GCC STATES AND TRADE REMEDIES: BETWEEN BENEFITS AND CHALLENGES

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Abstract

This paper aims at highlighting the ambiguous position of GCC states as to the application of trade remedy rules set forth in WTO agreements and implemented in GCC Common Law on Antidumping, Countervailing Measures and Safeguards. These countries acknowledge the usefulness of these rules used in case of difficulties due to trade liberalization, particularly by ensuring the defense of the legitimate commercial interests of WTO Members when they are victims of unfair practices or are forced to adopt emergency measures in the event of market disruption. GCC states also make the point that contingency measures are an essential tool for the success of regional integration process and diversification policies of their national economies launched for a decade. The fact remains that these countries are, surprisingly, reluctant to use these remedial tools at both regional and multilateral level. Very few investigations have been already initiated and no contingency measures have been yet adopted to date. In this context, and after recalling the benefits that could be reaped by the GCC countries through a more aggressive use of these instruments, this contribution endeavors to explain the reasons of this ambiguity.

Keywords: Trade Remedies, WTO, GCC States, Contingency Measures

INTRODUCTION

Established in 1981, the Cooperation Council for the Arab States of the Gulf (GCC states hereinafter) is a regional organization composed of six Arab and Muslim states of the Persian Gulf: Saudi Arabia, Oman, Kuwait, Bahrain, the United Arab Emirates and Qatar. If it is above all a very political "club" of Sunni oil monarchies who are concerned about security against Shiite Iran and neighboring civil wars (Iraq, Syria), the areas of cooperation have gradually expanded to integrate health, education, environment as well as the fight against transnational crimes.

But it is in the sphere of the economy that the progress is the most significant. The GCC region represents currently the most accomplished economic integration model in the Arab world. The GCC Common Customs Law was promulgated on January 2003. Since then, the GCC states have operated on the basis of the common external tariff. On 1 January 2008, the members of the GCC have also formed a common market, allowing the free movement of services between the members. This process is the final step before an economic and monetary union and the introduction of a single currency expected in 2010, but which has still not been completed to date.

GCC countries display cultural, geographical and economic similarities. They are among the world's biggest producers and exporters of oil and natural gas. Thanks largely to the surplus and investment generated in this area, this region is experiencing continuous growth and development. Its standard of living is one of the highest in the world. These countries have one of the highest per capita GDP in the world with an average of USD 33,005 GDP/inhabitant.

Fervent advocates of the virtues of free trade, all GCC states are thus full members of the WTO and are amongst the good performers of this institution, providing periodic anti-protectionist pledge to the international community. At the same time, GCC countries consider that regional economic integration can be a useful complement to the multilateral system, by deepening the integration of markets, reinforcing the role of trade in economic growth, promoting gains of scale for domestic firms, and providing an expanded base to face global competition. This region is preparing to become a major hub for international trade, as well as an important gateway to the Gulf, Asian and Middle-East regions.

In terms of trade policy, GCC members seem to have made use of their WTO accession and GCC integration to reform their economies and attract investments. As part of their accession, they have adopted a largely open tariff regime for goods and made extensive services commitments. Within the framework of the GCC, a common external tariff has been put in place, leading to applied tariffs well below their bound rates in the WTO. GCC Members have agreed to allow free movement of services and harmonization of certain trade rules has been achieved or is in the process of being achieved (e.g. customs, rules of origin, antidumping, countervailing duties and safeguards, standards and technical regulations).

Nevertheless, there are clearly economic and trade policy challenges on the horizon. Firstly, GCC countries' fortunes still rest heavily with the export performance of one sector. In 2014, oil and gas represented approximately one third of real GDP, but provided more than 80% of governments revenue and export earnings. In contrast, while services and, albeit less, manufacturing represent a large share of GDP and total

employment, they provide very limited contributions to public finances and export earnings. Due to the lack of diversification of their economies, these countries are highly dependent on foreign trade. The ratio of merchandise and services trade (exports and imports) to GDP represents more than 90% of the GDP.

Besides hydrocarbons dependence, GCC countries also face the dilemma of public/private sector dichotomy. While we note a significant government involvement in the economy, the private sector remains underdeveloped. State-owned enterprises exist in many sectors (such as insurance and banking, petrochemicals, electricity, air transport, real estate, telecommunications, postal services, etc.). Even if such companies are suggested to operate on the basis of commercial considerations, there is an apparent risk that they deter foreign as well as local competition and investments.

