

A Document Analysis Presented to the

In Partial Fulfillment of the Requirements for the Degree of

_____ of

The University of _____

Faculty of _____

by

December 2007

1 Statement of Aims

This dissertation seeks to contribute theoretically and empirically on three levels:

First, theoretically, this study seeks to contribute to the growing body of literature on public international law specifically in law-creation and enforcement of agreements in the level of developing countries.

Second, an examination on the impact of international organizations and agreements such as the WTO and the TRIPs, TRIMs and GATs and their corresponding impact on countries such as UAE, Brazil and Bangladesh would provide evidence that there is a need to re-examine the prevailing paradigm in public international law creation and shift to developing nations' perspective.

Third, this study seeks to contribute to UAE policy makers and scholars by providing an analysis of WTO's impact based on a legal perspective. This would supplement economic development studies that are abundant in the country.

2 Literature Review

2.1 Background and research context

The World Trade Organization has been created to generally improve the economic conditions of its member countries by opening up vast opportunities through free trade. Traditionally, the WTO is seen as a medium and as a bargaining body in order for poor countries to improve their conditions.¹ However, a growing body of literature has been questioning the impact of WTO among scholars of developing countries particularly in providing equality between developed and developing countries in terms of the trade system.² It is argued that the legal provisions in the WTO does not provide the legal opportunities for developing countries to flourish instead, the WTO agreement

¹ Siddiqi, M., October 2006, 'Crunch time for world trade deal', *African Business*, no. 324. ProQuest [Access Date: October 10, 2006].; Ierley, D., Summer 2002, 'Defining the factors that influence developing country; compliance with and participation in the WTO Dispute Settlement System: Another look at the dispute over bananas', *Law and Policy in International Business*, vol. 33, no.4: pp. 617. ProQuest [Access Date: April 18, 2007].; Kolben, K. 2006. The new politics of linkage: India's opposition to the Worker's Rights Clause', *Indiana Journal of Global Legal Studies*, pp. 225-259. ProQuest. [Access Date: April 18, 2007].

² 'Is there any point to the WTO?' August 6, 2005, *The Economist*, vol. 376, no. 8438. Academic Research Premier [Access Date: April 21, 2007]; McCrudden, C. & Gross. S. G. 2006, 'WTO government procurement rules and the local dynamics of procurement policies: A Malaysian case study', *The European Journal of International Law*, vol. 17, no.1: pp. 151-185. ProQuest. [Access Date: April 18, 2007].

has further aggravated the legal barriers and restrictions among poorer countries such as UAE, Brazil and Bangladesh.³

In the UAE where the people, policy-makers and legal practitioners alike have relied on the perceived benefits of the WTO agreement, the prevailing perception reveals that the WTO is seen to fall short of its promises. Concurrently, this does not only occur in the UAE but also in other Third World Countries such as Bangladesh and Brazil. While the WTO had in some form benefited these countries, the weakness of public international law as well as its inherent lenience on developed countries had made it less effective. This study was conducted in order to determine the extent of legal impediments in the WTO agreement on developing countries.

2.2 Review of similar research studies

Several studies have already argued the inherent concern of developing countries in the WTO agreement particularly in the areas of Rules-Based Structure of the WTO, Legal and Political Encroachment, Overregulation and Dispute Settlement. Scholars such as Ismail, Shadlen, Bolbol, Ierley reveals that rules-based approach is problematic because of the differences between legal frameworks between developed and developing countries and the leaning of the public international law on developed countries' framework thereby, leaving developing countries to grapple with the inconsistencies.⁴

Consequently, other scholars reviewing the legal and political encroachment of the WTO agreement argued that public international laws are used by developed countries as a means to enforce their will on developing countries.⁵ Hence, the result for

³ See Bolbol, A. A., February 1999, 'Arab trade and free trade: A preliminary analysis' *International Journal of Middle East Studies*, vol. 31, no.1, pp.3-17. JSTOR [Access Date: October 11, 2006]; Shadlen, K. C. Fall 2004. 'Patents and Pills, Power and Procedure: The North-South Politics of Public Health in the WTO', *Studies in Comparative International Development*, vol. 39, no. 3: pp.81. ProQuest. [Access Date: January 8, 2007]. See also *The Economist*, 2006; Ismail, 2006.

