that China was entitled to seek to justify these breaches pursuant to Art. XX(g). However, China failed to make a prima facie case that such requirements were justified pursuant to Art. XX(g). In this respect, the Panel considered that China's trading rights obligations were distinct obligations and that breaches of these obligations had to be justified separately from the justifications that China had advanced for the imposition of export quotas in violation of Art. XI of the GATT 1994<sup>312313</sup>.
- *Australia — Certain Measures Concerning Trademarks and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging:*

On 13 March 2012, Ukraine requested consultations with Australia concerning certain Australian laws and regulations that impose trademark restrictions and other plain packaging requirements on tobacco products and packaging and challenged two measures: Australia's Tobacco Plain Packaging Act 2011 and its implementing Tobacco Plain Packaging Regulations 2011; The Trade Marks Amendment (Tobacco Plain Packaging) Act 2011; and all further regulations, related acts, policies or practices that have been adopted by Australia to implement the two key measures.

Ukraine claimed that Australia's measures, especially when viewed in the context of Australia's comprehensive tobacco regulatory regime, appear to be inconsistent with Articles 1, 1.1, 2.1, 3.1, 15, 16, 20 and 27 of the TRIPS Agreement; Article 2.1 and 2.2 of the TBT Agreement; and Article III:4 of the GATT 1994.

On 24 March 2014, Ukraine requested the Director-General to compose which was carried out by the DG despite informing the parties to the dispute of a delay in issuing a panel report. On 28 May 2015, Ukraine requested the panel to suspend its proceedings in accordance with Article 12.12 of the DSU. The dispute was subsequently withdrawn following a 12 month lapse during which Ukraine had not requested that the panel resume its work<sup>314</sup>.

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<sup>312</sup> Appellate Body Report, China — Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum, as upheld by Appellate Body Report, WT/DS431/AB/R, adopted 29 August 2014, DSR 20 May 2015

<sup>313</sup> Appellate Body Report, China — Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum, as upheld by Appellate Body Report, WT/DS432/AB/R, adopted 29 August 2014, DSR 20 May 2015

<sup>314</sup> Australia — Certain Measures Concerning Trademarks and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging, WT/DS434, Panel suspended 29 May 2015. Authority lapsed 30 June 2016

This dispute involves claims by the United States regarding certain substantive and procedural aspects of the investigations that resulted in the imposition by China of anti-dumping and countervailing measures on certain automobiles from the United States with engine displacements equal to or greater than 2500 cubic centimeters (“cc”).

Regarding China's substantive obligations, the United States raised claims under Articles 3.1, 3.2, 3.5, 4.1, 6.8 and Annex II of the Anti-Dumping Agreement, and Articles 12.7, 15.1, 15.2, 15.5, and 16.1 of the SCM Agreement. The Panel found that MOFCOM erred in its determination of the residual anti-dumping and countervailing duty rates for unknown exporters of the subject product. The Panel thus concluded that these residual duty rates did not conform to the requirements of Article 6.8 and Annex II of the Anti-Dumping Agreement, and Article 12.7 of the SCM Agreement. The Panel also found a number of inconsistencies relating to MOFCOM's price effects and causation determinations, contrary to the requirements of Articles 3.1, 3.2 and 3.5 of the Anti-Dumping Agreement, and Articles 15.1, 15.2 and 15.5 of the SCM Agreement.

The Panel rejected the US claim that MOFCOM's definition of the domestic industry in the investigations at issue was inconsistent with Article 4.1 Anti-Dumping Agreement and Article 16.1 of the SCM Agreement.

Regarding China's procedural obligations, the United States raised claims under Articles 6.5.1, 6.9, 12.2, and 12.2.2 of the Anti-Dumping Agreement, and Articles 12.4.1, 12.8, 22.3, and 22.5 of the SCM Agreement. The Panel found that MOFCOM erred in failing to provide interested parties with adequate non-confidential summaries of certain confidential information in the petition, contrary to the requirements of Article 6.5.1 of the Anti-Dumping Agreement and Article 12.4.1 of the SCM Agreement. The Panel also found that MOFCOM failed to disclose to US respondents the essential facts which formed the basis of its decision to impose definitive anti-dumping duties, as required under Article 6.9 of the Anti-Dumping Agreement.

The Panel rejected the US claims that MOFCOM's public notices failed to disclose the essential facts and findings and conclusions reached on all issues of fact and law considered material by MOFCOM in relation to the determination of the residual duty rates. Accordingly, the Panel found that the United States failed to establish that China acted inconsistently with Articles 6.9, 12.2, 12.2.2 of the Anti-Dumping Agreement, and Articles 12.8, 22.3 and 22.5 of the SCM Agreement.

As a consequence of these violations, the Panel also found that China acted inconsistently with the general obligation set forth in Article 1 of the Anti-Dumping Agreement and Article 10 of the SCM Agreement to conduct investigations consistently with the provisions of these Agreements.

On the basis of the above, and pursuant to Article 19.1 of the Dispute Settlement Understanding, the Panel recommended that the Dispute Settlement Body request China to bring its relevant measures into conformity

with its obligations under the Anti-Dumping and SCM Agreements. At its meeting on 18 June 2014, the DSB adopted the panel report.<sup>315</sup>

#### *Indonesia — Measures Concerning the Importation of Chicken Meat and Chicken Products*

On 16 October 2014, Brazil requested consultations with Indonesia concerning certain measures imposed by Indonesia on the importation of meat from fowls of the species *Gallus domesticus* and products from fowls of the species *Gallus domesticus*. Brazil claims that the measures were inconsistent with Articles 2.2, 2.3, 3.1, 5, 5.1, 5.2, 5.5, 5.6, 8 and Annex C of the SPS Agreement; Articles 2.1, 2.2, 2.4, 5.1 and 5.2 of the TBT Agreement; Articles 4.2 and 14 of the Agreement on Agriculture; Articles 1.3, 3.2, 3.3 of the Agreement on Importing Licensing Procedures; Articles 2.1 and 2.15 of the Agreement on Preshipment Inspection; Articles III:4, X:1, X:3 and XI:1 of the GATT 1994.

On 15 October 2015, Brazil requested the establishment of a panel, which the DSB later deferred. At the next meeting of the DSB on 25 November 2015, Indonesia objected to the establishment of the panel because a corrigendum to the panel request had been circulated at the request of Brazil. Given Indonesia's objection, Brazil requested that the establishment of the panel be deferred to the next meeting. In the absence of Brazil's objection, the DSB deferred the establishment of a panel, which was later established on 3 December 2015 and composed on 3 March 2016.

#### **1.2.3. Cases involving Arab countries as claimants or respondents:**

##### *Egypt—Import Prohibition on Canned Tuna with Soybean Oil*

This case in which Thailand requested consultations with Egypt concerning the prohibition imposed by Egypt on importation of canned tuna with soybean oil from Thailand thus violating its obligations under Articles I, XI, and XIII of the GATT, and Articles 2, 3 and 5, and Annex B, paragraph 2 and paragraph 5, of the SPS Agreement. The case has not gone before a panel.

##### *Egypt—Definitive Anti-Dumping Measures on Steel Rebar from Turkey*

This case appears to have been a good experience for Egypt enabling its trade representatives to gain familiarity with the workings of the DSB, it also confirmed that Egypt was correct in interpreting the anti-dumping rules, although it had to reevaluate the rate of the anti dumping duties it imposed. Turkey requested consultations with Egypt concerning an anti-dumping investigation by the Egyptian Ministry of Trade and Supply with respect to imports of rebar from Turkey. The investigation was completed as a result of which anti-dumping duties were imposed, ranging from 22.63-61.00 per cent ad valorem. Turkey contested the

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<sup>315</sup> Panel Report, China — Anti-Dumping and Countervailing Duties on Certain Automobiles from the United States, WT/DS440/R, adopted 18 June 2014, DSR 2014

facts and findings of the investigation and subsequent imposition of anti-dumping duties. The panel, however, did not find that Egypt had acted inconsistently with its obligations but did recommend Egypt bring its definitive anti-dumping measures on imports of steel rebar from Turkey into conformity with the relevant provisions of the AD Agreement. Which Egypt has since complied with<sup>316</sup>.

#### *Egypt—Measures Affecting Imports of Textile and Apparel Products*

The United States brought a complaint against Egypt concerning the tariffs applied by Egypt to certain textile and apparel products on which it imposed specific duties rather than ad valorem duties in violation as claimed by the US under Article II of the GATT 1994 and Article 7 of the Agreement on Textiles and Clothing<sup>317</sup>. Egypt and the US subsequently reached a mutually agreed solution. This seems to suggest that when faced with a major trade partner such as the US, Egypt found it preferable to negotiate an agreement rather than risk contentious litigation<sup>318</sup>.

#### *Egypt—Anti-Dumping Duties on Matches from Pakistan*

This case involved a complaint brought by Pakistan against Egypt for anti-dumping duties imposed on matchboxes from Pakistan. Despite the establishment of a Panel, a mutually agreed solution was later reached Article 3.6 of the DSU in the form of price undertaking agreements between the concerned Pakistani exporters and the Egyptian Investigating Authority. This case is another example of the apparent inclination of Egypt to negotiate a solution rather than resort to litigation<sup>319</sup>.

#### *Morocco- Anti Dumping Measures on Certain Hot Rolled Steel from Turkey*

It is unclear as of yet what will happen in this case as although the Panel has been established, its work has been delayed with a final report due in mid 2018. It will be interesting to observe, however, as the facts of the case are similar to those involving Egypt and the imposition of anti-dumping duties as the result of an investigation. This presents an interesting development as the similarities might be indicative of trade patterns or interests particularly relevant to the Arab members of the WTO, especially considering the fact that Oman and the UAE joined the dispute acting as third parties.<sup>320</sup>

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<sup>316</sup> Indonesia — Measures Concerning the Importation of Chicken Meat and Chicken Products, WT/DS484, panel composed 3 March 2016

<sup>317</sup> Egypt — Measures Affecting Imports of Textile and Apparel Products, WT/DS305, settled or terminated 20 May 2005

<sup>318</sup> Egypt — Measures Affecting Imports of Textile and Apparel Products, WT/DS305, settled or terminated 20 May 2005

<sup>319</sup> Egypt — Anti-Dumping Duties on Matches from Pakistan, WT/DS327, mutually agreed solution on 27 March 2006

<sup>320</sup> Morocco — Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey, WT/DS513, panel composed on 17 May 2017

*United Arab Emirates—Measures Relating to Trade in Goods and Services, and Trade-Related Aspects of Intellectual Property Rights*

This case brought by Qatar is the only one to have gone before a Panel as of September 2018. It is still to soon, however, to ascertain what the findings of the Panel are. The case concerns a dispute involving the blocking of a Qatari owned broadcaster, beIN in Saudi Arabia. In addition to the blocking of the channel, Qatar has accused Saudi Arabia of failing to combat piracy and allowing the content of beIN to be pirated in contravention of intellectual property laws. The United Arab Emirates has announced its intention to avoid litigation by claiming the blocking of the channel was a measure undertaken under Article XXI of the GATT which allows for national security exceptions<sup>321</sup>:

“Nothing in this Agreement shall be construed

(a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests

(i) relating to fissionable materials or the materials from which they are derived;

(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

(iii) taken in time of war or other emergency in international relations; or

(c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.”

Bahrain, Egypt, Saudi Arabia, and Yemen have all joined as third parties. It would be interesting to pursue the outcome of the case, as the national security exception as claimed by the UAE is a controversial move. Indeed, if the national security exception were admitted which seems unlikely, it would allow for it to be used much more frequently perhaps in a way which differs from its original intent. This case also illustrates the politicisation of the WTO dispute settlement mechanism by the Arab members of the WTO since the start of the Qatari blockade. Such a development seems unproductive in a trade environment which is seen as a diplomatic forum in which to conduct trade negotiations and resolve trade disputes. Similarly, in terms of striving to obtain absolute gains from WTO membership, it would seem that such an approach were counterproductive. Indeed, instead of increasing trade through participation, it seems more inductive to reducing trade by hostile participation and politicisation

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<sup>321</sup> (n 281)

*Bahrain—Measures Relating to Trade in Goods and Services, and Trade Related Aspects of Intellectual Property Rights and Saudi Arabia — Measures Relating to Trade in Goods and Services, and Trade-Related Aspects of Intellectual Property Rights*

The facts of these case are identical to the case above involving the UAE. These cases are still at the consultation stage, however. Interestingly, however, in addition to the present dispute at the WTO, the Qatari owned company at the heart of the dispute appears to be planning arbitration under an investment protection agreement of the Saudi-based Organisation of Islamic Cooperation<sup>322</sup>. It would be interesting to observe whether the dispute will be solved via the WTO or whether an agreement will be reached by way of arbitration. Also of note in these particular cases is the absence of any third parties to the disputes. This is a highly unusual scenario that might reflect the unease of WTO members with this blatant politicisation of the dispute settlement mechanism<sup>323</sup>. In addition, it would be interesting to see how the cases brought by Qatar will develop with regards to the interpretation of article XXI of the GATT. Pursuant to Article 3.2. of the Dispute Settlement Understanding, the WTO dispute settlement system serves to ‘clarify’, meaning interpret the provisions of the WTO agreements. Decisions by Panels or the Appellate Body cannot, however, add to or diminish the rights and obligations of members<sup>324</sup>. The limitation to this risk of opening the ‘floodgates’ of Article XXI, is that the interpretations by the Panels or Appellate Body are in principle only binding on the parties to the dispute<sup>325</sup>. This does not mean that if the Panel decided to allow for the use of Article XXI, it would not encourage other WTO members to do so.

*Saudi Arabia— Measures concerning the Protection of Intellectual Property Rights*

This case is still at the consultations phase, it involves claims by Qatar similar to the previous case it brought against Saudi Arabia, of failing to deter copyright infringement of certain entities based in Qatar<sup>326</sup>. Although it is too early to understand what possible impact this case might have should it proceed to a Panel, it is of note that in the context of the Qatari boycott, Intellectual Property Laws appear to be of particular relevance in the context of a ‘media war’. Whether the nature of this dispute is purely trade-related remains to be seen, although this seems unlikely considering the fact that once again there are no third parties to the *dispute*. It is also of note that Qatar has decided to pursue this claim dispute gaining no support in a previous claim against Saudi Arabia on similar grounds.

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<sup>322</sup> OIC

<sup>323</sup> D. Collins, *The World Trade Organization* (Oneworld Publications, 2015) p. 13

<sup>324</sup> Van den Bossche (n 90)

<sup>325</sup> *ibid.*

<sup>326</sup> *Saudi Arabia — Measures concerning the Protection of Intellectual Property Rights*, WT/DS567, in consultations on October 1 2018

*Pakistan— Anti-Dumping Measures on Biaxially Oriented Polypropylene Film from the United Arab Emirates*

In this case, the first brought by the UAE, the claimant has requested consultations with regard to anti-dumping measures imposed by Pakistan on Emirati biaxially oriented polypropylene. The fact that once again, there are no third parties is of note, although the reason behind this most likely differs from the case of the claims brought by Qatar. This is not perhaps in itself shocking since a majority, but not all WTO cases include third parties and participation might depend on multiple factors other than direct relevance of the issue such as size of exports at stake<sup>327</sup>. The specialised nature of the export in question might therefore provide justification.

*Morocco— Provisional Anti-Dumping Measures on School Exercise Books from Tunisia*

This case provides for another first claim made by an Arab member of the WTO and involves a request for consultations by Tunisia concerning provisional anti-dumping duties imposed by Morocco on imports of school exercise books from Tunisia. It is of interest that these two countries, which have been WTO members for more than two decades are only now actively participating in WTO dispute settlement. The reasons behind this accelerated pace in participation could have various sources, from a sense of familiarity with the system. The approach adopted by some Arab members of the WTO of gaining experience as third parties to a dispute doesn't apply in the case of Tunisia, however. The question does arise, however, of whether the more recent membership of GCC countries has had an impact on some of the older members of the WTO, either by leading through example and convincing other Arab WTO members that further participation is the way forward in the organisation. It would be interesting to know whether consultations between Arab countries are at the source of this apparent change in policy, and whether there has been any cooperation or support amongst Arab WTO members. Conversations with former WTO delegates seem to suggest this is the case.

Again of note is the absence of third parties to the dispute, although perhaps the volume of school exercise books traded by other WTO members does not justify participation. The absence of third parties, however, might also be indicative of the fact that Tunisia in this case proceeded with the claim individually, and without cooperating with either other regional or non-regional members. Also of note is the recurrence of claims brought against anti-dumping measures by the Arab countries of the WTO, which along with IP appear to be the sole recurrent themes. Other than the claims brought by Qatar, it seems worthy of mention that in the cases involving the UAE and Tunisia, the claims are brought against trade partners of a similar economic 'power'. This might mean that the Arab members of the WTO that are debuting in dispute settlement are unwilling to test the waters with important economically powerful trade partners. It could also mean in the case of Tunisia and Morocco, however, that regional trade is perhaps more active, although this would need to be verified. What is important in this particular case, however, is the decision to use WTO dispute settlement rather than a regional agreement such as GAFTA or the AMU. The decision to use the WTO

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<sup>327</sup> C.P. Bown, 'Participation in WTO dispute settlement: Complainants, interested parties, and free riders' (2005) *The World Bank Economic Review*, 19(2), 287-310.

is perhaps a vote of confidence in the efficacy of the organisation's dispute settlement system, or the realisation that it is perhaps more efficient than alternative routes available to Tunisia for the resolution of this trade dispute.

## **2. The existence of coalitions amongst the Arab members of the WTO in Dispute Settlement:**

Although there are no obvious patterns that emerge with regards to the disputes discussed above, although two disputes do involve anti-dumping measures, what is glaringly obvious is what is absent. Not one of the cases involves agriculture or services, a major point of interest for non GCC Arab members of the WTO as we have seen in Chapter IV. This seems to support the idea that a lack of common trade interests hinders further cooperation amongst Arab members of the WTO. It does not seem to be a problem for those that do share more similar economies, and what we seem to be witnessing is a subdivision amongst the Arab group of the WTO according to trade interests. The GCC, that arguably has more cultural, political and economic interests in common functions in greater tandem than the the other members who are part of North Africa and the Levant. Those remaining countries, for example Tunisia, Egypt, Jordan and Morocco do have a number of common trade interests and yet do not appear to work together at least in any official capacity on the dispute settlement front.

It would be of interest to examine whether any future endeavours undertaken by the GCC/WTO members might later involve other non GCC Arab members. Based on the *Australia- Certain Measures Concerning Trademarks and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging* case, it seems to be a possibility as both Oman and Egypt were involved in this instance as third parties. An assumption can be made, however, that at this point in time, and without a concerted effort to act as a single Arab bloc, GCC and non-GCC cooperation might occur on a case-by-case basis whenever economic interests happen to collide.<sup>328</sup>

It would appear that Egypt, the Arab country with relatively more Dispute Settlement experience at the WTO has decided to take a third route. Aside from its single dispute entered into as a third party with Oman, it has been involved in the so-called GCC bloc, and has not, unlike the remainder of the Arab WTO members sidestepped the WTO dispute settlement entirely during the earlier portion of membership. Instead, it appears as though it works with non-regional countries that might be pursuing similar trade interests. For instance, Japan and the Republic of Korea are equally third parties in most of the disputes Egypt is third party to. Whether this is a coincidence and a result of similar trade interests, or the outcome of a concerted effort on the part of these countries is unclear. The EU and US also repeatedly appear in cases Egypt is involved in, either as respondent or third party, suggesting again that there might be a close collaboration between these countries at the dispute settlement level. What this might suggest is that Egypt has decided to work within a bloc for the most part, although two of the four disputes in which it is a respondent involve no third parties. It seems to have adopted the coalition approach favoured by a number of developing

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<sup>328</sup> Indonesia — Measures Concerning the Importation of Chicken Meat and Chicken Products, WT/DS484, panel composed 3 March 2016

countries<sup>329</sup> but has not limited itself to regional partners but any WTO members with which it has aligning trade interests. What these interests would be remains to be seen as at first glance the countries Egypt is currently involved with poses very different economies to Egypt, and are at different levels on the economic development scale.