All in all, these parameters raise serious questions about the competitiveness of the bulk of GCC economies, as well as the vulnerability of the GCC businesses. It seems that, looking forward, these states are at something of a crossroads, faced with some important decisions regarding the direction they want trade and economy to take in terms of diversification, transparency, role of the state and state-owned enterprises, attractiveness to investors and identification of non-hydrocarbon sectors where economy should become competitive.

Inasmuch as GCC economies are increasingly dependent on international trade, the outcome of these domestic structural reforms also depends on the ability of Arab stakeholders to play a more active role within the WTO fora, as well as on a more aggressive use of the trade defense instruments devoted in the framework of the GCC Customs Union through the GCC Common Law on Anti-Dumping, Countervailing Measures and Safeguards (GCC Common Law hereinafter).

Trade remedies are trade policy tools that allow governments to impose import restrictions in response to different situations and circumstances which may be causing material injury to a domestic industry. Under “antidumping duties” an importing country may impose tariffs in addition to ordinary customs duties to counteract certain “unfair” pricing practices by private firms that injure or threaten to cause “material injury” to a competing industry. An importing country may also impose “countervailing duties”, which are tariffs in addition to ordinary customs duties that are imposed to counteract certain subsidies bestowed on exporters by their governments, again when they cause or threaten to cause material injury to a competing industry. An importing nation may finally impose “safeguard measures” which are temporary trade restrictions, typically tariffs or quotas, in response to import surges that injure or threaten “serious injury”

to a domestic industry. Safeguard measures plainly differ from anti-dumping and countervailing duties on one essential point: if the latters are the actions taken against products imported through unfair trade conditions, safeguard measures, by contrast, can be used against products imported under fair trade conditions.

Based on the above, it is clear that trade remedy measures may constitute an instrument of competitiveness through the protection of an established GCC industry or the facilitation for the establishment of new industry. In this respect, the modernization of GCC economies requires both a diversification of economic base and a fight against adverse effects resulting from trade liberalization. GCC countries development strategy centered on a liberal trade regime and a more business-friendly environment is not sufficient.

It is also crucial to avoid that the path of sustained economic growth is questioned by unfair practices implemented by foreign firms or states, or even by market disruption. Such circumstances are not sporadic. The WTO annual reports regularly underline the high number of such barriers to free trade and the impressive number of litigations submitted to the Dispute Settlement Body in this area. These reports emphasize, at the same time, the growing use of remedial tools not only by developed countries, but also by a growing number of developing countries. Surprisingly, Arab states, and in particular GCC states, still remain far from this trend. To date, no anti-dumping, countervailing duty or safeguard measures has been yet imposed by a GCC state.

The importance of the use of trade remedy measures, as specified in the WTO agreements and implemented in the GCC legislation, for a sustainable development strategy is the subject of Section I. Section II reviews key features of the GCC current regulatory framework applicable to the contingency measures. Finally, Section III endeavors to explain the reluctance of GCC Members States for using these trade policy instruments despite the benefits for their economies. These arguments will be followed by a brief conclusion.

Section I- Benefits of the implementation of trade remedies by GCC states

As argued before, GCC economies are entirely based on oil and, to a lesser extent, on gas. The hydrocarbons represent more than 85% of the Members exports and nearly 80% of governments' revenues. Agriculture contributes to less than 5% of the GDP. As for tertiary sector, it contributes around 40% of the GDP and is dominated by international trade, air transport, tourism and financial activities. The industrial sector currently represents approximately 60% of the GDP, with the notable exceptions of the

Kingdom of Saudi Arabia and Bahrain where the balance between industry and service is quite striking. These countries export far more than it imports. This results in a positive trade balance, which is expected to remain largely positive during the coming years.

To limit their dependence on hydrocarbons, GCC states have launched since a decade a long term comprehensive development strategies on a GCC-wide integrated basis, including the implementation of the "Unified Strategy of Industrial Development for the GCC Member States" (art. 8(1), GCC Economic Agreement, 2001). The success of these structural reforms will not only consist in enhancing industrial diversification or fostering the role of the private sector, including privatization and more attractive investment, competition and public procurement policies. Member States shall also "unify their industrial legislation and regulations, including rules related to industry promotion, anti-dumping, and precautionary safeguards" (art 8 (2), GCC Economic Agreement, 2001). Recalling the importance of the role played by GCC industry in the national development, the preamble of the GCC Common Law dictates that the ultimate objective of this regulatory text is both "to achieve economic integration among the GCC Member States" and "to support the industrial process and increase the industrial sector's contribution to the national income of the GCC States".

