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Iraq Back on Track: The Case for Expediting WTO Accession of "Fragile and Conflict Affected" ("FCA") Countries

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Iraq Back on Track: The Case for Expediting WTO Accession of “Fragile and Conflict Affected” (“FCA”) Countries

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ABSTRACT:

This paper advocates that the World Trade Organization (“WTO”) should revise the accession process for countries classified by the World Bank as “Fragile and Conflict Affected” (“FCA”), in order to expedite the accession timeline and allow more expansive concessions, transition times, and technical assistance, similar to the terms of accession currently applied to Least Developed Countries (“LDCs”). Specifically, WTO should permit FCA countries recovering from crisis, genocide, natural disaster, or other severe unrest, to take advantage of the more flexible “special and differential treatment” accession provisions typically accorded to LDCs in the existing WTO system, while also providing enhanced “trade-related technical assistance” (TRTA) programming to such FCA countries to speed their accession process. This paper describes the WTO accession challenges faced by Iraq as a case study in why expediting WTO membership of FCAs is a critically important way to help such countries attract new investment and encourage economic growth and diversification of economies that tend to rely heavily in single commodities such as oil.

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Introduction

In ancient times, the Mesopotamian valley between the Tigris and Euphrates rivers served as a cradle of civilization and grew into a center of commerce and culture at the intersection of strategic international trade routes. Today, in that same location, the Republic of Iraq stands at a geographic and historic crossroads, with the hope of once again being able to actively engage in international commerce, including seeking accession to the World Trade Organization as part of that re-engagement process. Unfortunately, such efforts have been severely hampered by a series of chaotic transitions following the U.S. invasion and ouster of Saddam Hussein in 2003. The country has since confronted a whole series of seemingly insurmountable challenges, including:

- A lengthy occupation by U.S. forces, the end of international economic sanctions, and the protracted process of approving a

constitution and forming a new democratically elected government, with the political balance of power shifting from Sunni to Shia.¹

□ Following withdrawal of U.S. forces in 2011, mismanagement of the government's relations with key Sunni factions ushered in the resurgence of the Islamic State in Iraq and Syria (ISIS), which had taken control of a third of the country by mid-2014. The rise of ISIS in turn led to the formation of a wide range of armed militia groups and further deterioration of security.²

□ Between 2015 and 2017, Iraqi security forces, Kurdish Peshmerga forces and the Popular Mobilization Forces (PMF)—backed by airpower provided by U.S.-led multilateral coalition—gradually retook the territory from ISIS in a series of military initiatives.³

□ Once the government regained control over all Iraqi territory in 2018, fragile coalitions of various political factions led to the formation of a new national government that at first seemed stable and brought hope for progress on several fronts. Ultimately, the new government was unable to deliver on the policies and reforms most desired by the Iraqi population, leading to a series of protests that increased in size and intensity by late 2019, and the backlash from government forces and armed groups left more than “20,000 people injured and more than 450 killed.”⁴

□ The onset of the COVID-19 pandemic in early 2020 hit Iraq especially hard.⁵ Large spikes in cases by late 2020 and early 2021 left hospitals unable to cope,⁶

and in April 2021, a massive fire caused by exploding oxygen tanks engulfed the largest hospital treating COVID patients in Baghdad, killing 82 and devastating the facility.⁷

¹ See Sarhang Hamasaeed & Garrett Nada, *Iraq Timeline: Since the 2003 War*, U.S. INST. PEACE (May 29, 2020), <https://www.usip.org/iraq-timeline-2003-war> [https://perma.cc/BHJ5-XEQ6].

² See *id.*

³ See *id.*

⁴ See *id.*

⁵ See ‘Dire Consequences’: Iraq Issues COVID Warning After Record Cases, ALJAZEERA (Apr. 9, 2021), <https://www.aljazeera.com/news/2021/4/9/iraq-issues-covid-warning-after-record-cases> [https://perma.cc/5MXL-56Z9].

⁶ *Iraq Hospitals fear ‘Losing Control’ as Coronavirus Cases Surge*, ALJAZEERA (Sept. 5, 2020), <https://www.aljazeera.com/news/2020/9/5/iraq-hospitals-fear-losing-control-as-coronavirus-cases-surge> [https://perma.cc/BY2Q-EPXA].

⁷ *Iraq Covid Hospital Fire: 82 Dead After ‘Oxygen Tank Explodes’*, BBC NEWS

As seen above, Iraq now faces massive challenges for rebuilding its legal and economic institutions and infrastructure internally, while re-engaging with regional and multilateral trading partners externally. The conditions in Iraq since 2003 have led the World Bank to formally classify Iraq as a “Fragile and Conflict Affected” (“FCA”) country each year since 2006, when the FCA designation and criteria were first established.⁸ While the WTO is not currently bound by World Bank classifications of countries as FCA, this paper argues that the WTO process should formally provide “special and differential treatment” including streamlined accession processes and more flexible transition periods and conditions for “FCA” countries in the accession process, similar to that provided to developing and least developed countries. The WTO has shown an increasing interest in providing special assistance to FCA countries since 2017, when the “Trade for Peace” initiative was launched at the 11th WTO Ministerial Conference in Buenos Aires.⁹ This initiative is in very early stages, and thus far Iraq and several other FCA countries seeking WTO admission have not participated, as the benefits of the program remain unclear. The purpose of this paper is to provide actionable recommendations regarding how Iraq can strategically leverage its World Trade Organization (WTO) accession process as an initial framework for organizing efforts to rebuild its institutions and lay the groundwork for increased trade and investment, and how the WTO system can formally apply existing “special and differential treatment” to FCA countries such as Iraq to make the accession process easier.

(Apr. 25, 2021), <https://www.bbc.com/news/world-middle-east-56875804> [<https://perma.cc/KGW9-URAM>].

⁸ See *FCS Lists from FY06 to FY21*, WBG, <https://thedocs.worldbank.org/en/doc/b72adf78c2434c6980510d3aec9c65a1-0090082021/original/FCSList-FY06toFY21.pdf> (providing comprehensive list of fragile and conflict-affected situations from 2006 to 2021) (last visited Sept. 13, 2021); see also *Classification of Fragile and Conflict-Affected Situations*, WORLD BANK, <https://www.worldbank.org/en/topic/fragilityconflictviolence/brief/harmonized-list-of-fragile-situations> [<https://perma.cc/6Y4P-ZCYB>] [hereinafter *FCA Classifications*] (providing a list of fragile and conflict-affected situations for FY22) (last updated Jul. 01, 2021). See generally *Revised Classification of Fragility and Conflict Situations for World Bank Group Engagement*, WBG (supplying details on current process for classification of Fragility and Conflict Situations) (last visited Sept. 13, 2021).

⁹ See *Accessions: Trade for Peace Programme*, WTO, https://www.wto.org/english/thewto_e/acc_e/tradeforpeace_e.htm [<https://perma.cc/F2AN-7FWD>] (last visited Aug. 18, 2021).

A. Organization of this Paper

Part I of this paper addresses why countries choose to join the WTO, including an overview of steps in the WTO accession process. Part II addresses the challenges facing Iraq in pursuing WTO accession, as well as providing strategic recommendations for Iraq and other “FCA” countries in negotiating their protocols of accession. Finally, Part III argues that the WTO should formally extend to “FCA” countries seeking to join the WTO a form of “special and differential treatment” similar to that accorded least developed countries (“LDCs”), given that “FCA” countries face special challenges and thus need substantial flexibility and technical assistance in formulating their protocols of accession.

B. Timeliness and Relevance of Iraq as a Case Study in Accession of FCA Countries

This paper addresses timely and important issues in WTO and international trade law. The challenges faced by Iraq following long periods of conflict, civil strife, and instability are also directly relevant to other countries in the region and beyond that are actively seeking to join the WTO (e.g., Lebanon, Libya, Yemen, Syria, Somalia, and Sudan). Indeed, of the 23 countries currently seeking WTO accession, approximately half of them are classified as FCA by the World Bank Group.¹⁰ A total of nine Least Developed Countries (LDCs) have joined the WTO since 2004. Four Arab countries (the Kingdom of Jordan, the Sultanate of Oman, the Kingdom of Saudi Arabia and Yemen) have acceded to the WTO since its establishment in 1995.¹¹ Since that time, the Arab region has become an even more important focus area for WTO accession reforms, given that a total of eight Arab countries are currently in the process of accession (Algeria, Comoros, Iraq, Lebanese Republic, Libya, Somalia, Sudan and Syrian Arab Republic), accounting for more than one third of all on-going WTO accessions.¹²

Finally, this paper also seeks to fill a substantial gap in the

¹⁰ See *WTO Accessions*, WTO, https://www.wto.org/english/thewto_e/acc_e/acc_e.htm (last visited Nov. 6, 2021); see also *FCA Classifications*, *supra* note 10.

¹¹ See *High-Level Regional Dialogue on WTO Accessions for the Arab Region*, WTO, https://www.wto.org/english/thewto_e/acc_e/highlevelaccarreg2020_e.htm (last visited November 7, 2021).

¹² *Id.*

literature on WTO accession. While existing WTO literature addresses the pitfalls and benefits of WTO accession for developing countries generally, this paper specifically argues that the WTO should extend special treatment to “FCA” countries, similar to the special “Guidelines for Accession of Least Developed Countries” that were adopted by the General Council in December 2002, in order to facilitate and accelerate the accession of war torn countries in support of their economic reconstruction and reform efforts. Even those FCA nations that are not already considered to be “developing countries” or “least developed countries” arguably face even greater challenges to joining the WTO and engaging peacefully in international commerce than those typically faced by developing countries. Thus, they should be accorded at least as much special and differential treatment as is already available to developing and LDCs under the WTO system.

PART I: The WTO Accession Process and Trends

There are a variety of reasons why countries may seek to join the WTO multilateral trading system. The most relevant rationales to each applicant country may vary depending on the level of development, geographic considerations, the structure of domestic legal/political systems, regional dynamics, infrastructure, technical capacity, and key domestic sectors likely to be affected by trade liberalization. Nevertheless, proponents of the WTO system have traditionally pointed to many of the following benefits as key reasons for seeking WTO membership:

- Lowering tariff and non-tariff barriers, thereby improving access to foreign markets, which results in higher exports, and increased domestic employment in export industries;
- Attracting greater foreign investment to increase domestic employment and economic growth;
- Improving competitiveness of domestic industries over the longer term;
- Providing a “seal of approval” for domestic trade and economic regulations that is widely recognized by the international business community;
- Gaining access to a predicable rules-based system with internationally recognized standards;
- Gaining access to the WTO dispute-settlement process as a means of holding trading partners accountable on an equitable basis;

- Signaling a country's commitment to joining the international community of market-based economies applying transparent internationally accepted rules;
- Making a wider selection of goods and services available at a lower cost;
- Gaining technical assistance and capacity building, especially for developing countries and small to medium sized enterprises (SMEs) so that they can participate more actively in the international trading system.

