Participation of Arab developing countries in the dispute settlement system of the World Trade Organisation: limitations and underutilisation

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School of Law
Auckland University of Technology
Abstract

The purpose of this study is to explore in depth the concerns that limit the participation of developing countries in the WTO Dispute Settlement Proceedings. To this end, it investigates the current practice of WTO members. By interviewing Arab specialists, it seeks to understand why Arab developing members are reluctant to use the Dispute Settlement System (DSS) process of the WTO.

This research adopted a qualitative methodology based on semi-structured interviews. The interviews were conducted in Amman, Jordan, in 2018. The interviewees were three Arab specialists in the WTO.

The findings of this study are summarized as follows. Arab countries participate in the dispute settlement procedures of the WTO both actively and passively. Also, Arab countries tend to under-utilise the DSS. Among the 11 Arab member countries of the WTO, Jordan alone has never participated in any dispute. In addition, the interviewees differed in their perceptions of the main constraints. Geo-political pressure, weak domestic trade policy, and language were the priority constraints for Participants (JORDAN 1), (EGYPT 1) and (SAUDI ARABIA 1), respectively. The interviewees also indicated that Arab developing countries underuse the DSS. Furthermore, the exclusion of oil from the WTO agreements is considered as an important limitation because oil products are the main exports of some Arab developing countries. Moreover, cultural attitudes might limit DSS access by Arab developing countries. In particular, Arab countries prefer to settle their issues through Sulh rather than the standard litigation route. Cultural attitudes have not been addressed in detail in the existing literature. Besides, retaliation can legally be enforced on developed countries, but is prohibited in practice by the small market share of Arab developing counters. A developing Arab country can also mobilise retaliation on another developing Arab country with the same market share and power in the global trade.
This thesis clarifies the main constraints that limit the participation of Arab developing country members in the WTO's DSS on the example of Egypt, Saudi Arabia, Jordan and Arab United Emirates. It will also contribute to the literature on the Arab world’s engagement in the WTO.
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Attestation of Authorship

I hereby declare that this submission is my own work and that, to the best of my knowledge and belief, it contains no material previously published or written by another person (except where explicitly defined in the acknowledgements), nor material which to a substantial extent has been submitted for the award of any other degree or diploma of a university or other institution of higher learning.

Signature of candidate

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Auckland, New Zealand
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<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>AB</td>
<td>Appellate Body</td>
</tr>
<tr>
<td>ACWL</td>
<td>Advisory Centre on the WTO Law</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>DSB</td>
<td>Dispute Settlement Body</td>
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<td>DSM</td>
<td>Dispute Settlement Mechanism</td>
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<td>DSS</td>
<td>Dispute Settlement System</td>
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<td>DSU</td>
<td>Dispute Settlement Understanding</td>
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<td>GATT</td>
<td>General Agreement on tariffs and Trade</td>
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<td>GATS</td>
<td>General Agreement on Trade in Services</td>
</tr>
<tr>
<td>GSP</td>
<td>Generalised System of Preferences</td>
</tr>
<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
</tr>
<tr>
<td>ITO</td>
<td>International Trade Organisation</td>
</tr>
<tr>
<td>LDC</td>
<td>Least-Developed Country</td>
</tr>
<tr>
<td>MFN</td>
<td>Most-Favoured Nation</td>
</tr>
<tr>
<td>MTO</td>
<td>Multilateral Trade Organization</td>
</tr>
<tr>
<td>PSI</td>
<td>Pre-shipment Inspection</td>
</tr>
<tr>
<td>SPS</td>
<td>Sanitary and Phytosanitary Measures</td>
</tr>
<tr>
<td>TPT</td>
<td>Technical Barriers to Trade</td>
</tr>
<tr>
<td>TRIMS</td>
<td>Trade-Related Investment Measures</td>
</tr>
<tr>
<td>TRIPS</td>
<td>Trade-Related Aspects of Intellectual Property Rights</td>
</tr>
<tr>
<td>UR</td>
<td>Uruguay Round</td>
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<td>WTO</td>
<td>World Trade Organisation</td>
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Chapter 1: Introduction

1.1 Introduction

International trade is considered as a main factor for the economic improvement and development of any country. Global trade ensures that economy is unable to be controlled by a single country or state, but by the interconnected contributions with every nations’ economies. In 1995, the World Trade Organization (WTO) was set up as an international body that aims to liberalise trade by reducing looming trade obstacles levelling the playing field. The WTO provides a legal and institutional framework for the implementation and monitoring of agreements, and for settling disputes arising from interpretation and application by WTO members (World Trade Organisation, 2018). As one of its duties, the WTO operates a system of trade rules that ensure fair trading among its member governments. The WTO has a legal capacity and personality, as well as immunities, privileges, and a powerful regulation named the Dispute Settlement System (DSS) for resolving disputes among the members.

The DSS is a highly legalised and judicialised process that resolves or settles trade disputes among the WTO member countries. When settling these disputes, the system promotes equality and justice among the developing and developed member countries. However, most of the Arabic developing countries, despite belonging to the WTO, are deterred from participating in the dispute settlement process due to lack of expertise, litigation costs and other obstacles (Anyiwe & Ekhator, 2013) The details will be discussed in Chapter Three.

This research discusses in depth the obstacles to Arab developing members under the Dispute Settlement Body, which restrict the involvement of those members in the dispute settlement procedures.
1.2 Scope of the research

From many perspectives, this study discusses the fundamental obstacles that restrain Arab developing countries to use the DSS. The study also assesses whether Arab countries getting any preferential treatments from using the WTO legal regime. Bown and Hoekman commented that “a systemic pattern of missing dispute settlement activity calls into question whether the full public good and positive externality benefits of the trading system are sufficiently exploited” (Bown & Hoekman, 2005, p. 863). Also, Davey announced that “only an effective dispute settlement system can ensure rule enforcement, which in turn provides predictability and stability in trade relations” (Davey, 2000, p. 15).

1.3 Problem of the research

Under the WTO agreement, all WTO members, whether developed or developing have the right to access the DSM (Donmez, 2017). Even though Arab countries are counted among the developing countries, various obstacles limit their involvement in the dispute settlement mechanism. The present research addresses the following four problems.

1. Most of the previous studies (N. N. Alotaibi, 2011; Anyiwe & Ekhator, 2013; Horn, Mavroidis, & Nordström, 1999; Shaffer, 2005; Torres, 2012) have discussed the fundamental limitations that restrict the participation of developing country members in the WTO dispute settlement system, but without considering other limitations. These ignored obstacles might be significantly limiting for some countries (Abbott, 2007; Anyiwe & Ekhator, 2013; Malkawi, 2012; World Trade Organisation, 2018).

2. Most of the previous studies have discussed the limitations of developing countries in general. A focus on Arab countries seems to be lacking (N. Alotaibi, 2015; Anyiwe & Ekhator, 2013; Horn et al., 1999; Shaffer, 2005; Torres, 2012).

3. Previous studies assumed that all developing members face the same obstacles to participation in the DSS, without considering their cultural, linguistic, power and economic differences. For example, an obstacle for Jordan may not be an obstacle for
Brazil (Busch & Reinhardt, 2003b; Law Teacher, 2013; Malkawi, 2012; World Trade Organisation, 2018).

4. Some of the previous studies identified the main obstacles only from WTO reports, without considering new resources or methods, or the main reasons for the underuse of developing countries in the DSS.

1.4 Research Significance

This study aims to examine in depth certain fears that restrict the participation of Arab developing members in WTO Dispute Settlement Proceedings. To this end, it explores some of the potential obstacles that limit the participation of some developing countries in the dispute settlement procedures suggested by specialists working with the WTO. Researchers with an interest in the DSM will gain new knowledge by understanding the main reasons restricting the involvement of Arab developing members in DSS, and using those obstacles in finding solutions to the problems identified. The investigation will also identify other vital limitations and underutilisation that have received little attention thus far; in particular, that a large proportion of trade with developing countries occurs under preferential rules that are not enforceable by WTO laws (Nottage, 2009). Also, this thesis will contribute to the literature about the Arab world regarding the world trade organisation, in particular about the main challenges that restrict the participation of Arab developing country members in WTO'S DSS based on the judgment of DSS members from Egypt, Saudi Arabia, Jordan and Arab United Emirates.

1.5 Background of the research

Although previous studies have examined the obstacles that limit the participation of developing country members in the WTO dispute settlement procedures (N. Alotaibi, 2015; Anyiwe & Ekhator, 2013; Horn et al., 1999; Shaffer, 2005; Torres, 2012), they have underestimated the financial situations of developing country members, which are actually
quite variable. For example, Gulf countries supposedly rank among the wealthiest countries in the world and are financially unconstrained, yet many of them are not fully participating in the WTO dispute settlement mechanism (Abbott, 2007; Malkawi, 2012; World Trade Organisation, 2018).

Previous studies have also focused on two main factors: lack of technical expertise and few financial resources (Busch & Reinhardt, 2003b; Malkawi, 2012; World Trade Organisation, 2018). Yet several other limitations restrict the participation of Arab developing members in dispute settlement procedures. Some of the superficially discussed limitations are trade volume, political relations, language, cultural attitudes towards the judicial settlement of disputes, inability to enforce WTO rulings, reluctance to institute trade disputes, and the economic pressure imposed on developing countries by developed countries in trade disputes (Anyiwe & Ekhator, 2013). These ideas will be investigated in detail in Chapter Three of this thesis.

1.6 Research questions

Having identified a gap in the existing knowledge, this study seeks to answer the following questions:

Q1. What are the obstacles (legal, economic/financial, (geo) political, and cultural) restricting the participation of Arab developing country members in the WTO’s DSS?

Q2. Which of these constraints and obstacles are most significant from a practical viewpoint? Which are the least recognised, acknowledged, and understood?

Q3. Why do Arab developing countries hesitate to use the Dispute Settlement System (DSS) process of WTO?

Q4. Are these constraints the same or different for Arab developing members based on their economic situation?
1.7 Research approach

The current research is a pure Master of Laws research conducted by a qualitative methodology, described as follows:

1.7.1 Qualitative methodology

Qualitative research attempts to understand people’s perception of various events in the social world (Riley, 2010). Unlike quantitative methods, qualitative methods provide a detailed analysis of the investigated problem based on individuals' perceived understanding of a phenomenon (Yin, 2009). In this thesis, the research questions will be answered by qualitative methods such as interviews and document analysis.

The study is informed by an interpretivist worldview, which primarily focuses on the actions, situations and consequences of the research (Punch, 2013). Rather than viewing the world as a unified whole, interpretive consider that truth is based on the social, historical, political and other contexts of a particular situation. To answer a research problem, they prefer data collection and data analysis methods over holistic approaches (Creswell, Hanson, Clark Plano, & Morales, 2007).

Accordingly, the current research will collect and analyse the data by a qualitative approach (Punch, 2013). The methodology focuses on the complexity and individuals' perspectives of a situation (Creswell et al., 2007). The qualitative analysis will allow an in-depth interpretation of the examined phenomenon (Collins & O'Cathain, 2009).

1.7.1.1 Semi-structured interviews

To understand a particular environment, humans gain valuable insights from other humans (Lowry, 1995), often by face-to-face interactions with participants in interviews (Riley, 2010). Hence, data in the present study will be acquired from interviews with participants. Besides receiving answers to pre-determined questions, interviewing aims to obtain an in-depth
understanding of the lived experiences of other people and the meanings attached to those experiences (Seidman, 2013).

The present research interviewed Arab specialists (i.e., officials) who have represented their countries at the WTO. The interviewees were lawyers who deal with dispute settlement procedures, or academics wishing to improve their knowledge of DSS. Speaking to these pundits provides fundamental information on the main obstacles constraining the participation of Arab developing member countries in the WTO’s DSS. The interviews conducted in the interviewees’ offices at times that are prearranged by telephone or e-mail. Face-to-face or via Skype, the researcher first asked questions related to the participant’s background, such as name, nationality, and work position/responsibilities, and then posed the main research questions.

1.7.1.2 Document Analysis

Besides gaining knowledge through interviews, this research will analyse the relevant available literature on the topic. The literature investigation will depend on both primary and secondary sources. The primary sources are laws and conventions, along with official legal documentation and publications issued by the WTO such as agreements, cases and case statistics, including the involvement of Arab developing countries in these proceedings. The secondary literature sources are scholarly background papers in the study area, obtained from e-books, e-journals, and e-theses. Internet sites will be accessed for pertinent new data and information.

To analyse data, the researcher will perform a thematic analysis of interviews (Yin, 2009). To this end, all of the documented and interview-acquired qualitative data will be digitalised and transcribed, respectively, as soon as it becomes available to the researcher.

All files compiled from the qualitative data-collection part of the research, including the interviewees’ responses to open-ended questions, will be analysed manually by coding and categorisation (Dornyei, 2007).
1.8 Research Outline

This chapter (Chapter 1) introduced the thesis topic and posed its research questions. It also mentioned the scope, benefit and significance of the research, provided some relevant background information, and discussed the research approach and limitations of existing work.

The general structures of the remaining chapters are outlined below.

Chapter 2 is divided into two parts. The first part defines and overviews the WTO, and outlines the procedures for joining (accessing) the WTO. The second part investigates the DSM of the WTO. To this end, it introduces the four stages of the WTO dispute settlement process, namely, the consultation, panel, appeal, and implementation stages, and examines the classifications of ‘developing country’ by the WTO and the General Agreement on Tariffs and Trade. It then discusses the positions of developing countries and their importance in the WTO dispute settlement system.

Chapter 3 explores the participation limitations on developing members in the WTO’s DSS, namely, lack of financial and legal resources, litigation costs, and other constraints such as language and duration of the DSB process.

Chapter 4 outlines the methodological and ethical frameworks adopted to conduct this research. This includes a description of qualitative descriptive studies, the rationale for choosing this method, and an overview of the ethical guidelines followed while conducting this investigation.

Chapter 5 identifies the results of the analysis interviews and discusses these findings.

The concluding chapter, Chapter 6, summarises the results of the present study and suggests avenues for further work. It also identifies the limitations of current work.
Chapter 2: Overview of the WTO

2.1 Introduction

As the only global international trade organisation (World Trade Organisation, 2018), the World Trade Organization (WTO) replaced the less structured General Agreement on Tariffs and Trade (GATT) on January 1 of 1995 (Law Teacher, 2013). The WTO aims to liberalise trade by decreasing the constraints imposed on international trade and ensuring a level playing field for all member countries (World Trade Organisation, 2018). The WTO also provides a legal and institutional structure for implementing and monitoring the agreed conduct of trade relations between the states and the separate customs territories, who have full control over the trade policies of the state \(^1\) (i.e., the WTO member (Anyiwe & Ekhator, 2013), and who settle the disputes emerging from elucidation and application (N. Alotaibi, 2015).