In this respect, a key element of Gulf countries' development process was their participation in the multilateral trading system and a full economic integration under the Gulf Cooperation Council, including harmonization of legislation on, *inter alia*, customs, contingency trade remedies, SPS and TBT. GCC countries have indeed put in place a set of measures favorable to free-trade. As mentioned before, they have reduced trade barriers, harmonized regulations, and increased transparency in line, of course, with their WTO obligations.

Accordingly, GCC economies are very open, with an accessibility rate which varies between 80% and 100%. GCC countries are taking steps to simplify customs procedures. Customs duties are relatively low and there are not many trade barriers in this region. Although the bound tariff commitments of the GCC Member States towards the WTO are different, GCC member states have harmonized their applied tariffs in order to create unified external customs tariff. Almost all GCC countries imports are covered by a general import tariff rate of 5% on all agricultural and industrial products. Nearly 100% of their tariff lines are bound with more than 95% of the applied duties having ad valorem tariffs. This finding may be moderated by the maintenance of a gap between the average MFN applied tariff rate (5%) and the average bound rate (between 10%), creating uncertainty for businesses. Barring a few exceptions, goods produced in other GCC member states enter duty free, if accompanied by certificates of origin. However,

import of alcoholic beverages, tobacco and pork products attract at least 100% duties. It is noteworthy that article 25 of the GCC Common Customs Law applies rules of origin in accordance with the WTO Agreement on Rules of Origin.

While the process of regional economic integration continues and some Arab countries play an increasingly active role in the WTO, the GCC authorities acknowledge the existence of significant potential risks resulting from non-mastered liberalization of trade. For GCC members, in particular Kuwait, Oman and United Arab Emirates, the contribution to GDP of the industrial sector is significant. For those countries, the threat of competition from European and North American industrial goods is obvious and can impact negatively on GDP growth rates. These concerns appear in Article 1 of GCC Common Law underlying the necessity "to prevent the GCC economies from the injurious practices in international trade that cause or threaten material injury to an established GCC industry or retard the establishment of such an industry which can be achieved by taking appropriate GCC measures against such practices". This article argues that these practices include dumping, subsidies and unjustifiable increase in imports.

One can better understand in this context why GCC countries have deliberately opted for a common legislation in this field, while such measures under national or regional law are permitted, but not required, by WTO law, subject to the limitations found in WTO treaty text, including GATT 1994 (hereinafter GATT), the WTO Agreement on Safeguards (hereinafter SA), the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (the Antidumping Agreement, hereinafter ADA), and the WTO Agreement on Subsidies and Countervailing Measures (hereinafter SCMA). These WTO Agreements impose extensive substantive and procedural restrictions on the use of each type of measure.

Plainly, the consecration of trade defense measures in the WTO system and GCC framework lies both in economic welfare gains and the realm of political economy.

From the standpoint of economic efficiency, if the bulk of the modern normative commentary suggests that contingency remedies are economically unsound (SYKES, 2005), several arguments may, however, justify the recourse to this legal arsenal. Proponents often argue that there is a need for troubled industries to restore their competitiveness. Because of the injury test, the principal beneficiaries of these remedial tools are industries that have difficulty competing in open markets. Hence, in case of a rapid increase in imports, a temporary period of protection will allow firms with profits to finance new investments, the argument runs, so that they can again compete in both domestic and global markets.

Further, it is generally argued that the mainly useful function of the antidumping and countervailing laws from an efficiency standpoint is the avoidance of predatory pricing and monopolization by foreign firms. As a result, the difficulty for GCC governments will consist in identifying industries that can become competitive "again" and in promoting long-term financing by the capital markets. Another challenge for these governments will be to avoid a trade remedy policy that provides a government-sponsored route to cartelization, which would otherwise violate their antitrust laws. In conducting an econometric analysis on a dumping or subsidy practice, local authorities should take into consideration key features of their markets, the elasticity of domestic supply and demand, the degree of substitutability between imports and the concrete impact on competitors. It is interesting to recall that some exporters may not be harmed by antidumping or countervailing actions against them. If they are able to settle the case through a price undertaking, they will have raised price and restricted output much like a cartel.

In other circumstances, GCC authorities can use safeguard measures to reconvert industries affected by increased competition in expanding sectors where they could benefit from a competitive advantage, not to mention, of course, concerns related to the employment situation. Under the reconversion process, safeguard measures will permit to slow the pace of industry contraction and reduce adjustment costs. But the success of such a policy will depend, to a great extent, on the labour market flexibility and state aids encouraging the hiring of the unemployed.