## **2.1.Common obstacles faced by the Arab members of the WTO:**

### **2.1.1 A lack of financial resources and expertise:**

Although a number of Arab WTO members have high GDPs, namely the Gulf states, the majority are limited in terms of the financial resources available to them with regards to representation at the WTO headquarters in Geneva<sup>330</sup>. Most of these countries have a reduced team present on location. In addition, there is the added dilemma of specialisation as even the most competent trade negotiators cannot realistically master all areas of trade involved in the wide-ranging WTO trade agreements<sup>331</sup>. The delegates of these countries are therefore obliged to chose the highest-priority meetings to attend within the WTO at best, and if they are fortunate, not have to divide their schedule between the WTO and a number of other Geneva-based organisations they are accountable for.<sup>332</sup> This does not make for ideal working conditions, especially in comparison to other huge delegations present at the WTO, namely the EU and US that can afford a specialised and focused team<sup>333</sup>. Many of the Arab delegations are in comparison too thinly spread and ill supported to undertake the demanding workload required of them to be able to adequately defend their country's interests at the WTO.

There is a second obstacle related to resources the Arab members have yet to overcome, and that is sufficient experienced home-grown negotiators to represent their interests. Regarding this absence of opportunity for potential candidates to follow a career in trade law, Professor Bashar Malkawi responded with the following statement when questioned about the possible challenges the Arab WTO members faced:

The current state of affairs of Arab countries' participation in WTO affairs including dispute settlement is not effective. There are many opportunities for effective participation but this

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<sup>329</sup> K.Hopewell, 'Different paths to power: The rise of Brazil, India and China at the World Trade Organization' (2015), *Review of International Political Economy* 22(2), 311-338

<sup>330</sup> A. Donmez, 'Developing countries participation in the WTO Dispute Settlement System: how to facilitate?' (2017) (Doctoral dissertation, University of Cape Town).

<sup>331</sup> H. Kazzi, 'Arab Countries and the Doha Round: between ambitions and realities' (2014), *European Scientific Journal* 10(22).

<sup>332</sup> G. Shaffer, 'The challenges of WTO law: strategies for developing country adaptation', *World Trade Review* 5(2), 179.

<sup>333</sup> H. Kazzi, 'Arab Countries and the Doha Round: between ambitions and realities' (2014), *European Scientific Journal* 10(22).

requires long-term investment. For example, the number of staff members dedicated to WTO issues must be increased whether in Geneva or ministries of trade. A scholarship program must be developed where candidates are selected on the basis of merits and then sent abroad to pursue their education in WTO law. Upon return, they can work in ministries of trade and after that sent to missions in Geneva for 1-2 years. Then, through government contacts, work for international law firms that have practices in WTO law. By this, and over the years, Arab countries can develop a pool of experts that can assist in WTO matters including litigation. The current piece meal approach adopted will not work and will not help build expertise. In addition, universities must develop courses and programs that focus on international economic law and the WTO. I think very few universities in Arab countries offer courses- not even whole programs- on the WTO. So, there is a knowledge gap between graduates of Arab countries and other countries.

Further, to help alleviate financial costs of Arab countries in WTO affairs, rich Arab countries can create a fund to assist other Arab countries and pool resources together. Unfortunately, time is of the essence in this case as the lack of formal training of WTO law experts means current and future decisions might be made without in-depth knowledge or understanding of what the consequences may be. Although trade ministries in the Arab World are well staffed and experienced, WTO law is a relatively niche area of expertise and a lack of mastery means Arab countries are potentially blindly in tow ways. Firstly, they may not grasp how a particular WTO decision would affect them in time to possibly influence outcome. Secondly, Arab members of the WTO are entering into bilateral trade agreements which they are more familiar, and perhaps comfortable with, but without being able to fully weigh and compare outcomes of these bilateral agreements in contrast to outcomes they could pursue at the WTO in order to make an informed decision as to which forum would best serve their country's trade interests.

Developing countries by and large have to rely excessively on specialised international law firms when entering into disputes, at huge cost considering their limited means<sup>334</sup>. Such an obstacle is not insurmountable, however, as other developing countries, such as Brazil have successfully dealt with the issue. Brazil, with a GDP of 11.28 per capita is in between the lowest and highest Arab GDPs. It would appear to have significantly more resources to fund its WTO activities than say, Tunisia with a GDP of 4.316 per capita. On the other hand, it is armed with a much lower GDP than the average Gulf state. Qatar has a GDP 93, 714.06 per capita and Saudi Arabia 25, 961. 81 per capita. Despite this Brazil appears to have adequate delegations posted in Geneva, with a wide range of expertise between them<sup>335</sup>. This is the marked result of a conscious decision at the governmental level to fund, and train Brazilian trade experts to be sent to Geneva. On this same note, Egypt which is the most active Arab member of the WTO, has far less resources at its disposition than the Gulf States, which might suggest the lack of finances whilst a real obstacle to

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<sup>334</sup> C. Davis, S. Bermeo, 'Who files? Developing country participation in GATT/WTO adjudication' (2009), *The Journal of Politics* 71(3), 1033-1049.

<sup>335</sup> C. Efstathopoulos, 'Leadership in the WTO: Brazil, India and the Doha development agenda' (2012), *Cambridge Review of International Affairs* 25(2), 269-293.

optimum participation in the WTO, is not an insurmountable, nor does it seem to justify, as a single factor, low participation in the WTO.

If lack of resources alone cannot justify low participation, another question that arises is why the Arab members of the WTO that do possess the means not participate more actively<sup>336</sup>. It would appear from the disputes entered into as third parties analysed previously that there might be a concerted effort to gain more experience before fully delving into dispute settlement if this is even an eventual objective, which would explain the delay in participation. What remains unanswered, however, is why the GCC members who do have the financial resources have not yet actively invested in training a future generation of trade experts to act as their country's representative at the WTO, or at least have not yet publicly claimed to have done so in a systematic way.<sup>337</sup> Possible reasons for this state of affairs possibly include greater investment of resources in bilateral trade agreements. As such, resources and efforts would be put into training trade negotiators rather than GATT experts. Another, more technical possibility, is that they simply require more time, having not benefited from decades of GATT membership as some earlier members have. In either case, and regardless of whether they adopt a policy of not entering into the dispute settlement field or not, such an investment would be worthwhile for these countries to be able to fully master their positions as members of the WTO decision, in order to understand and influence decisions affecting their economies. It would be interesting to see whether in future these countries do invest to produce well-trained and experienced WTO experts through the creation of WTO related courses at the university level, as well as funding for training and internships<sup>338</sup>.

Although the lack of finances is a considerable hindrance to the increased participation of Arab countries in the WTO, there are a number of resources provided by the WTO to help alleviate this problem common to developing country members. Technical training and assistance has been incorporated following the Doha Round and is readily available to the Arab members. It would appear that a number have used its resources, namely Tunisia and Jordan. These same countries, and others have also become involved in the WTO Chairs Programme in an apparent attempt to help provide training to potential trade experts:

The main objectives of the Programme are to:

- provide teaching support for the development and delivery of courses on trade policy and WTO-related matters in academic institutions
- foster further research in trade-related matters and highlight the policy relevance of existing research — universities awarded a WTO Chair are expected to cooperate their counterparts in the Programme through joint research, shared lecturing arrangements and student/academic exchanges

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<sup>336</sup> J.Lacarte-Muro, P. Gappah, 'Developing Countries and the WTO Legal and Dispute Settlement System: A view from the bench' (2000), *Journal of International Economic Law* 3(3), 395-401.

<sup>337</sup> Malkawi (n 42)

<sup>338</sup> El Taweel (n 302)

- encourage outreach/communication — universities awarded a WTO Chair are expected to — organize public activities aimed at disseminating research and promoting discussion regarding international trade and trade co-operation.
- build lasting relationships with institutions from developing countries by according financial support to beneficiary institutions for a maximum period of four years

Whether these measures are sufficient to overcome limited resources and the lack of technical expertise, however, is much contested<sup>339</sup>. Various shortcomings have been raised concerning the fact that concrete WTO initiatives to facilitate Arab participation in WTO proceedings have included a collaboration with those Arab members to set up a webpage translating all WTO documents<sup>340</sup>, and the organising of various international trade courses that appear to resemble introductory college courses more than specialised training for trade initiates. One solution suggested is setting up a pan-Arab institution, funded by the Arab WTO members themselves, to bring together and train academics, government officials and representatives of the private sector in WTO law.<sup>341</sup>

### 2.1.2 Cultural preferences:

The main question that arises when considering cultural preferences, is whether the lack of Arab participation in dispute settlement is linked to a preference to resolve differences through means other than litigation<sup>342</sup>. If looking at Islamic law, for instance, which is an influential legal source in most of the Arab WTO member states, there is a strong preference towards the avoidance of the disruptive effects of adjudication whenever possible, by attempting conciliation beforehand.<sup>343</sup> This is by no means a feature unique to the Middle East and North Africa as other countries with no relation to the region are also known to prefer alternative forms of dispute settlement in their own judicial systems<sup>344</sup>.

With this cultural framework in mind, we might perhaps be able to understand at least partially why for most of the membership of Arab countries at the WTO, no Arab member had ever been a complainant in a dispute, and why out of all the Arab WTO members, only Egypt and Morocco effectively went before the panel in *Egypt — Definitive Anti-Dumping Measures on Steel Rebar from Turkey*, and *Morocco — Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey*, as respondents. The recent change in situation

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<sup>339</sup> Shaffer (n 319), 180

<sup>340</sup> <http://www.wtoarab.org> accessed 02/06/2017

<sup>341</sup> B. Malkawi, *Jordan and the World Trading System* (VDM Verlag Dr Müller EK 2010)

<sup>342</sup> A. Othman, 'And Amicable Settlement is Best: Sulh and Dispute Resolution in Islamic Law' (2007), *Arab Law Quarterly* 21(1), 64, 187

<sup>343</sup> *ibid.*

<sup>344</sup> J. O. Haley, 'Litigation in Japan: A New Look at Old Problems' (2002), 10 *Willamette J. Int'l L. Dis. Res.* 121, 185

might mean the objective figures on participation have changed, but it is yet too soon to determine whether they are indicative of a policy of increased participation in WTO dispute settlement.

There are present three cases involving Arab WTO members that have gone before a Panel. Concerning *United Arab Emirates— Measures Relating to Trade in Goods and Services, and Trade- Related Aspects of Intellectual Property Rights*, only the facts are known as the Panel has only recently been composed in September 2018 after having been originally been deferred. The dispute involves claims made by Qatar against the UAE concerning the boycott of a Qatari media network, and an apparent failure to prevent the piracy of said network amounting to an alleged violation of Intellectual Property rights. What is most interesting in this case as previously mentioned is the intention announced by the UAE to prevent the case going forward by claim the boycott of the network is justified by national security considerations.

The recent dispute involving Morocco was initiated on the 12th of January 2017 and stems from a complaint made by Turkey on the imposition of definitive anti-dumping measures, and certain aspects of the underlying investigation, by Morocco, on imports of certain hot-rolled steel from Turkey. Turkey claimed that the measures appear to be inconsistent with Articles 1, 3.1, 3.2, 3.4, 3.5, 5.10, 6.8, 6.9, 18.1 and paragraph 1, 3, 5, 6 and 7 Annex II of the Anti-Dumping Agreement; and Articles 3.2 and 3.3 of the Agreement on Import Licensing Procedures; and Articles I:1, VI, X:1, X:2, X:3(a) and XI:1 of the GATT 1994<sup>345</sup>. A panel was composed on the 17th of May 2017, and third parties to the dispute are China, Egypt, the European Union, India, Japan, Kazakhstan, Korea, the Russian Federation, Singapore and the United States reserved their third-party rights<sup>346</sup>.

The dispute involving Egypt was initiated On November 6th 2000 when Turkey requested consultations with Egypt concerning an anti dumping investigation carried out by the Egyptian Ministry of Trade with respect to imports of steel rebar from Turkey. As a result of the Egyptian investigation, AD duties were imposed, ranging from 22.63% - 61.00% ad valorem.

In its request for consultations, Turkey claimed that Egypt made determinations of injury and dumping in the investigation without a proper establishment of the facts, and based on an evaluation of the facts that was neither unbiased nor objective; during the investigation of material injury or threat thereof and the causal link. It was claimed that Egypt acted inconsistently with Articles 3.1, 3.2, 3.4, 3.5, 6.1 and 6.2 of the AD Agreement; and during the investigation of sales at less than normal value, Egypt violated Article X:3 of the GATT 1994, as well as Articles 2.2, 2.4, 6.1, 6.2, 6.6, 6.7 and 6.8, and Annex II, Paragraphs 1, 3, 5, 6 and 7 and Annex I, Paragraph 7 of the AD Agreement.

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<sup>345</sup> Morocco — Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey, WT/DS513, panel composed on 17 May 2017

<sup>346</sup> *ibid.*

After the consultations failed to reach a mutually agreed solution, Turkey requested the establishment of a Panel on 3 May 2001, which concluded that Egypt did not act inconsistently with its obligations under Articles 3.4, 3.2, 3.1, 6.1, 6.2, 3.5, 6.2 and 2.4 of the AD Agreement. The Panel concluded that Article 3.2 did not require that a price-cutting analysis be conducted at any particular level of trade and that the Egyptian authorities had provided the justification for their choice of the level of trade at which prices were compared, and that Turkey had failed to establish that an objective and unbiased investigating authority could not have found price undercutting to exist on the basis of the elements before it. Nevertheless, it also concluded that Egypt acted inconsistently with its obligations under Articles 3.4 and 6.8 of the agreement.

It could be rightly claimed that, by engaging in this case and achieving significant victory, Egyptian authorities acquired valuable knowledge, expertise and more importantly, confidence in the DSU<sup>347</sup>. It also confirmed that the Egyptian investigating authority was complying to a large extent with the rules set forth in the WTO Agreements when conducting AD investigations, which represented another source of confidence<sup>348</sup>.

### **2.1.3. Political considerations:**

Former patterns of behaviour of the Arab members of the WTO before more recent involvement dispute settlement seemed to indicate a possible preference for alternate forms of dispute resolution over litigation. More practical considerations play a role in the decision of many Arab members of the WTO to prefer negotiation and settlement rather than to bring a dispute before the panel, and that is political strategy. As members of both the WTO and signatories of a number of bilateral trade agreements, the Arab members of the WTO find themselves in the not unique position of having to honour those bilateral treaties, whilst keeping their main trade partners content. The idea of confronting these main trade partners through WTO dispute settlement might seem counterintuitive to most of the Arab members of the WTO, who prefer to come to a negotiated agreement rather than resolve a problem through confrontation. This appears to be a sound approach, for although in an ideal world, what happens in the WTO ought to stay in the WTO and not encroach on external agreements, *real politik* means that for every slight, or perceived threat to their interests, major and powerful trading partners might make their discontent known by retaliating either economically or politically.

Egypt found itself in such a dilemma when it agreed with the United States, its main donor from which it receives \$1.5 billion annually, to enter a dispute as a third party which the US was bringing against

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<sup>347</sup> M. Shahin, 'WTO dispute settlement for a middle-income developing country: the situation of Egypt', in GC Shaffer and R Melendez-Ortiz (eds), *Dispute Settlement at the WTO: The Developing Country Experience* (Cambridge University Press 2010), 275-300.

<sup>348</sup> J Prieur, OR Serrano, 'Coalitions of Developing Countries in the WTO: Why Regionalism Matters' (2006), In WTO Seminar, Department of Political Science, Graduate Institute of International Studies, Geneva.

the EU, Egypt's largest trade partner from which it equally receives various financial aides totalling €59 million<sup>349</sup>. Between 1948 and 2011, the US has given Egypt about \$71.6 billion in bilateral military and economic aid. The aid was made conditional after General Morsi took power, on the continued adherence by Egypt to the 1979 Peace Treaty with Israel<sup>350</sup>. In *European Communities — Measures Affecting the Approval and Marketing of Biotech Products*, the US had brought a complaint against the EU aimed at the European ban on the importation of genetically modified crops, which the US was producing and seeking to export. Egypt had initially agreed to support the US position and enter the dispute as a third party, and would have provided support to a key argument in the US report regarding the potential of genetically modified crops to reduce hunger in developing countries. Egypt was to be a representative of those developing countries. Amidst an internal dispute between the Egyptian Ministries of Foreign Affairs and Foreign Trade, the former considering a national ban on GMO's, and the latter wanting to conserve good diplomatic and trade relations with the US with the hope that a long promised FTA would come to fruition.

The initially pro US stance put forward by the Ministry of Foreign Trade was therefore reversed by the Ministry of Foreign Affairs, which was unwilling to risk the ire of the EU in exchange for unclear benefits of an FTA. The US did not take kindly to the volte-face and in a retaliatory move, removed Egypt from a list of countries with which it was about to commence FTA negotiations<sup>351</sup>. This case illustrates a myriad of concerns, which are not in any way unique to them, that Arab WTO members might have when considering whether or not to enter into a particular dispute. It would seem, the potential trade benefit would need to be quite considerable to consider ruffling feathers, especially those of important trade partners who represent a considerable percentage of their net trade. The aforementioned case also illustrates the fact that WTO disputes are not, as the theory might suggest, trade disputes which can be confined to their context. Unfortunately, trade disputes which should begin and end in the WTO, to be fairly adjudicated by an impartial panel, do carry consequences outside of the WTO, whether impacting on bilateral trade relations, regional trade, or political relations.

The practice seems to be widespread as it is not reduced to a single incident. Egypt again found itself 'urged' by the US to desist from the G20 group in the Cancun Ministerial Round. Making a barely veiled threat, US Senate Finance Committee Chairman at the time, Chuck Grassely issued the following statement at a press conference:

I'm disappointed by the position of many countries in the so-called G21...What I find most disturbing is some of the nations that have aligned themselves with the G21 position, such as Columbia, El Salvador, Costa Rica, Morocco, Thailand, Egypt,

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<sup>349</sup> European Commission, 'EU provides €59 million of socio-economic support to Egypt' (Memo, 10 September 2015) <<http://ec.europa.eu/enlargement/neighbourhood/pdf/key-documents/egypt/20150910-memo-egypt-aap-2015.pdf>> accessed 2 February 2017

<sup>350</sup> B. Plumer, 'The U.S. gives Egypt \$1.5 billion a year in aid. Here's what it does.' (Wonkblog, 9 July 2013) <<https://www.washingtonpost.com/news/wonk/wp/2013/07/09/the-u-s-gives-egypt-1-5-billion-a-year-in-aid-heres-what-it-does/>> accessed 2 February 2017.

<sup>351</sup> Shahin (n 345)

Guatemala and South Africa, are seeking to deepen their relationship with the United States through the negotiation of free trade agreements, but are resisting opening their own markets in agricultural trade. This makes me question their commitment to free trade and their interest in pursuing the strong market access commitments required to conclude free trade agreements with the United States.<sup>352</sup>

Whether or not these instances were isolated, or whether countries, developing or developed regularly face such pressures in order to comply with the interests of the country exercising their influence<sup>353</sup>, is unclear. It would seem logical that countries with less economic and political leverage would more often be on the receiving end of such statements. It is difficult to evaluate, however, how often such pressures might arise, and whether they are employed systematically as a matter of policy as such measures are unlikely to be publicly endorsed as policy, and often occur behind the scenes. Coincidentally, Egypt and the US have yet to sign an FTA, a situation resulting from the aforementioned trade dispute, among other factors<sup>354</sup>. The EU has had an EFTA in place with Egypt since 2011.

## **2.2. Involvement of the Arab members of the WTO in negotiating policy:**

It would appear from the information gathered in Section A above, that the great majority of Arab members of the WTO have decided to desist from the Dispute Settlement system for either practical reasons limiting their ability to engage and participate in WTO Dispute Settlement, or as a matter of policy, in a calculated effort not to make themselves vulnerable to retaliatory measures by their main trade partners potentially capable of affecting their trade interests detrimentally. It remains to be seen, however, whether they have adopted a similar approach with regards to negotiations, which one might argue is perhaps a more risk averse way for them to advance their country's interests using minimal confrontation. The aforementioned G21 situation, however, puts this assumption to question.