When the WTO was established in 1995, its rules included a bundle of 19 various multilateral agreements named "Understandings" and "Protocols", comprising approximately 2600 pages of text (Matsushita, Schoenbaum, Mavroidis, & Hahn, 2015), which bound all members into a single body of law \(^2\). Legal texts of the WTO are summarised in Figure 2-1 below.

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\(^1\) See Article XXIV/2 of General Agreement on Tariffs and Trade (GATT 1947).
Figure 2-1. The legal agreements of the WTO (Source: WTO, 1999)
The functions of WTO are given in Article 3 of the Marrakesh agreement, namely, that the WTO shall administer and implement the WTO agreements, shall govern dispute settlements and cooperate with other international organisations (coherence), and shall provide technical assistance to developing countries \(^1\). The organisation is composed of a chairmanship (ministerial conference and general council) (World Trade Organisation, 2018), and a specialised subsidiary council: TPRB and DSB. DSB has the authority to establish the DS panel and the Appellate Body panel. The institutional structure is outlined in Figure 2-2.

![Institutional structure of the WTO](source: Article IV of Marrakesh Agreement 1994: Structure of the WTO)

Two kinds of membership countries are recognised in the WTO agreement: current members and observers (World Trade Organisation, 2018). Within five years after acquiring observer’s status the governments of observer’s countries must start their accession negotiations. (World Trade Organisation, 2018). The current Arab membership countries and Arab observer governments accessed under the WTO are listed in Table 2-1 and Table 2-2, respectively (World Trade Organisation, 2018).

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\(^1\) See Marrakesh Agreement of 1994 Article 3.
Table 2-1. Current Arab membership of the WTO (Source: WTO, 2018)

<table>
<thead>
<tr>
<th>Country</th>
<th>Joined</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bahrain, Kingdom of</td>
<td>1 January 1995</td>
</tr>
<tr>
<td>Kuwait, the State of</td>
<td>1 January 1995</td>
</tr>
<tr>
<td>Morocco</td>
<td>1 January 1995</td>
</tr>
<tr>
<td>Tunisia</td>
<td>29 March 1995</td>
</tr>
<tr>
<td>Egypt</td>
<td>30 June 1995</td>
</tr>
<tr>
<td>Qatar</td>
<td>13 January 1996</td>
</tr>
<tr>
<td>United Arab Emirates</td>
<td>10 April 1996</td>
</tr>
<tr>
<td>Oman</td>
<td>9 November 2000</td>
</tr>
<tr>
<td>Jordan</td>
<td>11 April 2000</td>
</tr>
<tr>
<td>Saudi Arabia, Kingdom of</td>
<td>11 December 2005</td>
</tr>
<tr>
<td>Yemen</td>
<td>26 June 2014</td>
</tr>
</tbody>
</table>

Table 2-2. Arab observer governments (Source: WTO, 2018)

<table>
<thead>
<tr>
<th>Country</th>
</tr>
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<tbody>
<tr>
<td>Algeria</td>
</tr>
<tr>
<td>Iraq</td>
</tr>
<tr>
<td>Lebanese Republic</td>
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<tr>
<td>Libya</td>
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<tr>
<td>Sudan</td>
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<tr>
<td>Syrian Arab Republic</td>
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</table>

2.2 WTO Dispute Settlement Mechanism

2.2.1 Introduction

Since the Second World War, the GATT was the only international framework through which multilateral trade negotiations could proceed until WTO was established. The final minutes of the last three rounds (Kennedy, Tokyo, and Uruguay) have been pivotal in framing an international trade law by which the GATT can appropriately regulate international trade and provide an advance mechanism for settling disputes between contracting parties (N. N. Alotaibi, 2011).

The dispute settlement understanding (DSU) is frequently regarded as a standout amongst the significant accomplishments of the WTO (Busch & Reinhardt, 2003b; Wilson, 2007), and has
become known as the “backbone of the multilateral trading system” in the WTO agreement (Horn & Mavroidis, 1999). Meanwhile, the current DSS is considered to be much more efficient than its predecessor (Horn et al., 1999).

Among its key accomplishments, the DSU has imposed a time limit on the completion of a case (Kozlov, 2016). Another revolutionary renovation is the replacement of the so-called positive consensus rule with the negative consensus rule 2 during the GATT period. Hence, all procedural stages are automatically implemented without delays (Kozlov, 2016).

Under the DSU, the WTO framework is led by legal rules rather than by financial power and political issues, which compromised the integrity of GATT. (Steger & Hainsworth, 1998; Van der Borght, 1999). The WTO has replaced the weak dispute settlement system under the GATT by a more powerful understanding of dispute settlements (Malkawi, 2012).

The main guideline proposes that “each member in the WTO is equal before the law” (Abbott, 2007, p. 2). This proposal was intended to ensure fairer and more equivalent open doors than a system governed by financial power and political issues (Abbott, 2007). The WTO dispute settlement mechanism is based on the pre-existing GATT agreement, and became active from June of 1995 (Law Teacher, 2013).

The DSU builds on the understanding gained in the Uruguay round. The WTO dispute settlement purports to afford a positive solution to any dispute (Hoekman & Mavroidis, 2000), ensuring a level playing field for all members, and enabling poorer members to protect their trade situation despite their low economic strength (Al Bashar, 2009).

Article XVI:1 of the Marrakesh agreement states that “the WTO shall be guided by the decision procedures and customary practices followed by the contracting parties to GATT 1947”.

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2 The definition of negative consensus that DSB shall be deemed to have decided by consensus on a matter submitted for its consideration, if no Member, present at the meeting of the DSB when the decision is taken, formally objects to the proposed decision.
Despite the WTO’s endeavour to maintain a connection with GATT, its DSU departs from that of GATT in many essential ways (Narlikar, 2005).

Most importantly, owing to its quasi-judicial and quasi-automatic character, the WTO’s DSU can handle difficult cases while providing appeal rights, strict deadlines, legal rules and the Advisory Centre of WTO Law (ACWL) to developing countries (Al Bashar, 2009; Busch & Reinhardt, 2003a). Lacking in the GATT system was the dispute settlement body (DSB) of the WTO, a council comprising all country members of the WTO.

The DSB is granted full power to establish the DS panel, and to approve the selection of the appellate body (AB) members. By accessing the panels and AB report, it also maintains surveillance and implementation, and authorises retaliatory measures when a country does not comply with a ruling (Pfumorodze, 2007).

The WTO’s DSU comprises 27 Articles and 4 Appendices. Its rules apply to all dispute cases brought under the agreements listed in Appendix 1 of the DSU (Anyiwe & Ekhator, 2013).

The DSS of the WTO encompasses the DSB, DS panel and AB. The DSB is a kind of political organisation inside the WTO, whereas the DS panel and AB are kinds of legal organisations (Van den Bossche, 2008).

The DSU specifies that if WTO members are “abusing trade rules, they will utilize the multilateral system of settling the dispute as opposed to making a move singularly, that signifies submitting to the concurred methods and rules” (World Trade Organisation, 2018).

One obligation of GATT was to settle disputes between contracting parties by an agreeable settlement (Mcrae, 2004). Arguments were primarily regarded as internal problems to be solved rapidly inside the association. A dispute emerges when one of the WTO members performs some action that is deemed by one or more fellow WTO members to violate the WTO rules or fail to satisfy the commitments (World Trade Organisation, 2018).
2.2.2 Stages in the dispute settlement process

A dispute is created when one or more WTO members have taken an action that is deemed an infringement of the WTO trade rules, whether directly or indirectly (Steger & Hainsworth, 1998). To resolve the dispute, the WTO members follow the procedures and rules governing the dispute settlement (Busch, 2000) by the following methods:

2.2.2.1 Consultation (Negotiation between parties)

The DSM aims to secure a positive solution to a dispute between WTO members in a manner consistent with the WTO agreements (Davey, 2001). This stage, which is mandatory, should grant the WTO dispute member a chance to discuss their perspective, allowing the defending member to disclose measures that will resolve the dispute without resorting to litigation (World Trade Organisation, 2018). Thus far, most of the conflicts in the WTO have not proceeded beyond consultation, either because a satisfactory settlement was found, or because the disputants decided for another reason not to pursue the matter further (World Trade Organisation, 2018).

At the beginning of any dispute between WTO members, the WTO urges an agreeable solution to the dispute through consultation (Donmez, 2017). Consultation also enables the disputants to comprehend the reason for the dispute, discuss the legal basis of their claims, and preferably resolve the conflict before moving to the next stage (panel) (Davey, 2001). Article IV of the DSU states that “Before bringing a case, a Member shall exercise its jurisdiction as to whether action under these procedures would be fruitful or not”. The dispute settlement mechanism aims to secure a positive solution to a dispute.

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3 See Article 3.7 of the DSU.
4 See Article 3.7 of the DSU.
At any time, if there is “a measure affecting the operation of any covered agreement taken within the territory of the former”\textsuperscript{5}, the country member may request a consultation and should notify the DSB, relevant council and committees\textsuperscript{6}. The defendant accords sympathetic consideration to the case brought by the complainant (Al Bashar, 2009).

At any stage of the dispute settlement procedure, the DSM gives the disputants the opportunity to solve their dispute by negotiating a settlement (Dillon Jr, 1994). The consultations between the WTO disputants should not compromise trust between the disputing parties, nor prejudice the right of any WTO member\textsuperscript{7}. Also, the consulted member “should give special attention to the particular problem and interests of developing countries”\textsuperscript{8}, such special attention meaning is not discussed in Article IV of the DSU (Al Shraideh, 2010). The absence of specificity makes it hard to assess the level of consultation by WTO members with the article IV.

The DSU provides special treatment for WTO members that are developing countries. In particular, Article 12.10 of the DSU extends the regular consultation period when the parties of a dispute involving a developing country have failed to create a mutually satisfactory solution (World Trade Organisation, 2018).

Alternative dispute settlement procedures include good offices, conciliation, and mediation (a voluntary process undertaken if desired by the disputants)\textsuperscript{9}; these procedures should be built on trust and without prejudicing the right of the party in any further proceeding\textsuperscript{10}. The rules of these alternative dispute settlement procedures are exactly those of the consultation period.

Once the complainant member has requested consultation with the other member under the WTO agreement, the disputants are granted a maximum period of 30 days (starting from the

\textsuperscript{5} See Article 4.2 of the DSU.
\textsuperscript{6} See Article 4.4 of the DSU.
\textsuperscript{7} See Article 4.6 of the DSU.
\textsuperscript{8} See Article 4.10 of the DSU.
\textsuperscript{9} See Article 5.1 of the DSU.
\textsuperscript{10} See Article 5.2 of the DSU.
receipt date of the request) to reach a mutually satisfactory solution through the consultation process\textsuperscript{11}. If the other member does not respond within 10 days of the receipt date of the request, or refuses to enter the consultation process within 30 days of the receipt date, the complaining member may directly proceed to the panel stage\textsuperscript{12}. If the dispute is not settled within 60 days of the receipt date of the request, the complaining parties may also request a panel\textsuperscript{13}.

\textbf{2.2.2.2 Establishment of the panel}

At this stage, if consultation fails to settle the dispute between parties, the complaining member can request the establishment of a panel. Although the panel can be initially blocked by the defendant country, it must be established when the DSB meets for the second time, unless the DSB consents not to establish the panel (World Trade Organisation, 2018).

The request from the complaining member for the establishment of a panel must be made in writing and identify the specific measure at issue provides a brief summary of the legal basis of the complaint sufficient to present the problem clearly\textsuperscript{14}. The panel is commonly composed of three panellists, but the disputants may consent to five qualified panellists\textsuperscript{15}. Once the panel is established, it hears the written and oral arguments of the disputant parties, and subsequently issues the illustrative part of its report (factual and discussion) to the disputants (Anyiwe & Ekhatator, 2013). In compiling this report, the panel considers all comments from the disputing parties. This part of the report, along with its findings and conclusions, is passed to the dispute parties as an interim report following a review period. The panel then issues the final report to

\textsuperscript{11} See Article 4.3 of the DSU.
\textsuperscript{12} Ibid.
\textsuperscript{13} See Article 4.7 of the DSU.
\textsuperscript{14} See Article 6.2 of the DSU.
\textsuperscript{15} See Article 6.5 of the DSU.
the disputant and later circulates it among all WTO member countries (Shedd, Murrill, & Smith, 2012).

The findings of the report must discuss the arguments made at the interim review stage. The DSB will not consider adopting the report until 20 days after its circulation to all members. At the DSB meeting, the panel shall adopt the report within 60 days of its circulation date to all WTO members. If the DSB decides not to adopt the report by consensus, or if one of the disputants formally notifies the DSB of its decision to appeal, the panel cannot adopt the report until the appeal is complete. The average public-circulation time of the report is 13 months at most (Horn & Mavroidis, 2008). The special treatments for developing country members in the DSU are summarised below:

The first special treatment is the panel composition. Article 8 of the DSU states "When a dispute is between [a] developing country member and a developed country Member, the panel shall, if the developing country Member so requests, include at least one panellist from a developing country Member". The primary goal of Article 8 is to reinforce the confidence between the developing countries and the WTO system (Mosoti, 2003). This article may also confer a legal benefit to developing country members (Mosoti, 2003). When the panel involved in a developing-country dispute consists of three members, the first panellist is from the developing country, and the other panellists are from developed countries (Al Shraideh, 2010). Examples are the Indonesia automobile dispute, the US gasoline dispute the India, patents dispute, and the Mexico anti-dumping investigation of high-fructose corn syrup (Malkawi, 2012).

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16 See Article 15.3 of the DSU.
17 See Article 16.1 of the DSU.
18 See Article 16.4 of the DSU.
19 See Article 8.10 of the DSU.
Another special treatment for developing country members is presented in Article 12.10 of the DSU (Al Shraideh, 2010), which states that “In the context of consultations involving a measure taken by a developing country Member, the parties may agree to extend the periods established in paragraphs 7 and 8 of Article 4. If, after the relevant period has elapsed, the consulting parties cannot agree that the consultations have concluded, the Chairman of the DSB shall decide, after consultation with the parties, whether to expand the pertinent period and, if so, for how long. Also, in examining a complaint against a developing country Member, the panel shall accord sufficient time for the developing country Member to prepare its argumentation and present it. The rules of paragraph 1 of Article 20 and paragraph 4 of Article 21 are not affected by any action under this paragraph”\(^{20}\). The first section of this article imposes the expanded consultation period for developing countries. After consulting with the affected parties, the chairman of the DSB decides whether to extend the relevant period, and if so, for how long\(^{21}\). The second section of this article stipulates that when the respondent is a developing country member, “the panel shall accord sufficient time for the developing country member to prepare and present its argumentation”\(^{22}\).