Also in terms of economic efficiency, some empirical studies recently conducted on the basis of contingency measures adopted in both developed and developing countries have revealed that this type of instruments is not only conditioned by microeconomic or sectoral factors. Beyond the evolution of the industry or companies concerned, macroeconomic factors, such as the evolution of industrial production, the trade balance, the intensification of international competition, the fluctuation of the real GDP or the real exchange rate, also play a major role in antidumping or countervailing filings and their assessment by the regulatory authorities (Mustapha Sadni Jallab et *al*, 2008). The development of the economic situation as a whole can increase (or mitigate) the inclination of authorities to respond or not to requests for investigation formulated by the domestic producers. The demand for protection increases with the deterioration of the general economic situation. A context of rising unemployment and deteriorating balance of trade can change the perception of the damage and its severity by regulatory authorities.

The antidumping proceedings constitute a particularly favorable field for such considerations. The aforementioned empirical surveys have indeed

demonstrated that a high probability of satisfaction in a given economic environment may encourage companies to make greater use of anti-dumping rules. Simultaneously, in a situation of economic stagnation and more aggressive international competition, national authorities may be tempted to use anti-dumping rules, not at the service of fair trade practices, but for protectionist purposes.

The risk of misuse of anti-dumping proceedings is likely to be more important in periods of unfavorable macroeconomic variables. Investigations are totally at the discretion of the authorities, companies originally complaints have a high probability to benefit from protection and even if this is not the case, the existing empirical studies show that the mere fact to initiate the procedure provides a protective effect by causing a decline in imports.

In this regard, anti-dumping measures, unlike countervailing duties, are targeted to companies and not to governments. As a result, they are not subject to the rule of most favored nation or the principle of reciprocity (unlike the safeguard clause), which makes them particularly attractive as instruments of protection. Likewise, antidumping procedures provide more accurate selectivity by targeting states, sectors and firms concerned. Following the same line of thought, it is noteworthy that this trade instrument does not expose the country that applies them to the obligation to negotiate compensation. In sum, these features give antidumping proceedings the properties of an opaque instrument of protection that is not subject to the constraints that WTO rules (non-discrimination and reciprocity) impose to other trade remedies. The only possible response for the affected countries is the resort to the WTO dispute settlement mechanism in case of abuse of process.

The above mentioned surveys also make the point that the influence of each factor may vary according to the differences in practices and rules in force. While the period of investigation shall not exceed 18 months as per Article 5.10 of the ADA and Article 35 of the Rules of Implementation of GCC Common Law, GCC authorities have a large operating margin in the determination of dumping and evaluation of the damage suffered by domestic industry.

These findings have important legal and economic implications. By way of illustration, the consideration of a long period of about 3 years instead of 1 year for the evaluation of prejudice, as authorized by the ADA, can lead to an increasing number of investigation procedures and a more decisive influence of macroeconomic factors in the assessment of the economic impact of unfair practices or market disruption. Indeed, it is not surprising to note that, under national practices, the dominant trend (in accordance with the recommendations issued by the WTO Anti-Dumping

Committee) is to hold a short period to analyze pricing practices (usually one year before the complaint) and a longer period for investigations on injury (usually 3 years).

In sum, it is widely agreed that trade remedy measures and economic development are inseparable. In this respect, one should recall that WTO developing country Members receive special and differential treatment with respect to other Members' safeguard measures, and with respect to applying their own such measures. In applying safeguard measures, GCC states may indeed extend the application of a safeguard measure for an extra two years beyond that normally permitted. In addition, the rules for re-applying safeguard measures with respect to a given product are relaxed for these countries.

From a political economy rationale, safeguard measures permit GCC governments to face future political pressure for protection of declining industries. If we fully extend this reasoning, it may be in the mutual interest of the parties to trade agreements to allow each other to deviate from commitments when the domestic pressure to do so is high in an importing nation, but they must also worry that trading partners may deviate opportunistically because domestic political pressure is unobservable by others. Likewise, if protection for a declining industry harms foreign exporters who are highly profitable and growing, they will tend to raise less political objection to it because their prosperity would often be competed away in any event. It may then be in the mutual political interest of parties to trade agreements to allow each other to reimpose protection to help an industry that is in severe decline due to some shock that also leaves its foreign competitors prosperous and expanding.