Unlike Dispute Settlement, measuring the level of Arab participation in negotiations occurring at the WTO is more for practical reasons such as difficulties in consistently obtaining official records of involvement, or publicly available minutes of meetings for the Arab members of the WTO. It is therefore difficult to reliably measure how involved or persuasive they are on the negotiating front. There is no single element that might give us a definitive answer as to whether Arab members of the WTO actively participate in negotiations, but a number of factors, combined, does give us a clear idea of whether they are negotiating, what issues they feel affected by, and how they view these issues. The answer is not clear cut as conversations with delegates indicate levels of activity amongst Arab countries vary state-by-state and according to negotiating areas considered to be of vital national interest.

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<sup>352</sup> F. Jawara, *Behind the Scenes at the WTO: The Real World of International Trade Negotiations* (Zed Books 2003), 96

<sup>353</sup> Steinberg (n 173).

<sup>354</sup> Accusations that the 2005 Egyptian presidential elections were not free and fair also hindered the process.

Three elements could be of assistance in determining the level of Arab participation in WTO negotiations. Firstly, access to voting records would be of use. Considering policies that would affect all WTO members are voted into force, it would be interesting to see when Arab members of the WTO vote, and how they vote<sup>355</sup>. Similarly, looking at the groups the Arab members of the WTO are members of would give a clear indication of what they hold to be priority issues. Again, there is a limitation to the information to be collected as minutes of meetings are not readily available. We might therefore ascertain which groups the Arab WTO members belong to, but not how much they participate in these groups, or how active they are in the meetings. A last source of information would be to look at the notifications issued by the concerned countries. Notifications would give a clear indication of the policies entertained, or refuted by the Arab members of the WTO in accordance with their trade interests<sup>356</sup>. This section will therefore look at the Groups Arab members of the WTO are involved in in Section I, followed by the notifications issued by these countries in section II in the hope that these two elements combined will produce a reveal the negotiating trends of the Arab members of the WTO.

**Table 3: Groups the Arab members of the WTO are members of:**

Country	Groups	Total number of Groups
Bahrain	Asian Developing Members	1
Egypt	African Group G-90 G-20 NAMA-11 "W52" sponsors	5
Djibouti	ACP African Group G-90 Least-Developed Countries "W52" Sponsors	5
Jordan	Asian Developing Members Article XII Members	2
Kuwait	Asian Developing Members	1

<sup>355</sup> J.J. Schott and J. Watal, 'Decision Making in the WTO', in JJ Schott (ed), *The WTO after Seattle*, (Institute for International Economics 2000), 283-292

<sup>356</sup> Steinberg (n 173)

Country	Groups	Total number of Groups
Mauritania	ACP African Group G-90 Least-Developed Countries Small, vulnerable economies “W52” Sponsors	6
Morocco	African Group G-90 “W52” sponsors	3
Oman	Asian Developing Members Article XII Members	2
Qatar	Asian Developing Members	1
Saudi Arabia	Asian Developing Members Article XII Members	2
Tunisia	African Group G-90 NAMA-11 “W52” sponsors	4
UAE	Asian Developing Members	1

The numbers alone do not tell us much about the level of activity of the Arab members of the WTO within their respective groups. Indeed they could be passive members, which would mean their influence on the outcome of policy building, and negotiation would be minimal. The countries that are members of the largest number of groups, for example Mauritania, Djibouti, and Tunisia, are not particularly active on the dispute settlement front. It is difficult to tell whether this means they are inactive members of the Groups they belong to, and are passive members with regards both to dispute settlement and negotiation; or whether this signifies that they have consciously maintained a distance from the dispute settlement system, in favour of negotiation.

What the figures in Table 3 can potentially tell us, however, at least to a certain degree, is whether the Arab members have a similar arrangement with regards to cooperation on the negotiating front as they do in dispute settlement. Table 4 illustrates the Groups most adhered to by the Arab members of the WTO.

**Table 4:**

<b>Asian Developing members</b>	<b>African Group</b>	<b>G-90</b>	<b>NAMA-1 1</b>	<b>“W52” Sponsors</b>	<b>Least developed countries</b>	<b>ACP</b>	<b>Article XII Members</b>
Bahrain Jordan Kuwait Oman Qatar **Saudi UAE	Egypt Djibouti *Maur. Morocco Tunisia	Egypt Djibouti *Maur. Morocco Tunisia	Egypt Tunisia	Egypt Djibouti *Maur. Morocco Tunisia	Djibouti *Maur.	Djibouti *Maur.	Jordan Oman **Saudi

\*Maur. abbreviation for Mauritania.

\*\* Saudi. abbreviation for Saudi Arabia.

The first factor that comes to mind when looking at Table 4 is that unlike dispute settlement, there seems to be a higher level of activity from the Arab members of the WTO on the negotiation front than on the dispute settlement front. At a minimum, each country is a member of at least one Group. This could effectively indicate that the Arab members of the WTO are more active on the negotiation front than on the Dispute Settlement Front.

The second element of interest is the way in which the countries are grouped by Group, and thus by category of interest. By far the Group with the greatest Arab membership is the Asian Developing Members, of which all the GCC Arab WTO members are a part of. This seems to indicate that the close GCC cooperation visible on the dispute settlement front, carries to the negotiation front, which would suggest a coordinated global approach towards the WTO on the part of the GCC Arab members.

Again, the Group membership appears revealing of activity patterns amongst the Arab members of the WTO as they reflect an Asian/African divide amongst the Arab members of the WTO in a far more pronounced way than in dispute settlement. Whereas in dispute settlement, there appears a strong unofficial GCC group, with regards to negotiations that group is counterbalanced by an apparently strong Arab African group comprised of those Arab countries located on the African continent. Such a division would make economic sense as the GCC, when contrasted with the Arab countries of North Africa have little in common in trade terms, and yet the distinction does not appear with regards to dispute settlement.

This would seem to further support the idea that non-GCC Arab members of the WTO might have consciously decided to forsake the dispute settlement route in favour of negotiations. It remains to be seen whether this is effectively the case by looking at their level of participation within these Groups, a recommendation that shall be made in Chapter VII for further research.

### 2.3. Arab interests as seen through Group membership:

Information readily available on the activities of the various WTO Groups is limited, yet some information can be gleaned from the membership of the Arab members of the WTO to the WTO groups they belong to. The Asian Developing Countries group formed in 2012, and is a regional Group with a general agenda, amongst which is advancing the accession process of Asian developing countries who have applied for membership of the WTO. This might be relevant to increasing Arab membership of the WTO for the 12 remaining Arab League countries not yet members of the WTO. Pakistan acts as the coordinator for this Group. The ACP encompasses African, Caribbean and Pacific countries with common agricultural interests and with a focus on trade with the EU<sup>357</sup>. It appears particularly active and organised and main decisions are made by a Council of Ministers of member States<sup>358</sup>. The G-90 is comprised of the African Group, the ACP and the least developed countries Groups and has a general focus. NAMA-11 is a coalition of developing countries seeking flexibilities to limit market opening in industrial goods trade.

The “W52” Sponsors, created in 2008 is TRIPs focused and includes sponsors of TN/C/W/52, a proposal for “modalities” in negotiations on geographical indications (the multilateral register for wines and spirits, and extending the higher level of protection beyond wines and spirits) and “disclosure” (patent applicants to disclose the origin of genetic resources and traditional knowledge used in the inventions). The list includes as groups the EU, ACP and African Group. The Least-developed Countries Group auto proclaims itself as composed of the world’s least developed nations according to the UN list, and has a general agenda. Article XII Members is a Group with a general focus and which is comprised of WTO member countries that have joined the organisation post 1995. The Group seeks to lessen the commitments imposed on its members due to the liberalisation they have already undertaken as a condition of membership. No other information is available on the African Group other than it is a regional Group with a general nature.

What the list of Groups entered into by the Arab members of the WTO seems to show us is that about half have a specific focus: NAMA-11 deals with limiting market opening in industrial goods trade, “W52” with rules of origin and TRIPs, and the ACP is focused on agriculture. The remaining Groups have a general focus and are regionally based. Due to the lack of specific information provided regarding the activities of most of these Groups, we are unable to ascertain what those countries involved in the regional Groups are most interested in. It seems reasonable to assume they would become involved in negotiations on a case-by-case basis whenever their interests are at stake<sup>359</sup>. Little indication is provided, however, on what those interests might be.

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<sup>357</sup> V. Costantini, R Crescenzi, F De Filippis and L Salvatici, ‘Bargaining coalitions in the WTO agricultural negotiations’ (2007), *World Economy* 30(5), 863-891.

<sup>358</sup> A. Narlikar, J. Odell, ‘The Strict Distributive Strategy for a Bargaining Coalition: the Like Minded Group and the World Trade Organization’, in J Odell (ed), *Negotiating Trade; Developing Countries in the WTO & NAFTA* (Cambridge University Press 2006).

<sup>359</sup> P. Drahos, ‘When the weak bargain with the strong: negotiations in the World Trade Organization’ (2003), *International Negotiation* 8(1), 79-109.

With regards to those Arab members of the WTO who are members of Groups with a specific focus, none are unexpected or seem to contradict the findings of Chapter IV of this thesis. Agriculture, TRIPs amongst other things, are sectors one would expect the African and North African members of the WTO to have a strong stake in.

## **Conclusion:**

The Arab Members of the WTO have largely remained absent from the dispute settlement scene at the WTO<sup>360</sup> for most of the 28 years since the first Arab countries joined the organisation. This appears to be for a number of reasons including financial constraints, lack of experience or expertise, as well as fear of direct or indirect retaliation in case of a dispute. It would appear that this last factor is the one that carries the most weight when understanding why these countries behave the way that they do, and explains why a conscious decision appears to have been taken to not go down the path of litigation in order to solve trade disputes. To this effect, the Arab Members of the WTO appeared for the long part, to have preferred to resolve differences through negotiation, rather than before a panel. While this was mostly true for the first two decades of membership for the earlier Arab members of the WTO, there appears to be a recent increase in involvement in Dispute Settlement. There are many possible reasons for this apparently sudden change in policy, from the increase of negotiation and coalition activity at the WTO, to an increase in Arab members of the WTO that might be cooperating with one another, to an increased sense of security with the prospect of involvement in potentially legally complex dispute settlement procedures, or perhaps the failure of alternative forums to adequately adjudicate trade disputes Arab members are involved in, leading them to turn to the WTO.

Although there is increase in recent activity, the dominating stance for most Arab members of the WTO still appears to have continued unchanged. The GCC Arab members of the WTO adopted a slightly alternate route at first, appearing to slowly be testing the waters of dispute settlement by engaging, often together, in relevant disputes as third parties. This seems to have been adopted as a strategy to gain knowledge and experience of the dispute settlement system, with less risk than had they been a claimant in a dispute. Although this approach is not entirely risk free, as Egypt learnt at its expense, it is a valid strategy that overcomes many of the difficulties encountered by the Arab members of the WTO, and developing countries in general. It is especially well-adapted to the GCC countries who have gained membership of the WTO relatively recently and lack the experience that earlier members might have gained. This contrasts with Tunisia, a member since 1995 with no prior formal experience of WTO dispute settlement and which has brought a first claim.

The fact that the GCC countries always enter into these disputes with other GCC countries suggests there is indeed a greater level of coordination amongst them than with other Arab members of the WTO other

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<sup>360</sup> C.P. Bown, 'Participation in WTO dispute settlement: Complainants, interested parties, and free riders' (2005), *The World Bank Economic Review* 19(2), 287-310

than Egypt. This makes sense on a trade level as these countries have vastly more in common in economic terms than the agriculture and goods based economies of the Levant and North Africa. The fact, however, that GCC countries are now initiating disputes against each other might be symptomatic of political tensions amongst them, that if exported into the WTO, might hinder progress that could be made with regards to better cooperation and increased participation in the WTO dispute settlement mechanism. Such a scenario could effectively lead, in theory, to a Saudi-lead bloc forming, with the remaining Arab members choosing to distance themselves from political disputes and effectively annulling any chance of wider cooperation and undoing opportunities for increased participation that have been observed. In such a case, Arab members of the WTO might fall back on old habits which contributed to the failure of regional agreements with tensions resulting in the pursuit of relative rather than absolute gains. The fact Arab countries are bringing claims against one another is not necessarily indicative of politicisation, however. In the case of *Morocco—Provisional Anti-Dumping Measures on School Books from Tunisia*, for instance, increases in cases might be reflective of increased trade relations at the regional level which would appear as a promising development towards greater participation at all levels of trade offered by the WTO, and the pursuit of the ultimate goal of increased overall trade for members.

With regards to the forming of coalitions, the older Arab members of the WTO other than Egypt have not chosen to adopt a similar approach and engage in disputes relevant to their own economies as part of a non-regional bloc, in the manner of a number of developing countries who have formed coalitions in order to better their chances on the dispute settlement field<sup>361</sup>. With regards to Saudi Arabia, however, the kingdom seems to have reversed its former strategy of operating within the GCC bloc and appears to have entered into disputes as a third party a number of times in 2017 with non regional partners. Qatar, presumably in light of recent boycott measures imposed on it by members of the GCC, has resorted to bringing claims against them at the WTO. The complaints have presented a particular conundrum as Qatar has suffered a lack of backing which in itself is alarming with regards to precedent, perhaps because third parties are hesitant to enter what they might sue as a political rather than trade-related dispute. In addition, the UAE by planning to resort to the national security exception under Article XXI of the GATT, is also potentially setting a problematic situation as to the appropriate use of the exception and its applications.

With regards to negotiations, the non-GCC Arab members of the WTO appear to be more active than their GCC counterparts. They have indeed made their presence known in key sectors by joining powerful and active groups that try to influence the outcome of policies on agriculture especially, but also other factors affecting their exports such as TRIPs. The GCC Arab members, in contrast, have limited their membership of the various Groups to a regional one, Asian Developing Members, and another for recent members, Article XII Members.

It is difficult to ascertain, with precision, how active the individual Arab members of the WTO are in each of their Groups, what does appear to have happened, however, is despite alleged informal cooperation as an Arab regional Group, the Arab members of the WTO have followed two different paths with regards to

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<sup>361</sup> Rolland (n 95); M. Patel, 'New faces in the green room: developing country coalitions and decision-making in the WTO' (2007), Global Economic Governance Programme Working Paper 33, 2007

their policy regarding participation in the WTO: the GCC members adopted a soft approach involving familiarisation with the system through increased participation in disputes, albeit as third parties rather than as main actors before eventually attempting participation as parties to the dispute. The non-GCC Arab members have not made a similar move to increase participation in dispute settlement, other than Tunisia, seemingly as a matter of policy. They have instead preferred to focus their efforts on negotiations, hoping this will deliver the desired policy outcomes with minimal confrontation. There are therefore apparently two categories within the Arab members of the WTO with regards to participation in the WTO directly, either through negotiations or dispute settlement. The most active members seem to be closer to the goal of greater participation in the organisation and the subsequent maximisation of membership benefits in increasing trade.

## Chapter VI- Application of Article XXIV of the GATT: Regional and Bilateral Agreements

### 1-Introduction:

Arab countries have been involved in the GATT since its creation<sup>362</sup>, Lebanon and Syria as previously discussed in Chapter I, having been founding members that later left the organisation, presumably for political reasons. The MENA region, despite the turbulent times it has gone through in the past decades, has always been eager to partake in the global market; and undeniably has a long history of trading with both the East and the West<sup>363</sup>. Although most Arab countries joined the GATT at a later point; as early as the 1950s, they were entering into GATT inspired regional trade agreements that have co-existed in parallel with their WTO membership. None of the regional trade agreements, however, save the Gulf Cooperation Council, have truly come to fruition in terms of making a substantial difference in the volume of international and inter-Arab trade. At present, inter-Arab trade represents less than 10% of total Arab trade, a negligible amount of total trade. The lack of regional trade in the MENA region puts these countries in the quite unique position of having main trade partners with no geographical proximity or common borders. This raises the question of whether Arab countries are unable or unwilling to trade with each other. It is paradoxically often the case, that despite common borders, trade with a neighbouring country is less cost effective than with a non regional partner depending on customs agreements, tariffs and administrative, financial and infrastructural obstacles that complicate transactions. There is also the issue of lack of diversity in economies, where neighbouring countries often produce similar products which compete rather than complement each other as discussed in Chapter IV. This, in turn, brings forth the further question of whether Arab states are doomed to remain in a state of constant competition rather than partnership due to their similar economies, at least for those in immediate geographical proximity. This inability to trade amongst each other could ultimately explain why decades of concerted efforts that have given rise to a multitude of trade agreements have failed to improve inter-Arab trade. The ultimate question, however, is how all these parallel systems of bilateral and regional trade affect and are affected by each other, WTO membership, and Article XXIV of the GATT.

In addition to a number of significant regional trade agreements, this chapter will examine a rising number of bilateral trade agreements Arab countries have entered into, mainly with the EU and US. These bilateral trade agreements have a potentially far greater impact on the Arab states than the regional agreements, at least in the present context, as the EU and US represent their largest trading partners. To this effect, this chapter will first discuss the major Regional Agreements entered into by the Arab Members of the WTO (Section 1), followed by bilateral agreements entered into by these same countries (Section 2), before analysing how these various agreements come under GATT Article XXIV (Section 3). Conclusions can

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<sup>362</sup> C.L. Davis, M. Wilf, 'Joining the Club: Accession to the GATT/WTO' (2017), *The Journal of Politics* 79(3), 964-978

<sup>363</sup> C. Ju-Kua, *His Work on the Chinese and Arab Trade in the Twelfth and Thirteenth Centuries: Entitled Chu-fan-chi* (Cheng-Wen Publishing Company 1970); G.F. Hourani, J. Carswell, *Arab seafaring in the Indian Ocean in ancient and early medieval times* (Princeton University Press 1995).

thereafter be drawn as to whether the parallel system of trade agreements is an optimal solution for the Arab countries (Section 4).

## **1. Regional Agreements entered into by the Arab members of the WTO:**

Modern concepts of inter-Arab Trade arguably originated with the creation of the Arab League, the leading organisation that is called upon whenever a common Arab position is required. It was the Arab League, for instance that suspended Syria's membership following the Syrian uprisings in a move of protest against President Bashar Al Assad. It was equally the Arab League's Economic and Social Council which initiated the Agreement to Facilitate and Develop Trade Among Arab Countries in 1981, followed by the Greater Arab Free Trade Area Agreement in 1997, which currently counts 16 member states<sup>364</sup>. The GAFTA is the sole pan-Arab free trade deal to have come into existence, the remainder being sub-regional and area specific. Despite great ambitions and an accelerated implementation after a slow start, GAFTA never truly fulfilled its objectives of increasing inter-Arab trade, neither does it compete with the WTO as will be discussed in section 1.1 below.

### **1.1. Inter-Arab Trade Agreements:**

This section will look at the individual inter-Arab regional Agreements the Arab members of the WTO are involved in. A more detailed discussion of how these agreements fit under Article XXIV of the GATT will follow in Section 3.

#### **1.1.2 The Greater Arab Free Trade Area:**

GAFTA currently comprises eighteen member countries<sup>365</sup>, many of which are not yet WTO members. GAFTA was ratified in 1997 and followed the adoption of the Agreement to Facilitate and Develop Trade Among Arab Countries in 1981 by the Arab League's Economic and Social Council, and the subsequent approval by seventeen Arab League member-states at a summit in Amman, Jordan of the "Greater Arab Free Trade Area Agreement"<sup>366</sup>. Algeria, however was not party to the agreement until 2009. The objective behind GAFTA was to gradually decrease tariffs by 10% annually in order to create a trade barrier free area by 2008. By January 2005, most trade barriers between GAFTA members were effectively eliminated. It seems as though this had made little difference to the total volume of trade amongst GAFTA member countries as the percentage of trade amongst these countries has not increased in any significant way as discussed in Chapter IV.