A third special treatment for developing country members is developed in Article 12.11 of the DSU (N. Alotaibi, 2015), “Where one or more of the parties is a developing country Member; the panel's report shall explicitly indicate the form in which account has been taken of relevant provisions on differential and more-favourable treatment for developing country Members, that form part of the covered agreements which have been raised by the developing country Member in the course of the dispute settlement procedures”\(^{23}\). This article stipulates that when a developing country member is one of the disputing parties, the report issued by the panel

\(^{20}\) See Article 12.10 of the DSU.
\(^{21}\) Ibid.
\(^{22}\) Ibid.
\(^{23}\) See Article 12.10 of the DSU.
should demonstrate plainly the form in which the special and differential treatment of the DSU has been taken into consideration (N. Alotaibi, 2015). This article indicates the necessity of transparency in showing “how effective these rules have been in a given case” and “how they have actually been applied” (N. Alotaibi, 2015).

2.2.2.3 Implementation of panel and appellate body report

Either or both parties involved in the dispute can appeal the panel’s rulings but the third party cannot appeal the report. The appeal body must be restricted to the legal points included in the panel report and the legal interpretations developed by the panel. Moreover, the disputants cannot present new evidence or facts at this stage (Donmez, 2017). The DSB should establish a seven-member appellate body. Three of the panellists in the body should check the appeal requests from the panel case (Donmez, 2017).

The rulings of the WTO appellate body must uphold, reverse, or modify the panel report within 60 days of the date on which the dispute party formally notified the appeal, and the proceedings period should not exceed 90 days.

The DSB must adopt or reject the appeal report within 30 days. The appeal report can be rejected only if ruled out by consensus, which may be impossible (Mshomba, 2009). Once the DSB has adopted the recommendation and rulings, the WTO member should inform the DSB of its implementation plans within 30 days (Shedd et al., 2012). This mandate ensures the effective compliance of the recommendations and rulings, securing the rights and benefits of the disputants.

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24 See Article 17.4 of the DSU.
25 See Article 17.6 of the DSU.
26 See Article 17.5 of the DSU.
27 See Article 21.1 of the DSU.
When the panel or Appellate Body adopts the report, the ruling during the compliance stage must be implemented within a reasonable period that cannot exceed 15 months from the adoption of the report \(^{28}\). Compliance can be accomplished by removing, changing or supplanting the WTO-conflicting measure \(^{29}\).

The fourth special treatment for developing countries is presented in Article 21.2 of the DSU, which states that “Particular attention should be paid to matters affecting the interests of developing country Members with respect to measures which have been subject to dispute settlement” \(^{30}\); moreover, Articles 21.7 and 21.8 stipulate that if a developing country has raised a matter, the DSB should consider whether further action, in addition to surveillance and a state report, is appropriate \(^{31}\).

Finally, Article 21.8 states “if any developing country member brought a case, the DSB shall take into account not only the trade coverage of measures complained of, but also their impact on the economy of developing country Members concerned” \(^{32}\). Figure 2-3 summarises the formal workflow of the WTO’s DS. The figure below illustrates the formal time for the WTO dispute settlement process which goes through several stages beginning with the consultation process and ending with the implementation process.

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\(^{28}\) See Article 21.3: (C) of the DSU

\(^{29}\) E.g., Appellate Body Report, United States—Measures Relating to Zeroing and Sunset Reviews, Recourse to Article 21.5 of the DSU by Japan, paras. 154, WT/DS322/AB/RW (August 18, 2009).

\(^{30}\) See Article 21.1 of the DSU.

\(^{31}\) See Article 21.7 of the DSU.

\(^{32}\) See Article 21.8 of the DSU.
2.3 Definition of Developing Countries

Countries are divided into three categories: developed countries, developing countries and least developed countries. This chapter discusses the second group of countries. How developing countries are defined by the GATT and WTO bodies is important for the present research, because both bodies grant different concessions to their developing country members, especially in their DSS (N. Alotaibi, 2015). This chapter defines the meanings of developing members under the GATT and WTO agreements.

2.3.1 The definition of the developing countries within the GATT agreement

The term *developing country* was clarified in Article XVIII.1 of GATT 1946 (Jiang, 2002; Matsushita, Schoenbaum, & Mavroidis, 2003). The GATT agreement awarded the following benefits to developing countries and less developing countries (N. Alotaibi, 2015): “The contracting parties recognize that the attainment of the objectives of this Agreement will be facilitated by the progressive development of their economies, particularly of those contracting
parties the economies of which can only support low standards of living* and are in the early stages of development” 33

Although nearly 50% of the contracting countries who signed the GATT agreement (11 out of 23) (Constantine, 2000), (or 13 out of 23 when including the Czechoslovakian Republic and the union of South Africa) were developing countries (Srinivasan, 2000), GATT did not attempt to classify developing countries, nor recognize the need for any special treatment to meet their specific needs and thus safeguard their trade interests (Constantine, 2000). Portugal lost its endeavour to define a developing country in GATT 1946 (N. Alotaibi, 2015).

The GATT committee tried to avoid defining a developing country, leaving countries to declare their own status as a developing country or a developed one (Matsushita et al., 2003). The GATT endeavoured to understand what constitutes a developing country under the self-declaration strategy. However, this attempt was insufficient (N. Alotaibi, 2015).

2.3.2 The definition of the developing countries within the WTO agreement

In general, WTO has classified its members as “developed countries, economically-in-transition countries, or least developed countries”(N. Alotaibi, 2015, p. 87). However, developing country members comprise the majority of the WTO’s membership (Donmez, 2017).

The WTO does not specifically define the terms developed country and developing country (World Trade Organisation, 2018). Because the WTO is an international organization driven by its members countries instead announce themselves as developed or developing (Gallagher, 2000). Once a member classifies itself as a developing country, the other member states can challenge the decision to prevent that classification, which would deprive the self-proclaimed

33 See, GATT Agreement 1947, Article XVIII:1.
developing country of the benefits of the obtainable specific or available provisions afforded to developing countries mentioned in the previous chapter (World Trade Organisation, 2018).

To avoid criticism by researchers of economic law or politics, the WTO has created no criteria for defining a developing country. Consequently, it has not reached a consensus definition of *developing country* (N. Alotaibi, 2015). Moreover, no clear definition of *development status* exists under the WTO legal system (Donmez, 2017), and no definition of *developing country* exists in either general international law or the WTO system (Rolland, 2012).

To gain developing country status, a rising or transitional economy may require several claims in the WTO accession negotiations. An example is China, which was finally declared as a developing socialist member by the WTO (Zimmermann, 2006).

Arab countries similarly classify themselves as developed or developing countries. Using the same method as other WTO members, most Arab countries have classified themselves as developing countries; the remainder are least developed countries.

The Advisory Centre on WTO law progressed towards a definition of *developing country* at the 1999 ministerial WTO conference in Seattle (Washington, USA) (Matsushita et al., 2015). ACWL classifies countries based on their share of world trade with a positive correction reflecting their per capita income in the previous 3 years. The classification information was obtained from world bank statistics (Matsushita et al., 2003). The ACWL then subdivided the developing countries into three categories, A, B and C (N. Alotaibi, 2015).

“Category A developing countries contribute more than 1.5% of the world trade or high income, Category B countries contribute between 0.15% and 1.5% of the world trade, and Category C countries contribute below 0.15% of the world trade” (Jiang, 2002). The 35 developing members entitled to the services of the ACWL are listed in Table 2-3 below (Advisory Centre on WTO Law, 2015).
The Advisory Centre on WTO law recognises 35 developing countries that have participated in WTO dispute settlement proceedings (Advisory Centre on WTO Law, 2015). Although the WTO provides no clear definition of least developed countries, Article XI.1 of the Marrakesh agreement unequivocally acknowledges the class of least developed countries (LDC) granted by the UN. Nevertheless, a self-pronounced developing country member cannot with impunity secure the advantages of the “unilateral preference schemes of some of the developed country members such as a Generalized system of preferences (GSP)” (World Trade Organisation, 2018).

As mentioned in the previous chapter, developing countries are afforded certain rights and special and differential treatments, such as an extended transition period in the DSM, technical

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### Table 2-3. The 35 developing countries entitled to ACWL services (Source: Advisory Centre on WTO Law, 2015)

<table>
<thead>
<tr>
<th>Category A</th>
<th>Category B</th>
<th>Category C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hong Kong, China</td>
<td>Bolivarian Republic of Venezuela</td>
<td>Bolivia</td>
</tr>
<tr>
<td>Chinese Taipei (13 May 2004)</td>
<td>Colombia</td>
<td>Dominican Republic</td>
</tr>
<tr>
<td>United Arab Emirates (29 April 2016)</td>
<td>Egypt</td>
<td>Ecuador</td>
</tr>
<tr>
<td></td>
<td>India</td>
<td>Guatemala</td>
</tr>
<tr>
<td></td>
<td>Pakistan</td>
<td>Honduras</td>
</tr>
<tr>
<td></td>
<td>Philippines</td>
<td>Kenya</td>
</tr>
<tr>
<td></td>
<td>Thailand</td>
<td>Nicaragua</td>
</tr>
<tr>
<td></td>
<td>Uruguay</td>
<td>Panama</td>
</tr>
<tr>
<td></td>
<td>Oman (25 April 2003)</td>
<td>Paraguay</td>
</tr>
<tr>
<td></td>
<td>Mauritius (11 June 2003)</td>
<td>Peru</td>
</tr>
<tr>
<td></td>
<td>Turkey (17 August 2003)</td>
<td>Tunisia</td>
</tr>
<tr>
<td></td>
<td>Viet Nam (25 September 2009)</td>
<td>El Salvador (3 September 2004)</td>
</tr>
<tr>
<td></td>
<td>South Africa (28 April 2017)</td>
<td>Costa Rica (30 April 2009)</td>
</tr>
<tr>
<td></td>
<td>South Africa (28 April 2017)</td>
<td>Cuba (3 November 2013)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Côte d’Ivoire (12 January 2017)</td>
</tr>
</tbody>
</table>

assistance, flexible commitments, safeguarded interests, and increased trade opportunities (Al Shraideh, 2010; Novel & Paugam, 2006).
Chapter 3: Constraints challenging the participation of developing countries in the DSM

3.1 Introduction

Many parties concerned with the WTO function, whether WTO members or observers, have focussed considerable attention on the participation of developing countries in the WTO dispute settlement system (Malkawi, 2012).

The participation of developing countries in the DSS is significant for identifying the uses of the WTO and maintaining the balance between their obligations and rights. Therefore, we must determine the fundamental obstacles that inhibit the participation of developing members in the WTO at each step of the dispute settlement process, with particular emphasis on the situation of developing Arab countries (Al Shraideh, 2010).

By reviewing the previous literature, this chapter assesses the main constraints that limit the participation of developing counties in the dispute settlement system. It also discusses and analyses the limited financial resources and lack of internal experts, which are classed among the most significant and persistent constraints against developing countries using the DSS. This chapter then highlights the aspects that are frequently observed in practice, which have been focussed on by WTO members. Other significant factors that might affect the participation of developing countries in DSS are also highlighted, and the constraints that limit the use of DSS by developing members are analysed and discussed.

Before identifying the obstacles faced by developing members trying to access the DSS, Table 3-1 indicates the number of cases involving developing Arab countries. These cases reflect the participation of the Arab countries in the dispute settlement system of the WTO (World Trade Organisation, 2018). They also summarise the results of previous studies on the non-participation of developing countries.
Table 3-1. Disputes by Arab WTO Members (Source: WTO, 2018).

<table>
<thead>
<tr>
<th>Country</th>
<th>As complainant</th>
<th>As respondent</th>
<th>As third party</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bahrain</td>
<td></td>
<td>1 case(s): DS527</td>
<td>3 case(s): DS379, DS516, DS526</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>17 case(s): DS141, DS260, DS334, DS350, DS358, DS359, DS434, DS494, DS511, DS513, DS526, DS529, DS536, DS539, DS541, DS545, DS546</td>
</tr>
<tr>
<td>Egypt</td>
<td></td>
<td>4 case(s): DS205, DS211, DS305, DS327</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jordan</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kuwait</td>
<td></td>
<td></td>
<td>1 case(s): DS379</td>
</tr>
<tr>
<td>Morocco</td>
<td></td>
<td>2 case(s): DS513, DS555</td>
<td></td>
</tr>
<tr>
<td>Oman</td>
<td></td>
<td></td>
<td>12 case(s): DS431, DS432, DS433, DS434, DS435, DS440, DS453, DS467, DS484, DS509, DS513, DS518</td>
</tr>
<tr>
<td>Qatar</td>
<td>4 case(s): DS526, DS527, DS528, DS567</td>
<td></td>
<td>3 case(s): DS484, DS493, DS518</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Saudi Arabia</td>
<td></td>
<td>2 case(s): DS528, DS567</td>
<td></td>
</tr>
<tr>
<td>Tunisia</td>
<td>1 case(s): DS555</td>
<td></td>
<td></td>
</tr>
<tr>
<td>United Arab Emirates</td>
<td>1 case(s): DS538</td>
<td>1 case(s): DS526</td>
<td>4 case(s): DS482, DS513, DS516, DS523</td>
</tr>
<tr>
<td>Yemen</td>
<td></td>
<td></td>
<td>1 case(s): DS526</td>
</tr>
</tbody>
</table>

The above table confirms three types of Arab country members: Arab countries that do not participate in dispute settlement systems (e.g. Jordan), Arab country members which participate as complainants, respondents or third parties in the DSS (e.g. Bahrain, Egypt, Kuwait, Morocco, Oman, Qatar, Saudi Arabia, Tunisia and Yemen), and countries that
participate as complainants, respondents and third parties in the DSS (e.g. United Arab Emirates).

Note that Arab developing countries participate effectively as third parties in the dispute settlement system of the WTO. The exceptions are Jordan, which does not participate at all, and Tunisia, which participates as a complainant only. Table 3-1 also shows that Arabic participation in the dispute settlement system is not limited to third-party participation, but complainant and respondent participations are low. Moreover, the number of participations varies between countries. These observations indicate that the dispute settlement system is little utilised by Arab member countries of the WTO. Later, we will link this low engagement to restrictions placed on Arab country members. The obstacles faced by Jordan, which does not participate in DSS, might differ from those of Arab countries that use the DSS to a limited extent.