This line of analysis also provides an explanation as to why the WTO Safeguard Agreement is designed to provide temporary rather than permanent protection for declining industries. Such industries will tend to become a less potent lobby for protection over time as existing physical and human capital depreciates, and the returns of sunk investments that are lost due to foreign competition diminish. Another partial solution to this problem is to limit the number of times that nations may deviate from commitments in a given industry—governments will be less tempted to cheat by deviating when political pressure to do so is low, for fear of losing their right to deviate in the future when pressure is high. This observation suggests an explanation for one feature of the WTO Safeguard Agreement: safeguard measures cannot be used in an industry that has used them in the past, for a length of time equal to the time that they were in place.

In the same way, safeguard mechanism may constitute a device of “trade negotiations”. Without a safeguard mechanism, cheating on trade agreements might become acute and cooperation might unravel, denying

trading nations the long-term benefits of trade liberalization. Because treaties are negotiated under conditions of uncertainty, it is in the interest of political officials to include provisions that allow them to adjust the bargain when their obligations become politically onerous, much as private contracting parties permit deviation from contractual commitments under circumstances where their performance has become economically onerous.

Further, one may emphasize how the opportunity to deviate from commitments when the pressure to do so is high may make negotiators more comfortable about making trade concessions in the first instance. The economic welfare effects of the safeguard mechanism then depend on the balance between the economic welfare gains associated with more trade concessions *ex ante*, and the economic costs associated with renewed protection under the safeguard mechanism *ex post*. The *ex post* welfare consequences of the safeguard mechanism also depend importantly on the extent to which nations negotiate trade compensation when they employ safeguard measures, or instead trigger trade retaliation.

A related, though seemingly distinct, argument for antidumping measures is the suggestion that they redirect pressures for protection away from the legislature and into a more benign administrative process. Contingency remedies would thus be an instrument of pacification of international economic relations.

Briefly, the reasons mentioned before explain the persistent popularity and survivability of trade remedy measures in the WTO framework while we note that several bilateral and regional trade arrangements have merely removed the possibility to use contingency remedies. The same reasons cited above also explain the random nature, or even utopian, of proposals for reforms that aim at ending the confusion of the roles of judge and jury by transferring the implementation of investigation procedures and sanctions from national or regional level to multilateral framework.

Section II- GCC regulatory framework relating to trade remedies

If WTO trade remedy rules are international, their application is purely national. It is up to the importing country to decide on the existence and nature of adverse trade practices and decide what action to take. In line with the GCC Customs Union and according to GCC resolutions, GCC states have opted for a common model law on trade remedies. The GCC Common Law on Anti-dumping, Countervailing and Safeguards Measures (GCC Common Law hereinafter) was therefore adopted on 1 January 2004 within the framework of the GCC Customs Union. Promptly, the GCC Supreme Council has instructed the Industrial Cooperation Committee (ICC hereinafter) to prepare the relevant Rules of Implementation within the first

half of year 2004, provided that such law shall come into force after thirty days following the adoption of the said Rules of Implementation by the ICC. As a result, the ICC has adopted the said Rules of Implementation at its 23rd meeting held at Kuwait (11 October 2004). On 10 March 2008, a Technical Committee was established to review and amend the GCC Common Law and its Rules of Implementation. Further to the review, the Supreme Council adopted and amended the GCC Common Law on Anti-dumping, Countervailing Measures and Safeguards in December 2010.

After introduction within domestic legislations, the provisions of the GCC Common Law are compulsory for GCC member states. The probability of discrepancy between the GCC Common Law and national laws or between GCC member states laws is impossible since the original GCC Common Law and its amendments become national law upon ratification and publication in the national Official Gazette. It should be noticed that Qatar has not, however, adopted these rules, nor has domestic legal instruments to implement them. But this position has a negligible impact since the GCC Common Law sets forth that anti-dumping, countervailing, and safeguard investigations or measures are carried out at the level of the GCC customs union and not at the level of individual states. Thus, despite having no legal framework, Qatar has indicated it would participate in such procedures and cooperate in the process for investigations initiated in other GCC member states (Trade Policy Review, 2014). Anyway, GCC member states should notify any decision to initiate antidumping or countervailing duty investigation to Committee on Anti-Dumping Practices and SCM Committee and final measures at the time they are taken. Under WTO rules, these countries are also required to notify immediately the Committee on safeguard and affected countries of the initiation of a safeguard investigation and its outcome.