While many WTO member countries have experienced some of the above benefits, there continues to be a significant gap between the trade-related economic gains seen by developed countries as compared to developing and least developed nations.¹³ A growing number of economists and scholars have questioned whether multilateral trade has provided substantial measurable benefits to developing countries, or whether the system tends to promote the interests of developed countries at the expense of the developing world.¹⁴ Indeed, despite more than 10 years of talks, the current Doha round of WTO negotiations has been repeatedly on the verge of complete collapse, reflecting the ongoing impasse over establishing consensus on the "Doha Development Agenda" ("DDA").¹⁵ In turn, this lack of progress on the agenda for better integrating existing developing country members of the WTO into the trading system has dampened the enthusiasm of some developing countries who are not yet WTO members for actively pursuing accession. In short, the lack of progress in the current WTO negotiating round has led some to call into question whether the "price" of WTO membership has become too steep for developing countries. The sections below outline which countries are seeking accession to the WTO and provide an overview of the

¹³ See Todd L. Allee & Jamie E. Scalera, *The Divergent Effects of Joining Int'l Orgs.: Trade Gains and the Rigors of WTO Accession*, 66 INT'L ORG. 243, 265 (2012) (finding that countries have been through different WTO accession processes, and have experienced highly differential benefits from WTO membership). See generally ROBERT E. HUDEC, *DEVELOPING COUNTRIES IN THE GATT LEGAL SYSTEM* (Cambridge Univ. Press 2011) (providing background on the differences between developed and developing countries' trade-related gains).

¹⁴ See Allee & Scalera, *supra* note 13, at 266. See generally HUDEC, *supra* note 13.

¹⁵ See WILL MARTIN & AADITYA MATTOO, *UNFINISHED BUSINESS? THE WTO'S DOHA AGENDA 1* (WORLD BANK 2011).

accession process, before turning more specifically to the accession experience and challenges facing Iraq.

A. Countries Currently Seeking WTO Accession

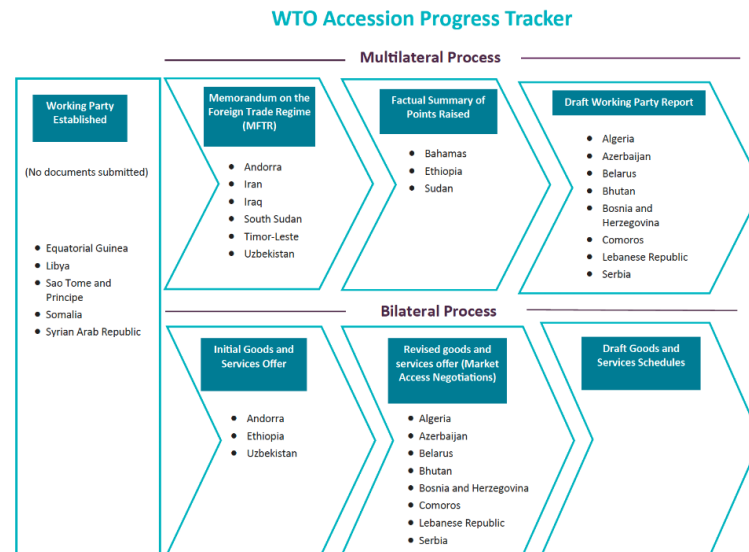
As of this writing, the United Nations consists of 193 Member States,¹⁶ while as of October 2021 the World Trade Organization consists of 164 Members,¹⁷ meaning that there are a total of 29 U.N. member states that are not currently members of the WTO. Of those, a total of 25 are currently listed as WTO “Observer governments” seeking accession to the WTO.¹⁸ As of February 2020, the 23 countries identified in 2021 WTO Accessions Map and Progress Tracker Chart below were still in the process of seeking accession

¹⁶ See *Member States*, U.N., <https://www.un.org/en/about-us/member-states> and <https://www.un.org/en/about-us> [<https://perma.cc/LXC4-Z4PG>] (last visited Nov. 8, 2021).

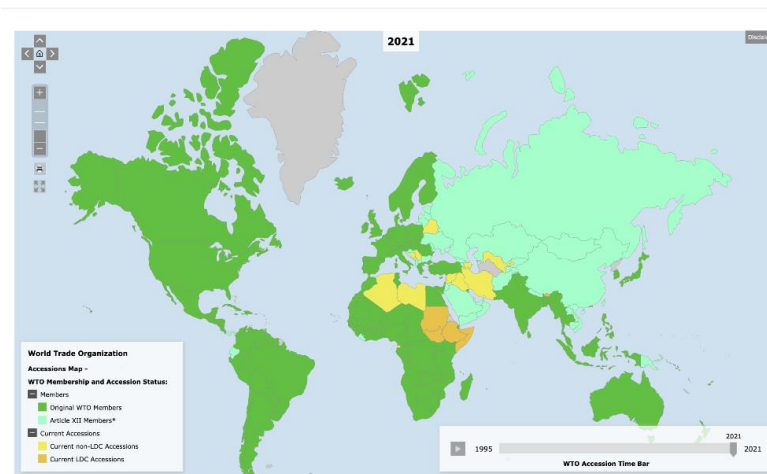
¹⁷ See *Members and Observers*, WTO, http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm [<https://perma.cc/B8ND-43VP>] (last visited Aug. 18, 2021). See also, Cimino-Issacs, C. and Fefer, I., Congressional Research Service (CRS) Report, “World Trade Organization: Overview and Future Direction” (Oct. 18, 2021) <https://sgp.fas.org/crs/row/R45417.pdf> (last visited Nov. 8, 2021). The Russian Federation had the longest accession process to date of any WTO member, at nearly 19 years, given that its accession application was filed and Accession Working Party was established in June 1993. See *Russian Federation*, WTO, http://www.wto.org/english/thewto_e/acc_e/a1_russie_e.htm [<https://perma.cc/6LCK-492G>] (last visited Aug. 18, 2021). Multilateral negotiations have been completed on the Russian Protocol of Accession, and Russian membership in the WTO is expected to be finalized by August 2012 with final domestic ratification of the accession protocol by the Russian Parliament, according to Russian Prime Minister Dmitry Medvedev. See *Russia to Enter WTO in Early August: Prime Minister*, WTO CENTER (June 11, 2012), <https://wtocenter.vn/chuyen-de/1891-russia-to-enter-wto-in-early-august-prime-minister> [<https://perma.cc/UPQ8-WKJM>]

¹⁸ See *Members and Observers*, *supra* note 17.

to the WTO.¹⁹



WTO accessions map



¹⁹ See Dimitar Bratanov, *Overview of Accessions*, WTO (July 3, 2020); see also WTO, “Technical Note on the Accession Process: State of Play and Information on Current Accessions,” WT/ACC/11/Rev.10 (Feb. 28, 2012). (Note: a * symbol next to a country name in this chart indicates that the WTO Accession Working Party has completed its mandate and the Accession Package has been approved by the General Council or the Ministerial Conference. The Acceding Government will become a Member of the WTO 30 days after notifying the Secretariat of the domestic ratification of its Accession Package). See *WTO Accessions Newsletter*, WTO, Aug.—Sept. 2019, at 8-9.

*B. Iraq and Other Arab Nations Have Faced Greater
Obstacles Than Most Countries in Seeking to Join WTO*

Historically, Iraq and many other Arab countries have potential to generate significant national income from optimizing trade in their oil resources while also seeking to diversify their economies. Yet, most nations in the region have struggled mightily in trying to become active participants in multilateral trading systems. From the birth of the GATT in 1947 until 1993, few Arab countries have joined the GATT-type multilateral trading system.²⁰ Like many other developing countries, Arab countries, after the end of colonialism, called for a new world economic order that would take their development needs into account.²¹ Thus, the United Nations Conference on Trade and Development (UNCTAD) was born. The UNCTAD was set up as a permanent organ of the U.N General Assembly in 1964, and it meets every four years.²²

The above WTO multilateral and bilateral negotiating steps reflected in the charts above have become increasingly lengthy, onerous, and complex for any country seeking to join the WTO, let alone for a country such as Iraq that remains plagued with civil strife

20 Bashar H. Malkawi, *Anatomy of the Case of Arab Countries and the WTO*, ARAB LAW Q. 111,111 (2006) (“Egypt, Kuwait, Morocco, Mauritania, and Tunisia were the only countries to join the GATT 1947. For example, Egypt and Tunisia first acceded to the GATT provisionally. Provisional accession means that the GATT contracting parties extend the GATT rights, including tariff concession, to acceding countries if the latter reciprocate. However, acceding countries did not have a direct right regarding tariff concessions negotiated prior to their accession to the GATT. In other words, acceding countries were not entitled to compensation in case tariff concessions were withdrawn.”).

21 The main reason developed nations did not want to join the GATT system was because of the doctrine of reciprocity embedded within. The doctrine of reciprocity obliges countries to reciprocate their concessions. See Adeoye Akinsanya & Arthur Davies, *Third World Quest for a New Int’l Econ. Order: An Overview*, 33 INT’L. & COMP. L. Q. 208, 209 (1984); see also G.A. Res. 3102 (S-VI), at ¶ 4(n) (May 1, 1974) (“The new international economic order should be founded on full respect for . . . preferential and non-reciprocal treatment for developing countries, wherever feasible, in all fields of international economic co-operation whenever possible.”).

22 See *History*, U.N. CONF. ON TRADE & DEV., <https://unctad.org/about/history> [<https://perma.cc/G9EN-RUKM>] (last visited Sept. 10, 2021) (UNCTAD held its first meeting in 1964 in Geneva, Switzerland.); see also Kelé Onyejekwe, *Int’l Law of Trade Preferences: Emanations from the Eur. Union and the U.S.*, 26 ST. MARY’S L.J. 425, 446-448 (1995) (The foundation of the new international economic order movement was the theory of “structuralism,” which called for a fundamental realignment of the international order to correct deep imbalances between developed and developing countries that would, if uncorrected, perpetuate underdevelopment.).

and whose government does not have the resources and technical understanding to navigate the above steps. Therefore, to understand why the above accession steps are particularly challenging for FCA countries such as Iraq, it is important to understand more about the WTO accession process, and how it has become more complex in recent decades.