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<sup>364</sup> Zarrouk (n 208).

<sup>365</sup> Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, UAE, Yemen.

<sup>366</sup> Abedini, Péridy (n 209).

Although the GAFTA agreement originated before the WTO, it was not implemented until 1998. Before looking at the specific terms of GAFTA and how it has worked in practice, it is of note that the original framework and ideology behind what an Arab free trade area should look like changed significantly between its inception in 1981, and implementation in 1997. In that time, a number of Arab countries had already joined the WTO, while other GAFTA members had initiated the accession process. The evolution in the circumstances of the original GAFTA members is evidenced by the stark difference between the language and terms of the first GAFTA agreement in 1981, and the revised agreement of 1997. The 1981 wording, heavily steeped in the pan-Arab ethos popular in the Arab world in the mid- sixties was strongly regionalist and protectionist. We can go so far as to say a number of articles in the 1981 agreement conflict with basic principles of the GATT, namely the Most Favoured Nation Principle<sup>367</sup> which obliges WTO members to extend any tariff reduction granted to one trading partner to all other WTO members without discrimination. This specific contradiction to the MFN rule will be discussed in the following paragraph.

### **1.1.3. The protectionist tone of the original 1981 Announcement to Facilitate and Develop Trade among Arab countries:**

The position espoused by signatories in the 1981 agreement is made clear in the first section of the agreement. After a brief first Article, which defines relevant terms and organisations, Article 2 states in its first paragraph that the objective of the agreement is to achieve a complete waiver on duties and restrictions imposed on certain goods and products<sup>368</sup>. The agreement deals exclusively with goods, and at this stage does not include services, intellectual property, etc. Almost immediately after, in the third paragraph, the agreement goes on to state as an objective, the protection of Arab goods and products against competition<sup>369</sup>. Furthermore, in Article 2:4(2), the agreement aims to provide financial support to facilitate the production and trade of goods by the Arab States. Whether this means Arab central banks and financial institutions should simply facilitate the financing of regional trade in terms of regulations, or whether governments are encouraged to subsidise inter-Arab trade is unclear. In Article 3 of the same agreement, it is stated that the principles agreed to as part of the agreement are a minimum standard, and each party to the agreement can grant further tariff reductions to any other Arab country either through bilateral or multilateral trade channels. Article 7:5 furthermore expressly forbids the granting of any trade advantage to a non Arab country that is superior to an advantage given a member. The fact that the attribution of further tariff reductions is limited to parties to the agreement would appear to be a clear violation of Article 1 of the GATT:

1. 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

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<sup>367</sup> MFN

<sup>368</sup> Personal translation of the original text in Arabic. Translation is approximate and not verbatim.

<sup>369</sup> Personal translation of the original text in Arabic. Translation is approximate and not verbatim.

matters referred to in paragraphs 2 and 4 of Article III,\* any advantage, favour, privilege or immunity granted by any contracting party 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 contracting parties.

Evidently, at the time of its signing, the agreement did not conflict with international trade agreements Arab countries were involved in, as the earliest Arab members of the WTO would not gain membership before the mid 1990's. It is likely non-coincidental that by 1997, two years into the membership of Bahrain, Egypt, Djibouti, Mauritania, Morocco, and Tunisia, the original 1981 agreement would have to be amended to conform to the new obligations these countries are now subjected to as members of the WTO. Further in the text of the 1981 Agreement, under Article 8:1, another seemingly protectionist measure calls for what can only be described as the concerted 'price fixing' of tariffs by Arab parties to the agreement on non-regional imports<sup>370</sup> into the GAFTA market. Paragraph 3 of the same section specifically addresses anti-dumping measure against non-Arab states, and paragraph 4 stipulates that parties to the agreement should prioritise imports from fellow members of the agreements. Read in reverse, this is to say that regional imports should be prioritised and non-regional imports admitted only out of necessity to fill a gap in the market. Also of note is Article 20 of the agreement which refers to the Arab boycott rules and principles which are to be observed in the application of the Agreement. The article does not appear to conflict with obligations under the GATT as such, as similar measures have been accepted under Article XXI of the GATT which related to security exceptions and provides that:

Nothing in this Agreement shall be construed... b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests...(iii) taken in time of war or other emergency in international relations.

It is worth noting, however, that this provision is absent from the 1997 version of the Agreement. Its presence in the 1981 Agreement could perhaps be explained by the signing of the Egypt-Israel Peace Accords in 1979, as presumably a reminder to remaining members of the Arab League that the common Arab League stance would remain in place. Its absence in the 1997 agreement could also be due to the fact that by 1994, Jordan had become the second Arab country to sign a peace agreement with Israel so a unified policy could no longer be claimed. Equally plausible, it could be that the new Arab members of the WTO did not want to bring unnecessary attention to the issue in this forum, and instead pursue their previous policy individually under the auspices of Article XXI of the GATT.

Despite the strong protectionist tendencies of the 1981 document, many of the terms it contains are familiar to a contemporary reader and echo many key principles found within the GATT. For instance, as previously noted, in Article 2:1(1), the clear aim of the agreement is the complete waiver of duties and restrictions on certain goods and products<sup>371</sup>, meaning the elimination of tariffs and the move towards free

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<sup>370</sup> Personal interpretation of the original text in Arabic.

<sup>371</sup> Approximate translation from the original text in Arabic.

trade in line with the objectives and principles of the WTO. Article 2:4(6) contains something similar to a least developed nations clause in that it provides for consideration to be given to the situations of less developed Arab countries. Article 8:3 contains an anti dumping clause targeting members of the agreement, while Article 9 sets the Rules of Origin benchmark at 40% local production for a product to benefit from tariff elimination within the free trade area.

With regards to the executive framework, Article 10 states that Arab members will facilitate Arab trade, exchange, and investment through their monetary and banking policy, before going on in Article 11 to delegate the execution of the agreement to the Economic Council of the Arab League. This same council is appointed in Article 11:1(6) with reviewing claims that might arise from parties to the agreement. At this point, the vocabulary used does not point to possible disputes, nor is a specialised legal body created to deal with such disputes. According to Article 11:6(3), the aforementioned Council can delegate its powers of reviewing claims to a committee created for that purpose. Similarly to the early days of the GATT, we appear to have an agreement built around diplomacy rather than regulations.

Strictly looking at the 1981 document itself, rather than outside economic and political factors that might have contributed to the failure to launch the application of the original 1981 agreement, two elements come to mind that could be considered fatal flaws. Firstly, there is no timeline set towards the achievement of the reduction and eventual elimination of tariffs. In Article 7, it simply states that members will negotiate the progressive waiver of duties and taxes, without indication as to when this should be achieved by. Secondly, there is no specialised body created to address any disputes that might arise between signatories. These two elements will be included in the revised text of 1997 and are an important point of distinction between the two documents.

#### **1.1.4. A renewed agreement compatible with the GATT:**

It appears, as noted above, that by 1997 GAFTA does not compete with the GATT in that its scope is far more limited, and also it shares some of the flaws which lead to the GATT being judged inadequate by the 90's, and resulted in the creation of the WTO. The diplomatic framework and the lack of a working schedule meant that the 1981 GAFTA never really took off. There were likely external factors, of a geopolitical nature that did not help to facilitate the application of the agreement, but this is unfortunately a recurrent theme in the MENA region.

The fact that the GAFTA 1981 did not take off was perhaps not a negative thing for its members, as its enforcement would have meant having to restructure an entire system as part of the conditions of adhesion to the WTO. Since the agreement was not applied, a simple revocation of the preliminary text, in favour of a more GATT friendly agreement was all that was needed. This is precisely what occurred in 1997 when a second draft of GAFTA was signed, again under the aegis of the Economic and Social Council of the Arab League.

The preamble of the GAFTA 1997 specifically refers to the changed circumstances of the parties to the agreement. It states as an objective the creation of an Arab Free Trade Area compatible with the circumstances and needs of Arab countries and compatible with WTO rules. The preamble also states the intention of creating this free trade area within 10 years of the signing of the agreement. This objective was in fact officially realised in 2005, ahead of schedule. This is perhaps due to the specific timeline contained within the executive programme which stipulates a semi annual review of progress to be carried out by the Council. Section 1 of the executive programme already widens the scope of the free trade area as compared to the earlier agreement by stating regulations pertaining to subsidies and non tariff barriers will apply equally to all countries, and be compatible with international regulations, by which one might infer the GATT is included. The section also refers to rules of origin, balance of payment and anti-dumping but once again, only to state that they be compatible with international norms, without providing further detail. Section 3, titled non-tariff barriers sets up a negotiation committee to address the issue of administrative, 'quantitative', referring to quotas. and financial obstacles to trade that might deter or obstruct trade despite the elimination of tariffs.

Section 5 refers to transparency and the sharing of information between member states, regarding economy, trade statistics, trade exchanges, etc. Section 6 creates a dispute review committee which is a significant development as the 1981 agreement did not specifically create such a body but only delegated authority to the council to either review claims, or form an ad hoc committee to do so. There was no designated body solely entrusted with the task of solving disputes. Section 7 contains a least developed nations provision and stipulates that those countries that wish to be considered for this status need to submit a request to the council as to what specific measures are requested and for what duration. Section 8 calls for the negotiation of trade policies and regulations on intellectual rights, which is once again a significant addition to the agreement absent from the 1981 agreement. Section 9 onwards deal with the structure of the GAFTA, it allows non-government actors to participate as observers in the review of laws applied by member countries to ensure they are compatible with the agreement. Four panels are created to support the committee in its tasks, which review on a 3 month basis the timely application of the agreement, any difficulties that might arise in its application, proposed solutions and recommendations. The council is also given the authority to form temporary arbitration panels with a maximum number of 5 experts sitting on the panel to put forth recommendations to the committee. The committee shall thereafter come to a decision based on a two thirds majority. In case of an inability to come to a decision, the matter is referred back to the Council.

Any impression that the description of the 1981 agreement and 1997 executive programme are brief and lacking detail are not mistaken. Each document contains no more than approximately ten pages. The sections referred to in the paragraph above are each a paragraph long, of three or four sentences each. Although the second document is an executive programme and therefore understandably devoid of great detail, it does nevertheless bring forward a great deal of novel elements to the agreement, that are absent from the original 1981 document, without providing any significant detail. It appears that the core work regarding GAFTA was done by the committees described in the 1997 document, who essentially reviewed existing legislation in order to ensure it aligned with GATT regulations and effectively eliminated tariffs in

order to comply with GAFTA. Furthermore, the fact that both documents were relatively difficult to obtain in English is relevant in itself. The original texts in Arabic were used as a complete official English translation could not be found online. The stark contrast in the availability of the documents is highlighted when one compares how the GCC customs agreement is readily available in both English and Arabic online. This equally applies to the bilateral agreements to be discussed later in this chapter which were once again readily available online in English, French, and Arabic, and contain far more content and detail.

## 1.2. Arab Maghreb Union:

The Arab Maghreb Union is in effect obsolete as a treaty due to political tensions between signatories that have caused its terms to lose their intended application<sup>372</sup>. It is, however, worthy of brief mention as the remaining members on good diplomatic terms have applied the treaty to some degree amongst themselves<sup>373</sup>, or used it as a basis in forging their bilateral relations.

The original text, signed in 1989 by Morocco, Algeria, Libya, Mauritania and Tunisia is ambitious and goes beyond a free trade area in that the preamble refers to integration beyond economic relations. Article 2 refers to the Union as having the following objectives:

The Union aims at:

- Strengthening the ties of brotherhood which link the member States and their peoples to one another;
- Achieving progress and prosperity of their societies and defending their rights;
- Contributing to the preservation of peace based on justice and equity;
- Pursuing a common policy in different domains; and
- Working gradually towards the achieving free movement of persons and transfer of services, goods and capital among them.

Before moving to the remaining articles of the agreement, which similarly to the GAFTA agreement are brief and devoid of detail<sup>374</sup>, looking at Article 2 above provides an outline of the main areas of cooperation addressed in the treaty as well as giving a contextual framework to the agreement. Firstly, the text refers to what appears as cultural ties shared by the parties to the agreement likely based on geographical proximity and commonality of language and religion. The region covered by the Arab Maghreb Union is much smaller than that covered by the GAFTA and similarly to the GCC which was built around a sub-region within the Arab world, the Arab Maghreb Union is a specifically North African Agreement. Article 3, for instance, refers to the safeguarding of moral values emanating from the tolerant teachings of Islam, and at

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<sup>372</sup> B Turner, 'Arab Maghreb Union', in *The Statesman's Yearbook*, (Palgrave Macmillan 2005), 117..

<sup>373</sup> M Finaish and E Bell, 'The Arab Maghreb Union' (IMF Working Paper 1994)

<sup>374</sup> *ibid.*

preserving the Arab national identity. Such a clause is absent from GAFTA, for although North Africa does include religious minorities, the religious diversity of the rest of the Middle East, most notably the Levant, is absent in the North African region which is overwhelmingly Sunni Muslim, with limited local Christian, Jewish, Shia and Bahai' populations<sup>375</sup>. Culturally, there are also significant Berber-identifying populations which have historically struggled with their governments to have their rights as cultural minorities recognised and protected. This is mainly the case in Algeria and Morocco that have significant Berber populations which in addition with sharing a historical Berber ethnicity with the rest of North Africa, have maintained the use of their language and refused the identification with Arab language and culture. Article 3 nevertheless refers to the preservation of Arab culture without mention of Berber or other minorities.

Article 2 also refers to the maintaining of peace which is echoed in Articles 14 and 15 which respectively state that an aggression on one member will be considered an aggression on all members, and that no activity or organisation be admitted on the territory of members that might threaten the security, territorial integrity, or political system of members. These two articles are revealing of the political context in which this treaty was signed, and what would ultimately cause it to collapse as the ongoing feud between Morocco, Algeria and Mauritania regarding the Western Sahara would lead these countries to cease diplomatic and trade relations. Article 13 addresses the creation of a judicial organ comprising of two judges from each state, to be appointed by the member states, and renewable by half every three years. The judicial organ is notable in the Arab Maghreb Union in that unlike other regional treaties, it has authority to mediate disputes, give advisory opinions on legal questions posed by the Presidential Council, and most importantly can produce binding and final verdicts to disputes presented to the Judicial Organ by the Presidential Council or individual member states. This significant legal authority and tool for solving internal disputes to the treaty was nevertheless unable to salvage the application of the treaty as diplomatic relations deteriorated.

### **1.3. Agadir Agreement:**

The Agadir Agreement is a free trade agreement between Egypt, Jordan, Morocco and Tunisia launched in May 2001, and ratified in February 2004. It has been implemented as of March 2007<sup>376</sup>. The Agadir Agreement is linked to the EU through an Association Agreement. The initial objective of the Agadir Agreement was to facilitate integration between Arab states and the EU under the broader EU-Mediterranean process, in preparation for formal entry into the EU-Mediterranean Free Trade Area<sup>377</sup>. As such, it is a 'horizontal agreement' seeking to bolster trade between non EU parties to the EU-Mediterranean Free Trade Area.

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<sup>375</sup> CIA World Factbook <<https://www.cia.gov/library/publications/resources/the-world-factbook/docs/profileguide.html>> accessed 1 June 2017.

<sup>376</sup> N. Péidy, 'Toward a pan-Arab free trade area: Assessing trade potential effects of the AGADIR agreement' (2005), *The Developing Economies* 43(3), 329-345.

<sup>377</sup> S. Wippel, 'The Agadir agreement and open regionalism' (2005), *EuroMeSCo* 45.

The preamble to the agreement states as the intentions of the agreement, to strengthen ties between member countries, to develop economic and commercial co-operation, to liberalise commercial exchanges between Arab members internally as well as with the EU, to develop the application of GAFTA by increasing Arab trade, to fulfil the objective of the “Barcelona Declaration” establishing the Euro-Mediterranean Free Trade Area, and to comply with the requirements of the WTO<sup>378</sup>. Specifically, the Agreement in Section 2 addresses the immediate and mutual exemption from all forms of duties on industrial goods between parties to the Agadir Agreement by referring to each of the Association Agreements entered into by the EU with the Arab member countries, and extending their application to the Arab members amongst themselves<sup>379</sup>. The Agreement proceeds in a similar manner, superimposing other international agreements on the parties on the Agadir Agreement. As such, Article 4 which relates to agricultural goods refers to the terms of the GAFTA. Article 5, which addresses trade in services absent from the GAFTA refers to the schedules of the World Trade Organisation Agreement on Services instead. There a number of such examples in the Agreement to be discussed below.

Article 4 addresses the controversial topic of agricultural goods as well as processed agricultural products. The article refers to sections 1 to 24 of the Harmonised System which is an international nomenclature for the classification of products which allows participating countries to classify traded goods on a common basis for customs purposes. The Harmonised system is to be applied to the provisions of the executive programme of the Greater Arab Free Trade Area rules on agricultural goods. These provisions stipulate that GAFTA members can provide a list of non seasonal agricultural products to be exempted from the elimination or reduction in tariffs, to be approved by the Social and Economic Council of the Arab League and subjected to a time frame. Article 5 addresses trade in services and refers specifically to the schedules of the World Trade Organisation Agreement on Services, presumably as Services are only referred to in the GAFTA as an area to be discussed in cooperation with other member countries, without establishing concrete guidelines or regulations.

Article 6 of the agreement establishes Rules of Origin which were originally contained in the Pan Euro-Med Protocol on Rules of Origin which were non-cumulative and required the goods or products in question to be accompanied by a certificate of origin. As of 2012, following the entry into force of the Pan European Mediterranean Convention, Pan Euro-Med<sup>380</sup> Rules of Origin have changed becoming ‘diagonally cumulative’ meaning that within the Pan-European cumulation zone, diagonal cumulation could occur with input materials from European Free Trade Agreement states, the European Union and Turkey, provided that these input materials were originating products. The application of the PEM Rules of Origin in the Agadir Agreement significantly complicates matters for Arab countries that are engaged both in multilateral and

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<sup>378</sup> S. Ülgen, ‘A faster, better route of economic integration across the Mediterranean’ (2011), International Economic Bulletin.

<sup>379</sup> Agadir Agreement – Agreement establishing a Free Trade Area between Arab Mediterranean Countries (published online, 2005), 17.

<sup>380</sup> PEM

bilateral trade agreements regionally, as well as with the EU and US as these Rules of Origin vary from agreement to agreement and have conflicted in the past. This will be further discussed later in the chapter.

With regards to non-customs restrictions addressed in Article 8, the wording is similar to that of the GAFTA, and specific reference is made to both WTO and GAFTA rules on non-tariff barriers including quantitative, currency, administrative and technical restrictions. Articles 8 to 23 contain no new elements and refer to either the GAFTA or WTO on a matter of subjects already addressed in GAFTA. Since GAFTA equally refers specifically to the WTO, no legal conflicts in the application of norms arise thus far. Article 28 provides a dispute settlement mechanism case of any differences that might arise between parties to the agreement. The resolution of disputes is the competence of the Foreign Trade Ministers Committee who are awarded 45 days to consult and reach an agreement about any disputes that should arise. If after 45 days the Committee has not reached a satisfactory solution, it then has the authority to nominate a special arbitration committee to issue a judgement on the matter to be formed within 30 days of the request, or 15 days in the case of perishable goods. The dispute settlement provision is therefore the only provision in the Agadir Agreement that members are not already indirectly subject to since any dispute in the context of GAFTA would fall under the legislation of a committee appointed by the Social and Economic Council of the Arab League, and any WTO dispute would be subject to the Dispute Settlement Understanding.

#### **1.4. The Gulf Cooperation Council:**

The Gulf Cooperation Council is a political and economic union established in 1981 comprising Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates. It is without doubt the most ambitious and in many regards, successful Arab union to date in terms of acting in concertation as a de facto unified front<sup>381</sup>. This does not imply that serious tensions have not occurred in the past or exist today. The main objectives of the GCC are to create a unified policy and regulations on issues as diverse as religion, finance, trade, customs, tourism, legislation, and administration. A unified military force did come into effect<sup>382</sup> although attempts to establish a common currency failed in 2009 due to disagreement between Saudi Arabia and the UAE over the proposed location of a Central Bank<sup>383</sup>. Plans have since been revived to create a single currency<sup>384</sup>, but the UAE and Oman have since withdrawn from the project<sup>385</sup>. As of 2015, the GCC has effectively become a customs union.