⁴ Bolbol, A. A., February 1999, 'Arab trade and free trade: A preliminary analysis' *International Journal of Middle East Studies*, vol. 31, no.1, pp.3-17. JSTOR [Access Date: October 11, 2006]; Ierley, D., Summer 2002, 'Defining the factors that influence developing country compliance with and participation in the WTO Dispute Settlement System: Another look at the dispute over bananas', *Law and Policy in International Business*, vol. 33, no.4: pp. 618.; Shadlen, K. C. Fall 2004. 'Patents and Pills, Power and Procedure: The North-South Politics of Public Health in the WTO', *Studies in Comparative International Development*, vol. 39, no. 3: pp.81. ProQuest. [Access Date: January 8, 2007]. See also Ierley.

⁵ Mosoti, V., Fall 2005, 'Bilateral investment treaties and the possibility of a multilateral framework...' *Northwestern Journal of International Law and Business*, vol. 26, no.1, p101. ABI/INFORM Global [Access Date: October 12, 2006]; Charnovitz, S., January 2002, 'Triangulating the World Trade Organization', *The American Journal of International Law*, vol. 96, no.1, p29. JSTOR [Access Date: October 11, 2006]; McCrudden, C. & Gross. S. G. 2006, 'WTO government procurement rules and the

developing countries is that of laws that are not aligned with domestic laws and disregards the culture and societal values of the developing countries. Furthermore, overregulation had been imposed with the aim of protecting the rights of developed countries but on the other hand, this incurs more cost for developing countries that would need to build on their legal framework in order to cover for all the points considered in the agreement.⁶ Finally, dispute settlement which is seen to be bias against developing countries serves as one of the barriers to trade specifically when litigation and economic and political sanctions are imposed on developing countries.⁷

2.3 Description of gaps in research literature

Studies on the economic impact of WTO both on developed and developing countries have been abundant including the use of case study in illustrating the benefits of WTO on countries. However, there have been few cross-cultural studies of developing countries that focus on the Middle East. Moreover, most of these studies have focused on the impact of WTO in general without specifying the laws in the case study. This research provides a cross-cultural analysis of WTO's legal and socio-political impact on UAE as compared to other countries such as Bangladesh and Brazil.

Using a legal-political perspective, an exploration of developing countries' experience with the WTO-imposed laws such as the TRIPs, TRIMs and GATs would

local dynamics of procurement policies: A Malaysian case study', *The European Journal of International Law*, vol. 17, no.1: pp. 151-185. ProQuest.[Access Date: April 18, 2007]; Bagwell, K., Mavroidis, P. C. & Staiger, R. W., January 2002, 'It's a question of market access', *The American Journal of International Law*, vol. 96, no.1, p75. JSTOR [Access Date: October 11, 2006]; Alvarez, J. E., January 2002, 'The WTO as linkage machine', *The American Journal of International Law*, vol. 96, no.1, p148. JSTOR [Access Date: October 11, 2006]. Cullet, P., 2003, 'Patents and medicines: the relationship between TRIPs and the human right to health', *International Affairs*, vol. 79, no.1: p139.ProQuest [Access Date: April 18, 2007]; Charnovitz, S., January 2002, 'Triangulating the World Trade Organization', *The American Journal of International Law*, vol. 96, no.1, p29. JSTOR [Access Date: October 11, 2006].