A third party is any WTO member with a substantial interest in the matter before a panel, and which has notified its interest to the DSB. The third party is entitled to be heard by the panel and make written submissions to the panel. These submissions are also provided to the parties involved in the dispute and must be reflected in the panel report. If the third party considers that a measure being considered by the panel proceeding nullifies or impairs the benefits accruing to it under any covered agreement, that Member may have recourse to normal dispute settlement procedures. Such a dispute is referred to the original panel wherever possible.\(^\text{35}\)

3.2 Limitation of participation in developing countries in DSS

3.2.1 Lack of finance and experts (Human)

Various researchers have identified many challenges that restrict the participation of developing members in DSS. Among them is shortage of experts and financial resources (Al

\(^{35}\) See Article 10.2 and 4 of the DSU.
Most of the developing members do not experts in trade; instead, they consider that active trade participation increases the opportunity for their trade rights to be violated by other countries (Al Shraideh, 2010; N. Alotaibi, 2015; Anyiwe & Ekhator, 2013; Bown & Hoekman, 2005; Guzman & Simmons, 2005; Kazzi, 2015; Malkawi, 2012; McCulloch & Bown, 2010; Narlikar, 2005; Nottage, 2009; Shaffer, 2005; Torres, 2012). As such countries are less likely than developed countries to become active members of DSS, developing countries are disinclined to improve or develop the necessary human resources for dealing with DSS (Guzman & Simmons, 2005; Kazzi, 2015; Malkawi, 2012; McCulloch & Bown, 2010; Narlikar, 2005; Nottage, 2009; Shaffer, 2005). Internal specialists who can follow up the complaint are also difficult to find in developing countries (Al Shraideh, 2010; N. Alotaibi, 2015; Anyiwe & Ekhator, 2013; Bown & Hoekman, 2005; Guzman & Simmons, 2005; Kazzi, 2015; Malkawi, 2012; McCulloch & Bown, 2010; Narlikar, 2005; Nottage, 2009; Shaffer, 2005; Torres, 2012).

The complexity of the dispute settlement process, coupled with the lack of trained specialists, force developing countries to employ specialised law companies from developed countries, which are costly. African countries are one group that refrain from using the system effectively (N. Alotaibi, 2015; Bohl, 2009; Donmez, 2017; Nottage, 2009; Torres, 2012).

The shortage of financial resources affects the availability of human and legal resources in developing countries. Training programs would help experts in developing countries to improve their knowledge of DSS. Even when such programmes are available, they differ from the programmes used by the developed countries (N. Alotaibi, 2015; Bohl, 2009; Donmez, 2017; Malkawi, 2012; Nottage, 2009).
Most of the experts in developing countries are not dedicated wholly to the DSS, but perform multiple tasks (Malkawi, 2012). For instance, some experts might represent their countries in both the UN and WTO; such multiple job-tasking is much more difficult than playing a single role (Malkawi, 2012). The number of professional staff in Geneva-based WTO delegations for Arab countries is one for Djibouti and Qatar, two for Bahrain, Jordan, Kuwait, Mauritania, and Tunisia, and three for Morocco, Oman, Saudi Arabia, and the United Arab Emirates. Egypt has the largest delegation among the Arab countries, with ten professional staff members (Malkawi, 2012).

When legal experts migrate to another (possibly developed) country which offers higher salary and more incentives, the reserve of human resources in developing countries is further depleted (Al Bashar, 2009). Moreover, the dispute settlement process is costly and requires a legal expert and financial revenue (N. Alotaibi, 2015).

Another kind of cost, not related to financial cost, is political cost. For example, when the complainant member is seeking bilateral aid from the respondent, any dispute raised between the two countries risks loss of aid to the complainant member from the respondent member (Al Bashar, 2009).

The long period of the dispute settlement process through consultation, appeal and implementation, coupled with the lack of local legal experts (necessitating the hire of legal specialists from other countries), is prohibitively expensive for developing members (N. Alotaibi, 2015; Nottage, 2009). For example, “in the Cotton and Sugar Subsidies cases, Brazil hired private law firms to assist the complaints process” (World Trade Organisation, 2018). The legal fees payable by Brazil exceeded two million dollars (N. Alotaibi, 2015; Bohl, 2009; Donmez, 2017; Malkawi, 2012; Nottage, 2009).

In the consultation stage, Government officials can present a case before the panel and the AB. According to the DSU, developing members are pressured into employing specialist firms to
help them with their dispute processes. Members of these private firms charge from $200 to $600 or more per hour, and sometimes extend the dispute to improve their earnings (Abbott, 2007; N. Alotaibi, 2015; Bohl, 2009; Donmez, 2017; Malkawi, 2012; Narlikar, 2005; Torres, 2012). For example, to resolve the Kodak and Fuji photographic film disputes, Japan hired a private legal representative costing $10 million US (Schoenbaum, 1998).

Quoting Ambassador Bhatia of India, “even for large developing countries, the high cost of WTO litigation is a major deterrent for using the system”. Moreover, when a dispute in a developing country requires the input of technical experts who are unavailable in the country, the developing country member is forced to hire an external technical firm or expert, which is prohibitively expensive (N. Alotaibi, 2015; Bohl, 2009). For example, “under the DSU procedures, the disputing counterparts Australia, Brazil and Thailand expended much time in defining what amount of the sugar imported from ACP/India should be subject to export subsidies” (Matsushita et al., 2015, p. 95).

Owing to their limited financial resources, most of the developing countries lack knowledge of the WTO. Therefore, legal experts must consult various sources of relevant information (N. Alotaibi, 2015; Kazzi, 2015; Malkawi, 2012). In addition, economists should provide consultation and econometric documents that support the complaint’s evidence of the developing member (N. Alotaibi, 2015; Kazzi, 2015; Malkawi, 2012).

Lack of expertise is consolidated in Article 17.3 of the DSU, which states that “The Appellate Body shall comprise persons of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally and shall stay abreast of dispute settlement activities and other relevant activities of the WTO”, Only two Arab experts have integrated into the appellate body since 1995, confirming that Arab developing countries lack the required expertise (Malkawi, 2012, p. 13).
Moreover, when initiating a dispute, developing countries members face additional costs (non-legal expenses) such as travel and accommodation expenses (Bohl, 2009; Narlikar, 2005; Shaffer, 2005). According to Bohl (2009, p. 145) “first-class law firms fly first class and stay at first class hotels”.

The WTO agreements comprise a package of 19 multilateral agreements, understandings, and protocols. The 26,000 pages of text include concession schedules. Under such complex WTO rules, delegates of developing countries cannot follow the specific WTO developments of more than 70 different WTO councils, committees, working parties and other groups involving approximately 2800 meetings each year (N. Alotaibi, 2015; Malkawi, 2012; Shaffer, 2005).

Donmez (2017) argued that after comparing the cost of WTO litigation with the benefits from the claim, developing countries will not participate in the DSS if the cost outweighs the benefit of belonging.

Furthermore, the DSU has adopted a new appellate system with more complicated legal requirements and higher DSS-access costs than the previous system (Law Teacher, 2013). Narlikar (2005) blamed the continued lack of participation on the high cost of first participation at the panel level.

Alotaibi (2015) argued that hiring external firms from developed countries addresses the lack of legal experts in a developing country, but does not resolve other barriers, such as lack of financial resources. High cost is an especially important problem for developing counties, because of their small trade share and government budget.

Al Shraideh (2010) argued that developing members cannot push for early settlement because they lack financial and legal resources, political power, and high chances of securing trade concessions, especially at the consultation stage. This situation is exemplified in the US vs. Pakistan cotton yarn dispute. When the developing country (Pakistan) was left helpless in a
difficult situation, it requested consultations with the US regarding a transitional safeguard measure applied by the US.

Although the overall result of this dispute favoured Pakistan, it highlights the situation of developing countries at the consultation stage. Before the dispute proceeded to the litigation stage, the US imposed unilateral restrictions on Pakistan, and then ignored a recommendation by the TMB to remove the measure. When the consultation process failed, the US dragged the dispute through the panel stage and then the appellate stage, delaying its outcome for two years and eight months (from March 1999 to November 2001). The US’s actions in this dispute is arguably attributable to the significant gap between the legal and financial resources and political powers of the US and Pakistan (Al Shraideh, 2010).

It could be argued that Pakistan lacks the required financial resources and legal expertise necessary to mobilise an effective bargaining process with the US in the shadow of the complex law of the WTO agreements, and also lacks the political weight to use consultations as a pressuring device against the US. Accordingly, the US could unilaterally impose its import restricting measure without concern of the consequences. The weak situation of Pakistan might also have empowered the US to refuse the TMB’s recommendation to remove the measure. The US could well have presumed that as the dispute proceeded, Pakistan’s lack of resources would become more burdensome. Faced with substantial costs, or with loss of the case owing to poor WTO legal expertise, Pakistan might be pressured to drop the case. The US might also have presumed that if Pakistan pursued the case despite the over-burden, the lengthy dispute would grant the US some free time. During that time, the US would benefit from keeping the measure in place until the panel reached its final decision on the dispute. In fact, the US enjoyed more than two and a half years without competition from Pakistan’s textiles and clothing industry. Until the DSB’s decision was implemented in late 2001, Pakistan’s damages were totally ignored. This outcome was reflected in a statement by Pakistan’s delegate after winning the case: both parties ultimately won, Pakistan because the decision ruled in its favour, and the
US because it was able to maintain its quota restraints over almost the entire length (three years) of the dispute (Al Shraideh, 2010).

The lack of expertise and finance in developing countries affects every step of the WTO dispute settlement process (Al Shraideh, 2010). The WTO created Article 27.2 of the DSU 36 to assist developing countries with the high cost of litigation in dispute settlement proceedings, and to mitigate the lack of legal experts in those countries (Alotaibi 2015, Torres 2012). Low finances and insufficient expertise are considered as the main limitations of SDD participation by developing countries.

Article 27.2 also promises additional legal advice to developing members, and dedicates qualified legal experts to developing countries requesting technical assistance from the WTO Secretariat 37. To fulfil these duties, the secretariat assigns two legal-affairs officers to developing countries (Al Bashar, 2009), but the officers’ duties are limited to providing legal advice and illustrating the WTO laws and processes under Article 27.2 of DSU. The officers are prohibited from counselling the writing of submissions, because it is believed that legal assistance must not breach the impartiality of the secretariat (Al Bashar, 2009).

Alotaibi (2015) mentioned that legal experts cannot provide the developing member with legal assistance before the dispute is initiated in the dispute settlement proceeding. Furthermore, developing members have expressed dissatisfaction with the legal assistance provided, and the WTO Secretariat has been criticized for the quality and quantity of the help provided to them.

36 See Article 27.2 of the DSU “While the Secretariat assists Members in respect of dispute settlement at their request, there may also be a need to provide additional legal advice and assistance in respect of dispute settlement to developing country Members. To this end, the Secretariat shall make available a qualified legal expert from the WTO technical cooperation services to any developing country Member which so requests. This expert shall assist the developing country Member in a manner ensuring the continued impartiality of the Secretariat”.

37 See Article 27.2 of the DSU.
The low quantity of assistance reflects the limited number of staff in the WTO Secretariat, most of whom work part time. Developing countries have questioned even the importance of the legal advice provided (World Trade Organisation, 2018).

Al Bashar (2009, p. 69) further argued that “the language of the article itself is very broad and does not specify how such assistance could be executed in an acceptable manner”.

In summary, Article 27.2 fails to afford an effective solution to the shortage of legal expertise and the high expense of litigation proceeding in developing members.

To better help developing members with the high expense of dispute settlement proceedings and their own shortage of expertise, the WTO members have established the ACWL, an innovative nongovernmental trans-national organization which is largely funded by European governments (Abbott, 2007; Al Bashar, 2009; N. Alotaibi, 2015; Anyiwe & Ekhator, 2013; Shaffer, 2005).

The ACWL provides legal aid advice and training (a 6-month part-time course based in Geneva) on WTO law to developing country members (N. Alotaibi, 2015). This training, which is available on request, assists them in preparing and presenting their trade complainant in the WTO. Moreover, the ACWL runs an investment fund devoted to support the high cost of this expertise.

By making a broad contract with developing countries, the ACWL can play a public defender role for developing countries (Al Bashar, 2009). In this role, the AWCL functions independently from the WTO secretariat but maintains the neutrality of the WTO Secretariat. Although the AWCL is not free, the fees cover a minor part of the real cost of representing a developing member from the beginning of the dispute (consultation) until the end of the procedure (N. Alotaibi, 2015). Nevertheless, some developing countries will struggle to meet the ACWL membership fees. These countries will join the centre only when a benefit from the WTO litigation is guaranteed (Advisory Centre on WTO Law, 2015).
As stated above Abbott, (2007) and Alotaibi (2015), although the ACWL has largely addressed many of the capacity constraints, it has not mitigated the disadvantage of developing countries in the pre-consultation stage, namely, the existence of trade barriers or measures that are perceived to adversely affect the exports of the developing country member.

Anyiwe & Ekhato (2013) criticized the ACWL for its inability to provide the required non-technical inputs for developing countries involved in WTO disputes, but this issue has been addressed to a considerable extent. A technical-experts trust fund that supports the high cost of contracting technical experts has been established for developing members.

N. Alotaibi (2015) argued that the ACWL has few staff and small number of professional legal advisors. Consequently, the ACWL lacks the ability to address all cases referred to it. Another concern, which arises when a developing country brings a case against another developing member, is the ACWL’s inability to support all developing members on both sides of the dispute (Al Bashar, 2009; N. Alotaibi, 2015). For example, the ACWL rejected to assist one of the developing countries’ parties (Brazil) in the sugar issue. In this case, Brazil was dealing with a private law firm and receiving monetary support from its sugar business. Australia employed its own legal experts and Thailand relied on the ACWL. In fact, the Thai government was actively seeking representation by the ACWL. The other parties were also interested in representation by the ACWL, but were declined because Thailand had already requested its assistance. Therefore, the Thai government benefitted from the reduced litigation cost, high quality of the services provided, and expertise of the ACWL’s director. Related to this concern, only a handful of Arab countries have joined the ACWL: Oman, Jordan, Egypt, United Arab Emirates and Tunisia.

The ACWL has not addressed all obstacles to developing countries participating in the DSS. For instance, ACWL may provide legal expertise, but the high cost of the litigation process deters many Arab developing countries (Advisory Centre on WTO Law, 2015).
3.2.2 Compensation or inability to enforce ruling through retaliation

Alotaibi (2015) identified compensation as one factor that encourages developing members to enter the DSS. Compensation ensures that the DSS is regarded as beneficial by all WTO members. However, Article 3.7 of the DSU treats compensation as an interim procedure, to be granted when the “immediate withdrawal of the measure is not possible”; that is, when a developed member cannot withdraw a measure, the defendant provides compensation to the affected member to “make up for the loss suffered… from the continuation of the offending measure”.