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<sup>381</sup> Peterson (n 307)

<sup>382</sup> D.Silander, 'Gulf Cooperation Council (GCC)', in D Silander and D Wallace, *International Organizations and the Implementation of the Responsibility to Protect* (Routledge 2015), 133-147.

<sup>383</sup> U. Fasano-Filho and A Schaechter, 'Monetary union among member countries of the Gulf Cooperation Council' (2003), International Monetary Fund Occasional Papers no 223.

<sup>384</sup> W.H. Buiter, 'Economic, political, and institutional prerequisites for monetary union among the members of the Gulf Cooperation Council' (2008), *Open Economies Review* 19(5), 579-612.

<sup>385</sup> M. Sturm, N. Siegfried, 'Regional monetary integration in the member states of the Gulf Cooperation Council' (2005), European Central Bank Occasional Papers no 31

Since it was established, the GCC has experienced considerable tensions amongst its members linked mainly to existing political, as well as trade-related disputes. Disagreements regarding policy towards the current crisis in Yemen, for instance, as well as the ongoing crisis involving Qatar. Despite a tenuous start, when Bahrain was drawn into a bilateral Trade Agreement with the US despite GCC agreement to negotiate as a bloc, the GCC has seemed to adopt a unified trade strategy for the most part. The GCC subsequently entered ambitious FTA negotiations with Australia, China, Mercosur, Japan, Jordan, Korea, Turkey, New Zealand, India, Iran, and ASEAN. It also signed an FTA with Syria in 2005, with Singapore in 2008, as well as trade agreements with Iceland, Liechtenstein, Norway and Switzerland .

The reason the GCC is of significant interest in terms of the WTO, is that its ultimate objective is to create a single market. It remains to be seen whether this objective will be realised, but if successful, it would potentially represent a colossal union in terms of GDP and growth, and the first such achievement in the Arab world<sup>386</sup>.

The Economic Agreement between GCC States signed on the 31st of December 2001 supersedes a previous agreement establishing a GCC Free Trade Area signed in 1981. The 2001 Agreement significantly begins with Article 1 stating the creation of a customs union and sets as a minimum standard that it shall include a common external customs tariff, common customs regulations and procedures, a single entry point for the collection of customs duties, the elimination of all tariff and non-tariff barriers, with some exceptions pertaining to laws on agricultural and veterinarian quarantine, as well as rules regarding prohibited and restricted goods, and national treatment. The initial objective was to achieve a customs union by January 2003, but as previously mentioned this was achieved much later in 2015<sup>387</sup>. Article 2 is equally of significance in that it outlines an intent for GCC members to secure better terms and more favourable conditions in their international economic relationships by drawing their policies and conducting economic relations in a collective fashion. This approach has already been adopted in the negotiations for a number, if not all Free Trade Agreements the GCC seeks to enter into. There also appears to be a continuity in the approach of the GCC at the WTO, as was discussed in the previous chapter.

Although the Agreement includes a number of notable developments in GCC integration, namely freedom of movement<sup>388</sup> as well as equal treatment of GCC nationals with regards to work in the private and public sectors, as well as pensions and social security, this chapter will focus solely on trade related measures included in the agreement.

Article 31 of the agreement reinforces the idea of the GCC acting as a unified bloc in terms of external trade negotiations by expressly prohibiting the granting to a non-member state any preferential

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<sup>386</sup> M. Sturm, J. Strasky, P. Adolf, D. Peschel, 'The Gulf Cooperation Council countries-economic structures, recent developments and role in the global economy' (2008), European Central Bank Occasional Papers no 92.

<sup>387</sup> R. Looney, 'The Gulf Co-operation Council's cautious approach to economic integration', *Journal of Economic Cooperation* 24(2), 137-160.

<sup>388</sup> Z. Babar, 'Free Mobility within the Gulf Cooperation Council' (2011), Center for International and Regional Studies at Georgetown University School of Foreign Service in Qatar Occasional Papers no 8.

treatment exceeding that granted to a member state, nor to conclude any agreement that violates provisions of the 2001 agreement. Considering that the GCC is effectively a customs union and seeking to become a single market, this is of particular importance as any agreements entered into at present on behalf of one of the GCC members acting individually could potentially impact the obligations of other GCC members in future should they form a common market. In particular, FTAs signed with the US

### **1.5. Extra- Regional Trade Agreements:**

This section will address extra-regional trade agreements entered into by Arab countries, and non-Arab trade partners.

### **1.6. GCC-EU Free Trade Agreement:**

Formal negotiations for a GCC-EU FTA began in 1990, but have not yet concluded. The Trade Agreements sought to establish trade concessions between the two parties, the EU considering the EU to be an attractive, and potentially lucrative market for EU member states to have access to. Political issues have been publicly blamed for blocking the agreement, however. These include demands from the EU with regards to fulfilling standards of democracy and human rights, as well as clauses on cooperation against terrorism and weapons of mass destruction as a precondition for any trade concessions granted through the FTA. By 2008, negotiations came to a standstill when the GCC formally announced it was suspending trade talks due to the EU's focalisation on political reforms.

Although the EU-GCC FTA has not been realised, it is potentially an important factor to consider as part of GCC participation in the WTO<sup>389</sup>. The two blocs represent considerable trading blocs, respectively. Should the FTA come to fruition, it could potentially mean the GCC would have an FTA with one of its two major trading partners<sup>390</sup>, the other being the US. In such a case, consideration must be made as to whether the GCC might potentially lose interest in the WTO, if no added incentive is given since its main trading needs would be met by two FTAs. This could ultimately translate into a stagnation or decrease in GCC participation at the WTO, unless non EU or US trading partners present a sufficient incentive for the GCC to maintain or increase participation in the WTO.

### **1.7. EU-Mediterranean Partnership:**

The main objective of the EU-Mediterranean partnership is the creation of a Free Trade Area, which aims at removing barriers to trade and investment between both the EU and Southern Mediterranean

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<sup>389</sup> A. Antkiewicz, B. Momani, 'Pursuing geopolitical stability through interregional trade: the EU's motives for negotiating with the gulf cooperation council' (2009), *European Integration* 31(2), 217-235.

<sup>390</sup> A. Cieřlik, J. Hagemeyer, 'Assessing the impact of the EU-sponsored trade liberalization in the MENA countries' (2009), *Journal of Economic Integration*, 343-368

countries, and between the Southern Mediterranean countries themselves<sup>391</sup>. The Arab countries which are currently part of an Association Agreement and involved with the WTO as members or future members are Algeria, Egypt, Jordan, Lebanon, Morocco, and Tunisia. The scope of these agreements essentially encompasses trade in goods, the liberalisation of trade in agriculture, the liberalisation of trade in services, accreditation and acceptance of industrial products and regulatory convergence<sup>392</sup>. The terms of The EU-Mediterranean Partnership are generally more restrictive than those of the WTO, especially with regards to agriculture. For instance, a quota is applied to imports of agricultural goods from the South Mediterranean countries<sup>393</sup> that by WTO standards, is contrary to Article 1 of the GATTs Most Favoured Nation Rule. The same quota is not imposed on imports from the EU.

Together, the Southern Mediterranean countries that are part of the EU-Mediterranean Partnership represent 8.6% of total EU external trade<sup>394</sup>. In addition to the Arab countries previously noted, Turkey, Palestine and Israel are equally party to the Partnership. The low trade volume and high threshold for concessions would suggest the Partnership is less attractive to Arab member countries than the EU. However, although the trade volume is indeed low vis a vis the EU, it is substantial to the Arab countries involved, most of whom consider the EU as their main trade partner, particularly the Maghreb countries. This perhaps explains the interest of these countries to join a partnership which offers them less than what the WTO does. By entering into Association Agreements, they have essentially entered into negotiations as the weaker party. After all, the EU represents their main trade market, yet they represent a negligible percentage of the EU's trade if considered individually.

It is of interest to compare the terms of the EU-Mediterranean Partnership with those of the EU-GCC Agreement to ascertain whether the terms of the EU-GCC Agreement were more favourable to Arab countries than the EU-Mediterranean Partnership. It is widely claimed, as previously mentioned, that the EU-GCC Agreement did not materialise due to political pressures. Another reason could be that the EU was not in such a position of strength to force measure through as it was able to do for the EU-Mediterranean Partnership. Supporting this possibility is the fact that the terms of the Association Agreements were not identical, and that some countries obtained more favourable terms than others<sup>395</sup>. It is unclear, however, if this is due to better terms being put on the negotiation table by the EU to begin with, or whether their counterpart was able to negotiate and push for more favourable terms than their neighbours<sup>396</sup>. Further

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<sup>391</sup> R. Miller and A. Mishrif, 'The Barcelona process and Euro-Arab economic relations: 1995-2005' (2005), *Middle East Review of International Affairs* 9(2), 94-108.

<sup>392</sup> *ibid.*

<sup>393</sup> R. Gomez, *Negotiating the Euro-Mediterranean partnership: strategic action in EU foreign policy?* (Routledge 2017).

<sup>394</sup> European Commission, 'Euro-mediterranean partnership' (countries and regions, 2018) <<http://ec.europa.eu/trade/policy/countries-and-regions/regions/euro-mediterranean-partnership/>>.

<sup>395</sup> M. Asseburg, 'The EU and the Middle East Conflict: tackling the main obstacle to Euro-Mediterranean Partnership' (2003), *Mediterranean Politics* 8(2-3), 174-193.

<sup>396</sup> R. Gillespie, *The Euro-Mediterranean partnership: political and economic perspectives* (Routledge 2013).

discussion of the benefits and drawbacks of the Arab involvement in the EU-Mediterranean Partnership, in comparison with the WTO, will be discussed in section four of this chapter.

### **1.8. US-Middle East Free Trade Area:**

The objective of the US-Middle East Free Trade Area<sup>397</sup> plan to achieve a single free trade agreement (FTA) between the United States and all countries between the Western Sahara and Iran. It was launched in 2003 with the idea of building the FTA gradually, using bilateral FTAs between the US and individual future members as building blocs<sup>398</sup>. One of the requirements for joining the US-MEFTA is membership of the WTO, which perhaps provided an added incentive for some Arab countries to have joined the WTO. In this respect, the US-MEFTA is closer to the GATT in that it seeks to create a Free Trade market, rather than lower or raise the bar of concessions to be granted, as was done in the EU-Mediterranean Partnership. The countries targeted to join MEFTA which are also involved with the WTO as members or observers are Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Qatar, Saudi Arabia, Syria, and Tunisia. The geographical scope of US-MEFTA is obviously much larger than the EU-Mediterranean Partnership, and as such, its impact could be more far-reaching<sup>399</sup>. To date, however, only four Arab countries, Bahrain, Jordan, Morocco and Oman have signed FTAs with the US and officially entered the US-MEFTA process.

## **2. Bilateral Trade Agreements signed with Arab members of the WTO:**

Having discussed regional trade agreements in the previous section, section 2 will now look at bilateral trade agreements signed by individual Arab members of the WTO, and their implications in terms of trade. Section 2.1. will look at inter-Arab bilateral agreements, while section 2.2 will look at bilateral agreements outside the MENA region.

### **2.1. Inter-Arab Bilateral Trade Agreements:**

In addition to the regional agreements previously discussed, several countries have entered into bilateral agreements with each other and with countries outside the region.

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<sup>397</sup> MEFTA

<sup>398</sup> N.Péridy, 'Towards a New Trade Policy Between the USA and Middle-East Countries: Estimating Trade Resistance and Export Potential' (2005), *World Economy* 28(4), 491-518.

<sup>399</sup> M.D. Parra Robles, I. Martínez-Zarzoso, C. Suárez Burguet, 'The impact of FTAs on MENA trade' (2012), Ibero America Institute for Economic Research Discussion Papers no 217.

**Table 1:**

Jordan	Tunisia	Egypt
Bahrain	Egypt	Iraq
Egypt	Iraq	Jordan
Morocco	Jordan	Lebanon
Sudan	Libya	Libya
Syria	Morocco	Morocco
Tunisia		
UAE		
GCC		

A number of these bilateral agreements would seem to overlap with regional agreements<sup>400</sup> such as GAFTA. Also of note, a number of bilateral trade agreements exist between countries that have failed to enter a regional trade agreement, for instance, the Arab Maghreb Union<sup>401</sup>, which initially sought to create a customs union and common market between Tunisia, Algeria, Morocco, Libya and Mauritania. Although the initiative failed, mainly due to tense political relations between Morocco and Algeria over the Western Sahara, Tunisia did eventually sign agreements with all the potential members bar Mauritania. Bilateral Agreements could, therefore, be viewed as an alternative by Arab countries who have attempted to join a number of regional agreements which have eventually failed. As in the case of Tunisia, despite the failure of the Arab Maghreb Union, regional trade interests were significant enough to incentivise the pursuit of individual bilateral treaty with almost all the AMU members.

Overall, the number of inter-Arab bilateral trade Agreements is relatively low<sup>402</sup>, with only three Arab countries actively pursuing Trade Agreements with their regional neighbours. This could be explained by the existence of GAFTA, which effectively encompasses all the MENA countries and would render additional bilateral agreements superfluous. In addition, the low volume of inter-Arab trade could be another reason for the relatively low number of regional bilateral trade agreements.

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<sup>400</sup> M.D. Parra, I. Martínez-Zarzoso, C. Suárez-Burguet, 'The impact of FTAs on MENA trade in agricultural and industrial products' (2016), *Applied Economics* 48(25), 2341-2353.

<sup>401</sup> AMU

<sup>402</sup> Al-Atrash, Yousef (n 203)

### 3. Conformity to Article XXIV of the GATT

This section will examine article XXIV of the GATT, its meaning and implications, as well as the conformity of individual MENA agreements to this article of the GATT.

Article XXIV of the GATT contains an exception to Article I of the GATT, which provides for the Most Favoured Nation Principle as previously discussed in this chapter. The Most Favoured Nation rule is a cornerstone of the WTO and ensures that any trade advantage accorded by one WTO member to another WTO member, be automatically extended to all other members indiscriminately. Although this is the official rule and a major principle of the GATT, in practice, it appears the application of the rule is less widespread than one might believe<sup>403</sup>. After taking into consideration customs unions, common markets, bilateral free trade areas, preferences, and various miscellaneous trade deals, it almost appears as though MFN is the exception rather than the rule<sup>404</sup>. As will be discussed later in this section, although other agreements might render the MFN rule almost defunct for other regions in the world<sup>405</sup>, the volume of trade and the concessions granted as part of Arab regional trade agreements are so minimal as to be insignificant in this regard.

Article XXIV is one of many exceptions to Article I. For the purposes of this chapter, discussion of exceptions will be limited to Article XXIV which is most relevant to the topic at hand. The regulations pertaining to regional integration are to be found in Article XXIV itself, as well as in the *Understanding the Interpretation of Article XXIV of the GATT 1994*. The reasons for allowing Article XXIV, in addition to other exceptions such as ‘security exceptions’<sup>406</sup> and ‘environmental exceptions’<sup>407</sup>, might initially seem counterintuitive to maintaining the MFN principle. Why the WTO would allow for the Article XXIV exception, especially in light of the commonly held but disputed belief, that regional trade agreements would divert trade away from multilateral ones such as the GATT<sup>408</sup>. One probable reason is that pragmatically, in light of the proliferation of regional trade agreements in the past two decades, a time when many of the current WTO members were just joining, it might have deterred some applicants from joining the WTO had their national sovereignty been limited with regards to entering into parallel trade agreements of their own accord. A second reason is that the long-held belief that regional trade agreements would deter from multilateral ones was, as previously mentioned, not un- challenged<sup>409</sup>. In fact, regional trade agreements

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<sup>403</sup> A.R.Ziegler, ‘Most-favoured-nation (MFN) Treatment’ (2008), *Standards of Investment Protection*, 59-88.

<sup>404</sup> Report by Consultative Board to the Director-General Supachai Panitchpakdi, *The Future of the WTO: Addressing Institutional Challenges in the New Millennium* (the Sutherland Report) (WTO 2004), [60]

<sup>405</sup> *ibid.*

<sup>406</sup> GATT, Article XXI

<sup>407</sup> GATT, Article XX

<sup>408</sup> G. de Jonquières, ‘Global Trade: Outlook for Agreements Nears Moment of Truth’, *Financial Times* (24 January 2006).

<sup>409</sup> n 378, [85].

were encouraged by the WTO as a means of speeding up the realisation of free trade through the efforts of smaller regional groups also targeting this same objective, and able to work more quickly to achieve their goal than in a larger more complex setting<sup>410</sup>.

With regards to the text of Article XXIV, it mainly provides for the conditions under which members of the WTO might divert from the MFN treatment obligation. Article XXIV:4 of the Gatt 1994 states that members recognise the desirability of increasing freedom of trade by closer integration, which may serve to justify the existence of Article XXIV as mentioned above, or at least why it is tolerated<sup>411</sup>.

Article XXIV:5 of the GATT 1994 states that the GATT shall not prevent the formation of a customs union or a free trade area, or the adoption of an interim agreement necessary for the formation of the aforementioned. The Appellate Body in *Turkey-Textiles* clarifies under which conditions an exception to measures inconsistent with GATT provisions is authorised under Article XXIV. Turkey sought in this instance to impose quantitative restrictions on textiles from India, in what it claimed was an effort to comply with similar restrictions imposed by the European Communities in what was a crucial sector to Turkish exports into the EC. The argument that such a restriction would fall under Article XXIV was rejected by the Appellate Body which claimed Turkey could find an alternative measure to ensure its textiles exports to the EC were maintained, for instance by adopting Rules of Origin measures to distinguish between the Turkish textiles and those imported from India. Firstly, to be justified, the measure must be introduced upon formation of a customs union, free trade area, or an interim agreement that meets all the requirements set out in WTO law, or more specifically Articles XXIV:8 and XXIV:5. Secondly, the formation of the customs union or free trade area would be prevented if the measure concerned were not allowed<sup>412</sup>. In order to facilitate understanding of how Article XXIV is applied, we can separate the two categories of customs union and free trade area to see how the article applies in each situation.

### **3.1 Customs Unions under Article XXIV:**

Articles XXIV:8(a) and XXIV:5(a) set out the conditions that need to be met to form a customs union under Article XXIV. Article:8(a) stipulates the following:

8. For the purposes of this Agreement:
  - (a) A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that
    - (i) duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated with respect to

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<sup>410</sup> GATT, Article XXIV:4

<sup>411</sup> Van Den Bossche (n 90)

<sup>412</sup> *ibid.* 700

substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and,

(ii) subject to the provisions of paragraph 9, substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union;

What this effectively means is that in order to form a valid customs union as recognised by Article XXIV, the customs union must seek to eliminate all duties and restrictive regulations on all internal trade. The only deviations permitted are those that fall into the exceptions as set out in the GATT. The second condition imposed is that in addition to the elimination of tariffs within the customs union, a comprehensive approach is adopted by the union with regards to tariffs on goods from outside the union. Therefore a double obligation exists with regard to internal and external trade within and outside the union<sup>413</sup>. There is uncertainty in the interpretation of Article XXIV:8(a), however, that is still open to interpretation as the text refers to the elimination of duties on substantially all trade within the customs union. As was referred to by the Appellate Body in *Turkey-Textiles*, substantially all trade is different from all trade. It means that a customs union need not eliminate all internal tariffs completely in order to fulfil conditions under article XXIV. The Appellate Body does however state in the same dispute that the flexibility accorded by the wording of Article XXIV:8(a) is subject to and limited by the requirement that duties and other restrictive regulations be eliminated outside of these exceptions. Similarly with regards to tariffs imposed externally, there is a certain degree of flexibility accorded to the customs union since identical external tariffs are not required. This is nevertheless limited in its interpretation to require ‘sameness’ in tariffs imposed by the various members of the customs union<sup>414</sup>. This is particularly relevant to GAFTA, as will be discussed later on in this chapter, since the agreement allows for exactly such exceptions.