C. Increasing Complexity of Accession Process from GATT to WTO

Putting the WTO accession process into a historical perspective helps to place into context why Iraq would seek to join the WTO, and some of the specific challenges the country is likely to face during the process. Membership in the WTO has grown substantially in the years since October, 1947 when 23 countries first signed the General Agreement on Tariffs and Trade (the GATT), which came into effect January 1, 1948.²³ As of this writing, WTO membership has risen to 164 member countries, with an additional 25 countries having “observer status,”²⁴ meaning they are in various stages of negotiating their proposed accession to the WTO.²⁵ It is important to note that not all of these 164 countries

²³ See Press Release, WTO, Fiftieth Anniversary of the Signing of the General Agreement on Tariffs and Trade (Oct. 27, 1997) (on file with author) (noting that the original 23 GATT signatories included: Australia, Belgium, Brazil, Burma, Canada, Ceylon, Chile, China, Cuba, Czechoslovakia, France, India, Lebanon, Luxembourg, Netherlands, New Zealand, Norway, Pakistan, Southern Rhodesia, Syria, South Africa, United Kingdom and the United States. The first Session of the Contracting Parties was held from February to March, 1948 in Havana, Cuba) [hereinafter Fiftieth Anniversary].

²⁴ The thirty countries currently in the WTO accession process (listed by original date of application) include the following: Algeria (1987), Russian Federation (1993), Belarus (1993), Sudan (1994), Uzbekistan (1994), Seychelles (1995), Vanuatu (1995, negotiations concluded in 2001, accession expected to be finalized in 2011), Kazakhstan (1996), Iran (1996), Azerbaijan (1997), Andorra (1997), Lao People's Democratic Republic (1997), Samoa (1998), Lebanese Republic (1999), Bosnia and Herzegovina (1999), Bhutan (1999), Yemen (2000), Bahamas (2001), Tajikistan (2001), Ethiopia (2003), Libya (2004), Iraq (2004), Afghanistan (2004), Republic of Serbia (2004), Republic of Montenegro (2004), Sao Tomé and Príncipe (2005), Union of the Comoros (2007), Equatorial Guinea (2007), Liberia (2007). Syria (2001) (Syria still waits for a General Council decision on its requested application.). See *Summary Table of Ongoing Accessions*, WTO, http://www.wto.org/english/thewto_e/acc_e/status_e.htm [https://perma.cc/S8X3-QGHP] (last updated Mar. 2020); see also *Members and Observers*, *supra* note 17.

²⁵ See *Members and Observers*, *supra* note 17.

have had to complete the same accession procedures.²⁶ For example, under the early GATT system, the ordinary accession process was governed by GATT Art. XXXIII, but a total of 64 countries benefitted during the post-World War II era from special admission terms under GATT Art. XXVI:5(c), which provided fast track GATT status to countries that had gained independence from colonial powers.²⁷ These countries could convert their *de facto* status into full GATT contracting party membership through “succession – a process that was much less stringent than the ordinary accession process under GATT Art. XXXIII” or under the current WTO accession regime.²⁸

By comparison, accession has been a more difficult process for countries that have joined in recent decades, particularly for those seeking accession under the rules that have applied since formation of the WTO in 1995.²⁹ A total of 128 countries that were already GATT contracting parties as of 1995 “became original members of the WTO, and 24 additional countries [have] joined the organization since,” under provisions contained in Art. XII of the 1994 Marrakesh agreement establishing the World Trade Organization.³⁰ Thus far, post-WTO accession experiences have been varied, with the shortest accession negotiation being that of the Kyrgyz Republic (lasting 2 years and 10 months), while the accession of China was an extensive process, lasting 15 years and 5 months and involving multiple rounds of negotiating contentious issues in China’s protocols of accession with key WTO members such as the United States and EU member countries.³¹ The WTO accession process has been so onerous for some developing countries that they have

²⁶ See Olivier Cattaneo & Carlos A. Primo Braga, *Everything You Always Wanted to Know about WTO Accession (But Were Afraid to Ask)* 2 (World Bank Poverty Reduction and Econ. Mgmt. Network, Working Paper No. 5116, 2009).

²⁷ See *id.* at 2-3.

²⁸ See *id.* at 2.

²⁹ See *id.* at 3.

³⁰ See *id.*; see also *Relevant WTO Provisions*, WTO, http://www.wto.org/english/thewto_e/acc_e/acc7_3_e.htm [<https://perma.cc/22YE-GE2Y>] (last visited Sept. 11, 2021) (detailing Article XII of the Marrakesh agreement and other provisions concerning accession).

³¹ See Cattaneo & Primo Braga, *supra* note 26, at 3; see also *Accessions: China*, WTO, https://www.wto.org/english/thewto_e/acc_e/a1_chine_e.htm [<https://perma.cc/Y9Y4-WXQ4>] (last visited Sept. 11, 2021) (chronicling the extensive negotiations surrounding China’s accession).

placed their WTO negotiations on hold for years at a time, sometimes renewing their efforts and ultimately achieving membership, and sometimes not.³² For example, the Pacific Island nation of Vanuatu, which is recognized under the WTO system as a “least developed country,” applied for WTO admission on July 7, 1995, then placed the process on hold after failing to finalize accession by 2001, before restarting the process in 2008.³³ Vanuatu eventually completed the negotiation of its accession protocol in 2012 and became the 157th member following the Russian Federation—a candidate for membership for over 17 years.³⁴

There are several reasons that the accession process has become more complex, difficult, and time consuming under the current WTO system. One obvious factor is simply that the scope of coverage of the WTO agreements is so much more expansive than under the original GATT system. For example, while the early GATT system was primarily concerned with cutting tariffs, the current WTO trading system of 153 members and 30 observers covers a whole host of multilateral and plurilateral agreements, encompassing all aspects of global commerce, including trade in services, textiles, agriculture, and international rules for the protection of patents, trademarks, and copyrights.³⁵ This wider scope of coverage means that countries seeking to join the WTO generally must undertake wider scale legal and economic reforms before being approved as a new member, which in turn may involve substantial domestic legal and political processes that often take years to complete.

Moreover, the absence of some Arab countries from participation in the WTO is due to the U.S. blocking the establishment of working parties to examine their applications.³⁶ Since 2000, Jordan, Oman, and Saudi Arabia were the last Arab

³² See, e.g., *Vanuatu on Verge of WTO Membership*, WTO (May 2, 2011), http://www.wto.org/english/news_e/news11_e/acc_vut_02may11_e.htm [<https://perma.cc/S4YJ-KBWF>].

³³ See *id.*

³⁴ See Press Release, WTO, WTO Membership Rises to 157 With the Entry of Russia and Vanuatu (Aug. 22, 2012) (on file with author)

³⁵ See Fiftieth Anniversary, *supra* note 23.

³⁶ See Raj Bhala, *Challenges of Poverty and Islam Facing American Trade Law*, 17 ST. JOHN'S J. LEGAL COMMENT. 471, 508 (2003) (“To join the WTO, a working party needs to be established to negotiate terms of accession, and the General Council (which operates by consensus) must agree to form the working party.”).

countries to accede to the WTO.³⁷ Of the 148 members of the WTO only 11 Arab countries are members. Algeria, Comoros, Lebanon, Libya, the Palestinian Authority, Saudi Arabia, Somalia, Sudan, Syria, and Yemen are all lining up for accession to the WTO.³⁸ However, applications of some of Arab countries for admission to the WTO are “clinically dead.”³⁹ Other Arab countries’ applications are “standstill.”⁴⁰ The U.S. supports applications of accession for only handpicked Arab countries that are considered “peaceful”, whatever this term maybe interpreted.⁴¹

The section below addresses the accession process, including the important role of bilateral negotiations for accession under the WTO system that was not required under the GATT process. Such negotiations become more complex as larger numbers of countries join the WTO system and often seek to be involved in such negotiations with new members.

D. Important Role of Bilateral Negotiations in The WTO Accession Process

The current WTO accession process requires applicants to undertake substantial legal, economic, and political processes that are both time consuming and unpredictable. In the WTO system, decisions of the organization generally are taken by consensus among all members, and accession decisions are no exception.⁴² Although the WTO has implemented detailed legal procedures to guide the accession process, the actual terms of accession for a new member must be decided based on a consensus of all members

³⁷ Bashar H. Malkawi, *Anatomy of the Case of Arab Countries and the WTO*, 20 ARAB L. Q., 110, 112-13 (2006).

³⁸ *Id.* at 113.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* (quoting Gary G. Yerkey, *U.S. and Saudi Arabia Sign Agreement that Could Lead to Free Trade Negotiations*, 20 Int’l Trade Rep. (BNA) 1353 (Aug. 7, 2003) (citing the term “peaceful countries” used by former USTR Robert Zoellick)).

⁴² Article IX of the Agreement Establishing the World Trade Organization continues the GATT (General Agreement on Tariffs and Trade) tradition of consensus decision-making. Consensus is deemed to be reached on a matter if no objection is voiced at the meeting at which the decision is to be taken. While Article IX provides for vote-based decision making in the event that consensus cannot be reached, and on certain issues such as accessions and waivers, in practice decisions within the WTO are generally. *See* Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154 [hereinafter Marrakesh Agreement].

expressing an interest in the accession. As a result, the provisions of Article XII of the WTO Agreement on the terms of new member accession are vague and open-ended, simply stating:

1. Any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement and the Multilateral Trade Agreements may accede to this Agreement, on terms to be agreed between it and the WTO. Such accession shall apply to this Agreement and the Multilateral Trade Agreements annexed thereto.⁴³
2. Decisions on accession shall be taken by the Ministerial Conference. The Ministerial Conference shall approve the agreement on the terms of accession by a two-thirds majority of the Members of the WTO.⁴⁴

In practice, the above accession language “on terms to be agreed between it and the WTO,” and the necessity of gaining approval from two-thirds of WTO members, has meant that each country aspiring to join the WTO must undertake extensive and direct bilateral negotiations with other WTO members who express an interest in that country’s membership, a process that can be heavily influenced by politics, and that typically requires governmental approvals within each of the participating WTO member countries.

The specific terms outlined in these bilateral framework agreements are ultimately cumulated into what becomes the “Protocol of Accession” that binds the new WTO member.⁴⁵ Some applicant countries may have greater leverage than others in such negotiations, leading to different outcomes as to what specific terms, commitments, and concessions will be required of each new WTO entrant. In turn, and as further discussed in Parts II and III of this paper, this process has resulted in many WTO applicant countries being pressured to make specific commitments and concessions to trading partners in their bilateral agreements and WTO accession protocols that go “above and beyond” what is written in the actual text of the multilateral WTO treaties

⁴³ *Id.* at 162.