Unequal economic power imbalance and political considerations have also hindered the ability of developing countries to claim compensation; such impositions will reduce the number of developing members participating in the DSS. Shaffer (2005) stated that the offered compensation might be insufficient for developing members, because retroactive compensation or punishment measures are unable to be awarded to developing countries for their economic losses before the DSB decision.

If the defendant member cannot or will not withdraw a measure, or continues the offending measure (i.e. does not compensate the affected country for losses incurred), the affected member can resort to retaliation, considered as the last procedure of decision enforcement by the affected country.

According to several studies the fundamental obstacle limiting the use of the DSS by developing-country members is inability to implement decisions against larger developed members who do not comply with the WTO conditions (Al Bashar, 2009; Al Shraideh, 2010; N. Alotaibi, 2015; Anyiwe & Ekhator, 2013; Kazzi, 2015; Shaffer, 2005), especially when the market size differs between the developing countries and the non-compliant WTO member. The WTO’s retaliation rules, which are based on the suspension of trade concessions or obligations, have been described as “virtually meaningless” (Bown & Pauwelyn, 2010).
The retaliation rules are criticised because members with small trade markets cannot impose adequate economic or political losses on larger members of the WTO. Therefore, they cannot enforce compliance on non-complying WTO members (N. Alotaibi, 2015). In fact, the suspension of trade concessions may prejudice the developing member. This criticism, described as the “conventional wisdom”, posits that developing countries are wasting their time and money when invoking the WTO’s dispute settlement proceedings against larger states, because the developing country has no effective way of enforcing the ruling (World Trade Organisation, 2018).

According to the WTO dispute settlement report, WTO rulings are often followed (Al Shraideh, 2010; N. Alotaibi, 2015). However, well-publicised disputes that have led to formal non-compliance actions are the Regime for the Importation, Sale and Distribution of Bananas in the European Communities (EC - Bananas III), and the salmon dispute in Australia. Article 22 of the DSU states that “the complainant member has automatic power to retaliate if the non-complying WTO member fails to comply with the recommendation and ruling within the reasonable period of implementation time”.

This retaliation procedure should be reviewed by a third party to identify the extent and the economic appropriateness of the retaliation. In addition, the legal theory of retaliation is based on the definition of reciprocity, which creates a balance of rights and obligations. Therefore, when a developing member cannot enforce the ruling and recommendation on a non-complying WTO member, the affected member can exploit the trade opportunities to gain compensation and the right to seek the removal of such a harmful measure by initiating a retaliation procedure, which incentivates the non-complying member to comply (N. N. Alotaibi, 2011).

For more information, see DS27 on https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds27_e.htm.
Retaliation is considered as “the last resort” of the affected member (Al Bashar, 2009, p. 83). Developing countries using DSS are largely hindered by the “structural inflexibility of the remedies presented to the poor nation to enforce a favourable decision” (N. Alotaibi, 2015). Moreover, when developed countries fail to comply with the recommendations of the dispute settlement proceedings, the developing members may be emboldened to adopt similarly non-compliant behaviour (N. Alotaibi, 2015).

The weakness of enforcement under the DSU has also been criticised for increasing the tensions between developed and developing countries. To alleviate these tensions, the developing members should perceive that the DSM acts in their favour (Malkawi, 2012). For example, due to weak enforcement after the banana dispute, the involved developing member lost trust in the WTO’s DSM39.

Anyiwe & Ekhator (2013) argued that most trade of developing members occurs under preferential rules that are not part of the enforceable WTO dispute settlement proceedings.

Donmez (2017, p. 51) mentioned that the retaliation procedure between members follows an “eye-for-an-eye or a “tooth-for-a-tooth” model, which does not enforce compliance with the WTO rules by the DS member, but affects the economy of the complainant party.

According to Shaffer (2005), retaliation is the primary approach for enforcing WTO rulings. The outcome of this retaliation depends on the market power of the complainant. For example, the larger developed countries can more effectively push the developing member to comply with the WTO rules than vice versa, because developing countries rely on accessing the larger market share of the developed members.

Retaliation in the DSU allows the affected member to withdraw tariff concessions offered to the non-complying WTO member (N. Alotaibi, 2015). To ensure that non-complying WTO

39 Ibid
members comply with the dispute settlement rulings, increasing the tariff on goods imported from the non-complying member is considered as the best solution. Nevertheless, the inability to enforce decisions against large members with broad economic markets is greatly limiting to affected developing members. (N. Alotaibi, 2015).

Seventeen disputes under the dispute settlement body have prompted requests for authorisation of retaliation. Among the 13 members who made these requests, 8 were developing members. Moreover, only 9 of the 17 disputes were granted retaliation rights from the DSB, and retaliatory measures were imposed in 5 of these 9 cases (N. Alotaibi, 2015).

In summary, after studying the impact of retaliation, one researcher (N. Alotaibi, 2015) concluded that retaliation is among the most significant challenges faced by developing countries desiring to participate in the DSS. The reasons for this conclusion are listed below.

Firstly, developing countries with weak market shares are unable to enforce political or economic losses on developed country members. Therefore, the larger member is not economically pressured into compliance. Secondly, the imposed retaliation could harm rather than benefit the developing country. Thirdly, developing members have limited incentives to participate in the WTO dispute settlement proceedings because they are unable to enforce the WTO rulings effectively.

Alotaibi (2015, p. 162) stated that “no one [has] found a solution for the lack of retaliation that has happened frequently in practice and has been reported by WTO member (sic) as a constraint challenge [to] developing countries using the DSS”.

Nottage (2009) considered that the retaliation rules for developing countries undermine the utility of dispute settlements, and that potential cross-retaliation deserves ongoing attention.
3.2.3 Additional obstacles limiting the participation of developing members in the WTO dispute settlement system

3.2.3.1 Politics

The participation of developing members in the DSS is also limited by fear of political and economic pressure from developed countries (Abbott, 2007; Al Bashar, 2009; Al Shraideh, 2010; Malkawi, 2012; Nottage, 2009). Developing countries are unable to counter threats from developed countries to withdraw their preferential tariff benefits, foreign aid, or food aid. As discussed earlier, lack of finance can be regarded as another kind of cost (Abbott, 2007; Al Bashar, 2009; Al Shraideh, 2010; Malkawi, 2012; Nottage, 2009).

Whether or not such pressure is applied in practice is difficult to discern. However, most of the developing countries fear that initiating a WTO dispute will lead to economically harmful consequences. This fear will adversely affect their participation.

Al Bashar (2009) stated that developing countries must consider the economic and political issues before initiating any dispute against a large developed member or when enforcing a favourable ruling incurring high political and economic cost. Also, the political influence of large members over developing members is a source of unequal power relations between the developed and developing members. For example, in the military force, most developing countries have bilateral military cooperation with large members who grant them military aid (Al Bashar, 2009).

The power of developing members within the WTO is also lower than that of developed countries, reducing their chances of winning a dispute. An example is the genetically modified organism (GMO) case of US against the EU. In this case, Egypt may have been in the same situation when it decided to solve its dispute with the EU out of court. If Egypt assisted the US in the sensitive GMO case, it would have troubled its relations with the EU. By the same token, if Egypt did not help the US, it would have soured its trade relations with the US. As a result, Egypt decided to resolve its dispute with the EU without a lawsuit. Without pressure from the
EU, Egypt might have persevered with its dispute against the EU. Both the US and Egypt expressed interest in signing the FTA, but no talks had been scheduled yet. While Egypt hoped to begin the FTA negotiations, the US was less enthusiastic, possibly because Egypt withdrew its support of the US during the Genetically Modified Organism case against the EU (Malkawi, 2012).

3.2.3.2 Duration of the DSB process

Article 3.3 of DSU states “The prompt settlement of situations in which a Member considers that any benefits accruing to it directly or indirectly under the covered agreements are being impaired by measures taken by another Member is essential to the effective functioning of the WTO and the maintenance of a proper balance between the rights and obligations of Members” (Nottage, 2009). However, the goal of promptly settling the dispute but delaying the litigation process is considered as a problematic issue in the WTO’s DSS.

Chapter Two discussed the four stages of the formal dispute process: consultation, adjudication (panel review), appeal (AB review), and compliance (implementation).

The period of the litigation process in the WTO should not exceed fifteen months from the date of adoption of a panel or Appellate Body report. However, that time may be shorter or longer, “depending upon the particular circumstances”40. This period surpasses the general rule in Article 20 of the DSU, which stipulates a maximum of nine months for the litigation stage (Nottage 2009). Furthermore, the panel proceedings must be preceded by formal consultation, which generally requires a minimum period of two months. The member can also appeal the panel report to the AB, which adds another three months to the litigation process.

40 See Article 21.3 (c) of the DSU.
Indeed, settling the dispute by the litigation process is considered to be a long process for developing country members. More complex cases may take even longer to resolve (N. Alotaibi, 2015).

Nottage (2009, p.14) noted that “delays do make the system less attractive to business and could, in the long run, lead to less and less use for the system”. This is especially true when the litigations involve small members with little capital that highly depend on annual revenues for survival.

N. Alotaibi (2015) observed that the litigation might be lengthened by both the legal and political complexity of cases. Language barriers also present a problem: when the panel or parties use different official languages, time is expended in translating the documents.

Malkawi (2012) noted another difficulty: the prolonged duration of the DS proceedings (up to five years). This protracted period will largely increase the cost for developing countries.

### 3.2.3.3 Preferential rules

A significant proportion of the trade in developing countries is based on preferential rules that cannot be enforced in the WTO’s DSS (Anyiwe & Ekhator, 2013). Specifically, if the rule is not one of the enforceable WTO laws indicated in Chapter 2 (Annex 1A, Annex1B, Annex1C, and Annex 4 A&B in Figure 2-1), that rule cannot be enforced in the rules of trade in the WTO dispute settlement proceedings.

Some of the developing countries gain access to a developed member’s markets through a preferential agreement that does not establish enforceable rights in the WTO dispute settlement proceedings (Nottage, 2009). Unsurprisingly, developing countries that trade under preferential rules are not active in the DSS.
3.2.3.4 Language

The three official languages in the WTO are English, Spanish and French (Malkawi, 2012). Countries that do not speak these official languages are linguistically disadvantaged, even when translators of their language are available for developing members. The difficulty lies in technical terms and translating highly legalistic to their language without compromising the original meanings of the words. Arab countries are faced with this difficulty, as their language is not a working language of the WTO.

3.2.3.5 Private sector attitudes

Most of the developing countries lack a domestic private sector mechanism that would reveal their trade barriers to WTO lawyers (Nottage, 2009). A government’s job is to initiate a dispute and carry a case theory to its end. Meanwhile, the private sector plays an important role in both initiating and developing the case, conducting independent investigations and contributing resources.

Furthermore, any human resources provided by the private sector can improve the Government’s cost–benefit analysis, which decides whether to bring or start a case. The private sector is also better equipped to identify harmful practices than the Government or is more familiar with the nature of the harm.

After discussing and investigating all obstacles that restrict the participation of developing members in the WTO dispute settlement system, the present research poses the following arguments:

First, most of the previous studies discuss the limitations of developing countries in general. Especially, a focus on Arab members seems to be lacking. Although some of the previously addressed limitations are applicable to Arab country members, they cannot identify all challenges limiting Arab participation in DSS.
Second, the existing studies investigated in depth the significant obstacles that challenge the participation of developing countries, such as lack of finance, low level of expertise, and barriers to retaliation. Other limitations that might be significantly restrictive for certain countries, such as culture, language, and lack of industrial support for domestic trade, were discussed in one or few publications.

Third, the previous studies identified lack of financial resources as a main limiting factor, but neglected the different financial situations of members. In fact, the economic circumstances of developing countries are quite variable. For example, Gulf countries supposedly rank among the wealthiest countries in the world, and are financially unconstrained. However, many of them are not fully participating in the DSS.

Fourth, some authors have assumed that all developing members face the same limitations to participation in the DSS, without considering their cultures, linguistics and economic differences. For example, an obstacle to Jordan is not necessarily an obstacle to Brazil.

Fifth, the previous studies posed solutions to the finance or expertise problem through the Advisory Centre on WTO Law, or by referring to Article 27.2 of the DSU. These solutions aim to reduce the high cost of the litigation process, or hire experts in developing countries. However, both solutions are impractical, and have been critiqued as discussed above. Also, if these solutions are indeed reasonable and sufficiently overcome the challenges, why have only five Arab countries (Oman, Jordan, Egypt, United Arab Emirates and Tunisia) joined this centre? Moreover, why are those countries not actively participating?

Some countries that have joined the ACWL, such as Jordan and Egypt, are not considered as rich countries like UAE and Oman. Although these countries lack financial resources, they receive financial and expertise assistance from the ACWL. Why, therefore, do these countries not participate in the DSS?
Sixth, Unlike the Gulf Arab countries, Jordan and Egypt are not oil exporters. However, this does not explain their non-participation in the DSS because oil is not covered under the WTO agreements.

Seventh, some of the previous studies identified the obstacles only from the WTO report, without considering new resources or methods. Therefore, they may not have recognised the significant primary limitations.

Eighth, some of the factors affecting developing countries in general, which were identified in the literature review, affect some Arab developing countries but are inapplicable to other Arab members, because the economic statuses and cultures differ among the countries.

Ninth, the previous studies analysed various disputes between developed and developing countries, but did not consider disputes raised between two developing countries where one or both countries were not restrained by retaliation recourses, political pressure, or some other limitation.

Finally, some existing studies have identified political pressure as a limitation that challenges the participation of developing countries in the DSS. However, some developing countries participate in the DSS despite receiving financial aid, food aid or military aid from developed countries. For example, in 2001, Pakistan received $20 billion funding from the United States following the cotton yarn dispute between the two countries.

41 For more information, see https://www.reuters.com/article/us-pakistan-usa-aid-factbox/factbox-u-s-has-allocated-20-billion-for-pakistan-idUSTRE73K7F420110421
42 For more information, See DS 129 on web, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds192_e.htm.
Chapter 4 : Research Approach

4.1 Data collection

4.1.1 Introduction

The aim of this research was to investigate in depth specific limitations that restrict the participation of Arab developing country members in WTO Dispute Settlement Proceedings. It also investigates the current practice of the WTO members.

The data for the investigation were obtained by qualitative interviewing based on understanding “the people knowledge, views, understandings, interpretation, experience and interaction which are meaningful properties of the social reality of the research questions that (are) designed to explore” (Mason, 2002).