As members of the GCC, all the concerned states are committed to using trade remedy instruments under the WTO Agreements (Anti-dumping, Subsidy and Countervailing Measures, Safeguards) only if GCC statutory requirements are satisfied. It must be said that GCC rules are strongly inspired by WTO texts, in particular in terms of evaluation of injury to a GCC industry, the conduct of investigation procedures, as well as the nature and duration of remedies. Hence, an investigation must be carried out by "competent authorities," including notice to all interested parties and "public hearings or other appropriate means" to allow parties to present evidence and views. The findings of the competent authorities must be published setting forth "reasoned conclusions" on all matters of law and fact.

The Implementing Regulation stipulates that, as a rule, anti-dumping, countervailing duty and safeguard measures apply to all imports into the GCC. However, the application of anti-dumping, countervailing and

safeguard measures may be limited to one or several member states of the GCC, as per the exceptions provided in the Implementing Regulation. The exceptions concerning the scope of application of the GCC Common Law are set forth in the Implementing Regulation of the GCC Common Law. These exceptions are based on the provisions of Articles 4.1(ii) and 4.2 of the Anti-Dumping Agreement, Articles 16.2 and 16.3 of the SCM Agreement and footnote 1 of the Agreement on Safeguards. As a rule, the assessment of injury and of the effects of dumping and/or subsidization is to be made on a GCC-wide basis. However, where the scope of an investigation is limited to one or several GCC member states, the injury and the effects of dumping and/or subsidization will be assessed only for the GCC member state(s) concerned.

With regard to the procedural requirements, the complaint against dumping, subsidy or an unjustifiable increase in imports is to be submitted to the Technical Secretariat of the Permanent Committee in writing on the form prepared for this purpose. The complaining party must attach with his complaint a non-confidential summary of adequate details explaining the subject matter of the submitted confidential information. For a complaint to be acceptable, it has to be filed by the GCC industry or its representative, by the concerned chamber of Commerce & Industry, producers union or by any ministry in charge of the production sector in any of the GCC member states. The decision to keep the complaint (application) or to initiate or terminate investigation, or to take any provisional measures, accept price undertakings or any other relevant decisions, procedures or measures shall be effected by a decision of the Permanent Committee in the light of the investigation findings. Composed of representatives of the governments of the Member States, the Permanent Committee takes the necessary measures and procedures under the provisions of this Law, including the imposition of provisional measures and price undertaking. But it only proposes the imposition of definitive anti-dumping and countervailing duties to prevent subsidies and submit them to the Ministerial Committee, also called the GCC Industrial Cooperation Committee (hereinafter ICC). PC proposes imposition of definitive safeguard measures to prevent the unjustifiable increase of imports. In the same way, the Permanent Committee may also propose appropriate solutions for settlement of the disputes that may arise between Member states over interpretation of GCC Common Law.

The ICC approves the definitive measures relating to anti-dumping, countervailing measures or safeguards, or suspending, terminating, increasing or reducing such measures. The ICC also takes the final decision in the settlement of disputes that may arise between Members over interpretation of the GCC Common Law. Note that the ICC adopts the Rules of Implementation while the Financial and Economic Cooperation

Committee (FECC hereinafter) is responsible for interpreting and amending the GCC Common Law in coordination with the ICC.

Section III- Reasons of non-implementation of trade remedies by GCC states

Previous arguments have highlighted that the application of trade defense rules is essential for both the economic competitiveness and integration process. It is therefore not surprising that during the period 1995-2013, 25% of WTO agreements referred to in requests for consultations, which is the first stage in the WTO's dispute settlement process, related to trade remedy rules (WTO, annual report 2014). In 2013 only, 20 requests for consultation have been filed, of which approximately half by Developing countries including Cuba, Guatemala, Panama or Indonesia. Eight of them were related to trade remedies. This is confirmed by the fact that ¼ of WTO disputes in 2013 focused on trade remedy issues.

The review of WTO members involved in disputes during the period 1995-2013 reminds us that, to date, no GCC member state has been involved in WTO dispute settlement procedures in any capacity, neither as a complainant, respondent, nor third party. Only Saudi Arabia has occasionally participated in some litigations as third party. Accordingly, the GCC member states have not imposed, to date, any trade remedy measures. Two safeguard investigations were in fact initiated at the request of GCC domestic industries in 2009 on imports of iron, but were terminated without measures being taken in 2010. By way of indication, the inertia of GCC Countries is almost similar to that of all Arab countries. No safeguard measure on imported products have been to date imposed by any Arab state. Only Egypt has initiated and imposed anti-dumping measures, while antidumping duties are by far the most frequently used measures in the WTO trade remedy arsenal.