⁴⁴ *Id.* (emphasis added).

⁴⁵ See *Note by the Secretariat, Technical Note on the Accession Process*, at 2, WTO Doc. WT/ACC/10 (Dec. 21, 2001).

themselves. These more onerous obligations become a part of a country's Protocol of Accession and can be enforced through the WTO's Dispute Settlement body.⁴⁶ Such additional obligations typically are embodied in two types of accession measures: 1) so-called "WTO-plus" obligations, which are commitments in a variety of new areas not specifically covered under the Multilateral WTO Agreements; and 2) so-called "WTO-minus" obligations, which are commitments contemplated under the Agreements, but with new applicants being held to a harsher standard.⁴⁷ In order to minimize the burden of such WTO-plus and WTO-minus commitments on new members, it is increasingly important for countries seeking WTO accession to map out a comprehensive negotiating strategy that clearly defines key priorities and objectives under each category covered by the WTO agreements (e.g., goods, services, trade remedies, intellectual property, agriculture, investment, rules of origin, etc.), while taking steps to identify and maximize all potential sources of good will and negotiating leverage.

The WTO is generally viewed as a rules-based system, and the accession process is governed by a detailed set of well established procedures. Somewhat paradoxically, however, the actual terms of accession are not governed by these procedural rules, but rather they emerge from the extensive bilateral negotiating process discussed above, often with varying outcomes for each applicant. As a result, it is difficult for an acceding country to fully assess the true costs and benefits of its WTO membership until such negotiations have been completed. Moreover, it can be difficult to make generalizations about the accession experiences of countries joining the WTO, because ongoing bilateral negotiations remain confidential until final framework agreements can be reached, and many of the submissions to the WTO by applicant countries during the accession process remain confidential until the protocols of accession are finalized and entry to the WTO has been approved.⁴⁸

⁴⁶ See *id.* at 3 (explaining that Protocols "set out the terms which the WTO offers to the acceding government in a single package," and that "all the obligations [therein] are enforceable through the Dispute Settlement Understanding of the WTO").

⁴⁷ See Simon J. Evenett & Carlos A. Primo Braga, *Trade Note 22: WTO Accession: Lessons from Experience*, WBG (June 6, 2005) (discussing "WTO Plus" and "WTO Minus" commitments further).

⁴⁸ See *Accessions: How to Become a Member of the WTO*, WTO, http://www.wto.org/english/thewto_e/acc_e/acces_e.htm [<https://perma.cc/R6ZB-RU6Q>] (last visited Aug. 20, 2021).

Although the accession experience of each country will vary, it is helpful to have an understanding of the basic steps and procedures involved, as outlined in the following section.

E. Overview of Multilateral Procedures Involved in WTO Accession

Article XII of the WTO Marrakesh Agreement forms the legal basis for accession, but because these provisions are vague, the WTO Secretariat, in consultation with the members, has specified a more detailed set of procedures for accession. The current technical process for WTO accession specified by the Secretariat is largely modeled on those that were followed by GATT contracting parties prior to 1995.⁴⁹ Among the prescribed steps of the accession process are (a) the application for and the creation of a Working Party, (b) the examination of the Foreign Trade Regime of the state (or separate customs territory), (c) the establishment and negotiation of a schedule of commitments on goods (GATT 1994) and a schedule of commitments on services (GATS), (d) the agreement on the report of the Working Party, and (e) the Protocols setting out the detailed terms of accession (as negotiated between the acceding country and other WTO member countries).⁵⁰

The process of WTO accession begins with filing of a formal written request by the applicant government.⁵¹ The WTO General Council then establishes a “Working Party . . . [that] is open to all interested Members.”⁵² Next, a “Chairperson of the working party is appointed, following consultations conducted by the Chairperson of the General Council involving the Applicant and members of the

⁴⁹ See generally Note by the Secretariat, *Accession to the World Trade Org.: Procs. for Negots. under Art. XII*, WTO Doc. WT/ACC/1 (Mar. 24, 1995) [hereinafter *Procs. for Negots.*] (prescribing “procedures to be followed in the organization and pursuit of accession negotiations . . . following decisions, procedures and customary practices of the GATT 1947 to the extent that these are relevant” and, *inter alia*, “requir[ing] . . . the negotiation and establishment of a schedule of concessions and commitments to GATT 1994”). The procedures for negotiations under Article XII have been amended in a number of documents, including WT/ACC/4, WT/ACC/5, and WT/ACC/9.

⁵⁰ See Note by the Secretariat, *Tech. Note on the Accession Process 4*, WTO Doc. WT/ACC/10/Rev.3 (Nov. 28, 2005) [hereinafter 2005 Tech. Note]; see also *Accessions: How to Become a Member of the WTO*, *supra* note 48.

⁵¹ *Procs. for Negots.*, *supra* note 49, at 1.

⁵² *Id.* at 1-2.

working party.”⁵³ Finally, the applicant government “submits a Memorandum describing in detail its foreign trade régime.”⁵⁴

The required Memorandum covers very extensive sets of governmental information, economic documentation, legal materials, trade data, statistics, technical standards, and other subjects as detailed in annexes 1 through 7 of the WTO “Procedures for Negotiations under Article XII.”⁵⁵ Given the extensive preparation and documentation required of the applicant country, these procedures specifically indicate that “[t]echnical assistance is provided by the Secretariat and may [also] be provided by individual Members.”⁵⁶ Typically, developing and least developed countries are able to request and receive substantial technical assistance in the form of training programs for government personnel, consulting/advisory assistance, translation of relevant materials, and aid in drafting and reviewing materials to ensure consistency with the required format and guidelines.⁵⁷ In addition to the technical assistance provided by the WTO, other national and international organizations routinely assist developing countries with preparing for WTO accession, including the U.N. Conference on Trade and Development (UNCTAD), the World Bank, and programs through national or supranational organizations in the mold of the U.S. Agency for International Development.⁵⁸

The Working Party meets to review the extensive materials submitted in the country’s initial accession memorandum, and its members may question the applicant further, in writing.⁵⁹

⁵³ *Id.*

⁵⁴ *Id.* at 2.

⁵⁵ *See id.* at 5-27.

⁵⁶ *Id.* at 2.

⁵⁷ *See, e.g., WTO Technical Assistance and Training*, WTO, https://www.wto.org/english/tratop_e/devel_e/teccop_e/tct_e.htm [<https://perma.cc/Z4BP-N65W>] (last visited Sept. 16, 2021).

⁵⁸ *See, e.g., Supperamaniam Manickam, Fredrik Arthur, & Nagib Hamim, Evaluation of UNCTAD’s Trade-Related Tech. Assistance and Capacity Bldg. on Accession to the WTO 1*, U.N. Conf. on Trade and Dev., Trade and Dev. Bd., U.N. Doc. TD/B/WP/190 (July 21, 2006); Press Release, WTO, World Bank Grant Kicks Off Bank-WTO Assistance on Standards (Sept. 27, 2002), https://www.wto.org/english/news_e/pres02_e/pr314_e.htm [<https://perma.cc/28GV-LQHJ>]; Press Release, Int’l Trade Ctr., Promoting Inclusive Economic Growth and Job Creation in Iraq (Nov. 30, 2020), <https://www.intracen.org/news/Promoting-inclusive-economic-growth-and-job-creation-in-Iraq/> [<https://perma.cc/8WCV-DPDR>].

⁵⁹ *Procs. for Negots.*, *supra* note 49, at 2-3.

Documentation and materials submitted to the Working Party remain on “restricted” (non-public) status until the entire accession process is complete.⁶⁰ Once the Working Party’s “examination of the foreign trade régime is sufficiently advanced, members of the working party initiate bilateral market access negotiations on goods and services and on the other terms [of accession] to be agreed.”⁶¹ Thus, while the Working Party is busy examining the trade regime and legal system of the applicant country on a multilateral basis, such bilateral negotiations also begin on a parallel track.

Multilateral negotiations in the Working Party typically focus on compliance with WTO rules and disciplines, while bilateral negotiations permit each member country in the Working Party to broker specific commitments with the acceding country relating to a wide range of issues, including: market access commitments and concessions relating to agricultural and industrial goods; services; application of rules disciplines (e.g., transition periods, trade remedies such as antidumping, etc.); customs and rules of origin; intellectual property; applicability of plurilateral agreements (e.g., government procurement); issues relating to trade and labor/environmental concerns; and any other key terms the parties may wish to include in the protocol of accession.⁶² When all bilateral negotiations are finally complete, the strictest conditions in any one of the bilateral agreements are then incorporated into the final protocol of accession, and must be applied on a non-discriminatory Most-Favored-Nation (MFN) basis to all WTO members.⁶³

The outcome of the multilateral and all bilateral negotiations is a final WTO “accession package,” which includes the Report of the Working Party, the Goods and Services Schedules, and the “Draft Decision and Protocol of Accession.”⁶⁴ These documents serve as the conditions of the applicant’s accession.⁶⁵ Following the WTO General Council/Ministerial Conference’s adoption of the Report of the Working Party and the approval of the draft Decision by a two-

⁶⁰ *Accessions: How to Become a Member of the WTO*, *supra* note 48.

⁶¹ *Procs. for Negots.*, *supra* note 49, at 3.

⁶² See STEFFEN GRAMMLING, *THE WTO ACCESSION PROCESS: EXPLANATIONS AND REFLECTIONS 2* (FES Geneva 2009).

⁶³ *See id.*

⁶⁴ *See* 2005 Tech. Note., *supra* note 45, at 4, 14.

⁶⁵ *Id.* at 14.

thirds majority of the Members, the Protocol of Accession enters into force thirty days after formal ratification under the applicant's domestic procedures has been deposited with the Director General.⁶⁶ All of the terms and conditions contained in the final protocol of accession may then be enforced against the new member through the WTO's Dispute Settlement Understanding and related dispute settlement provisions of the various WTO agreements.⁶⁷

PART II: Challenges Faced by Iraq in Getting WTO Accession Process Back On Track

The new Iraqi government formed following elections in October 2021 will face numerous hurdles to reviving the economy and attracting trade and investment to the country, including lack of clear mandates, lack of technical capacity in key ministries, and a history of widespread corruption; crippled infrastructure, dysfunctional domestic legal/regulatory systems, banking and currency instability; lingering security problems, and lack of bilateral or multilateral trade and investment agreements with key trading partners. These same issues also pose hurdles in negotiating terms of accession for entry into the WTO. Despite these challenges, the new Iraqi government now has a historic opportunity to leverage WTO membership as part of a larger strategy for strengthening its institutions and increasing trade and investment, which in turn are crucial to rebuilding infrastructure, facilitating economic growth, diversifying the private sector beyond petroleum, and creating desperately needed jobs in support of a middle class. The sections below address Iraq's experience to date in seeking admission to the WTO, including the specific challenges facing Iraq in the accession process, as well as providing strategic recommendations for Iraq and other "FCA" countries in negotiating their protocols of accession.