Semi-structured open-ended data collection is regularly adopted in qualitative descriptive studies (Sandelowski, 2000). In this study, the primary data were collected in semi-structured interviews based on an interview guide, which allowed the researcher to understand the interviewees' experience and emphasises the importance of their perspective (Patton, 2002). In this way, the interviewer gains the meaning and significance of what is happening (Birmingham & Wilkinson, 2003). The interview guide lists the issues or questions to be investigated during the interview (Patton, 2002). It allows for conversational and spontaneous, yet adaptable, discussion on a specific predetermined subject (Becker, Bryman, & Ferguson, 2012), helping to acquire the trust of the interviewees and diminish any troubles or other negative emotions that might result from taking part in the study (Becker et al., 2012).

The interviewees were given the opportunity to ask any questions during the interview, and to stop or terminate the interview at any stage without any repercussions.. They were also informed that they could not answer any of the posed questions (Marshall & Rossman, 2014). One disadvantage of the interview process is that participants may hesitate to provide detailed information on a topic they have not contemplated before. To avoid this problem, all
participants were provided with an information sheet regarding the research aim, granting them time to ponder on the interview topic (See Appendix B).

4.1.2 Sampling
Qualitative descriptive studies are commonly performed on small samples (Magilvy & Thomas, 2009). As there are no conventional rules regarding the sample size of qualitative inquiries, the selected sample size of the research will depend on features such as the study purpose, the time allocated to the study, and the existing resources (Patton, 2002). The researcher selected three participants under the following criteria:

1- Arab specialist lawyers representing their countries at the WHO, who are deeply engaged with the DSS or interested in gaining knowledge about DSS (Academic).

2- Participants who are comfortable being interviewed in English.

4.1.3 Minimisation of harm to participants
Study participants must be protected from physical harm, developmental harm, loss of self-esteem, and stress (Becker et al., 2012). The participants need to perceive the consequences of the participation in this research and be informed of whom to approach when concerned about the conduct of the research (Mutch, 2013). The researcher of the present study provided the participants with a consent form (See Appendix C) and an information sheet containing the contact details of the researcher and his supervisor. The interviewer and supervisor are authority figures to whom participants can express any grievance during or after the interview. During the interview, the researcher informed the participants that they could refuse to answer any questions, and could request to end the interview session at any stage.

4.1.4 Ethical considerations
The researcher must consider "the effects of the research on participants, and act in such a way as to preserve their dignity as human beings" (Cohen, Manion, & Morrison, 2007, p. 77) whatever the specific nature of their work.
In a qualitative research, the researcher must communicate deeply with the participant when collecting data. This kind of exchange of information raises "several ethical issues that should be addressed during, and after the research had been conducted" (Thomas, 2010, p. 325). This study was approved by the AUT ethics committee on 23 May 2018 (see Appendix D) under application number 18/182. The ethics application will expire on 23 May 2021. The ethical considerations approval aims to minimise the harm to study participants, ensure informed consent, provide confidentiality and/or anonymity of the participants, and eliminate deception (Becker et al., 2012).

4.1.5 Confidentiality
In any investigation study, the privacy of the participants is of paramount importance. The subject of the present research was especially interesting to the participants, and the researcher encouraged them by guaranteeing their privacy, confidentiality and anonymity. Although the details of the participants were known to the researcher through his previous job, the confidentiality of the participants was guaranteed by replacing their real names with pseudonyms in the thesis. When signing the consent form, the interviewees were given the option to hide their names and details, but all participants willingly gave their names. The participants’ contact details were kept in a separate file to protect their privacy.

The collected data were stored on a memory stick that is retained in a secure place in the office of the researcher’s supervisor at AUT. The data will be destroyed after six years of being stored. Any data remaining on the researcher’s personal device will be removed after completion of this study. The consent forms are kept in the supervisor’s office at AUT, and will be shredded after 6 years.

4.2 Data analysis
The qualitative data collected in this research included the interviewees' responses to open-ended. These data were filed and analysed manually by coding and categorisation (Dörnyei,
The digital data were transcribed by the researcher (Cohen et al., 2007). In this research, the qualitative content was analysed inductively (Patton, 1990). The method of analysis implies to the process of identifying, coding and categorising the salient themes or repeating words appearing in the data (Patton, 1990).

Bell (2005) asserts that "coding allows you to cluster key issues in your data and allows you to take steps towards drawing the conclusion”.

Interviewees’ answers to pre-determined questions will hopefully provide an in-depth understanding of the lived experiences of people and the meanings attached to those experiences (Seidman, 2013).

These themes were closely examined to determine the findings and draw conclusions in the present research. The data were analysed by the following process (Creswell, 2014):

A. Collect the data and organise them for analysis. This stage includes transcribing the interview data.

B. Obtain a general first impression of the data provided. In this stage, the researcher read and re-read the transcripts of all interviews and interview notes, analysed the transcripts in detail, and categorised the various responses of each participant.

C. Coding the data. In this stage, the researcher sorted all data into relevant categories, assigned the main category, and separated it into two themes. Each theme was then divided into various sub-themes related to each question and the overall interview.

D. Discuss each research question based on the concerns that emerged from the data collection.

E. Qualitatively interpret the findings and results.
Chapter 5: Findings (Results) and Discussion

5.1 Introduction

This chapter aims to examine the knowledge of Arab specialists (lawyers and academics) who currently represent their countries at the WTO. It then attempts to identify the fundamental information on the main obstacles restricting the participation of Arab developing members in the WTO’S DSS. The findings of the interviews are also outlined in this chapter.

This section summarises the study results and discussion. In the thematic hierarchy, the main category was the participation of Arab country members in the dispute settlement procedures of the WTO. This main category was divided into three themes: active participation of Arab countries in the DSS, lack of participation of Arab countries in the DSS, and other issues. These themes were further divided into sub-themes.

The participants’ identities were protected by assigning the code pseudonyms EGYPT 1, SAUDI ARABIA 1 and JORDAN 1 to participants from Jordan and United Arab Emirates. The participants were asked a number of principal questions to initiate the discussion. The findings are summarised below in Figure 5-1.
The findings

Active participation

Internal WTO procedure limitations
- Lack of Arabic
- Long duration of the DSB process

External limitations
- Limited utility of retaliation due to economic imbalance in the market share
- Political pressure on Arab developing countries

Reasons for non-participation
- Oil products are not covered under the WTO agreements
- Preferential rules are not covered by the WTO
- No issues to be raised

Lack of Participation

Domestic internal limitations
- Lack of legal capacity, programs, research, brain drain
- Lack of private sector cooperation
- Weak domestic trade policy
- Cultural Attitudes

Lack of Participation

Figure 5-1. Research findings
5.2 Active participation of Arab developing members in the WTO’s DSS

The purpose of this research was to identify the most important obstacles that restrict the participation of Arab developing members in WTO’s DSS. After analysing the active participation of Arab developing countries in the DSS, the result was expected to reflect the main aim of the research.

(EGYPT 1) mentioned that the dispute settlements elicit different types of participation. In the first type, all WTO members participate in the dispute body in regular meetings to apply the rules of WTO and the covered agreements, check on the agenda items, supervise and monitor the implementation of the panel report and appellate body report, and some issues related to the selection and appointment of the AB and the panel establishment. All WTO members participate in general processes and technical procedures.

The second type of participation (as mentioned by EGYPT 1 and JORDAN 1) is the active participation of some Arab countries as third parties in the DSS, which enhances the members to improve their legal capacity and help the legal experts to understand the different causes raised in the DS, such as the Egypt dispute listed in Table 3-1. However, (SAUDI ARABIA 1) did not mention this type of participation despite his country being an active member with third-party participation in many cases.

Malkawi (2012) addressed the second type of participation, namely, that “the one area in which Arab countries have been comparatively active is in participation as third parties”. The third-party participation of Arab countries is not costly. Malkawi’s study is the only study including Arab country members of the WTO.

Other studies discuss participation by third-party representatives of developing countries in general, with no specific focus on Arab developing members. We must appreciate that developing countries frequently participate as third parties in disputes launched by other members, but the vast majority of WTO members—around 60–70 in total—have never been
involved in any dispute (Abbott, 2007). Corresponding to this observation, (EGYPT 1) reported
that approximately 50 percent of the WTO members never participate in a dispute.

Other studies disagree with the statement “The number of developing countries participating
repeatedly in the WTO disputes as third parties is very limited, and many of them have never
participated”(Al Shraideh, 2010). However, this statement has encompassed all developing
members regardless of their economic situation, and despite reviewing the dispute list that
determines the extent of a country’s participation as a third party. In the other type of
participation, Arab country members may participate as respondents or complainants in the
DSS.

My results are inconsistent with the statement "around 50% in total—have never been involved
in any dispute" (see Table 5-1), for the reasons discussed below.

<table>
<thead>
<tr>
<th>Country members in WTO</th>
<th>Non-Participation percentage in 2007</th>
<th>Non-Participation percentage in 2018</th>
<th>Number of country members participating 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>All WTO members</td>
<td>50%</td>
<td>33.5%</td>
<td>109 out of 164</td>
</tr>
<tr>
<td>Arabic country members</td>
<td>–</td>
<td>9%</td>
<td>10 out of 11</td>
</tr>
</tbody>
</table>

As indicated in Table 5-1, the WTO members participating in DSS comprised 50% of all
members in 2007. In 2018, the proportion of participating WTO members increased by 16.5%,
with 109 out of 164 countries accessing the WTO dispute settlement system as complainants,
respondents or third parties. Also, 91% of the Arabic country members have recently used the
DSS, with 10 out of 11 countries entering the system as complainants, respondents or third
parties. The only Arabic country not recently participating in the DSS is Jordan¹. Some Arab

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¹ For further information, see https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm.
developing countries have actively participated as third parties in the DSS, such as Saudi Arabia (35 cases), Oman (12 cases) and Egypt (17 cases) (World Trade Organisation, 2018). Previous studies did not distinguish between developed, developing and least developed countries. Nor did they distinguish Arab countries from other countries.

We note that most of the Arab developing members underuse the DSS, but only Jordan has completely refrained from participating. The small active involvement of Arab developing members in the WTO’s DSS is explained in the next section.

5.3 Lack of participation of Arab countries in the DSS

This main theme was divided into four sub-themes: Domestic internal limitations, internal WTO procedure limitations, external limitations, and reasons for non-participation in the DSS.

After dividing the main theme, the researcher found that most of the constraints limiting the participation of Arab developing countries are imposed by WTO member countries. The other constraints, forming a much smaller subset than the member-based constraints, are derived from dispute settlement proceedings. The constraints are discussed below:

5.3.1 Domestic internal limitations.

5.3.1.1 lack of legal capacity, programs, research, brain drain, too few representatives in the WTO, insufficient knowledge and training courses, limited awareness and lack of finance

All participants agreed that lack of legal expertise limits the incentive for Arab developing countries to use the DSS. EGYPT 1 stated that Arab countries lack awareness and knowledge about the covered agreements, appeal, DSB procedures and DSU. As well, there is a lack of research and development within the Arab region.

Participant (JORDAN 1) explained this constraint in depth, addressing the following important issues:
Participant (SAUDI ARABIA 1) agreed that lack of experts is an obstacle, but he did not discuss the problem in depth, mentioning only that one of the important challenges that face Arab developing countries is lack of expertise. To this participant, lack of legal expertise was not the most important or the main limitation.

Most of the previous studies have addressed this constraint comprehensively. Consistent with the interviewees, these studies associated the lack of legal expertise with the limited participation of Arab developing countries, but the previous studies' conclusions were drawn from developing members in general, not exclusively from Arab members (Al Shraideh, 2010; N. Alotaibi, 2015; Anyiwe & Ekhator, 2013; Bown, 2008; Guzman & Simmons, 2005; Kazzi, 2015; Malkawi, 2012; Narlikar, 2005; Nottage, 2009; Shaffer, 2005; Torres, 2012).

For the lack of finance

Participant (EGYPT 1) asserted that there is no unique economic model among Arab countries but there are different classifications of Arab countries: high-income countries such as the Gulf countries, middle-income countries, and low-income countries. However, this limitation does not affect the participation of high-income countries.

Participants (JORDAN 1) and (SAUDI ARABIA 1) agreed that this concern challenges the participation of Arab countries in the DSS, and their opinion on the Gulf countries was consistent with that of (EGYPT 1); however, they did not classify the countries into high, middle and low income-earners as (EGYPT 1) did.

(JORDAN 1) stated that cases cost Arab members millions of dollars to initiate a complaint because they need to hire an international legal firm, but this constraint is non-existent for some countries such as the Gulf countries.

Various researchers (Al Shraideh, 2010; N. Alotaibi, 2015; Anyiwe & Ekhator, 2013; Bown, 2008; Guzman & Simmons, 2005; Kazzi, 2015; Malkawi, 2012; Narlikar, 2005; Nottage, 2009;
Shaffer, 2005; Torres, 2012) have identified many challenges that restrict the participation of developing members in DSS. Among them is lack of financial resources. However, rather than classify the developing countries as EGYPT 1 did, these earlier researches generally applied the constraints to all developing countries, regardless of their income.

The above researchers paid much attention to this obstacle, and provided detailed discussions on what they considered as the most important constraint on developing countries in general. They failed to consider that some Arab countries are among the wealthiest countries in the world, and can hire any legal firm from a developed country.

In my view, when previous studies discussed the reasons for the non-participation of Arab countries in the WTO’s DSS, they did not consider the economic situation of the Arab Gulf countries, which enables them to hire a law firm. If we assume that some Arab countries have sufficient financial resources, what becomes the main barrier to participation in the dispute settlement system? Interview discussions with the participants revealed that oil products are not covered by the WTO agreements (Annex 1A, Annex1B, Annex1C, and Annex 4 A&B in Figure 2-1).

However, this cannot be the main reason for the non-participation of Arab countries in the DSS, because some Arab countries not considered as oil-exporters, such as Jordan, also under-participate in the DSS.2

If resources and oil export do not affect the participation of Arab countries in the DSS, what other factors can explain the low participation?

One possible explanation is that a significant proportion of the trade in developing countries is based on a preferential rule that cannot be enforced in the WTO decision support system (Anyiwe & Ekhator, 2013). Specifically, if the rule is not one of the enforceable WTO laws

2 For further information, see https://atlas.media.mit.edu/en/profile/country/jor/#Exports.
indicated in Chapter 2 (Annex 1A, Annex 1B, Annex 1C, and Annex 4 A&B in Figure 2-1), that rule cannot be enforced in the rules of trade in the WTO dispute settlement proceedings.