Should that first dual requirement be met, the customs union must satisfy a second condition contained in Article XXIV:5(a):

5. Accordingly, the provisions of this Agreement shall not prevent, as between the territories of contracting parties, the formation of a customs union or of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or of a free-trade area; Provided that:

(a) with respect to a customs union, or an interim agreement leading to a formation of a customs union, the duties and other regulations of commerce imposed at the institution of any such union or interim agreement in respect of trade with contracting parties not parties to such union or agreement shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories

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<sup>413</sup> *ibid.* 701

<sup>414</sup> WTO Appellate Body Report *Turkey-Textiles*, [50]

prior to the formation of such union or the adoption of such interim agreement, as the case may be;

Again, what this signifies is that the formation of a customs union must not be done with a protectionist intent. The purpose of a customs union as seen by the WTO and accepted by the GATT, is to potentially increase or at least facilitate trade between adjacent countries by eliminating tariff barriers. The GATT would not admit any attempts at circumventing the MFN rule by effectively hiking tariffs applied to non-members of the union. Article XXIV:5(a) effectively acts as a safeguard against protectionism disguised as a customs union. Once again, this is particularly relevant to the first GAFTA agreement 1981 which sought to impose higher tariffs on incoming goods from non GAFTA countries, and would not have passed the the scrutiny of Article XXIV:5(a) in its initial form. This will be discussed in further detail later on in the chapter.

### **3.1.1 Free Trade Areas under Article XXIV:**

Provisions allowing for the existence of free trade areas under the GATT are contained within Article XXIV:8(b) of the agreement. Once again, an exception is made under which members of the WTO might seemingly veer away from GATT rules, if certain conditions are met to justify these exceptions.

b) A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories.

The main difference between the definition of a free trade area under Article XXIV as opposed to the definition of a customs union, is that unlike the scrutiny customs unions are subjected to with regards to both their internal duties, and those imposed externally on third parties, Article XXIV imposes only a single requirement on free trade areas with regard to internal duties only. This is not to say that free trade areas are at liberty to increase duties applied to third parties, rather they cannot do so after the creation of the free trade area, nor can those duties be higher or more restrictive than those applied by the concerned country before the creation of the free trade area<sup>415</sup>.

An additional exception to the GATT which is also provided for and worth mentioning in the context of the MENA countries, is the possibility of enacting the Enabling Clause. In a decision signed by the contracting parties to the GATT in 1979<sup>416</sup>, the Enabling Clause stipulates the following:

1. Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries(1), without according such treatment to other contracting parties.

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<sup>415</sup> Peter Van Den Bossche (n 90) 706

<sup>416</sup> WTO Decision of 28 November 1979 (L/4903), 'DIFFERENTIAL AND MORE FAVOURABLE TREATMENT, RECIPROCITY AND FULLER PARTICIPATION OF DEVELOPING COUNTRIES' <[https://www.wto.org/english/docs\\_e/legal\\_e/tokyo\\_enabling\\_e.pdf](https://www.wto.org/english/docs_e/legal_e/tokyo_enabling_e.pdf)>.

2. The provisions of paragraph 1 apply to the following(2):
  - a) Preferential tariff treatment accorded by developed contracting parties to products originating in developing countries in accordance with the Generalized System of Preferences(3),
  - b) Differential and more favourable treatment with respect to the provisions of the General Agreement concerning non-tariff measures governed by the provisions of instruments multilaterally negotiated under the auspices of the GATT;
  - c) Regional or global arrangements entered into amongst less-developed contracting parties for the mutual reduction or elimination of tariffs and, in accordance with criteria or conditions which may be prescribed by the CONTRACTING PARTIES, for the mutual reduction or elimination of non-tariff measures, on products imported from one another
  - d) Special treatment on the least developed among the developing countries in the context of any general or specific measures in favour of developing countries.
3. Any differential and more favourable treatment provided under this clause:
  - a) shall be designed to facilitate and promote the trade of developing countries and not to raise barriers to or create undue difficulties for the trade of any other contracting parties;

The appeal of the Enabling Clause is that its definition and requirements for regional trade agreements are less stringent than those imposed by Article XXIV. It is meant to encourage trade between developing countries and not intended to be used as a means to impose external tariffs on this parties as outlined in Paragraph 3 above. However, due to its relatively simple demands, the GGC attempted to change its notification to the WTO, originally made under Article XXIV to one under the Enabling Clause. This was rejected by the US and EC who claimed some of the tariff bindings of the GCC were above those of some of its individual members, and as such an inconsistency with Article II, and as such needed to be compensated and notified under Article XXIV<sup>417</sup>. At present, the WTO website still does not state under which category the GCC was notified, it therefore looks as though the issue is yet unresolved<sup>418</sup>.

Having discussed the conditions that need to be met in order to notify a customs union or free trade area, this section will address those RTAs that have met the requisite conditions and have been accepted by the WTO. As of May 2017, 274 Regional Trade Agreements<sup>419</sup> were in force, and as of June 2016 when Japan and Mongolia entered into an RTA, all WTO members were involved in an RTA. With regards to the MENA countries relevant to this thesis, there are fourteen RTA's which the WTO has been notified of and

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<sup>417</sup>J. Alavi, 'Article XXIV vs Enabling Clause' (International Law and Policy Blog, 12 January 2009) <<http://worldtradelaw.typepad.com/ielpblog/2009/01/article-xxiv-vs-enabling-clause.html>> accessed 3 June 2017.

<sup>418</sup> See Table 1 below

<sup>419</sup> RTA

which are currently in force. GAFTA features as the Pan-Arab Free Trade Agreement (PAFTA) in WTO documents.<sup>420</sup>

### 3.2. Arab RTA's Notified to the WTO:

**Table 1: List of Arab Country notifications of RTAs<sup>421</sup>:**

RTA Name	Coverage	Type	Date of Notification	Notification	Date of entry into force	Status
Agadir Agreement	Goods	FTA	22-Feb-2016	Enabling Clause	27-Mar-2007	In Force
Canada-Jordan	Goods	FTA	10-Apr-2013	GATT Art. XXIV	10-Oct-2012	In Force
Common Market for Eastern and Southern Africa (COMESA)- Accession of Egypt	Goods	Customs Union	03-Jan-2017	Enabling Clause	17-Feb-1999	In Force
EFTA-Egypt	Goods	FTA	17-Jul-2007	GATT Art. XXIV	01-Aug-2007	In Force
EFTA-Jordan	Goods	FTA	17-Jan-2002	GATT Art. XXIV	01-Sep-2002	In Force
EFTA-Morocco	Goods	FTA	20-Jan-2000	GATT Art. XXIV	01-Dec-1999	In Force
EFTA-Tunisia	Goods	FTA	03-Jun-2005	GATT Art. XXIV	01-Jun-2005	In Force
Egypt-Turkey	Goods	FTA	05-Oct-2007	Enabling Clause	01-Mar-2007	In Force
EU-Egypt	Goods	FTA	3-Sep-2004	GATT Art. XXIV	01-Jun-2004	In Force
EU-Jordan	Goods	FTA	17-Dec-2002	GATT Art. XXIV	01-May-2002	In Force
EU-Morocco	Goods	FTA	13-Oct-2000	GATT Art. XXIV	01-Mar-2000	In Force
EU-Tunisia	Goods	FTA	15-Jan-1999	GATT Art. XXIV	10-Mar-1998	In Force

<sup>420</sup> It is not included in the list of RTAs notified to the WTO and in force but a copy of the notification letter can be found on the WTO website: WT/REG223/N/1.

<sup>421</sup> Not all Arab countries involved in RTAs will be mentioned, only those who are both currently concurrent members of the Arab League and the WTO.

Gulf Cooperation Council (GCC)	Goods	Customs Union			01-Jan-2003	In Force
Gulf Cooperation Council (GCC)-Singapore	Goods & Services	FTA & Economic Integration Area	30-Jun-2015	Enabling Clause & Gats Art. V	01-Sep-2013	In force
PAFTA	Goods	FTA	03-Oct-2006	GATT Art. XXIV	01-Jan-1998	In force

#### 4. Conclusion:

This section will look at the balance of advantages and disadvantages with regards to trade for Arab countries involved in Trade Agreements with the EU and US, as well as those in regional and bilateral trade negotiations, in comparison with membership to the WTO. Subsection 4.1 will look at the EU-Mediterranean Partnership, Subsection 4.2 will look at US-MEFTA, Subsection 4.3 will address inter-Arab multilateral and bilateral trade agreements, and Subsection 4.4 will compare all forms of bilateral trade agreements to membership in the WTO in terms of trade.

#### 5.1 EU-Mediterranean Partnership and Arab countries:

There are a number of factors to be taken into consideration when identifying whether regional and bilateral trade agreements are beneficial to the economies of those countries that enter into them. One way of determining whether Arab countries have benefited from the multitude of multilateral trade agreements they have entered into is comparing trade flows before and after regional trade agreements enter into force. This can shed some light on their contribution to trade expansion, and help understand whether these agreements are beneficial or detrimental in comparison with WTO membership.

**Table 1. Share of trade between MENA countries and PTA Partners on Total Trade (Nonfuel.%)<sup>422</sup>:**

		Average of 3 Years (%)				Change (%) Points	
		Exports		Imports		Exports	Imports
PTA	Entry into force	Prior to PTA	Post PTA	Prior to PTA	Post PTA		
Jordan-US	12/17/2001	6.6	26.3	10.8	8.2	19.8	-2.6

<sup>422</sup> M. Rouis, S.R. Tabor, *Regional economic integration in the Middle East and North Africa; beyond trade reform* (World Bank 2013).

Average of 3 Years (%)				Change (%) Points			
Bahrain-US	8/1/2006	11.6	10	6.5	7.9	-1.6	1.4
Morocco-US	1/1/2006	2.5	2.7	4.3	5.7	0.2	1.4
Oman-US	1/1/2009	2	4.5	5.6	5.4	2.5	-0.2
Tunisia-EU	3/1/1998	78.7	79.6	76.5	75.3	0.9	-1.2
Morocco-EU	3/1/2000	70.5	75.1	66.3	66.4	4.6	0.1
Jordan-EU	5/1/2002	5.5	3.8	35.9	32.7	-1.7	-3.2
Egypt-EU	6/1/2004	31.2	26.1	31.4	27.8	-5.1	-3.5
Algeria-EU	9/1/2005	63.1	57.4	55.9	53.1	-5.6	-2.8
Lebanon-EU	4/1/2006	11.3	14.7	47.8	31.7	3.4	-16.1

A number of MENA countries have entered into EU-Mediterranean Association Agreements to provide reciprocal market access. The first such agreement was concluded with Tunisia, entering into force in March 1998. Subsequently, agreements were signed with Morocco in March 2000, Jordan in May 2002, Egypt in June 2004, Algeria in September 2005, and Lebanon in April 2006. In all six cases, there has been a substantial increase in trade volumes after the agreements came into force, with trade values doubling in participating countries during 2003–08. Only in Morocco did the change in exports exceed the change in imports, however, and the trade volume increase was far more significant for imports from the EU than for exports into the EU.

This would suggest that as a strategy, joining the EU-Mediterranean Partnership is beneficial to overall trade volume, although an imbalance occurs in that while the Agreements widens the export market available to the EU, the same advantage is not reciprocated. A larger import market does arguably increase the range and competitiveness of the local market for the country entering the EU-Mediterranean Agreement<sup>423</sup>, but the question arises whether, in economical terms, there is any real advantage or net benefit<sup>424</sup>. It would seem unlikely, as the main source of income for the parties to the agreement would be

<sup>423</sup> P. Montalbano, S. Nenci, 'Assessing the trade impact of the European Neighbourhood Policy on the EU-MED Free Trade Area' (2014), *Applied Economics* 46(7), 730-740.

<sup>424</sup> H. Wolde, M.R. Bhattacharya, 'Constraints on Trade in the MENA Region' (2010), International Monetary Fund Working Papers 10/31

found in the sale through exports. The question arises as to whether such an arrangement is beneficial overall for the Arab countries involved, as an increase in overall trade is not necessarily a positive outcome if the increase is mainly limited to imports<sup>425</sup>.

## **5.2 An overview of the underlying issues with bilateral trade agreements:**

Overall, figures show that free trade agreements do increase trade between signatories, and in the case of a regional agreement, between neighbouring countries when compared to trade without an agreement. There are many caveats to this argument, however<sup>426</sup>. First of all, figures reflecting higher trade after the implementation of a trade agreement cannot, with certainty, attribute the rise in trade volume solely to the trade agreement. Several factors arise simultaneously that could account for the increase. For instance, it could be reforms implemented as a result of the trade agreement, rather than the agreement itself which is responsible for the increased flow of trade albeit this would ultimately be related to the creation of the trade agreement. Other factors could be completely unrelated to the existence of a free trade agreement, as in the case of the Arab Maghreb Union, which should in theory have boosted trade amongst its four signatories, but fell through due to political rivalry amongst two members.

Another factor to consider when looking at the assumption that total trade volume is increased by free trade agreements, as previously stated in this chapter, is the balance of imports and exports. In the case of the EU-Mediterranean Partnership, for instance, all trade volumes of the Southern Mediterranean countries had increased, but more in regards of imports to the EU than exports towards it. Although this in itself is an advantage, it might not ultimately be what the southern mediterranean countries had in mind when they signed the deal in hopes of boosting trade. Such results would suggest that trade agreements made by individual countries and powerful economic blocs, might ultimately put the weaker Arab party at a disadvantage in terms of negotiations. It must be noted, however, that countries are rarely in a position to decline an invitation by a major trade partner to enter into a free trade agreement without repercussions. The intent behind these agreements might therefore be entered into not solely for economic reasons, as they are not always sound from a trade perspective. A country might consider it preferable to pacify a major trade partner, and in many cases, donor, and see an increase in trade whether truly beneficial or not, rather than risk the ire or loss of a major economic and political partner. One possibility for countering the advantage imbalance, however, would be as discussed in Chapter II, to increase the number of FTA's entered into by a single country. There appears to be evidence to the fact that countries at the centre of custom's unions or free trade agreements gain more from the agreement than those at the periphery. This would help to explain why the EU FTA's with Arab countries have not always provided the desired results for these countries. Regionalism in this context appears to be especially relevant in redressing this imbalance, and improving rates of regional trade between Arab countries would stand not only to benefit the region as a whole, but equally individual MENA countries who by accruing trade links through multilateral, bilateral, and regional

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<sup>425</sup> Cieřlik, Hagemeyer (n 388).

<sup>426</sup> S.Rey, 'Effective Exchange rate Volatility and MENA countries' exports to EU' (2005), *Journal of Economic Development* 31(2), 23-54.

trade agreements, can hope to see an increase in absolute gains and a resulting greater increase in trade per country.

The question that arises when looking at the disparity in negotiating power, which ultimately is the problem behind bilateral trade agreements entered into by Arab members of the WTO with powerful trading blocs, is not one that cannot be at least partially solved. When Bahrain was invited by the US to enter into an FTA, and rushed to acquiesce, this created significant tensions between Bahrain and Saudi Arabia. Saudi Arabia reproached Bahrain for by-passing the GCC bloc and entering into a bilateral trade agreement independently. It is uncertain whether Bahrain could have realistically declined the offer, but it would seem that it would have been able, at little political cost, to suggest the US turn to the GCC as a bloc, and that is was a ready partner in such a context. That is, after all what the remaining GCC members had done, with success. Negotiating as a bloc, the GCC was able to obtain more favourable terms when compared to other countries in the region acting individually.

In addition to improving their success at negotiating the terms of free trade agreements entered into, Arab members of the WTO entering bilateral trade agreements in parallel to their WTO membership should be attentive to the perhaps unforeseen effects of these agreements. It seems as though the assumption, when signing US-MEFTA and the EU-Mediterranean Partnership is that all trade agreements are beneficial in that they boost trade. Although this appears to be generally true, it is not always the case and in some instances can be detrimental. The example of rules of origin comes to mind. Regulations for Rules of Origin differ between the US-MEFTA and EU-Mediterranean Partnership. What this means, in real terms, is that local producers in the MENA region that have simultaneously entered into both agreements find themselves having to fulfill different sets of requirements, the effect of which is both time-consuming and costly, and ultimately detrimental to trade.

One would need to be able to accurately measure the trade impact of membership of the Arab members of the WTO in order to glean information on whether membership has increased trade flow in real terms. Such data is not available at present but there is data that suggest that WTO membership in itself does not increase trade<sup>427</sup>, or if it does, it does so in a skewed manner<sup>428</sup>. However, studies do show that trade increase in the WTO is linked to rates of participation, not just within the organisation but in the sense of a dynamic trade policy integrating multilateral trade organisations with regional and bilateral trade agreements<sup>429</sup>. Whilst it is not possible at present to directly compare trade statistics related to bilateral trade agreements vis-a-vis WTO membership, past experience would suggest that bilateral trade agreements are not to be shunned by Arab members of the WTO, if approached with caution. Concertation and the creation of regional blocs would help alleviate the problem of an imbalance in concessions that seems to be the overriding challenge the Arab countries face when negotiating bilateral trade agreements. Not only are they

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<sup>427</sup> A.K. Rose, 'Does the WTO make trade more stable?' (2005), *Open economies review* 16(1), 7-22.

<sup>428</sup> A. Subramanian, S.J. Wei, 'The WTO promotes trade, strongly but unevenly' (2007), *Journal of international Economics* 72(1), 151-175.

<sup>429</sup> T. Kohl, 'The WTO's effect on trade: What you give is what you get', In BJ Christensen and C Kowalczyk (eds), *Globalisation: Strategies and effects* (Heidelberg, Springer Verlag 2017), 459-493.

more exposed to unfavourable terms dictated to them by more economically powerful partners, they are also in danger of eroding a minimum standard they have acquired through the GATT MFN rule. Although the GCC seems to be recognising the advantages to be gleaned from a more united approach, both within the WTO as discussed in Chapter V, and in bilateral trade agreements as seen in the present chapter, the remainder of Arab countries have not yet been able to successfully do the same and continue to proceed on both the bilateral and multilateral fronts on a largely individual and arguably weaker position.

In terms of the larger picture of how use of Article XXIV by the Arab members of the WTO might be indicative of their level of participation in the organisation, the impression is similar to that given in the previous chapter, that is to say while there are some positive developments, there is room for improvement if the Arab WTO members are to gain the full benefits of their membership and see tangible results with regards to increased trade. The level of regional trade, despite recurrent efforts, has not yet reached its potential and represents one of the greatest underexploited means of increasing overall trade for these countries. Concerning bilateral trade agreements, some GCC countries are displaying pro-activeness in seeking out new trade partners but for a large part the MENA countries are approached by their largest trading partners, with which they enter into delicate trade agreements that are difficult to negotiate due to the disparity in negotiating and economic power. Even these agreements, however, could be made more positive for the Arab MENA countries were they to offset the skewed trade results they provide by increasing trade opportunities elsewhere and with more varied partners whether regional or extra-regional.

## Chapter VII- Conclusion

### Introduction:

The initial starting point of this thesis was the participation of the Arab members of the WTO in both the decision making and dispute settlement processes of the WTO, and to ascertain from their patterns of behaviour whether their participation thus far was successful in achieving their assumed trade goal of increasing trade, and if not, what could be done to improve results. A number of findings ensued from both the available literature on the subject, discussion with Arab WTO experts, and Arab WTO delegates. What becomes apparent is that the subject of Arab participation at the WTO leads to larger topics such as Arab regional and bilateral trade agreements under Article XXIV of the GATT. Additional factors also need to be taken into consideration such as political economy and the diversity of economies of the Arab members of the WTO, which might explain why interests are not always aligned, and why even when backed by the political will to see them succeed, regional trade agreements overwhelmingly fall short of declared targets, with the exception of the GCC in some respects. This lack of cohesion and opportunity seems to be holding back Arab countries from further participation in the WTO and the world economy at large. If in unity, there lies strength, as other regions have shown at the WTO and beyond, then it appears the lack of regional Arab unity is costing them in influence and trade opportunities. The WTO provides a valuable but fragile opportunity for Arab members of the WTO to work together within a specialised diplomatic framework, as they are inclined to do according to first hand accounts on the matter. Care must be taken, however, to minimise tensions external to trade related issues lest they affect trade outcomes. Cohesion and a long-term vision of what they would like trade to look like in the Middle East and North Africa would strengthen the region from a trade perspective, and although the obstacles are many and considerable due to the political and economic situation of the MENA region, there appears to be some progress in this direction suggesting positive steps towards greater participation are underway, eventually leading to improved trade outcomes.