A. Procedural Progress of Iraq's WTO Accession to Date

Iraq was granted "observer status" by the WTO in February 2004, then filed its initial application for accession to the WTO on September 30, 2004, and the WTO General Council established a WTO Working Party on Iraq's accession on December 13, 2004.⁶⁸

⁶⁶ *Id.* at 3-4, 31.

⁶⁷ *Id.* at 2.

⁶⁸ *Accession Working Parties Established for Afghanistan, Iraq, WTO* (Dec. 13,

The attached *Appendix II* provides a timeline summarizing all of Iraq's accession submissions to the WTO Working Party to date.⁶⁹ These key events in Iraq's accession initially began under CPA rule, and then the WTO process was assumed by the UN-recognized Iraqi Interim Government (IIG) during the period from June 28, 2004 until elections were held on January 30, 2005.⁷⁰ Thereafter, the elected Iraqi Transitional Government (ITG) assumed control over the WTO process until a new constitution could be drafted and ratified in 2005, and a new constitutionally elected Council of Representatives (COR) could take office.⁷¹

At the General Council meeting establishing the Iraq working party in December 2004, then Minister of Trade under the IIG, Mustafa Al-Jibouri, stated that Iraq had already begun drafting its Foreign Trade Regime Memorandum, had created a National Committee for WTO Accession, and that "[t]he new Iraq looks with great optimism at achieving political stability, economic prosperity and social development . . . we believe that our reintegration into the world trading system is an essential element to fulfill those aims."⁷² However, Iraq actually submitted its detailed Memorandum on its Foreign Trade Regime to the WTO Working Party on September 16, 2005, under the auspices of the ITG, only one month before the new Iraqi Constitution was ratified and six months before the first constitutionally elected Council of

2004),

http://www.wto.org/english/news_e/news04_e/gc_afghanistan_iraq_13dec04_e.htm
[<https://perma.cc/R4LJ-YE3T>].

⁶⁹ The Appendix II list is current through December 2010. *See also* Note by the Secretariat, *Tech. Note on the Accession Process: State of Play and Info. on Current Accessions* 21, WTO Doc. WT/ACC/11/Rev.9 (Dec. 20, 2010) [hereinafter 2010 Tech. Note].

⁷⁰ *See* U.S. DEP'T OF STATE, IRAQ BACKGROUND NOTE (2011), <https://2009-2017.state.gov/outofdate/bgn/iraq/183823.htm> [<https://perma.cc/4SSM-WLCB>].

⁷¹ *Id.* *See also* Iraq government timeline at Appendix I for details.

⁷² *Accession Working Parties Established for Afghanistan, Iraq, supra* note 68 (alteration in original). Mohammed Mustafa Al-Jibouri, Minister of Trade under the IIG, "was born in Mosul in 1949 and graduated from Mosul University in 1974 with a degree in Economics. He received a post-graduate degree in Economics from Glasgow University in 1983, and then returned to Iraq to work for the State Oil Marketing Organization (SOMO). He was elected Director General of SOMO in May 2003." Press Release, Coalition Provisional Authority, Iraqi Interim Government Announcement Ceremony Press Packet (June 1, 2004), http://dosfan.lib.uic.edu/ERC/cpa/english/government/press_packet.pdf.

Representatives took office in March 2006.⁷³ By November 28, 2006, Iraq had exchanged formal questions and replies regarding its foreign trade regime with WTO members in the Working Party.⁷⁴ During this time, the country was transitioning from ITG rule to its first constitutionally elected Government of Iraq (GOI).⁷⁵

During the subsequent years, from 2007 through 2010, the Working Party on Iraq accession held two meetings (on May 25, 2007 and April 2, 2008) to review Iraq's trade regime and request that Iraq provide additional information relating to specific areas of concern.⁷⁶ At the first Working Party meeting, Iraq sought technical assistance in making further progress towards accession.⁷⁷ As a result, the Working Party created a plan of action instructing Iraq to "prepare documents on agriculture, services, technical barriers to trade, sanitary and phytosanitary issues and intellectual property," as well as a "general legislative action plan providing members with a state of play of current and future legislation."⁷⁸ At the same time, Iraq commenced separate bilateral market access negotiations with key members of the Working Party group, including "Brazil, Chinese Taipei, Egypt, the European Union, Jordan, Morocco, Norway, Oman, the United Arab Emirates, the [United States], and Viet Nam."⁷⁹

Prior to the second meeting of the Working Party, Iraq filed additional documentation with the WTO on February 8, 2008 responding to the plan of action from the first Working Party meeting, including:

- (1) information on agricultural support (based on the requirements of WTO document "WT/ACC/4"),

⁷³ See timelines at Appendices II and II for details. See WTO Working Party on the Accession of Iraq, *Iraq Foreign Trade Regime Memorandum*, WT/ACC/IRQ/3 (16 September 2005) (RESTRICTED DOCUMENT not yet publicly available at the time of this writing).

⁷⁴ 2010 Tech. Note, *supra* note 45 at 21.

⁷⁵ IRAQ BACKGROUND NOTE, *supra* note 70.

⁷⁶ *WTO Starts Negotiations with Iraq for Membership*, WTO (May 25, 2007), http://www.wto.org/english/news_e/news07_e/acc_irak_25may07_e.htm [https://perma.cc/T83D-9PJG]; *Working Party Reviews Iraq's Trade Legis.*, WTO (Apr. 2, 2008), http://www.wto.org/english/news_e/news08_e/acc_iraq_april08_e.htm [https://perma.cc/Y9S3-99TD].

⁷⁷ *WTO Starts Negotiations with Iraq for Membership*, *supra* note 76.

⁷⁸ *Id.*

⁷⁹ *Id.*

- (2) information on SPS and TBT measures (pursuant to guidelines in WTO document “WT/ACC/8”),
- (3) information on its intellectual property (TRIPS) regime, according to “WT/ACC/9” and
- (4) a legislative action plan, outlining the status of proposed legal and market reforms needed to meet WTO requirements.⁸⁰

These documents were reviewed by Working Party members at the second meeting on April 2, 2008, at which time Iraq was asked to provide “more information on government pricing policies, investment rules, import licenses, customs law, state trading enterprises, regulations on tariffs, free zones and telecom licenses.”⁸¹ In spring 2008, Iraq’s bilateral negotiations were stalled until Iraq could “table its initial offers on goods and services.”⁸² By December 2008, Iraq provided additional responses to questions from Working Party members on its foreign trade regime, particularly in relation to agriculture programs and subsidies.⁸³

Iraq did not make any further submissions to the Working Party until 2010, when it filed updates and clarifications of its agriculture programs, sanitary/phytosanitary measures, and legislative changes.⁸⁴ In the meantime, in December 2009, Iraq’s Trade Minister emphasized Iraq’s status as a developing country, expressed concerns regarding the “tremendous income and foreign exchange losses to the Iraqi economy” caused by falling oil prices that year, and stated: “We have real concerns about WTO-PLUS

⁸⁰ See following WTO restricted documents: WT/ACC/IRQ/5, WT/ACC/IRQ/6, WT/ACC/IRQ/7, WT/ACC/IRQ/8, and WT/ACC/SPEC/IRQ/1 (note, these document will be RESTRICTED, thus not publicly available until after Iraq’s accession process has been completed). See also 2010 Tech. Note, *supra* note 45, at 21 and WTO Accession Newsletters dated 2010-2020; and *Working Party Reviews Iraq’s Trade Legis.*, WTO (Apr. 2, 2008), http://www.wto.org/english/news_e/news08_e/acc_iraq_april08_e.htm [<https://perma.cc/Y9S3-99TD>].

⁸¹ *Working Party Reviews Iraq’s Trade Legis.*, *supra* note 68.

⁸² *Id.*

⁸³ See WTO Accession Newsletters dated 2010-2020, https://www.wto.org/english/thewto_e/acc_e/newsletter_archive_e.htm (last visited on Nov. 6, 2021); *Working Party Reviews Iraq’s Trade Legis.*, WTO (Apr. 2, 2008), http://www.wto.org/english/news_e/news08_e/acc_iraq_april08_e.htm [<https://perma.cc/Y9S3-99TD>];

⁸⁴ *Id.*

commitments and WTO-MINUS treatment as a type of entrance fee for joining WTO[.] Acceding countries should not be subjected to onerous demands while negotiating the terms of their accession.”⁸⁵

B. Current Political and Procedural Status of Iraq's WTO Accession Efforts

As can be seen from the above “state of play” accessions chart, and the more detailed Accessions Work Programme Summary chart at Appendix I, despite having initially applied for accession to the WTO in 2004, Iraq has made very little progress to date in the important stages of negotiation necessary to gain approval for WTO membership.⁸⁶ As of October 2021, there had been only two full meetings of the Working Party on the Accession of Iraq, the most recent occurring in April 2008.⁸⁷

1. Political Instability and Security Threats Slowed Iraq's WTO Accession Progress from 2008–21

From 2008 to 2021, Iraq has experienced substantial internal political turmoil, including a series of elections after which the nation's Council of Representatives, a unicameral parliament, was left with challenges in forming a viable government among competing factions.⁸⁸ Internal political instability has been accompanied by a series of security crises in responding to increasing threats from ISIS / Daesh in Iraq, as well as a series of protests against continued occupation of the country by U.S. military forces.⁸⁹

Most recently, from 2018 to 2021, the Iraqi government has responded to increasing calls for the withdrawal of U.S. forces, and has been actively negotiating plans for such withdrawal.⁹⁰ In April

⁸⁵ See Safa Al Deen Al-Safi, Minister of Trade, Republic of Iraq, Statement at the Seventh Regular WTO Ministerial Conference (Dec. 2, 2009).

⁸⁶ See *WTO Accessions Newsletter*, *supra* note 10, at 8.

⁸⁷ See *Accessions: Iraq, the WTO*, https://www.wto.org/english/thewto_e/acc_e/a1_iraq_e.htm#status (last visited Nov. 6, 2021).

⁸⁸ Al Kli, S. Decentralization and State Building in Iraq, ProQuest Dissertations Publishing, 13860656 (March 2019). <https://www.proquest.com/openview/ff15489bc5189abf95530a373f5a775d/1?pq-origsite=gscholar&cbl=18750&diss=y> (last visited Nov. 6, 2021).