⁶ Abbott, F. M., April 2005, 'The WTO medicines decision: World Pharmaceutical trade and the protection of public health', *The American Journal of International Law*, vol. 99, no.2, p317 JSTOR [Access Date: October 11, 2006]; Levy, C. S., Spring 2000, 'Implementing TRIPs – a Test of political will', *Law and Policy in International Business*, vol. 31, no.3: p792; Boswell, C., October 27, 2003, 'India poised for TRIPs compliance in 2005', *Chemical Market Reporter*, vol. 264, no.14: pp. 24-25. ProQuest [Access Date: April 18, 2007]; Chowdhury, M.A.M., Ali, M.M. & Rahman, R. Jan-Mar 2006, 'WTO, post MFA era and the Bangladesh RMG sector: An assessment of performance and challenges', *South Asian Journal of Management*, vol. 13, no.1: pp. 76-106. ProQuest [Access Date: April 18, 2007]

⁷ See Abbott (2005), Chaves and Oliveira (2007) and Cullet (2003).

provide scholars and readers alike with a better understanding of developing countries' struggles with the WTO particularly in the Middle East. Consequently, among developing and third world countries, there are still variations on the problems encountered and the degree to which these variations are experienced. Hence, further studies on individual countries would provide public international law and social sciences scholar with the necessary information on how to approach the problem of the WTO in relation to developing countries is necessitated. This research is a response to the growing need for works that considers the cultural and socio-politico-legal frameworks of countries.

2.4 Importance and contribution of proposed research

Studies that originated in Western cultures and developed countries have largely focused on the positive impact of the WTO in developed and developing countries alike. While some have outlined the problems and challenges that developing countries have experienced, the prevailing attitude has been that of favouring the WTO regardless of its impact on developing countries. In order to correct the misconception and misunderstanding of some scholars from developed countries on the experiences of Third World societies, it is important that scholars from developing countries provide an account of the experiences of their countries legally, politically, economically and socially.

This research paper is significant both in the theoretical and policy-making level. Theoretically, this paper supports the approach that the inability of political regimes to enforce public international law would lead to the exploitation of developed and stronger countries as against weaker and Third World countries. Essentially, this study serves as an eye-opener for some scholars and as a guide for other academicians. Moreover, this study is also important in the international and domestic policy-making arena in order to provide a holistic view of the impact of international laws. It is important to note that adherence to international laws necessitates a re-adjustment of the cultural and societal values- traits that some societies may not necessarily adhere to. Hence, the need for studies such that expounds on the advantages and disadvantages as well as the threats and opportunities of international laws such as the TRIPs, TRIMs and the GATs.

3 Research Outline (Up to 1000 words)

3.1 Research Design

This study used an analytical approach through an objective assessment of the impact of WTO laws such as the TRIPs, TRIMs and GATs through a legal and socio-political perspective, the research explores approached the research questions through a critical analysis of constructs such as free trade, international trade, public international law and domestic laws within the context of domestic and international arena. Following this philosophy, a critical analysis was made on the grounds that prevailing international legal institutions, rules and regimes are important factors in the development of the researchers' understanding and hence, choice of evaluation in the study.

Following these parameters, the researcher considered the personal and subject background in order to provide an objective analysis of legal issues in the international trade and international law. In doing so, the researcher is able to focus the question not only on the outcomes of the research but rather on the role of legal, governmental and business institutions and actors as significant factors in the success/failure of the WTO in providing its promise for the development of developing countries. Consequently, a qualitative approach is employed in this study primarily because of its capability of exploring concepts, knowledge and theories both from the legal as well as the development impact of technology transfer within the context of international law.

From a legal standpoint, the qualitative research provides a construction of meanings and interpretations which are relevant in the operational definition of terms that is used to evaluate technology transfers. Using in-depth evaluation and the researcher's proficiency in the subject, a qualitative approach can serve as a means for theory building and is useful in explaining causal as well as systemic phenomena. Moreover, through the use of case studies, this paper will be able to provide empirical evidences made on theoretical and analytical grounds by showing how the WTO's legal construct has improved or aggravated the progress of developing countries and whether it has lived to the expectations that countries have accorded to it. Through case studies derived from the experiences of UAE, Brazil and Bangladesh comparisons on the experiences of these countries serves as the outcome of the research which were then analyzed.