5.3.1.2 Lack of private sector cooperation

According to participant (JORDAN 1), the domestic industry does not pressure the governments of Arab developing country members to bring an action against any non-compliant country. The other interviewees did not mention this constraint, possibly because they attach low importance to the constraint, or because their countries do not consider the constraint to limit their participation in the DSS.

The private sector plays an important role in both initiating and developing the case, conducting independent investigations and contributing resources. The private sector can also improve the Government’s cost–benefit analysis by providing human resources (Malkawi, 2012; Nottage, 2009).

5.3.1.3 Weak domestic trade policy

Participant (EGYPT 1) regarded the main limitation as the weak participation of Arab countries within the general global trade. The domestic trade policy and its integration within the international trade are limiting factors. However, this constraint was not mentioned by the other interviewees, and is not found in the literature. It is therefore considered as a new challenge that restricts the participation of Arab developing members in the WTO’s DSS.

5.3.1.4 Cultural Attitudes

Arab countries prefer to settle their issues though sulh (an Arabic word meaning “resolution”) rather than through formal litigation.

In the Middle East, conflicts are traditionally resolved by an informal approach called Sulh, meaning “peace” in Arabic. This process is specifically designed to resolve conflicts between the familial clans to which the disputants belong. Although the process employs techniques
that are similar to mediation and arbitration, now used throughout the world, it differs from these practices in several major respects (Pely, 2008).

The Sulh process is an informal conflict resolution mechanism. Many different kinds of disputes can be resolved through Sulh, including business, financial and consumer conflicts, although many disputes arise from acts of violence, including murder (Pely, 2008).

Pely (2008) wrote that Sulh “stresses the close link between the psychological and political dimensions of communal life through its recognition that injuries between individuals and groups will fester and expand if not acknowledged, repaired, forgiven and transcended”.

Participant (EGYPT 1) and Malkawi (2012) mentioned that this cultural attitude limits the participation of Arab developing country members of the WTO, because other cultures prefer the litigation route. The other interviewees considered that other limitations are more important than cultural attitudes.

Like (EGYPT 1), attached importance to this limitation and added that Arab developing country members prefer sulh because it reflects the social and cultural perceptions of conflict in general.

Other researchers did not mention this limitation as a constraint on the participation of Arab developing members in the DSS, because their studies were composed in English and did not involve Arab countries as a case study. Therefore, the previous studies might be unfamiliar with the term Sulh, or might settle their disputes through standard techniques such as arbitration or mediation (Al Shraideh, 2010; N. Alotaibi, 2015; Anyiwe & Ekhator, 2013; Bown, 2008; Guzman & Simmons, 2005; Kazzi, 2015; Malkawi, 2012; Narlikar, 2005; Nottage, 2009; Shaffer, 2005; Torres, 2012).
5.3.2 Internal WTO procedures limitations

5.3.2.1 Lack of Arabic

The three official languages in the WTO are English, Spanish and French. As Arabic is not an official language of the WTO, the language barrier poses another challenge to the participation of Arab developing members in the DSS. Participant (SAUDI ARABIA 1) mentioned that in the WTO there are only three languages, and none of them are Arabic. Language is considered one of the main obstacles limiting the participation of Arab countries in the DSS, because the Arab countries are required to use the English language, which puts them at a linguistic disadvantage. Arab members have been trying for nine years to add Arabic as an official language of the WTO, but unfortunately, some procedures and negotiating are required.

The other interviewees (EGYPT 1 and JORDAN 1) agreed that language limits the use of DSS by Arabic countries, but considered that other constraints were more important.

Previous studies have also observed a problem with language barriers: when the panel or parties use different official languages, the documents must be translated, which incurs additional limitations such as long processing and high cost (N. Alotaibi, 2015).

Members who do not speak the official languages of the WTO are considered to be linguistically disadvantaged. Even when translators of their language are available, they are disadvantaged because the translator may not accurately interpret their intended meaning. Arab countries are faced with this difficulty, as their language is not a working language of the WTO (Malkawi, 2012).

Alotaibi (2015) addressed this limitation as a general problem among developing countries, but did not mention Arab countries as separate entities. If we assume that lack of Arabic in the WTO has limited the participation of Arab developing members in the DSS, we must acknowledge that not all Arab countries face this limitation, because some of them (e.g. the Gulf countries) can hire a legal firm to represent their dispute in the DSS.
Arab members of the WTO had campaigned for Arabic to be made a fourth official language of the global trade body. However, the proposal was thwarted by the heavy cost of translation, interpretation and extra printing requirements of adding Arabic to the three current official languages. Moreover, adding Arabic as an official language would probably prompt a request for Chinese and maybe even Russian, aligning the WTO’s language policy with that of the United Nations. Adding three languages would cost about 45 million Swiss francs ($43 million) each year.

5.3.2.2 Long duration of the DSB process

Participation by developing countries in DSS related to dispute settlement proceedings seem to be limited by the long period of the DSB process. Such a long process will be too costly for developing countries, and might affect small economies if the costs accumulate to the final decision (N. Alotaibi, 2015).

This limitation was mentioned by one participant (JORDAN 1), who stated that the process of DSS is very complex. The details and long period of the DS process are incurred because Arab developing members must collect the data, analyse them, and complete other procedures.

The views of (JORDAN 1) were echoed in some previous studies. This limitation is thought to constrain the participation of Arab developing countries in the DSS because delays negatively affect participants’ impressions of the system and ultimately reduce the use of the system. Therefore, the DS process aims to settle disputes within a short time (Nottage, 2009).

3 For further information, see https://www.reuters.com/article/us-trade-wto-language/arabs-push-for-arabic-to-be-official-wto-language-idUSTRE60P52H20100126.
5.3.3 External limitations

5.3.3.1 Limited utility of retaliation due to economic imbalance in the market share

When a developing member cannot enforce the ruling and recommendation on a non-complying WTO member, it can initiate a retaliation procedure. Retaliation also restricts the involvement of Arab developing country members in the DSS, for the following reasons.

A. Retaliation is virtually meaningless

Retaliation rules have been described as “virtually meaningless” because countries with small economic markets cannot suspend their trade concessions or obligations against larger developed members who do not comply with the WTO conditions (Bown, 2010).

Participant (EGYPT 1) considered that retaliation rules are not a virtually meaningless in general, because they can enforce ruling and recommendation on a non-complying WTO member, enforcing retaliation rules is based on the role of developing member in terms of international trade, the power of the developing member and its integration in the global trade. However, for some developing countries, especially Arab members, retaliation may be unhelpful and virtually meaningless because of the minimal integration within the international trade market.

Participants (JORDAN 1) and (SAUDI ARABIA 1) considered that retaliation is virtually meaningless because it is related to political issues; that is, Arab developing countries cannot apply retaliation rules because they are fearful of losing foreign aid.

These assertions are consistent with previous studies (N. Alotaibi, 2015; Footer, 2001; Nottage, 2009). The WTO’s retaliation rules, which are based on suspension of trade concessions or obligations, have been regarded as “virtually meaningless” because the trade market sizes of developing members and non-compliant developed countries are widely disparate (Footer, 2001).
I agree with the previous studies and the interviewees’ assertions that retaliation is “virtually meaningless”, but what constitutes “virtually meaningless” requires more investigation. Previous studies ignored the power of developing countries and of integration in the global trade market. They also concluded that retaliation was “virtually meaningless” to developing countries in general, although some developing countries, such as Brazil, have successfully applied retaliation. Moreover, although retaliation is not always applied against developed country members, it may be accessible to Arab developing countries.

B. Inability to impose political losses or sufficient economic pressure on larger members

When a developing member cannot enforce the ruling and recommendation on a non-complying WTO member, the affected member can seek the removal of the harmful measure. If the larger member refuses to remove the harmful measure, the developing member can impose adequate economic or political losses on the larger member.

Participant (EGYPT 1) stated that the imposition of adequate economic or political losses on larger members depends on the power of the Arab developing member and its ability to benefit from the system by integrating within the international trade. This measure is applied not only against developed members, but against one or more members of any status (developing or developed).

Participant (JORDAN 1) mentioned that imposing adequate economic or political losses on larger members is very difficult. Theoretically, Arab developing countries could impose the above measure but this is difficult in reality, because such countries depend on other members’ markets for export. Therefore, any imposed measure will hurt the developing country imposing the measure more than the larger member.
Participant (SAUDI ARABIA 1) similarly asserted that the Arab developing countries have the power to impose adequate economic or political losses on other members, but in reality, implementing this action against larger members is hindered by political pressure.

All of the previous studies investigated on this topic (Al Bashar, 2009; Al Shraideh, 2010; N. Alotaibi, 2015; Anyiwe & Ekhator, 2013; Kazzi, 2015; Shaffer, 2005) supported the opinions of the interviewees, namely, that developing countries “cannot impose adequate economic or political losses on larger members” because they have small trade markets that are vulnerable to damage. However, the above studies did not address Arab countries in particular, but treated all developing members as a general group.

5.3.3.2 Political pressure on Arab developing countries (threats to financial aid or military relations)

The participation of developing members in the DSS is limited by fear of political and economic pressure from developed countries. In particular, when Arab members initiate a WTO dispute, they risk the loss of monetary foreign aid, or food aid.

Participant (JORDAN 1) asserted that Arabic countries share intertwined relationships with the EU and US, so are reluctant to upset these countries or make them uncomfortable. For this reason, Arab developing countries do not bring action against these countries. This constraint is considered as the most significant one.

Meanwhile, (EI) stated that this challenge is the least important of the constraints. He placed the geo-political constraint at the end of the list.

Similarly, (SAUDI ARABIA 1) reported “I don’t think that the main problem limiting the participation of Arab developing countries is based on political issues” because most of the disputes are settled before initiating a dispute or before moving to the panel (consultation stage).
Previous studies (Abbott, 2007; Al Bashar, 2009; Al Shraideh, 2010; Malkawi, 2012; Nottage, 2009) echoed the opinion of (JORDAN 1). According to these studies, developing countries cannot counter threats by larger countries to withdraw their preferential tariff benefits, foreign aid, or food aid. Whether or not such pressure is applied in practice is difficult to discern. However, most of the developing countries fear that initiating a WTO dispute will lead to economically harmful consequences. This fear will adversely affect their participation. None of the above studies referred specifically to Arab countries, and none considered this constraint as more significant than the other constraints. Political pressure on Arab developing countries with small economic markets has been indirectly addressed in previous studies.

If we assume that two developing countries receiving zero aid from each other are engaged in a dispute, political limitations are absent because both countries have the same trade market share. A dispute between two Gulf countries is similarly free of political pressure (see, for example, three cases recently raised between Gulf countries4). However, if the dispute is between a Gulf country and an Arab developing country, or between a developed and a developing country, political pressure accrues because some Arab countries receive financial aid from Gulf countries.

All previous studies and interviewees agreed that any country with a small economic market, such as a developing Arab country, cannot enforce retaliation by imposing political pressure or adequate economic losses on larger members. Although small members can legally impose political and economic pressures on larger members, I argue that retaliation by this means is infeasible in practice.

All of the previous studies and participants addressed this limitation in disputes between a developed member and an Arab developing member. In a dispute between two developing

4 For further information, see cases DS526, DS527, DS528, DS567.
countries, the Arab developing member seeking retaliation can impose political and economic losses on the other developing member. Therefore, political pressure cannot be the sole factor limiting the participation of Arab developing countries in the DSS.

Some of the above limitations are applicable to Arab developing countries with small economic markets. This fact has been indirectly acknowledged in previous studies, which did not distinguish Arab developing members from other developing countries.

5.3.4 Reasons for non-participation of Arab members in the DSS

5.3.4.1 Oil products are not covered under the WTO agreements

Oil products are not covered by the WTO agreements (Annex 1A, Annex1B, Annex1C, and Annex 4 A&B in Figure 2-1). Participants (J1) and (S1) mentioned that the main exports of Arab developing countries members are oil products, which are excluded from the WTO coverage. The exclusion of oil reduces the number of problems and disputes in the WTO, and raised any dispute between countries (whether WTO members or not), thus limiting the participation of Arab developing countries in the DSS. However, EI did not mention this reason because not all Arab countries have high income or similar types of economic models. For instance, not all Arab countries export oil (an example is Jordan).

Apart from (Malkawi, 2012), mentioned oil as an important product exported by Arab developing countries that is hardly considered by the WTO. These assertions agree with (J1) and (S1), but as a limitation, the exclusion of oil from the WTO influences only the Gulf countries, and is irrelevant to other types of Arab countries that do not export oil.

This exclusion does not apply to Jordan, which does not export oil, but could easily influence the decision of major oil exporters such as the Gulf countries. Accordingly, these countries may be prevented from participating in the DSS.
5.3.4.2 Preferential rules are not covered by the WTO

Some of the developing countries gain access to a developed member’s markets through a preferential agreement that does not establish enforceable rights in the WTO dispute settlement proceedings. For example, Jordan has many preferential agreements with WTO member countries (11 Arab countries, European Union, the United States of America, (EFTA countries) which includes Switzerland, Liechtenstein, Iceland and Norway, Singapore, Canada and Turkey\(^5\)). As these preferential agreements are not covered by the WTO, Jordan will be prevented from accessing the DSS of WTO.

5.3.4.3 No issues to be raised

Some Arab developing countries may have no dispute issues to raise. This situation has not been considered by previous researchers or interviewees, but is feasible in Gulf countries with sufficient financial resources and expertise, who face no language barriers, and who are not bound by many preferential agreements.

\(^5\) For further information, see https://mit.gov.jo/Pages/viewpage?pageID=310.
Chapter 6: Conclusions and Future Research

6.1 Contributions of the Research (Strengths)

The first strength of this research is the use of a qualitative descriptive methodology, which collected in-depth information from semi-structured interviews with specialists involved in the WTO dispute settlement system. In contrast, previous studies identified the limitations that challenge the participation of developing countries in the DSS by scrutinising the WTO reports. To the best of our knowledge, no previous studies focused on Arab developing countries. This study is the first investigation of specialists from four different Arab countries: Jordan, Egypt, Saudi Arabia, and United Arab Emirates. Their individual perceptions of the constraints that deter Arab developing countries from using the DSS provide a unique perspective on the topic. The main limitations for the four Arab developing countries that were investigated were identified as geo-political pressure, weak domestic trade policy, and language. The interviewees also indicated that Arab developing countries underuse the DSS.

6.2 Limitations of the Current Work

Although this research achieved its objectives, there are some unavoidable limitations that need to be acknowledged. These limitations are listed below.

1. The sample size of the recruited subjects was small, so cannot be representative of all Arab countries. The interviewees were three specialists associated with four Arab country members of the WTO (Jordan, Egypt, Saudi Arabia, and the United Arab Emirates). As representatives from other Arab developing members were excluded, the transferability of the findings is limited.