⁸⁹ *Id.*

⁹⁰ See Al-Salhy, S., “Iraq pressing US to agree on troop withdrawal timetable as tensions escalate,” *Middle East Eye* (Apr. 15, 2021).

2021, the United States and Iraq jointly announced a formal agreement to withdraw US-led coalition forces according to timetables to be determined by joint technical military committees.⁹¹ The agreement between the United States and Iraq followed an unofficial truce that was reached between the United States and the Iran-backed factions in October 2021, after tensions had reached a height during the final year of the Trump administration when the United States threatened to close its Baghdad embassy and attack Iranian targets inside and outside Iraq.⁹² Since taking office, the Biden administration has remained committed to the complete withdrawal of the remaining 2500 or so U.S. troops from Iraq as first negotiated under the previous administration. However, it remains to be seen whether the specifics of the 2021 Iraq withdrawal plans and timetables will be affected by the fierce criticism Biden faced over the chaotic withdrawal of U.S. forces from Afghanistan in August 2021.⁹³

In the meantime, the above political and security challenges on the ground in Iraq from 2018 to the present have continued to pose roadblocks to progress towards negotiating Iraq's terms of accession to the WTO. When the Council of Representatives is divided into factions, without a strong leadership mandate or clear sense of direction, it becomes a grave challenge to appoint leaders in the Council of Ministers to oversee key ministries such as Finance, Trade, Interior, and Defense. These ministries, among others, would need to be actively involved in planning, negotiating, and supporting the multilateral and bilateral WTO accession negotiations shown in the table above as the key concurrent stages of Iraq's WTO accession process.⁹⁴

2. Most Recent Developments Impacting Future Accession Prospects

There is some hope for greater momentum following the most

⁹¹ Id.

⁹² Id.

⁹³ Arraf, J. and Schmitt, E., "U.S. to Announce Troop Drawdown from Iraq, but Little Is Expected to Change," *New York Times* (Sept. 20, 2021). <https://www.nytimes.com/2021/07/24/world/middleeast/iraq-biden-us-forces.html> (last visited Nov. 5, 2021).

⁹⁴ Yacoub Oweis, K., "Who's who in Iraq's new Cabinet" *The National News* (May 10, 2020) <https://www.thenationalnews.com/world/mena/who-s-who-in-iraq-s-new-cabinet-1.1016366> (last visited on Nov. 5, 2021).

recent Iraqi election results during October 2021. Supporters of Shia religious figure and militia leader *Muqtada al Sadr* won the most seats, with 73 out of the 379 seats elected, improving on their 2018 electoral performance through effective party organizing and voter turnout activities.⁹⁵ Sadr, whose movement maintains a militia of its own, emphasized the importance of state authority and control of armed groups in his post-election remarks, and appears determined to form a stronger government. His coalition had helped to organize and lead a series of protests from 2019–21, but won amid very low turnout, such that he now faces substantial opposition from pro-Iranian factions complaining of unfair processes and lack of adequate representation in the new government.⁹⁶ Thus, al Sadr and his close associates will continue to face substantial political hurdles in seeking to form a viable and effective new government with a strong leadership in the key ministries, especially leading into the uncertainties surrounding the final withdrawal of remaining U.S. forces, which was negotiated to occur by year-end 2021.⁹⁷

Leading up to the election, Iraq was already showing new signs of movement in the WTO accession process. In September 2021, Iraq submitted several accession documents required to activate a resumption of the Working Party. These include a newly revised Memorandum on the Foreign Trade Regime (MFTR), as well as replies to Members' written questions, and a formal "Legislative Action Plan," along with responses to WTO questionnaires on import licensing and customs valuation.⁹⁸ These new documents are the first items that Iraq has submitted to the WTO since 2018, and are currently in the process of being circulated to the Iraq Accession Working Party members as of Fall 2021.⁹⁹ Thus, hopefully these

⁹⁵ Blanchard, C. "Iraq's October 2021 Election Results", Congressional Research Service (Oct. 18, 2021). <https://crsreports.congress.gov/product/pdf/IN/IN11769> (last visited on Nov. 9, 2021).

⁹⁶ *Id.*

⁹⁷ *Id.* See also, Adnan, G. and Malsin, J., "Shiite Cleric Moqtada al-Sadr Emerges as Kingmaker After Iraq Election, Forming a new government could take weeks and Sadr faces competition from pro-Iran factions," Wall Street Journal (Oct. 12, 2021). <https://www.wsj.com/articles/shiite-cleric-sadr-emerges-as-kingmaker-after-iraq-election-11633975674> (last visited on Nov. 8, 2021).

⁹⁸ See WTO Accessions Newsletter, Issue N° 106 (Sept. 2021), <https://mailchi.mp/wto/wto-accessions-newsletter-n-106-sept-2021-6212593?e=9c067e1dee#IRQ> (last visited on Nov. 8, 2021).

⁹⁹ *Id.*

tangible items will result in progress being made during 2022.

C. Greatest Obstacles Faced by Iraq to Date in Completing WTO Accession Requirements

Iraq has faced significant practical and political difficulties in actively pursuing its WTO accession process, which have delayed progress considerably. As a result, Iraq likely will need significant technical assistance and flexibility in the negotiating process to overcome the obstacles to accession outlined below.

1. Domestic Political Obstacles and Lack of Ministry Capacity

After national elections were held as scheduled on March 7, 2010 for seats in the Council of Representatives (COR), Iraq's political parties were at an impasse, unable to form a functioning government for nearly eight months in light of sectarian tensions and lack of viable coalitions among the various factions.¹⁰⁰ On November 11, 2010, the COR finally selected Jalal Talabani to another term as President of Iraq, and Osama al-Nujayfi of the Iraqi National Movement coalition was elected as Parliament Speaker.¹⁰¹ On December 21, 2010, the COR finally approved President Talabani's nomination of Nuri al-Maliki for a second term, with Ayad Allawi slated to head a new security council.¹⁰² However, continued political infighting has left key ministry and cabinet positions unfilled, with growing tensions between the al-Maliki and Allawi contingents, as well as civilian protests against the lack of progress by the government in rebuilding infrastructure, managing public resources, and providing basic public services such as electricity.¹⁰³

¹⁰⁰ See IRAQ BACKGROUND NOTE, *supra* note 70 ("The Iraqi National Movement coalition led by former Prime Minister Ayad Allawi won the most seats (predominantly Sunni alliance with 91 seats), followed by Prime Minister Nuri al-Maliki's State of Law coalition (Shiite alliance with 89 seats), the Kurdish bloc (headed by Kurdistan Democratic Party President Masud Barzani and Patriotic Union of Kurdistan President Jalal Talabani, with a total of 57 seats), the Iraqi National Alliance led by Muqtada al-Sadr (second Shiite alliance having ties to Iran, with 70 seats), and other smaller parties (18 seats).").

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Michael S. Schmidt & Tim Arango, *Bitter Feud Between Top Iraqi Leaders Stalls Government*, N.Y. TIMES (June 25, 2011), <http://www.nytimes.com/2011/06/26/world/middleeast/26iraq.html> [<https://perma.cc/3LJL-UZXU>].

These domestic political difficulties, which have persisted for over a decade, have substantially slowed progress on Iraq's pursuit of WTO accession. In particular, Iraq has struggled mightily to provide leadership, staffing and resources—and to overcome corruption—in the very ministry that is in charge of the WTO accession process. For example, during May 2009, Abdel Falah Hassan Hamadi al-Sudani, who served as Minister of Trade from May 2006 to May 2009, became embroiled in a high profile corruption and graft scandal after trade ministry officials were accused of misappropriating between \$4 billion and \$8 billion over a four year period from programs relating to public food rations.¹⁰⁴ On May 3, 2009, Iraq's anti-corruption Integrity Commission issued arrest warrants for eight trade ministry officials, including two of al-Sudani's brothers and the head of the Iraqi Grain Board.¹⁰⁵ When officials arrived at the trade ministry to arrest the accused, a fifteen minute gun battle ensued between Iraqi troops and ministry bodyguards, ending with one suspect being arrested while the others escaped.¹⁰⁶

Al-Sudani resigned as Trade Minister on May 14, 2009, but Prime Minister al-Maliki delayed accepting his resignation pending a parliamentary investigation.¹⁰⁷ On May 16 and 17, Al-Sudani appeared before the parliamentary committee and admitted that corruption had taken place and the system needed to be changed.¹⁰⁸ He faced a vote of no confidence from Parliament on May 27 to determine whether he should be charged criminally.¹⁰⁹ The Iraqi

¹⁰⁴ See Marie Colvin, *Trade Ministry Hit by £2.6 Billion Fraud*, THE TIMES (Mar. 7, 2010), <https://www.thetimes.co.uk/article/trade-ministry-hit-by-pound26-billion-fraud-rk6q925vdlc> [<https://perma.cc/6NL8-EYXE>].

¹⁰⁵ See *id.*; see also "Fleeing" Ex-Iraq Minister Arrested: Former Trade Minister Held over Alleged Corruption While Trying to Leave Country, AL JAZEERA (May 30, 2009), <https://www.aljazeera.com/news/2009/5/30/fleeing-ex-iraq-minister-arrested> [<https://perma.cc/6YAS-WZRV>] [hereinafter *Ex-Iraq Minister Arrested*].

¹⁰⁶ Sam Dagher, *Gunfight Breaks Out as Iraqi Soldiers Try to Arrest Trade Officials*, N.Y. TIMES (May 2, 2009), <http://www.nytimes.com/2009/05/03/world/middleeast/03iraq.html> [<https://perma.cc/268K-SJXL>].

¹⁰⁷ See Timothy Williams & Abeer Mohammed, *Trade Official Quits as Iraq Continues Investigations*, N.Y. TIMES (May 25, 2009), <http://www.nytimes.com/2009/05/26/world/middleeast/26iraq.html> [<https://perma.cc/3PKU-NY6Z>].

¹⁰⁸ See *Corruption Undermining State Food Aid Programme?*, THE NEW HUMANITARIAN (May 19, 2009), <http://www.irinnews.org/Report.aspx?ReportId=84447> [<https://perma.cc/Y9AU-B5KL>].