Further, although a number of industries or services are supported by state subsidies, GCC countries do not grant or maintain within their territory any subsidies within the meaning of Article 1.1 of the Agreement on Subsidies and Countervailing Measures, which is specific within the meaning of Article 2 of the Agreement, or which operates directly or indirectly to increase exports from or reduce imports into its territory within the meaning of Article XVI:1 of the GATT 1994.

Even if GCC governments claim that they do not encounter any significant trade problems requiring the use of trade remedy measures, this argument is not convincing. In this context, how is it possible to justify this inertia of GCC states?

The lack of use of multilateral trade defense rules may be explained may several reasons linked, among others, to the specifics of GCC countries

and the inefficiency of WTO trade-related technical assistance mechanisms that did not fully respond to the needs of GCC countries in this field. An in-depth analysis of these different issues is required.

The absence of GCC states in the WTO dispute settlement system (hereinafter DSS) may indicate that these countries chose to settle their disputes by peaceful means. This claim is supported by the fact that no GCC state has been yet involved in a dispute under its regional or bilateral agreements. But it is difficult to justify that no "request for consultations" has been filed to date by a GCC state! The reasons clearly are elsewhere. A number of experts endeavor to justify this situation by the high cost of litigations initiated under the DSS which is an obstacle for many Arab countries, but also by the fear of reprisals and adverse consequences on the financial assistance provided by developed and emerging countries. It is striking nonetheless that some countries such as Guatemala, Cuba, Bangladesh, Pakistan or Colombia adopt a more offensive position in the DSS. The lack of participation in the WTO dispute settlement proceedings may also be attributed to the low contribution of GCC states to world trade. Here again, this argument should be moderated since it is sufficient to recall the low share held by some active countries such as Argentina (0.6% of world trade) or India (1.5% of world trade), as well as the other countries mentioned above.

In any event, the reasons given before cannot overlook the fact that the infrequent use of the DSS by GCC states is, first, the result of their lack of expertise and knowledge of WTO rules. This situation is exacerbated by the increasing complexity of commercial disputes. Bringing an action before a WTO panel is a long process that requires the preparation of legal and business data which cannot be provided by the other Member or the WTO Secretariat. A State Member must find other sources of relevant information by using legal experts and economists who can provide consultations and econometric studies supported by substantial documentation. It is not questionable that GCC states have a severe lack of experts in these areas. Is it necessary to recall that, notwithstanding the provisions of Article 17.3 of the Dispute Settlement Understanding (hereinafter DSU) by which the Appellate Body shall be broadly representative of WTO Members, only two Arab experts have integrated this entity since 1995!

This situation is compounded by the delay of Arab governments and national universities to incorporate into their courses and training programs issues related to international trade. But it is inevitable to question the effectiveness of the "progressive learning strategy" and the "reference centers" that constitute the two vertebral columns of the trade-related technical assistance program for developing countries. Managed by the WTO Secretariat, and more particularly by the Institute for Training and Technical

Cooperation (hereinafter ITTC), this program focuses on e-learning courses, academic programs, seminars and workshops organized at global, regional and national levels. The immediate objective of these activities is to enable participants to understand the fundamental principles of the WTO in relation to the matters dealt with. For specific questions in connection with the Doha Round, the goal is to give participants the factual and analytical information required to participate meaningfully in the negotiations process.

While the training tools have been continuously improved since the creation of the WTO, in particular through the growing use of e-learning tools and the incorporation of results-based management approach, their added value for GCC states remains, however, limited. The latest annual report issued by the WTO is eloquent. In 2013, the WTO undertook 281 technical assistance activities related to trade capacity building and most of which were for officials from developing countries and LDCs. But the analysis by region shows that only 5% of those activities concerned Arab states and Middle East region as a whole, including GCC states, ranking this region almost in the last position with the Caribbean area which received 2% of the technical assistance activities.

A more circumscribed review focused on the period 2012-2014 underlines that WTO trade-related technical assistance was concretized by both global or regional trade policy courses and regional seminars or workshops destined to Arab and Middle East countries as a whole, including not only GCC states but also Algeria, Libyan Arab Jamahiriya, Morocco, Tunisia, Egypt, Mauritania, Djibouti, Sudan, Bahrain, Iraq, Jordan, Lebanon, Syrian Arab Republic and Yemen. Among the activities carried out in cooperation with the IMF, the AMF or IDB, only one WTO workshop related to trade remedies (Level 2 - Specialist path). It was held for 3 days (from 22/09/2012 to 25/09/2012) in Oman and was designed for the investigators in Arab countries that have an active investigating authority. The focus was on dumping margin calculations and the discussion of WTO jurisprudence on selected topics.

