ANATOMY OF THE CASE OF ARAB COUNTRIES AND THE WTO

Bashar H. Malkawi*

Introduction

Arab countries are attempting to broaden their engagement in the multilateral trading system in a manner that has many implications. Not only have some Arab countries either acceded or are in the pipeline of acceding to the World Trade Organization (WTO), but their new commitments coincide with reorientations in their economic strategies. The purpose of this article is to examine the involvement in and implications of the multilateral trading system on Arab countries. The proposition in this article is that the WTO is not a perfect institution. In WTO accession, politics matter more than commerce or trade. I argue that joining the WTO is a balancing act. As a result of economic liberalization, there would be losers in the industries of Arab countries. However, governments should compensate for any loss by ensuring better access to capital and establishing training programs to develop the skills of those dislocated.

The article proceeds to discuss in section I representation of Arab countries in the multilateral trading system. Section II examines accession of Arab countries to the WTO and some of the obstacles they face in their accessions. Section III discusses the Fourth WTO Ministerial Conference held in Qatar in 2001. Section IV studies participation of Arab countries in the WTO dispute settlement mechanism. Section V analyzes the impact of the multilateral trading system on Arab countries in selected sectors such as agriculture and oil. Section VI uncovers the opposing positions

* Bashar H. Malkawi is Assistant Professor of international trade law at the Hashemite University of Jordan. He holds an S.J.D in International Trade Law from American University, Washington College of Law and an LL.M in International Trade Law from the University of Arizona. I am indebted to Professor David Gantz at the University of Arizona and Professor Padideh Ala’i of American University, Washington College of Law for their advice and comments on earlier drafts. I thank Donna Butler, Meytal Kashi, and Nihan Keser for their editorial help.

© Koninklijke Brill NV, Leiden, 2006

Arab Law Quarterly 20.2
Also available online – www.brill.nl
of Arab officials and civil societies in Arab countries toward globalization and the multilateral trading system.

I. Arab Countries’ Representation in the Global Multilateral Trading System

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

From the birth of the GATT in 1947, until 1993, few Arab countries have joined the GATT-type multilateral trading system.³ Like many other developing countries, Arab countries, after the end of colonialism, called for a new world economic order that would take their development needs

¹ In order to enter into force, article XXVI.6 of GATT 1947 requires governments with a minimum share of world trade to deposit their instruments of acceptance. However, few countries did so. Therefore, GATT was applied through the Protocol of Provisional Application. See Protocol of Provisional Application to the General Agreement on Tariffs and Trade, signed Oct. 30, 1947, 61 Stat. A2051, 55 U.N.T.S. 308.
² As the acronym of the GATT indicates, GATT’s scope was limited only to tariffs and trade in goods. GATT 1947 did not contain rules aimed at the liberalization of trade in services and other sectors. An example of GATT 1947 pragmatism is article XXV (3) & (4) which calls for one vote per nation and decisions to be taken by majority vote. However, in practice, consensus was developed among parties.
³ Egypt, Kuwait, Morocco, Mauritania, and Tunisia were the only countries to join the GATT 1947. For example, Egypt and Tunisia first acceded to the GATT provisionally. Provisional accession means that GATT contracting parties extend GATT rights, including tariff concessions, to acceding countries if the latter reciprocate. However, acceding countries did not have a direct right regarding tariff concessions negotiated prior to their accession to the GATT. In other words, acceding countries were not entitled to compensation in case tariff concessions were withdrawn.