¹⁰⁹ See Williams & Mohammed, *supra* note 107.

judiciary issued an arrest warrant for him on May 30, 2009.¹¹⁰ He was arrested at Baghdad airport that day while attempting to depart Iraq for Dubai, then later released on bail.¹¹¹ On April 21, 2010, the former Trade Minister was acquitted for lack of evidence on charges of corruption and mismanagement within his Ministry.¹¹² The Commission of Integrity said they would persist in the pursuit of additional corruption charges against him.¹¹³ Three other Ministry of Trade officials involved in the case, including the director general of the Grain Import Board, were convicted of negligence; one received a two-year prison sentence, and the other two received one-year sentences.¹¹⁴ Iraq will have to work extremely hard to overcome this level of endemic corruption during the 2008-10 period in the very ministry that is directly in charge of leading and implementing WTO accession efforts.¹¹⁵ Even as Iraq has sought to appoint new Ministry of Trade officials and personnel since 2012 to address corruption and make improvements, there remains a huge gap in capacity and expertise.

Iraq, like many other Arab countries, faces a limited capacity to negotiate and implement complex international trade agreements.¹¹⁶ The WTO uses some of its resources, whether through its regular budget or off-budget, to help developing countries improve their involvement in the WTO work.¹¹⁷ The broad objectives of technical

¹¹⁰ See *Ex-Iraq Minister Arrested*, *supra* note 105.

¹¹¹ See Nada Bakri, *Iraq's Ex-Trade Minister, Abdul Falah al-Sudani, Detained in Graft Investigation*, WASH. POST (May 31, 2009), <https://www.washingtonpost.com/wp-dyn/content/article/2009/05/30/AR2009053001089.html> [<https://perma.cc/RJG3-69L6>].

¹¹² See U.S. Dep't of State, 2010 Country Reports on Human Rights: Iraq 41 (2011), <https://2009-2017.state.gov/documents/organization/160462.pdf>.

¹¹³ See *id.*

¹¹⁴ See *id.* See also, *See Ministers in the New Iraq Government*, ASSYRIAN INT'L NEWS AGENCY (Dec. 23, 2010), <http://www.aina.org/news/20101222202853.htm> [<https://perma.cc/57ED-9FYF>].

¹¹⁵ See Schmidt & Arango, *supra* note 103.

¹¹⁶ It is no clearer than in the Doha Ministerial Declaration, which states, "We shall continue to make positive efforts designed to ensure that developing countries, and especially the least-developed among them, secure a share in the growth of world trade commensurate with the need of their economic development. In this context, enhanced market access, balanced rules, and well-targeted, sustainably financed technical assistance and capacity-building programs have important roles to play." See WTO, Ministerial Declaration of 14 November 2001, ¶ 2 WTO Doc. No. WT/MIN(01)/DEC/1, 41 I.L.M. 746 (2002).

¹¹⁷ There are four mechanisms employed by the WTO to implement the WTO Agreements: capacity building, monitoring, supervision, and enforcement. The WTO

assistance are to provide general information on the multilateral trading system, improve the country's participation in this system through training on negotiating techniques, use of the Integrated Data Base, and encouraging participation in dispute settlement courses.

2. *Iraq's Legacy of Endemic Corruption*

As illustrated by the trade ministry scandal discussed above, widespread corruption and lack of transparency in government are additional obstacles that not only inhibit Iraq's WTO prospects, but also limit the country's ability to attract foreign investment. Iraq ranked fifth from the bottom in Transparency International's corruption rankings list for 2010, with only Uzbekistan, Turkmenistan, Sudan and Chad faring worse.¹¹⁸

The corruption problem has existed for decades in Iraq. During the Saddam Hussein era, corruption was a fact of life, touching virtually every major economic transaction in some manner.¹¹⁹ The former regime's control of the economy left a legacy of heavy state procurement and subsidies that distorted market prices, and

defines the objectives of technical assistance and cooperation as to improve knowledge of multilateral trade rules and WTO working procedures and negotiations and to assist in the implementation of commitments in the multilateral trading system and full use of its provisions, including the effective use of the dispute settlement mechanism. These objectives will be administered by the WTO Secretariat and reviewed by the members. The Committee on Trade and Development approves a three-year plan adjusted on an annual basis, including the budget consideration, and submit the plan to relevant WTO bodies for implementation. See Xin Zhang, *Implementation of the WTO Agreements: Framework and Reform*, 23 NW. J. INT'L L. & BUS. 383, 387-95 (2003) ("The functions of the WTO . . . will be fundamentally undermined if the majority Members cannot implement the WTO Agreements due to lack of capacity."). Discussion will be limited to capacity building. Following the Doha Ministerial Declaration's instructions to develop a plan ensuring long-term funding for WTO technical assistance, the General Council adopted on Dec. 20, 2001, a new budget that would increase technical assistance funding by 80 percent and establish a Doha Development Agenda Global Trust Fund with a proposed core budget of CHF15 million.

¹¹⁸ See Stephen Kurczy, *The 8 Worst Countries on Transparency International's List*, CHRISTIAN SCI. MONITOR (Oct. 26, 2010), <http://www.csmonitor.com/World/Global-Issues/2010/1026/The-8-worst-countries-on-Transparency-International-s-list/Iraq> [<https://perma.cc/Y2MF-PMKK>].

¹¹⁹ See U.S. Dep't of State, Bureau of Econ., Energy and Bus. Affs., 2010 Investment Climate Statement – Iraq (Mar. 2010), <https://2009-2017.state.gov/e/eb/rls/othr/ics/2010/138084.htm> [<https://perma.cc/C6Q9-KVFW>].

corruption at all levels remains a significant problem.¹²⁰ In addition, there has been a lack of accountability and transparency in managing state resources. Furthermore, the decades-long isolation has created a digital divide and left the country with outdated institutions and administrative systems and inadequate regulatory mechanisms.¹²¹ The years of U.N. sanctions against Iraq have also contributed to a climate of corruption, as sanctions helped to create a black market that is driven by profiteering and organized crime.¹²² Corruption thrived following the coalition invasion given the chaotic government transition processes and the lack of organization, accountability, and expertise at various layers of the government.

Overcoming and controlling corruption is extremely difficult, especially in a “FCA” reconstruction environment where there is a combination of large public procurement projects and a series of various funding infusions.¹²³ It was recently alleged that approximately \$17 billion in Iraq oil funds from the Development Fund of Iraq (DFI) have been unaccounted for since 2004.¹²⁴ The United States blames corruption in Iraq for the unaccounted funds, while Iraq blames U.S. institutions, filing a letter and 50-page report with the United Nations in which it asks for assistance in recovering the funds and states: “All indications are that the institutions of the United States of America committed financial corruption by stealing the money of the Iraqi people, which was allocated to develop Iraq, (and) that it was about \$17 billion.”¹²⁵

Although the WTO Agreements do not contain provisions

¹²⁰ *See id.*

¹²¹ *See id.*

¹²² *See* PHIL WILLIAMS DR., *CRIMINALS, MILITIAS, AND INSURGENTS: ORGANIZED CRIME IN IRAQ*, 31-32 (US Army War College: USAWC Press, 2009); *see also* U.N. ESCOR, 52nd Sess., ¶ 9, U.N. Doc. E/CN.4/Sub.2/2000/33 (June 21, 2000) (stating that data now reveals that the government and the elite usually benefit personally from a monopoly in the black market when sanctions prevent market competition for necessary goods).

¹²³ *See generally* Robert Looney, *Impediments to Stability in Iraq: The Elusive Economic Dimension*, 12 MIDDLE E. REV. OF INT’L AFFS. 25 (2008) (describing the reconstruction environment).

¹²⁴ *See, e.g.,* Waleed Ibrahim, *Iraq Hunting \$17 Billion Missing After U.S. Invasion*, REUTERS (June 19, 2011), <https://www.reuters.com/article/us-iraq-usa-money-idUSTRE75120S20110619> [<https://perma.cc/8W68-YUYD>].

¹²⁵ *Id.*

explicitly forbidding corruption, there is longstanding evidence that WTO membership goes hand in hand with higher institutional quality and efficiency, greater transparency, and reduction of bribery and other forms of corruption.¹²⁶ Many of the WTO agreements include specific transparency provisions, such as mandating clear disclosures of applicable standards, regulations, taxes, fees, or other commercial requirements at the national and multilateral level (*e.g.*, through publication in official government journals and/or through formal notifications to the WTO), making it more difficult for agencies or officials to demand additional corrupt payments not referenced under such disclosures.¹²⁷ The WTO also has a regular Trade Policy Review Mechanism, which conducts surveillance of national trade policies as a further means of encouraging ongoing transparency domestically and at the multilateral level.¹²⁸

Transparency is viewed as one of the fundamental principles of the WTO agreements in their aim to achieve a greater degree of clarity, predictability and information about trade policies, rules and regulations of Members.¹²⁹ Based on the lengthy WTO accession experiences of China (15 years), the Russian Federation (18 years), and other countries that have joined the WTO since 2000, corruption is often a significant issue in bilateral WTO negotiations and subsequent trade policy reviews of members by the WTO.¹³⁰

¹²⁶ See Zdenek Drabek & Marc Bacchetta, *Tracing the Effects of WTO Accession on Policymaking in Sovereign States: Preliminary Lessons from the Recent Experience of Transition Countries*, 27 THE WORLD ECON. 1083, 1096-103 (2004).

¹²⁷ See *id.* For example, the WTO Agreement on Sanitary and Phytosanitary Measures (the “SPS Agreement”) includes transparency requirements under Article 7 and in Annex B (titled “Transparency of sanitary and phytosanitary regulations”), which helps ensure corrupt officials cannot demand additional payment for technical requirements not notified and published in an open and transparent manner and applied to all transactions on a non-discriminatory basis. See also WTO SECRETARIAT, HOW TO APPLY THE TRANSPARENCY PROVISIONS OF THE SPS AGREEMENT 7 (2002), http://www.wto.org/english/tratop_e/sps_e/spshand_e.pdf (defining the word “transparency” in the context of the WTO).

¹²⁸ See *Trade Policy Reviews: Ensuring Transparency*, WTO, https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm11_e.htm [<https://perma.cc/57JT-DJ4W>] (last visited Sept. 9, 2021).