3.2 Data Description

Using the data collection strategies employed in qualitative approach, this paper collected narratives, case studies and theories in constructing an analysis of the theoretical as well as the empirical proofs on the legal barriers that WTO had created leading to the inability of developing countries to fulfil the promise of development. Consequently, an evaluation of the adherence of UAE, Brazil and Bangladesh on the WTO agreement and the development of their legal system in TRIPs, TRIMs and GATs laws were also evaluated. Using both desk research and an extensive documentation of both theoretical and empirical researches and considering all the information drawn from the study, the researcher objectively analyzed the information on hand. Each country was studied separately and then compared with each other in order to determine the similarities and differences.

Primarily, the research strategies employed in this paper focused on both the theoretical as well as the empirical methods of data gathering. First, a theoretical survey of the literature in order to examine the existing body of data that can be employed as a means of analysis was conducted. After the gaps in the literature are reviewed and the methodologies of existing articles and books were evaluated, the researcher proceeds to choose the research strategy to be employed. This is followed by a selection of countries to be examined in order to provide an in-depth analysis of the countries that are employed in the research. Furthermore, data are gathered from the countries as well as the sectors and industry that were chosen in the study. Primary data were collected through government, international and legal documents that are used in order to evaluate the case studies in this paper.

3.3 Confidentiality and Ethics

In order to attain academic etiquette, the researcher had studied and interpreted the documents and other peoples' work through the context by which these studies are made. Moreover, the correspondences that were made in the study were not included but rather were used in order to gain a deeper understanding and grasps of the issues involved. Consequently, no part of this paper had been copied or had come from other scholars without undue citation.

3.4 Methods and choice of analysis

Based on the review of the research methods available the existing body of literature, which is the most appropriate for answering the research questions, an overall research strategy was developed. The following were used in the current study: desk research, literature survey method, and comparison of the cases. The study is divided into two stages: the first stage is the literature review of related concepts and theories in the international public laws and policies, and the second phase is the comparison of countries, industries, and instruments based on the cases reviewed. For this study, the secondary sources of data were gathered from published articles in international technology transfer and international trade journals, articles, magazines, and books.

In order to provide a systematic means of analyzing the data collected, this study analyzed the data gathered from the countries and sectors are corresponding to each other in order to scientifically provide an evaluation of the differences and similarities of WTO laws such as TRIPs, TRIMs and GATs between developing and developed countries. In this method, the differences and similarities provided a guide in identifying patterns, generalizations and themes in order for the study to provide useful criteria in determining the effectiveness of international public laws and domestic laws in governing institutions and countries.

3.5 Expected outcomes

This study predicts that there would be legal barriers to international trade in the WTO's agreement with UAE, Brazil and Bangladesh particularly in the areas of TRIPs, TRIMs and GATs. Consequently, this would be more so with UAE and Bangladesh than in Brazil because of the proximity of Brazil to the United States and the different cultural and societal traditions in UAE and Bangladesh. Consequently, countries in the Middle East which posits different beliefs are more likely to suffer the negative impact of WTO's laws.

4 Provisional timetable for proposed research

Provisional Dissertation Schedule

Time	Activities/Tasks to be Completed	Status
March 28, 2007	Delivery of Chapter 1 [10,000 words]	<input checked="" type="checkbox"/>
June 15, 2007	Delivery of Chapter 2	<input checked="" type="checkbox"/>

	[10,000 words]	
July31, 2007	Revisions and editing for chapters 1 and 2	<input checked="" type="checkbox"/>
October 31, 2007	Delivery of Chapter 3 [10,000 words]	On-going
January 30, 2008	Delivery of Chapter 4 [10,000]	On-going
February 30, 2008	Revisions and editing for chapters 3 and 4	On-going
June 15, 2008	Delivery of chapter 5 [10,000 words]	On-going
October 30, 2008	Delivery of chapter 6 [10,000 words]	On-going
March 30, 2009	Delivery of chapter 7 [10,000 words]	On-going
July 30, 2009	Delivery of chapter 8 [10,000 words]	On-going
August 30, 2009	Revision and editing of chapters 5, 6, 7 and 8	Pending
August - September, 2009	Finalization of dissertation and final touches and preparation for discussions and defense	Pending