During the same period, no national technical assistance activity was undertaken in the WTO framework. GCC countries may, of course, have individual access to trade-related technical assistance through The ECampus website that offers interactive courses over the Internet which provides participating government officials online access to training material and to their assigned tutors from any location in the world. Likewise, Saudi Arabia is at the final stage of establishing a WTO Reference Centre located at the Ministry of Trade and Industry.

There is no doubt that the small number of technical cooperation and training activities does not increase the level of expertise in the GCC countries in the field of international trade, nor does it target the needs of

these countries in the implementation of the WTO Agreements and the Doha Round negotiations. The dramatic situation of these countries requires more than a few days of training or seminars on specific international Trade issues. This requires more regular training and monitoring mechanisms for Arab officials selected on skills and stability criteria, as well as more intense awareness policies for businesses, parliamentarians and decision-makers in these countries. GCC states also need to organize more targeted technical assistance corresponding to their common needs and priorities, and that may be different from those of other Arab states. GCC states welcome the host of national or sub-regional Seminars and workshops organized by the WTO secretariat or in cooperation with other international organizations. They are interested by the provision of technical assistance in various WTO agreements to ensure effective participation in the multilateral trading system. These countries have identified trade remedy issues as a priority of WTO technical assistance as the Agreement on Trade in Services (GATS), the Agreement on Trade Related Aspects on Intellectual Property Rights (TRIPS) or the Agreement on Government Procurement (The Kingdom of Saudi Arabia, Trade Policy Review, 2011).

Before concluding, it is striking to note that the weak expertise of Arab countries in international trade issues has a negative impact on their representation within the WTO bodies and in the process of multilateral negotiations. Coordinator of the WTO activities, the Secretariat has 634 regular staff selected from 78 WTO Members. Among them, there are only 14 experts coming from four Arab countries (Jordan (1), Egypt (5), Morocco (3) and Tunisia (5)) which constitute roughly 2% of the total staff. There is no representative of GCC states in the current Secretariat staff. This analysis may be moderated somewhat by the review of the current chairs of WTO bodies and the presence of H.E. Mr Abdolazeez Al-Otaibi (Saudi Arabia) at the head of the Working Group on Trade and Transfer of Technology, Mr. Mohamed Al Saadi (Oman) at the head of the Working Party on State Trading Enterprises, as well as Mr. Saqer Almoqbel (Saudi Arabia) heading the Working Party on GATS Rules.

CONCLUSION

In conclusion, the above discussion suggests, at least, three observations.

First, in order to reduce their dependence on oil and petrochemicals, and to boost employment levels, GCC states have recently released a revised Comprehensive Industrial Strategy and Future Vision for the Industrial Sector. This development strategy enhances diversification of the economic base, encourages privatization, and deepens trade liberalization process rooted in the basic principles of the multilateral trading system. In this

framework, previous developments have demonstrated the key role that could be played by contingency remedies for the success of such a strategy and the struggle against abuses associated with an open and liberalized economy. These trade instruments permit, depending on the circumstances, to maintain fair competition, to restore competitiveness of troubled industries or to support the conversion of such industries.

Second, and beyond the economic efficiency, trade remedy measures follow a political economy rationale usable by GCC authorities in the international trade negotiations with the goal to facilitate the agreement and concessions from trade partners. In allowing governments to take remedial action against imports which may cause material injury to a domestic industry, they actually constitute a device for governments to face future political pressure for protection of declining industries.

Finally, previous developments have also pointed out that GCC states are too reluctant to use such a legal arsenal. These states go so far as to deny the existence of dumping or subsidization practices in the GCC market, or even the occurrence of any market disruption to date. But it is difficult to consider that these countries remain unaffected by such practices, while many developed and developing countries emphasize their adverse effect on domestic markets and initiate investigation procedures ending by, in several cases, the imposition of trade remedy measures. A closer look reveals that this situation may be justified by cultural and economic features of GCC states, and also, to a large extent, by the inefficiency of WTO-trade-related technical assistance that failed to make GCC authorities and businesses understand the main issues surrounding the contingency rules and to provide appropriate legal and economic expertise necessary for their implementation.

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