2. Time constraints prevented the recruitment of more participants for the study, and limited the duration of the interview to approximately 40 minutes (as agreed by the participants). This timeframe was insufficient for discussing all correspondence with the participants, thereby limiting the amount of information gathered.
3. One of the participants was interviewed by telephone, preventing the researcher from understanding and interpreting the body language that often reveals unspoken issues, problems or negative feelings of the speaker.

4. Specialists in some Arab developing countries could not be readily interviewed because of tumultuous national circumstances, such as war.

6.3 Recommendations for future work
In future work, the findings of the current study could be expanded by interviewing more specialists in the dispute settlement system. As this research focused on four Arab developing countries, future studies should expand the focus and include more Arab developing countries into the pool of participants. In addition, future studies should also include the least developed Arab countries.

Finally, the current study analysed the obstacles that restrict the participation of Arab developing country members in the WTO's DSS. Future research should include discussion of potential solutions to the limitations of participation of Arab developing countries in DSS.

6.4 Conclusion
The purpose of this study was to explore in depth the challenges that restrict the participation of developing members in the WTO Dispute Settlement Proceedings. By interviewing Arab specialists, it sought to understand why Arab developing members are reluctant to use the Dispute Settlement System (DSS) process of the WTO.

This research adopted a qualitative methodology based on semi-structured interviews. The interviews were conducted in Amman, Jordan, in 2018. The interviewees were three Arab specialists in the WTO. This research was guided by four research questions: What are the constraints and obstacles (legal, economic/financial, geo-political, and cultural) that restrict the participation of Arab developing members in the DSS? Which of these constraints and obstacles are most significant from a practical viewpoint? Which are the least recognised,
acknowledged, and understood? Why do Arab developing countries hesitate to use the Dispute Settlement System (DSS) process of the WTO? Are these obstacles common to all or most Arab developing members, or do they depend on the economic situation?

The main findings of this study are summarized as follows:

**First**, Arab countries tend to under-utilise the DSS. Among the 11 Arab member countries of the WTO, Jordan alone has never participated in any dispute (see Table 5-1).

**Second**, Arab countries participate in the dispute settlement procedures of the WTO both actively and passively.

**Third**, Arab developing countries adopt different economic models. There are high-income countries such as the Gulf countries, middle-income countries, and low-income countries. Lack of finance and expertise, lack of Arabic pose no challenge to Gulf country members because they can hire any legal firm, but may obstruct the middle- and low-income countries.

**Fourth**, the interviewees differed in their perceptions of the main constraints. Geo-political pressure, weak domestic trade policy, and language were the priority constraints for Participants (JORDAN 1), (EGYPT 1) and (SAUDI ARABIA 1), respectively. The interviewees also indicated that Arab developing countries underuse the DSS.

**Fifth**, the exclusion of oil from the WTO agreements is considered as an important reason not to use DSS because oil products are the main exports of some Arab developing countries. However, this exclusion is irrelevant to countries that do not export oil.

**Sixth**, based on the responses of (JORDAN 1) participant, cultural attitudes might limit DSS access by Arab developing countries. In particular, Arab countries prefer to settle their issues though *Sulh* rather than the standard litigation route. Cultural attitudes have not been addressed in detail in the existing literature.
Seventh, retaliation can legally be enforced on developed countries, but is prohibited in practice by the small market share of Arab developing counters. Therefore, retaliation is essentially meaningless for these countries. Their situation largely differs from that of large developing countries, who are sufficiently powerful and integrated in the global trade to mobilise their retaliation rights or impose adequate economic or political losses on larger members. A developing Arab country can also mobilise retaliation on another developing Arab country with the same market share and power in the global trade.

Eighth, Arab developing countries cannot impose political pressure or adequate economic losses on larger countries without risking damage to their small trade markets, although this recourse is possible in disputes between two developing countries with the same market share and power in the global trade. Therefore, the utility of the DSS is largely diminished in disputes between a developed and a developing country. The inability to impose political and economic pressure on larger countries probably limits the participation of all Arab countries in the DSS.

Ninth, political pressure can affect any Arab country member receiving aid from another country. Regardless of whether the Arab member is disputing a developed or developing country, political pressure is expected as one of the most important limitations for Arab countries.

Tenth, if the expenses of accessing the DSS outweigh the benefits of resolving an issue, a developing country will be dissuaded from accessing the DSS. For example, if Jordan raises a dispute with another country but will accrue a loss after calculating all fees for lawyers and the litigation process, it will not raise the issue in the DSS. This situation has also not been considered in previous studies.
References


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Torres, R. (2012). Use of the WTO Trade Dispute Settlement Mechanism by the Latin American Countries Dispelling Myths and Breaking Down Barriers.


### Appendix A: List of Members and Observers

<table>
<thead>
<tr>
<th>Members</th>
<th>Membership Date</th>
<th>Members</th>
<th>Membership Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>29-Jul-16</td>
<td>Dominica</td>
<td>1-Jan-95</td>
</tr>
<tr>
<td>Albania</td>
<td>8-Sep-00</td>
<td>Dominican Republic</td>
<td>9-Mar-95</td>
</tr>
<tr>
<td>Angola</td>
<td>23-Nov-96</td>
<td>Ecuador</td>
<td>21-Jan-96</td>
</tr>
<tr>
<td>Antigua and Barbuda</td>
<td>1-Jan-95</td>
<td>Egypt</td>
<td>30-Jun-95</td>
</tr>
<tr>
<td>Argentina</td>
<td>1-Jan-95</td>
<td>El Salvador</td>
<td>7-May-95</td>
</tr>
<tr>
<td>Armenia</td>
<td>5-Feb-03</td>
<td>Estonia</td>
<td>13-Nov-99</td>
</tr>
<tr>
<td>Australia</td>
<td>1-Jan-95</td>
<td>Eswatini</td>
<td>1-Jan-95</td>
</tr>
<tr>
<td>Austria</td>
<td>1-Jan-95</td>
<td>European Union (formerly EC)</td>
<td>1-Jan-95</td>
</tr>
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<td>1-Jan-95</td>
<td>Fiji</td>
<td>14-Jan-96</td>
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<td>1-Jan-95</td>
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<td>Gambia</td>
<td>23-Oct-96</td>
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<td>22-Feb-96</td>
<td>Georgia</td>
<td>14-Jun-00</td>
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<td>Germany</td>
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Appendix B: Participant Information Sheet

Participant Information Sheet

Date Information Sheet Produced:
05/04/2018

Project Title:
World Trade Organization (WTO) dispute settlement and Arab developing countries: problems and potential solutions.

An Invitation:
(Attached)

What is the purpose of this research?
The participants of the research will be provided with an opportunity and platform to voice their concerns related to the main reasons of limit the participation of Arab countries in the dispute settlement procedures. Moreover, share with them the significant potential solutions for tackling the constraints on Arab developing countries' participation in WTO dispute settlement proceedings.
The researcher will gain deeper insights for his teaching practice. He will also get his master’s degree in law and it will help him to get more knowledge about DSS. Moreover, it will be useful for him in his work as he is working in foreign trade policy department at the Ministry of trade in Jordan.
it will help those who are interested about the dispute settlement; the main reasons that limit the participation of Arab countries in DDS and share with them how to use those obstacles to find solutions and improve their knowledge. Research finding may be used for the legal academic publications and presentations.

How was I identified and why am I being invited to participate in this research?
The participants are Arab specialists in WTO who are working at WTO as representatives of their countries (officials) and with lawyers who deal deeply with disputes settlement procedures or who are interested in gaining more knowledge about DSS (academics).
The criteria used to choose who to invite as participants are the experience of the participants in the practice of dealing with WTO dispute settlement cases.
It is unlikely to arise that there are many participants agree to participate in this study more than I need because there are not too many people who are experienced in WTO dispute settlement involving developing Arab countries.
The researcher will contact the Jordanian Ministry of Trade, where he used to work. The researcher also will approach the Directors of the Jordanian Department of Foreign Trade Policy to explain the importance of the research he is doing and ask them about the possibility of conducting interviews with Jordanian experts in the WTO and the researcher will collect contact details of potential participants from the Directors of the Jordanian Department of Foreign Trade Policy because this department is the focal point between the Jordanian government and the WTO.

How do I agree to participate in this research?
Potential participants will be emailed Information Sheet and Consent Form with full details of the research. The researcher will mention the key points prior to the commencement of the interview session and will have to sign a hard copy of it at the beginning of the interview session.

What will happen in this research?
The research is seeking to highlight and evaluate the potential solutions that would remedy the constraints which limit developing countries' participation in WTO dispute settlement proceedings. Ultimately, it might help to formulate solutions to the problems identified. To achieve this, the research will employ interviews with specialists...
in this field. The interviewees' values, practices, and beliefs will be respected throughout the study by welcoming them and keeping all names anonymous.

The participants will share fundamental information about the main constraints that limit the participation of Arab developing countries in WTO’s DS3 and evaluate potential solutions that might alleviate constraints. The participants' role will be limited to providing information not otherwise publicly available in the primary and secondary literature.

**What are the discomforts and risks?**

The level of discomfort should be minimal, and this research poses no risks to the participants.

**How will these discomforts and risks be alleviated?**

In any case, it will be made clear to the participants that they do not need to answer any questions they find uncomfortable.

The participants do not need to answer a question that they may find uncomfortable, or they may terminate an interview or their participation in the research. To encourage a collegial atmosphere, refreshments will be offered after the face to face interviews. The confidentiality of the participants is paramount and every effort will be made to ensure that they will not be identified.

**What are the benefits?**

The researcher will gain deeper insights for his teaching practice. He will also get his master's degree in laws and it will help him to get more knowledge about DSS. Moreover, it will be useful for him in his work as he is working in foreign trade policy department at the Ministry of Trade in Jordan.

**How will my privacy be protected?**

Recordings of each interview will be shared with the relevant participant. To protect participants' identities, the consent form will give participants the option of being cited anonymously in the thesis (participants who choose this option will be assigned code names/pseudonyms during data analysis). The primary researcher will ensure confidentiality by sharing the information participants provide only with his supervisors during the data analysis stage. Participants should be on equal footing with the primary researcher and their personal and cultural beliefs will be taken into account. No power imbalance between the participants and the primary researcher is foreseen.

**What opportunity do I have to consider this invitation?**

The participants will have two weeks to reply with the suitable time and date for the interviews. Time options for interviews meetings will be provided.

**Will I receive feedback on the results of this research?**

Participants who request to see the results of the research will be sent a copy of the thesis via email.

**What do I do if I have concerns about this research?**

Any concerns regarding the nature of this project should be notified in the first instance to the Project Supervisor, Amy Benjamin, amy.benjamin@aut.ac.nz, +642921 9999 Ext 5356.

Concerns regarding the conduct of the research should be notified to the Executive Secretary of AUTEC, Kate O'Connor, ethics@aut.ac.nz, +642921 9999 Ext 6038.

**Whom do I contact for further information about this research?**

You are also able to contact the research team as follows:

**Researcher Contact Details:**

Adel Shunaq, adel_shunaq@yahoo.com

**Project Supervisor Contact Details:**

Amy Benjamin, amy.benjamin@aut.ac.nz

Approved by the Auckland University of Technology Ethics Committee on the date final ethics approval was granted, AUTEC Reference number type the reference number.
Appendix C: Consent Form

Consent Form

Research title: World Trade Organization (WTO) dispute settlement and Arab developing countries: problems and potential solutions.

Project Supervisor: Amy Benjamin
Researcher: Adel Shannaq

We respect your privacy. No names will be collected during this study. Please tick when you have read the following:

- I have read and understood the information provided about this research project in the Participant Information Sheet dated 05.04.18
- I have had an opportunity to ask questions and to have them answered.
- I understand that the voice record will be used for academic purposes only and will not be published in any form outside of this research without my written permission.
- I permit the researcher to use voice record that is part of this research solely and exclusively for the researcher’s study.
- I understand that notes will be taken during the interviews and that they will also be audio-taped and transcribed.
- I understand that I may withdraw any information that I have provided for this research at any time prior to completion of data collection, without being disadvantaged in any way.
- If I withdraw, I understand that while it may not be possible to destroy all records of which I was part, the relevant information about myself will not be used.
- I agree to take part in this research.
- I agree to use my actual name and position in this research (please tick one): Yes O No O
- I wish to receive a copy of the report from the research (please tick one): Yes O No O

Participant’s signature: 

Participant’s name: 

Date: 

Participant’s Contact Details (if appropriate):

email: 

phone: 

Approved by the Auckland University of Technology Ethics Committee on, type the date on which the final approval AUTEC Reference number type the AUTEC reference number

Note: The Participant should retain a copy of this form.
Appendix D: Ethics Approval

23 May 2018

Amy Benjamin
Faculty of Business Economics and Law

Dear Amy

Re Ethics Application: 18/182 World Trade Organisation (WTO) dispute settlement and Arab developing countries: problems and potential solutions

Thank you for providing evidence as requested, which satisfies the points raised by the Auckland University of Technology Ethics Committee (AUTEC).

Your ethics application has been approved for three years until 23 May 2021.

Non-Standard Conditions of Approval

1. Disclose primary researcher’s affiliation in the Ministry of Trade in the Information Sheet.

Non-standard conditions must be completed before commencing your study. Non-standard conditions do not need to be submitted to or reviewed by AUTEC before commencing your study.

Standard Conditions of Approval

1. A progress report is due annually on the anniversary of the approval date, using form EA2, which is available online through http://www.aut.ac.nz/researchethics.

2. A final report is due at the expiration of the approval period, or, upon completion of project, using form EA3, which is available online through http://www.aut.ac.nz/researchethics.

3. Any amendments to the project must be approved by AUTEC prior to being implemented. Amendments can be requested using the EA2 form: http://www.aut.ac.nz/researchethics.

4. Any serious or unexpected adverse events must be reported to AUTEC Secretariat as a matter of priority.

5. Any unforeseen events that might affect continued ethical acceptability of the project should also be reported to the AUTEC Secretariat as a matter of priority.

Please quote the application number and title on all future correspondence related to this project.

AUTEC grants ethical approval only. If you require management approval for access for your research from another institution or organisation then you are responsible for obtaining it. If the research is undertaken outside New Zealand, you need to meet all locality legal and ethical obligations and requirements. You are reminded that it is your responsibility to ensure that the spelling and grammar of documents being provided to participants or external organisations is of a high standard.

For any enquiries, please contact ethics@aut.ac.nz

Yours sincerely,

Kate O’Connor
Executive Manager
Auckland University of Technology Ethics Committee