5 Resource needs and funding

Materials Needed	Amount
Laptop	US\$2,000
Printer, Computer Materials, Printing	US\$1,000
Documentation, Library Searches, Purchase of Books, Journals, Magazines	US\$1,500
Travel Expenses (Seminars, Symposium, etc)	US\$1,500
Miscellaneous Expenses	US\$1,000
Editing fee, Panel fee, etc	US\$2,000
TOTAL	US\$9,000

6 Research Progress

A preliminary draft of Chapters 1, 2, 3, 4 and 5 has already been completed and the literature review has already been started. An identification of the countries to be included in the study has been done (UAE, Brazil and Bangladesh) and the corresponding legal and socio-political analysis has been started in relation to the TRIPs, TRIMs and GATs agreement.

Before the formulation of the research questions was started, an extensive literature review has been conducted in order to determine the depth and breadth of the current literature. However, there are still journal articles and books relating to public international law and domestic laws including the empirical studies on developed and developing countries in relation to WTO. Particularly, an extensive literature on the cases involved such as UAE, Brazil and Bangladesh has yet to be completed. The search for more literature in order to ensure that all points are covered is not yet finished though the draft is ready.

From the initial literature review, the results revealed that there had been discrepancies between the goals of the WTO from the actual experiences of developing countries. Primarily, trade barriers occur as a result of the results-based approach to public international law as well as the political and legal encroachment, overregulation and dispute settlements that tend to lean towards developed countries. Hence, in the absence of strong public international law enforcement, those countries in power are more likely to be the ones who will shape and decide on treaties made by the WTO.

While the WTO had instituted important measures in order to provide order to different countries, the cultural and socio-political structures of countries such as UAE, Bangladesh and Brazil would require a rigid restructuring of their current legal system in order to ensure compliance. However, not all countries are willing to restructure their current judicial and governmental institutions in order to comply with the WTO. Hence, there is a need for the WTO to re-examine its policies and the legal infrastructures of countries so that developing countries would not be relegated to the sidelines of development.

Moreover, the three case studies employed in this research would serve as the proof to the claims that developing countries are experiencing significant trade barriers

that prevent them from flourishing in the international trade. The legal system of these three countries including their policies on TRIPs, TRIMs and GATs has already been collected. However, the researcher is still in the process of gathering more data in order to provide the strengths and weaknesses of these legal acts in relation to WTO and economic development. Furthermore, interviews with governmental officials, legal scholars and economic and political analysts in these countries have yet to be started. These are critical in the provision of a more solid research paper and in answering the questions posited in the paper.

7 Outline of Research Training (ca. 200 words)

International public law particularly of international organizations such as WTO has been central in my studies through my undergraduate to the post-graduate degree. This dissertation topic was chosen based on my previous work experiences, area of interest and the preparations I have made during my stay in the university such as taking up Research Methods as well as in attending seminars, conferences and collaborating with other scholars who have worked in subjects in line with this research topic. Moreover, I have chosen electives that would familiarize me with this topic and have written several academic papers about WTO.

8 Conclusion

The continued expectations on the potential benefits of WTO's legal agreements in developing countries is still central in international trade and international law literature although it had weak areas that needs to be addressed in order not to disintegrate. These expectations are not solely based on hope and aspirations that these countries will attain economic development but rather on concrete evidences that given the right domestic conditions, legal parameters, implementation and enforcement, technology transfer can realize the goals set by both countries involved in the transfer. While significant empirical evidences also suggest the inability of WTO to concretize its goals and manifest itself in the domestic level, it should also be considered that the process of trade and legal issues involves several complexities that need the coordination of local resources in order for the international public treaties and laws to work.

It can be concluded that: 1) successful economic development can only occur if developed and developing countries shares in the responsibility of public international

law with the goal of supporting instead of exploiting each others' resources; 2) there is a need for the development of accurate legal measures aside from the WTO as well as from UAE, Bangladesh and Brazil; and 3) legal, political, economic and social considerations needs to be considered by the WTO in governing free trade.