Although at first glance it quickly becomes apparent that the Arab members of the WTO were not until recently participating in any visibly significant way in the WTO decision making and dispute settlement system, membership to a considerable number of working parties and the current trends of behaviour of Arab countries' involved with the WTO indicate a possible change of policy and interest in greater future participation. It would appear that the majority of Arab members of the WTO are either unable, for practical reasons, or unwilling as a matter of policy, to directly become involved as a party to a dispute for fear of confrontation with potential trade partners. This is especially true for the less wealthy Arab WTO members. Certain Arab members of the WTO did, however, become increasingly active as third parties to disputes, in what appears to be a safe strategy allowing them to gain exposure to, and experience of the WTO dispute settlement mechanism with little risk involved and at a lower cost. Current patterns of behaviour also seem to suggest an increase in participation, meaning the strategy of Qatar and the UAE might have born its fruit in encouraging engagement in Dispute Settlement at the WTO, and the extended experience of Tunisia as an early member of the organisation could account for its similar recent venture in to Dispute Settlement. Saudi Arabia, Bahrain, Egypt, and Morocco have all similarly come closer to active participation in WTO dispute

settlement by virtue of being respondents in various cases. With regards to regional trade, the MENA trade landscape has equally seen significant change in a relatively short time with the implementation of an updated and reformed GAFTA agreement that illustrates the significant shift in stance from an inward looking region, to a more open and outward looking one post WTO. The GCC has also achieved significant objectives with regards to regional trade and economic integration despite existing divisions, in that it is the first example of a truly successful Arab regional agreement which has impacted the volume of trade between its members to a significant extent.

This chapter will take an overarching look at Arab participation in the WTO thus far, to determine what has hindered or facilitated greater involvement in the organisation with the view to assess what can be done to improve outcomes in the future so that greater participation and involvement in trade channels might positively impact trade for the countries of the MENA region. This chapter will first review significant bilateral and regional trade agreements entered into by Arab members of the WTO, and compare how successful these trade agreements have been in increasing trade for the Arab parties involved (2). Subsequently, this chapter will address the lack of a visible cohesive structure or approach designed by the Arab members of the WTO both with regards to their participation in the WTO, and their pursuit of bilateral trade agreements with non regional partners. These agreements whilst causing them a number of difficulties, some practical such as entering into trade agreements with conflicting obligations, and some endemic to developing countries due to their position as the weaker party both in a multilateral and bilateral trade environment, are problematic but not without solution (3). After considering the trade agreements themselves, this chapter will then restate the nature of the economies of the Arab members of the WTO (4), as well as the historical, social and legal elements affecting their trade patterns at present (5). This chapter will then end with a section on recommendations and predictions (6).

### **1. Current participation of Arab countries in the WTO:**

First of all, it is of note that there is no singular pattern of behaviour for all 13 Arab members of the WTO. The countries that appear to have engaged quickly and dynamically with the decision making and dispute settlement systems of the WTO are the GCC countries. It comes as no surprise that economic means would facilitate greater participation, and so they appear to have outpaced some older members of the WTO. These older middle income members, however, have been able to gain steady and growing experience of the inner workings of the organisation primarily through participation in negotiations, which appears to have recently come to some level of fruition considering their shift from exclusive involvement in negotiations, to their entry in the realm of dispute settlement for the first time. The only category of Arab members of the WTO that has thus far not appeared to have benefitted from any significant increase in direct participation in WTO proceedings are unfortunately the LDC members. This in itself would seem to suggest that the general lack of participation in dispute settlement during the first two decades of Arab membership in the WTO was linked more to economic limitations rather than any cultural or legal ones.

The level of participation in the decision making process of the WTO is difficult to establish with detail as there are no consistently available records of all working party meetings the Arab members of the

WTO are part of. Notifications can be somewhat useful in looking at general involvement. First hand accounts from Arab delegates at the WTO suggest involvement as well as cooperation both with regional and extra-regional trade partners. There is therefore an indication that Arab members of the WTO are involved in the negotiations most pressing to their national interests, but details of involvement are unclear as to the regularity of attendance at meetings, and the level of activity and influence exerted in them. Membership to working parties, however, can be an indication of the centres of interest of the Arab countries of the WTO, as well as revealing which Arab delegates might often work together or as parts of a coalition as part of these groups. Considering the foundations of WTO negotiations based on consensus and single undertakings, consultations and coalitions are especially important for the Arab members of the WTO as developing countries if they are to participate effectively and have some influence over decisions affecting their trade.

Dispute settlement proceedings within the WTO, on the other hand, are recorded and made available to the public as part of transparency measures implemented in the aftermath of the WTO Ministerial Conference of 1999. The activity of MENA countries in the WTO is therefore much easier to observe. It quickly becomes apparent that for the most part, the Arab members of the WTO were not active on the dispute settlement front in a direct manner for over two decades of their membership as only two cases involving Egypt<sup>430</sup> and Morocco<sup>431</sup> involved an Arab WTO member as a respondent until very recently. Other disputes were either solved through mutual agreement, or never went past the consultation stage<sup>432</sup>. This appears to be a conscious decision on the part of Arab WTO members who might have feared negatively affecting their relations with important trade partners, and sometimes donors, or engaging in a process they felt unfamiliar with. Arab countries have had to navigate dispute settlement in the WTO carefully, as they have learned through the experience of Egypt that they could find themselves pressured to support a specific party to a dispute involving main trade partners that it could not afford to disappoint. There subsequently appeared to be an increase in the number of Arab countries acting as third parties to disputes, mainly GCC WTO members who seemingly adopted the alternative approach of gaining experience through observation of the dispute settlement process. This seems to have served the intended purpose as Qatar and the UAE have recently come forward as claimants in a dispute. Tunisia, while not engaging in the same process, has been active in negotiations processes, and also recently ventured into dispute settlement for the first time. While these recent cases cannot yet tell us if this increase in participation is set to become a permanent feature, it appears to be a step in the right direction for greater participation by certain Arab members of the WTO, which will hopefully spread to other members of the group.

As discussed in Chapter V, the majority of Arab members of the WTO face a number of technical difficulties common to developing members of the WTO, which include limited budgets leading to understaffing as well as a shortage of highly specialised trade experts with area specific expertise. In addition the modest size of the Arab delegations means it is difficult, if not impossible, to be physically present and

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<sup>430</sup> World Trade Organisation (n 303)

<sup>431</sup> World Trade Organisation (n 5 )

<sup>432</sup> World Trade Organisation (n 6)

engaged at various Geneva based institutions covered by these delegates, in addition to the WTO. Although as previously stated, this is by no means a limitation faced by Arab countries alone, it is a considerable obstacle to overcome should all Arab members of the WTO seek to increase their participation in negotiation procedures, which requires expertise in the topic at hand, as well as the physical presence to be able to be informed of various issues on the negotiating table, and time to network with relevant parties.

The shortage of funding also results in the lack of a long-term training program which would have allowed MENA countries to train potential future delegation members. The GCC countries, which do not suffer from the same limited means as other Arab members of the WTO, has nevertheless not yet invested in a formal training program either, nor does it appear to plan to do so in the foreseeable future<sup>433</sup>. While emerging economies like Brazil have greatly invested in training programs to lure promising graduates into the field of WTO law, providing the necessary training and exposure to ensure their aptitude for the task, an Arab equivalent is sorely lacking. A number of initiatives conducted by the WTO chair programme, for instance, did organise joint programs in Tunisia and Jordan<sup>434</sup>. It is of note that the program was run in French, an important accessibility factor for the North Africa region which is predominantly Arabic and French speaking. This is also true for a number of African countries in which French is a main language, as such it seems fitting that main francophone countries should be invited to attend<sup>435</sup>. These programs, however, lacked depth of the kind that would provide true technical expertise for delegates needing to manoeuvre complex WTO regulations<sup>436</sup>.

Membership of the WTO without participation in its decision making and dispute settlement processes effectively means Arab WTO countries would be subjecting themselves to a passive role where regulations are made by other members without the opportunity for Arab members of the WTO to defend their own interests. At best, the result might be neutral in that it does not directly affect the sectors of trade relevant to MENA countries, but the potential danger is that through inaction, policies are put in place that directly conflict with the interests of Arab members of the WTO. A significant number of Arab WTO members do appear to be involved in negotiations efforts, although this is not without its difficulties due to the nature of the decision-making process of the WTO in which less economically powerful countries are at a technical and influential disadvantage, due to difficulties in training and funding a delegation with the material capability to be involved in all relevant meetings, and the opportunity to network and build the necessary ties with their counterparts that might lead to advantageous collaborations and compromises<sup>437</sup>.

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<sup>433</sup> Email correspondence with an Arab WTO delegate dated February 10 2106.

<sup>434</sup> Eight-week Intermediate Level Activity for French-Speaking African Countries, organised in partnership with University Al-Manouba, Tunis in French.

<sup>435</sup> Algeria; Angola; Benin; Burkina Faso; Burundi; Cameroon; Cape Verde; Central African Rep.; Chad; Comoros; Congo; Congo, Democratic Republic of; Côte d'Ivoire; Djibouti; Equatorial Guinea; Gabon; Guinea; Guinea-Bissau; Madagascar; Mali; Mauritania; Morocco; Niger; Sao Tome and Principe; Senegal; Togo; Tunisia

<sup>436</sup> Conversation with an Arab WTO delegate dated February 10 2106. supported by information provided on the WTO website regarding the focus of the training programs.

<sup>437</sup> C. Michalopoulos, *Developing Countries in the WTO* (Springer 2001), 1

## 2. Regional and bilateral trade:

Regional MENA efforts at creating a free trade area were numerous, and yet few have survived to the present day. Many of these agreements stem from the creation of the Arab League in 1945, an organisation with the aim of increasing political and economic cooperation and integration, including the creation of currency and customs unions.<sup>438</sup> From the Arab Economic and Social Council of the Arab League emerged a number of treaties, the most notable and ambitious of which is the Greater Arab Free Trade Area which includes almost all Arab League members apart from Comoros and Algeria. The GAFTA, was novel in that it included specific commitments, whereas previous attempts had failed, in part due to a lack of specific measures to be undertaken and the absence of a schedule. These commitments included the full trade liberalisation by January 1<sup>st</sup> 2005, of goods through the full exemption of customs duties and charges having equivalent effect between all Arab countries members of the GAFTA. Exceptions included Sudan and Yemen as least developed countries where customs duties and charges having equivalent effect would be reduced by 16% annually as of January 1<sup>st</sup>, 2005 to reach full exemption by the end of 2010 pursuant to the resolution of the Arab League Council at its 14th meeting in Beirut regarding offering less developed Arab countries preferential treatment. In practice, most but not all tariffs have since been eliminated. A number of other sub-regional agreements, such as the Agadir Agreement, and the Arab Maghreb Union were equally created but have since fallen into disuse. In the case of the Agadir Agreement, this was due to the said agreement being superseded by the Euromed Agreement. The AMU, on the other hand, became dissolute as a result of political tensions between Algeria and Morocco who were parties to the agreement.

Other than the Agadir Agreement, which was purely economic in its scope, all other MENA regional trade agreements have gone beyond the economic sphere to include political, and in some instances military cooperation and monetary unions. The GCC is such an example, and is by far the most closely integrated regional bloc despite considerable recent tensions. It is also the most successful with regards to effectively increasing trade amongst its members, a task GAFTA has failed at mainly due to the failure to remove non-tariff barriers to trade after the elimination of almost all tariffs was effectively achieved. In addition, the lack of close integration within GAFTA as exists within the GCC, particularly with regards to uniformity of trade related regulations, administrative procedures, necessary infrastructure and freedom of movement of good and persons.

The disparity in the fiscal policies of the MENA states also partially accounts for the successes and failures of various regional trade agreements. Some MENA countries, mainly the GCC states, have relatively low tariffs, in line with their economies of mainly import markets<sup>439</sup>. The countries of the Levant and North Africa have inversely struggled to lower tariffs, this again is explained by their interests in protecting

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<sup>438</sup> Malkawi (n 42)

<sup>439</sup> With the notable exception of hydrocarbons, their main export product.

national production against possible competition.<sup>440</sup> In addition, a number of other factors have presumably contributed to the stunted progress of the GAFTA, namely the abundance of exceptions the agreement allows for in order to protect vital sectors of the economy of a great number of MENA states, most typically involving agriculture.<sup>441</sup>

The opportunities for Arab trade on a regional level have been underexploited and leave non-oil based economies of the MENA region unable to grow their economies through increased trade flows. The failure of almost all regional trade agreements<sup>442</sup> for the various reasons previously mentioned has not, however, frozen periodic efforts to invigorate regional Arab trade. The Agadir Agreement which includes Jordan, Tunisia, Egypt and Morocco, is a third example of a regional trade agreement that sought to increase inter-Arab trade. The agreement was open to all Arab country members of the Arab League, the GAFTA, and countries linked to the EU through an Association Agreement or an FTA. Its main purpose was novel in that it aimed to facilitate integration between Arab states and the EU, as well as between Arab states regionally, under the auspices of the broader EU-Mediterranean process,<sup>443</sup>.

Despite continuous efforts however, the rate of regional trade in the Arab world does not exceed 10% at present.<sup>444</sup> Faced with this less-than encouraging figure, it would seem that Arab countries have had to find alternative solutions in order to keep their economies afloat and look outward as regional trade has borne little success so far. This turning point from an inward looking to an outward looking MENA marks the beginning of trade liberalisation in the region, as well as the move of a number of MENA countries towards multilateral trade through membership of the WTO, and the pursuit of an ever increasing number of bilateral trade agreements between Arab countries and mainly European and US partners. While these are positive developments in themselves, the lack of regional economic integration of the MENA region remains a considerable obstacle towards more dynamic trade for countries in this region. Considering the increasing rates of regional economic integration whether one looks at NAFTA, MERCOSUR, or the EU, regionalism has proven its advantages for trade despite certain limitations related to unequal levels of distribution and the inherent difficulties which lie in cooperation. These difficulties are nevertheless arguably worth the effort despite the many difficulties that are especially relevant at present. Greater regional economic integration as well as greater trade links, have overall been proven to positively affect trade<sup>445</sup>. If the Arab members of the WTO do not manage to remedy their low levels of regional economic integration, they stand not only to lose out on potential trade links that could be gained by use of Article XXIV of the GATT, but they will also have

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<sup>440</sup> Zarrouk (n 208), 290

<sup>441</sup> *ibid.* 292

<sup>442</sup> The GCC has been able to realise at least some of its charters requirements and GAFTA is applied as of 2005.

<sup>443</sup> Agadir Agreement (n 217)

<sup>444</sup> Limam, Abdalla (n 246)

<sup>445</sup> *ibid.*

to compete on an individual and arguably weaker basis with powerful regional blocs as well as economic superpowers.

### **3. Lack of a concerted approach to trade in the MENA region:**

Since the creation of the WTO, thirteen<sup>446</sup> Arab countries have become members of the organisation, with another seven<sup>447</sup> countries on the path to accession. This signifies that of the twenty-two members of the Arab League, over half are current members, with the rest presumably aiming to obtain membership at some point<sup>448</sup>. These countries are in a vulnerable position, however, when it comes to multilateral trade as they lack the requisite experience and resources to be able to effectively advance their interests within the WTO decision making system which presents non negligible challenges in general due to the consensus-based system, and specific challenges of developing countries. They are also vulnerable, if not more so, in the context of a bilateral trade agreement due to the imbalance in bargaining power when faced with an economically stronger trading partner as is often the case. This difficulty seems to be acknowledged by the current Arab participants in WTO dispute settlement since all the current cases involve states at similar economic levels. It remains to be seen whether this is coincidence or the result of a conscious decision to avoid litigation, if it can be helped, with economically more powerful opponents. For although dispute settlement would provide a neutral and objective forum for dispute settlement based on a rule based and reliable interpretation of WTO obligations, outside of this environment, there are necessarily consequences on trade and beyond between unequal parties<sup>449</sup>.

With regards to multilateral trade within the WTO, the lack of participation and apparent coordination amongst Arab countries of the WTO and between Arab and non-Arab members of the WTO has in the past meant that the MENA countries were unable to effectively manoeuvre the decision-making and dispute settlement mechanisms of the WTO in a proactive way that would yield results. The same holds true with regard to bilateral trade agreements, generally entered into at the invitation of a main trade partner, with very little real say over the pre-established terms of the agreement. On both fronts, the MENA countries display what appears to be a shift towards what appears to be some form of cooperation but not in a generalised way. For example, the lack of consultation amongst MENA countries prior to the signing of bilateral agreements meant regional neighbours received different deals from the same external trade partner, and not always with favourable results. The GCC countries have appeared to attempt to present a more unified front in the case of bilateral trade agreements attempting to negotiate as a bloc, although not without setback as was the case with the US-Bahrain FTA. With regards to multilateral trade negotiations, Arab trade delegates do indicate an attempt to cooperate and share information, both with regional and external WTO members. Evidence of this perhaps lies in the activity of the older Arab members of the WTO in negotiating

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<sup>446</sup> Bahrain 1995, Djibouti 1995, Egypt 1995, Jordan 2000, Kuwait 1995, Mauritania 1995, Morocco 1995, Oman 2000, Qatar 1996, Saudi Arabia 2005, Tunisia 1995, the U.A.E. 1996, Yemen 2014

<sup>447</sup> Algeria, Comoros, Iraq, Lebanon, Libya, Sudan, Syria.

<sup>448</sup> Somalia has not sought membership although the Palestinian Authority has shown an interest in joining the WTO.

<sup>449</sup> Van Den Bossche (n 90)

parties and the Arab working party, the formation of coalitions and participation as third parties, as well as the increase in direct involvement in dispute settlement which seems to have gained momentum. These are undoubtedly encouraging signs of progress with regards to increased participation, but would benefit further from a broad long-term vision for trade by and for all 13 Arab WTO members.

Within specific contexts, however, it does appear as though a number of Arab members of the WTO are attempting to improve their trade strategy through increased cooperation. One such regional example is the GCC, which despite the loss of Bahrain in this instance, still attempted to negotiate a US FTA as a single bloc realising it would have a more solid chance of obtaining trade concessions, or at least avoiding trade concessions they were not prepared to make if they came forward as a single bloc with a considerably more attractive market. GCC attempts to negotiate bilateral trade agreements as a single bloc have not translated, thus far, into a similar attempt at the regional level. The MENA region so far, has lagged behind other economic regional projects in the absence of a consistent approach to negotiating bilateral trade agreements as a single bloc. The recent crisis within the GCC, however, could threaten the continuation of this relatively recent successful approach to increased collaboration within bilateral trade negotiations. The rationale behind the forming of blocs or coalitions at the multilateral or bilateral levels is that developing countries individually have very little influence in a large group of countries such as the WTO, or in unbalanced bilateral negotiations, where influence is proportional to prosperity. Coalitions are as such seen as a remedy allowing for the interests of weaker members of the organisation to be heard when grouped together leading to more positive negotiation outcomes for the disadvantaged party with a view to increased and more effective participation.

#### **4. The economies of Arab states:**

When speaking of the nature of Arab trade and their economies, it becomes apparent that no uniform pattern exists when it comes to the MENA region. Arab countries vary considerably in their resources, imports and exports. We can, however, distinguish, in broad terms, between oil producing countries, and non-oil producing countries, as these subcategories tend to group countries sharing more similar economies. Oil producing countries, predictably, tend to rely heavily on oil exports, although extent will vary once again from country to country. Algeria, Bahrain, Iraq, Kuwait, Libya, Mauritania, Oman, Qatar, Saudi Arabia, Sudan, Yemen, and the U.A.E., almost all have oil and minerals export rates well over half of total exports. The oil resources of the U.A.E. vary from Emirate to Emirate, and overall constitute over half of the country's exports, a sizeable albeit reduced proportion compared to many of its neighbours. This means that a staggering majority, if not all their exports are based exclusively on fuels and mining products<sup>450</sup>. These countries tend to lean towards the opening of their markets which allow them to export their fossil fuels more easily, as well as importing the various goods they need that are not produced locally.

On the other side of the spectrum, other Arab economies with little or no fuel resources have had to rely on very different means of income. In this category, we find Comoros, Egypt, Jordan, Lebanon,

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<sup>450</sup> Algeria: 98.6%, Bahrain: 80.2%, Kuwait: 92.3%, Iraq: 97.7% (as of 2008), Oman: 73.1%, Libya, 89.4%, Yemen: 75.1% in 2008, U.A.E.: 53.6% in 2008, 35% in 2010, Sudan: 88%, Saudi Arabia: 84.2%, Qatar: 84.9%, Mauritania: 75.6%. Country Trade Profiles <http://stat.wto.org>. Accessed 09/09/2010 and 12/01/2012

Morocco, Syria, and Tunisia. These countries tend to have more diversified economies with exports including agricultural products, fuels and mining products, manufactures, and services. In addition, Djibouti, Mauritania, and Yemen represent yet another category in the wide economic spectrum represented by the Arab members of the WTO. These countries struggle considerably economically as LDCs with Yemen's difficulties compounded by a devastating war. The stark contrast in the economies of these three categories of Arab countries has naturally led to a number of consequences and differences in the way these countries conduct trade. The oil-rich countries of the Gulf are traditionally open to trade, as this allows them to export their much sought-after primary resource, which to date is governed by the rules of the OPEC, rather than those of the WTO. This means there is little risk for these countries of seeing their exports subjected to outside regulation. The second category of countries, however, have a more complex relationship with 'free trade' and have struggled more to remove tariffs than their GCC counterparts. The sources of revenue for these countries are far more modest, and tend to be more protective of national goods as these already struggle against external competition. Membership of the GATT is more nuanced for these countries who indeed have had new markets opened to them, but at the same time presenting a risk of competition with their own internal markets. In the case of LDCs, they have advantages with regards to market access not granted to non LDC WTO members, although participation in the WTO is still a struggle for these countries that would greatly benefit from inclusion in any regional cooperation within the WTO. Despite the categorisation of the MENA economies into oil-producing and non-oil producing, there are a number of sectors that intersect these two categories of countries such as tourism and services. In time, the economic divide between the two blocs could lessen further as oil loses its dominant place in many MENA economies.

##### **5. The effects of MENA history, and social and legal culture on current trade:**

The MENA region has a long history with the GATT, and Arab countries, whatever their economic profiles, are no strangers to the concept of free trade. Since the beginnings of the GATT, a number of Arab countries were amongst the founding members of the treaty. At the signing of the GATT 1947, Syria and Lebanon had just gained effectual independence from France. Syria had been recognised as an independent republic in 1944, but French troops only evacuated in 1946. Similarly, Lebanon was declared independent on November 22nd 1943, but French troops evacuated the country in 1946. The two countries were amongst WTO founding members, although both countries later withdrew from the agreement in 1951. Lebanon and Syria did not attempt to rejoin the WTO until 1999 and 2001, respectively<sup>451</sup>. The MENA region has a long history of trade, as well as a historical role in the modern concept of free trade specifically in the context of the GATT. It also has a long tradition of how it conducts trade which has permeated many aspects of its trade policies, whether regional, multilateral or bilateral.

The many exceptions included in the GAFTA agreement, and indeed, in most of the regional agreements previously mentioned are an indication of what seems to be an unwillingness to use forceful language in the various treaties, and the cultural aversion towards an aggressive approach to dispute settlement. Indeed, Arab tradition, which draws in this case from the Quran, calls for negotiation and conciliation rather than confrontation between parties. Cultural preference equally permeates the structure of

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<sup>451</sup> Bilaterals.org, 'Arab countries and the WTO' (*Offline*, 9 September 2010) <[http://www.bilaterals.org/offline/?ARTICLES:ARAB\\_COUNTRIES\\_AND\\_THE\\_WTO\\_-\\_submitted\\_09\\_Sep\\_2010](http://www.bilaterals.org/offline/?ARTICLES:ARAB_COUNTRIES_AND_THE_WTO_-_submitted_09_Sep_2010)> accessed 11 January 2012.

regional trade agreements that are averse to imposing ‘inconvenient’ or limiting restrictions, which would explain the numerous exceptions allowed for in the agreements. Culture could also help to explain why many of the regional agreements relevant to the Arab world lack the authority to make them enforceable, and in this respect, vary considerably from similar bilateral agreements between Arab and non-Arab trade partners<sup>452</sup>. In addition, legal dispute settlement mechanisms are absent from regional trade agreements and are instead replaced by diplomatic means of resolving disputes. These characteristic traits of Arab trade culture are equally found at the WTO where participation levels in the dispute settlement system have been low, and significantly, no Arab country has ever brought a claim against another member.

In addition to cultural parameters, politics plays a central role in Arab trade. The numerous political tensions in the region that sometimes translate into war, are an undeniable factor leading to non participation in multilateral trade, and the failure for the most part of regional trade. Naturally, a country overshadowed by a near-constant threat or reality of war will have political and military agendas as its main priority, at the expense of economy, health, education, etc. which will undoubtedly deteriorate as a result of conflict. If increased trade is the absolute gain that countries can aspire to, war is the absolute loss to all parties involved in all meaningful areas of development. Political tensions and war have at least in part, impeded the efforts of some countries in the region at regional and international trade demonstrated by the sometimes interminable lapses of time between meetings to finalise certain regional trade agreements, as well as panel meetings for accession to the WTO. A more stable political situation would certainly aid, if not solve the economic difficulties of these countries, helping them to focus more on strengthening their economies. Indeed according to the Preamble of the GATT, stability and trade go hand in hand. Recent and less recent uprisings and wars across the Arab world have appeared to demonstrate this, resulting in wide ranging implications for the MENA region that could drastically alter patterns of trade in the region in the future unless the source of the problem is remedied.

In addition to conflict, the impact of regional tensions on Arab trade is non-negligible. A number of Arab countries have strained relations with their neighbours, a factor that evidently hampers trade between them. To name but a few examples, the Moroccan and Algerian borders are closed over disputes involving the Western Sahara, Syria and Lebanon have had tense relations ever since the assassination of Prime Minister Rafiq Al Hariri in 2005, in addition to the raging civil war currently taking place in Syria. Bahrain and Qatar went to arbitration on a border dispute over the Hawar Islands, a dispute that now seems minor in light of the Qatar blockade. The Palestine-Israel conflict has led the Palestinian territories to be trapped in a legal limbo with regards to its status, effectively losing any meaningful control over its already struggling economy and trade opportunities. These factors cannot be disassociated from the region’s trade and have come to affect specific regional agreements, such as the Arab Maghreb Union, where the hostility between two of its five members led to the eventual cessation of activity of the Union. In the Gulf Cooperation Council, disagreements have existed but none to the degree that has recently been seen with the imposition of a blockade on Qatar. The expulsion of Qatar seems unlikely as it is unclear if any legal mechanisms allow for the expulsion of a member state. In addition, Qatar’s opponents in the event of a vote, would likely be unable to secure a unanimous vote to expel Qatar. A more likely scenario, is that the GCC will continue to

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<sup>452</sup> Zarrouk (n 208), 286

exist, but like so many regional agreements before, will lose in significance as its members disperse and turn to current allies, both within and outside of the region for trade. The MENA region looks set to lose a valuable tool for regional trade, and it is unclear at present whether it could be salvaged or effectively replaced.

## **6. Conclusion, recommendations and predictions:**

Returning to the original question posed at the beginning of this thesis, on whether the participation of the Arab members of the WTO in the decision making and dispute settlement processes of the WTO is conducive to fully benefitting from their membership to the organisation, the current answer would have to be nuanced by the timeframe we are looking at and the member countries included in the evaluation. A possible formulation would be as follows: From the earliest presence of Arab members at the WTO in 1995 to the present, there has been a slow progression towards participation at first limited to the negotiations level through involvement in working parties, later progressing to a first attempt at experiencing Dispute Settlement by appearing as respondents and third parties to cases and going regional and extra regional coalitions, and finally progressing very recently to full participation in Dispute Settlement through the instigation of claims. This overall trend has to be tempered with the acknowledgement that it does not involve all Arab members of the WTO, but a considerable majority, and that for this trend to be established, it must become recurrent and more widespread in future. The development does however, give reason for optimism.

If we look at membership to the WTO as a whole, however, an important caveat to this trend towards greater participation in the organisation is the underuse of the potential offered by Article XXIV of the GATT. Participation in negotiations and in dispute resolution are a promising start, but no less important in an environment where MENA countries are surrounded by economically integrated trading blocs and powerful individual states, is the development of regional trade. This is for two reasons, firstly the trade potential the increase in regional trade itself represents, and secondly, the mitigating effects it could have on bilateral trade agreements with ambiguous benefits to MENA country trade. Therefore, in order to gain the full benefits of WTO membership leading to absolute gains in all areas of trade, the Arab members of the WTO would have to fully embrace all the tools made available by the WTO in order to gain the full advantages of membership to the organisation. The Arab members of the WTO, in addition to making full use of WTO membership, must also make proper use of its institutions. Whilst it is too early to tell whether this will develop into a recurring issue, the apparent recent misuse of WTO Dispute Settlement intended as an objective and diplomatic means to resolve trade disputes for political ends would be counterproductive to the pursuit of absolute gains.

The Arab members of the WTO would benefit greatly from formulating a strategy as to what global trade policy they would like to pursue, on the multilateral front, as well as the regional and bilateral fronts., and how common obstacles are likely to be overcome. At present, it appears that these countries are reacting to external situations rather than actively pursuing a long-term vision for trade. If indeed they would like to

pursue trade on more than one level, as seems to be the case, it must be established that a passive or incomplete approach can at best leave trade flows stagnant, and at worse decrease them.

With regards to the the WTO, challenges for further participation of a material nature can be somewhat alleviated by increased use of the WTO's technical assistance for training and legal advice services. In addition, at present there seem to be informal means of dialogue present amongst the Arab members of the WTO. These should be encouraged and expanded to share information and experience as well as enable a joined front of action where appropriate. Certain Arab members of the WTO such as the GCC are already working in concert and attempting to gain familiarity with the relatively new WTO dispute settlement system through concerted action. This appears to be an effective way of moving forward towards a goal of greater participation. Such efforts should be consolidated within the WTO and encouraged to expand to greater regional economic integration when possible, using existent regional legal tools as well into the area of bilateral trade negotiations in the pursuit of more better outcomes for each individual country, and the region as a whole.

Arab members of the MENA can potentially benefit from each other's strengths, the older members in sharing their longer experience at the WTO, and the newer ones invigorating the regional delegation with their experience of closer integration and how this has successfully lead to an increase in trade to the GCC area. In addition, financial obstacles to further participation might be alleviated if the Arab members of the WTO were to pool their resources together when necessary, for example to cover fees should a dispute arise involving a MENA country that is of interest to other regional members. Funds could also be useful if allocated to train future trade experts with specific knowledge of the WTO. In the long term, training will be a crucial factor in improving participation of Arab countries in the WTO and be a more economical long term solution than reliance on costly international law firms.

As resources for many MENA countries are limited, perhaps their best opportunity at increasing their activity at the WTO is to form coalitions. If regional ones are impracticable due to divergent economic and trade interests, this should not hinder them from joining non-regional coalitions on an ad hoc or permanent basis according to aligned interests.

With regards to regional economic integration, MENA countries must be reminded of the considerable trade benefits to be gained from successful attempts at eliminating tariffs between countries of the region and draw the necessary conclusions from previous failed attempts, as well as identify the factors that have lead to successful regional trade agreements with the Arab world and elsewhere. The GAFTA illustrates that tariff eliminations without the subsequent elimination of non-tariff barriers will have little to no effect on levels of regional trade. Consequently, MENA countries should work at streamlining their trade regulations, reducing the volume of administrative red tape, as well as reducing costs, and invest in improving infrastructure so that regional trade becomes a more realistic and attractive prospect. These elements, when eliminated and coupled with the free movement of goods and people in the GCC resulted in actual increases in volumes of trade amongst members, despite having similar economic profiles that were not particularly complimentary. Although trade amongst Arab countries might always come second to trade

with the EU and US, if for no other reason than a market economy will dictate trade patterns based on offer and demand, there is still much potential for regional trade growth that would benefit all parties involved.

Crucially, MENA countries must view cooperation not as an option but as a necessity for overall good relations, and for the survival of regional trade. Difficulties with diplomacy must be overcome at all costs and conflict equally avoided at all cost due to its catastrophic effects on trade, amongst many other things. In addition, the link between a healthy economy and political stability must be underlined to encourage the governments of MENA states to invest resources and efforts into the improvement of trade relations on all fronts as added prosperity will contribute to decreasing the risk of instability through popular discontent as was the case during the uprisings of 2011. The circle linking prosperity and stability also works in reverse, and those MENA countries that are enjoying sustained growth and political stability should be particularly motivated to maintain regional peace as the loss of stability would invariably lead to a corresponding loss of trade and economic growth.

The claim that differing economies render MENA cooperation unworkable is a valid point, but cannot be defended in light of yet greater cooperation and integration in other regional groups that also were faced with challenges. The example that comes to mind is the European Union, which had considerably less social cohesion than the MENA region encompassing a multitude of different European cultures that were nevertheless driven by the same precepts that lead to the creation of the WTO, and that is cooperation as a necessity to improve standards of living and promote peace. The countries of Europe not so long ago, managed to progress from a situation of war and devastation, to one of the largest and most prosperous markets in the world. This is not to say considerable difficulties cannot arise, especially in light of recent developments and the occurrence of Brexit. The MENA region, however, is aware from recent experience of what more peaceful and prosperous parts of the world might have forgotten, and that is that any amount of frustration and imperfection is preferable to all out conflict and its tragic human and economic costs. Similarly, successful examples of economic integration in the MENA region should be protected from possible implosion and the failure of diplomacy, as they reveal how fragile their structures are when confronted with the threat of regional politics. Cooperation must be a conscious and determined effort, against economic and political odds, in order to ensure the economic welfare of all parties involved.

With the decrease in oil supplies and prices, and their predicted depletion within the next few decades, the economies of the Arab members of the WTO might change to become more similar then they currently are at present. It would therefore benefit these countries to create a framework in preparation for anticipated greater economic cooperation. Although the change might not appear as drastic for the MENA countries of the Levant and North Africa, a complete change in principal source of income is a monumental shift that GCC countries have been preparing, some more effectively than others, for a number of years now. Loss of oil revenue is by far the greatest long and short term economic and national challenge they face. The sectors where the MENA countries might align in future would logically be services, tourism, and agriculture, although the list is not exhaustive. These sectors can already be discussed amongst MENA countries which can gain from each other's experiences. Looking at the specific example of tourism, Tunisia, Morocco and the U.A.E. have all made these central sectors to their economies, but created extremely

different models. Tunisia opted to attract low budget customers, planning to make a profit out of numbers rather than through steep margins. Morocco opted for cultural tourism, maximising the appeal of its unique Moorish architecture and cuisine, while Dubai opted to create a luxury tourism market. All three models are therefore very different, and have succeeded to different degrees, with Morocco and the UAE having created the most viable long-term markets. Tunisia has since sought to learn through bilateral diplomatic means from its Maghreb neighbour how to attract a different clientele that would increase profit margins for the local tourism industry, and is making the necessary adjustments to infrastructure and planning. This exchange of knowledge and experience could easily have taken place in a regional setting and benefited all parties involved. Concerns of competition are potentially outweighed by the benefits of improving the tourism sector across the region by improving modes of transport and infrastructure linking the MENA countries which might create more movement of capital as a whole to the region if it appears more attractive to consumers. This would also likely present the added advantage of increasing foreign direct investment into the area.

Open markets and free trade in the MENA region present huge economic advantages, but admittedly, can only be achieved if political stability is also guaranteed. At present, investment in the area is mostly linked to fossil fuels, and should these run out, the MENA region will have to find a way to assure investors other sectors in its industry are viable investments, and that the market will not suffer from instability. Here a strong legal framework for a regional open market and free trade area, similar to the GCC economic union, would be greatly beneficial to MENA countries. Firstly, it would formalise and solidify cooperation and possibly expand it. Secondly, it would give the necessary assurance to non-regional trade partners that the area is trade friendly and represents an attractive market for trade and investment. A practical starting point would be GAFTA, but with the necessary adjustments made for greater economic integration that would remove existing non-tariff barriers to trade, and legalise the currently diplomatic structure of its dispute settlement mechanism. With regards to current Arab members of the WTO, use of the organisation's reputable dispute settlement mechanism can act as an alternative or complement to GAFTA dispute settlement, as is already being done by some Arab members of the WTO.

Despite the merits of a consensus and conciliation based cultural preference, in cases where these mechanisms fail, effective dispute settlement forums must be an available option, as differences between parties which are not adequately resolved eventually lead to the inefficacy and disuse of several regional MENA trade agreements. A potential area of further research could be to look at whether any viable alternative solution would exist with relation to dispute settlement in the MENA region, that would incorporate the qualities of being both an effective dispute resolution mechanism, as well as respecting local cultural preference for non litigious confrontation between trade partners. Additionally, the possibility of using WTO dispute settlement amongst Arab members of the WTO could also be explored.

Another potential area of interest would be to monitor progress as the situation unfolds regarding patterns of behaviour with regards to participation in WTO dispute settlement. Firstly, one would have to establish whether this recent occurrence is a growing and sustained trend, as well as monitoring whether any patterns arise in terms of areas of trade interest, whether individual or common to several of the MENA

countries at the WTO. It would also be worth monitoring whether the GCC political crisis will indeed transcend into the behaviour of Arab members of the WTO within the organisation, a misuse of the organisation which would give rise to great concern for the viability of continued trade cooperation.

Considering the fact that one of the MENA's main trade partners, the US, seems to be headed towards greater protectionism of the US market, and that the current administration is looking to veer policy away from multilateralism and toward bilateralism. In addition, the EU, suffering from serious internal struggles might not prioritise bilateral trade agreements at present. A possible area of study would be to observe what, if any, consequences this might have on trade with MENA countries, as well as any possible consequences this might have on regional economic integration for MENA countries.

One area of study that could be of interest would be to observe the practical implementation of Arab participation at the WTO if direct access were possible, complemented by detailed records or accounts from Arab WTO delegates if this were not always the case in order to gain a real understanding of dynamics, challenges, and level of cooperation between these countries, as well as with other WTO members sharing similar trade interests.

Finally, another possible area of study could be the experience of MENA countries with the concept of free trade, and what the ensuing impact has been on the countries that have apparently embraced the tenets of trade liberalisation with greater or lesser enthusiasm. The region in the past few decades has seen significant change with regards to trade, transitioning from an inward looking region concerned with protectionist measures to an outward looking region that has opened its markets to non regional trade partners and establishing its main trade relationships outside the region. What the implications of this development are for current MENA trade objectives could be a point of interest. In addition, it is arguably in the benefit of MENA countries to be actors rather than observers regarding decisions affecting their trade policies. How then can they ensure that they are able to shape their own economic destiny in an ever-changing and interconnected world? The words of the former Saudi delegate to the WTO sums the situation of the MENA country with the concise advice that "Globalization will overcome you if you don't know how to steer its rules in your favor".<sup>453</sup>

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<sup>453</sup> Email correspondence dated 16 March 2017.

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