¹²⁹ See *id.*

¹³⁰ For instance, China’s protocol of accession included commitments on transparency and reducing bribery and corruption as “WTO-Plus” obligations. See World Trade Organization, Protocol on the Accession of the People’s Republic of China, WTO Doc. WT/L/432 (2001). Corruption has also been an issue in subsequent WTO trade policy

For example, it took Russia 18 years to achieve WTO accession, longer than any other country, and corruption in the very ministries that have been involved in WTO negotiations appears to be one factor causing delays in the process.¹³¹

Since 2003, Iraq has made significant progress in seeking to combat pervasive corruption. The Commission of Integrity (COI) was first established by CPA Order No. 55 as an independent, autonomous Iraqi governmental agency that is responsible for anti-corruption, law enforcement and crime prevention at the federal level.¹³² Following transfer of Coalition Provisional Authority powers to the Iraqi national government, the COI made additional commitments to reduce corruption through several initiatives including: establishing a coordinating body within a Joint Anti-Corruption Council (JACC), becoming a candidate member of the Extractive Industries Transparency Initiative (EITI), ratifying the U.N. Convention against Corruption (UNCAC) in 2008, and joining the Middle East and North Africa Financial Action Task Force (MENA-FATF).¹³³ Through these programs and commitments, Iraq has proposed a plan of action that includes the following goals: strengthening government institutions, erecting visible barriers to nepotism, publicly exposing corrupt acts, adopting freedom of information regulations, tightening procurement laws, and enforcing conflict of interest rules. There is now a momentum for such change, as demonstrated in more aggressive enforcement efforts by the COI. The Council of Ministers formally approved a five year (2010-2014) multi-faceted anticorruption strategy in January 2010.¹³⁴ Iraq will be able to point to these initiatives in WTO accession negotiations to demonstrate they are on the path toward reducing corruption and increasing transparency.

reviews of China. The most recent trade policy review contains significant discussion of transparency and China's anti-corruption legislation and initiatives. *See* Trade Policy Review Body, *Trade Policy Review Report by the Secretariat: China*, at 29-31, WTO Doc. WT/TPR/S/199 (2008).

¹³¹ *See* Anders Aslund, *Why Doesn't Russia Join the WTO?*, 33 THE WASH. Q. 49, 56-7 (2010); *see also* Pamela A. Jordan, *Diminishing Returns: Russia's Participation in the World Trade Organization*, 33 POST-SOVIET AFFS. 452 (2017).

¹³² *See* *Delegation of Authority Regarding the Iraq Commission on Public Integrity*, CPA Order No. 55, CPA/ORD/27 January 2004/55 §1 (Jan. 27, 2004).

¹³³ *See* UN Assistance Mission for Iraq (UNAMI), *The Iraq Briefing Book*, at 37 (Dec. 2010), <https://www.refworld.org/docid/4d4fc6c02.html> [<https://perma.cc/QQ8G-BB6G>].

¹³⁴ *See id.*

D. Iraq's Legal System and Key Economic Reforms Remain in State of Flux

The transitional and current Iraqi governments in power since the 2003 to 2004 time period have reaffirmed much of the legislation passed by the Coalition Provisional Authority, while also making some significant revisions. Despite facing almost overwhelming obstacles, Iraq has made great strides in ratifying a new constitution and electing a new national government in the years following the 14-month period of CPA control. As indicated in the materials Iraq has filed with the WTO Working Party to date, significant progress has been made on passing and implementing legislation on investment law, agriculture subsidies and reforms, technical barriers to trade (SPS/TBT), and intellectual property protection.

Despite the progress on reforms in Iraq, additional reforms likely will be sought by the Working Party and in bilateral negotiations with trading partners during the WTO accession process. Implementation also remains a problem, and it may take years before implementation and enforcement of reforms can make a substantial difference in the ease of trading and doing business with Iraq. For example, the World Bank continues to give Iraq low marks in its annual rankings for ease of doing business in 183 economies worldwide, as follows:¹³⁵

Doing Business Criteria	Rank (out of 183)
Starting a Business	174
Dealing with Construction Permits	102
Registering Property	96
Getting Business Credit	168
Protecting Investors	120
Paying Taxes	54
Trading Across Borders	179
Enforcing Contracts	141
Closing a Business	183

¹³⁵ See WBG, MAKING A DIFFERENCE FOR ENTREPRENEURS 2 (2011), <https://web.archive.org/web/20110704132157/http://www.doingbusiness.org/~media/FPDKM/Doing%20Business/Documents/Profiles/Country/DB11/IRQ.pdf>.

The political tensions discussed above also make passage and implementation of new legislation extremely difficult. One critical example of this involves Iraq's challenges in reforming the petroleum sector, which will be a significant issue in WTO negotiations, given that oil and related products account for 95% of Iraqi exports.¹³⁶ Iraq's Council of Ministers approved a draft hydrocarbon law in 2007, which would establish revenue-sharing among regions, a process for federal-regional cooperation, and transparency through public disclosures of contracts and associated revenue and payments.¹³⁷ The government has not been able to enact and implement the Hydrocarbon Law, largely due to opposition from semi-autonomous Kurdistan, and concerns that the law must be consistent with provisions of the Iraq Constitution.¹³⁸ Article 111 of the Iraq Constitution provides that "oil and gas are owned by all the people of Iraq in all the regions and governorates," while Article 112 provides that "the federal government, with the producing governorates and regional governments" must share responsibility for management of oil and gas under a system that "shall be regulated by law."¹³⁹ Without a Hydrocarbon Law in place, reconstruction and development of Iraq's oil and gas sector will be delayed since foreign investors would be taking a risky step to enter into contracts without knowing how management of ownership and resources will be legally split among the various jurisdictions and entities in Iraq. Moreover, investment in this sector is deemed outside the scope of the new 2006 investment law, making it unclear as of yet what legal rights, degree of ownership, investor protections, and access to dispute settlement would be available to investors in the petroleum sector.¹⁴⁰

¹³⁶ See Ahmed Rasheed & John Davison, *Exclusive: Iraq to increase oil output and exports, waits on Iran sanctions – minister*, REUTERS (Nov. 6, 2018), <https://www.reuters.com/article/us-usa-iran-sanctions-iraq-exclusive/exclusive-iraq-to-increase-oil-output-and-exports-waits-on-iran-sanctions-minister-idUSKCN1NB1Q0> [<https://perma.cc/8HFM-4KTS>].

¹³⁷ See, e.g., Zalmay Khalilzad, *A Shared Stake in Iraq's Future*, WASH. POST (Mar. 3, 2007) at A15.

¹³⁸ *Id.*

¹³⁹ See Articles 111-12, *Dustūr Jumh. ūrīyat al-'Irāq* [The Constitution of the Republic of Iraq] of 2005.

¹⁴⁰ See U.S. DEP'T OF COM., INT'L TRADE ADMIN., IRAQ INV. AND RECONSTRUCTION TASK FORCE, LEGAL GUIDE TO INVESTING IN IRAQ (2011).

Opening the fragile Iraqi banking system, where lending to the private sector made up one-half of 1% total commercial bank assets lending in 2018, would create a regime more favorable to mega foreign banks. Iraqi banks may not have enough capitalization to compete with foreign banks. The subsidized agriculture sector is set for reform, which may ultimately benefit the agri-businesses of the U.S. and other major agricultural exporters.¹⁴¹ Likewise, Iraqi higher education is also slated for market-oriented reforms, under which graduates would have to find their own jobs, and job placement would no longer be a direct responsibility of the government.¹⁴²

With many decades of paternalistic cradle-to-grave government policy it is hardly perceivable that such reforms would be easy on people. Moreover, Iraq needs gradualism, not an instant trade liberalization, to make advances from a closed economy dominated by state-owned monopolies and subsidies toward a competitive and modern economy open to world trade.

Although Iraq faces a number of hurdles in pressing forward with the WTO accession process, this process may actually provide Iraq with a framework and support for overcoming political gridlock while improving the capacity of its Ministries to implement legislative reforms that are already in place. In order to utilize the WTO process to Iraq's full advantage, the Government of Iraq needs to map out a comprehensive accession negotiating strategy that will open up trade and investment opportunities, while limiting shocks to key sectors of the economic system and other pitfalls

¹⁴¹ See Ariana Eunjung Cha, *Iraqis Face Tough Transition to Market-Based Agriculture*, WASH. POST (Jan. 22, 2004), <https://www.washingtonpost.com/archive/politics/2004/01/22/iraqis-face-tough-transition-to-market-based-agriculture/a54bd6fb-c30e-4f13-92a1-35919188cd79/> [https://perma.cc/QNX4-SXMV]. Iraq has 5 million agricultural workers. In old Iraq, the state provided seeds, fertilizers, pesticides, sprinklers, and tractors at low cost. The Coalition Provisional Authority is determined to create a capitalist economy where the state provides little, if any, support. The U.S. and Australia are major agriculture exporters and are taking the lead in rehabilitating the Iraqi agricultural sector. After first purchasing and then destroying low quality Iraqi wheat in 2003, the food supply gap was made up with \$190 million worth of wheat from Kansas, Oklahoma, and Texas, courtesy of the U.S. See *id.*

¹⁴² See generally John Waterbury, *Reform of Higher Education in the Arab World*, in MAJOR CHALLENGES FACING HIGHER EDUCATION IN THE ARAB WORLD: QUALITY ASSURANCE AND RELEVANCE 448 (Adnan Badran, Elias Baydoun & John R. Hillman eds., 2019) (discussing the high level of youth unemployment and the need for reformation regarding the same in the Arab world).

sometimes experienced by developing countries.

PART III: Strategic Benefits of WTO Membership for Iraq

In spite of the WTO accession process being so lengthy and complex for many applicants, as described above, membership in the organization is nevertheless viewed as extremely important, and there remains a strong demand by non-member countries, especially developing countries, who are actively seeking to join the WTO.¹⁴³ In addition to the commonly recognized benefits of WTO membership, there are a number of more specific benefits of membership that are unique to “FCA” countries generally and Iraq in particular. As described below, the key benefits of WTO membership for Iraq can be divided into two basic categories: 1) *externally-focused benefits*, relating to improved integration into the international community and world economy; and 2) *internally-focused benefits*, including opportunities to improve economic conditions, governance, and quality of life within Iraq.

A. WTO Membership as a Path to International Engagement and Economic Integration

The most basic reason countries find value in joining the WTO is that it has become the most reliable path for integrating a country into the world economy in order to harness the benefits of international trade. The more isolated an economy has become, the more the country stands to benefit from such integration over the long term; with the important caveat that isolated economies will need greater flexibility and longer transition periods in order to avoid potential pitfalls and facilitate economic adjustments, as outlined in the next section below.¹⁴⁴

Economic integration is especially beneficial for countries that have been marginalized in the world trading system for historical (e.g. “FCA,” or transition economies), geographical (e.g. landlocked countries), and/or economic (e.g. least-developed countries) reasons.¹⁴⁵ In the case of Iraq, the country has been isolated from world markets for decades due to violent conflict and civil unrest, economic sanctions, centralized control over the economy, crumbling infrastructure, widespread corruption, lack of

¹⁴³ See *Summary Table of Ongoing Accessions*, *supra* note 24.

¹⁴⁴ Cattaneo & Primo Braga, *supra* note 26, at 4-5, 7.

¹⁴⁵ *Id.* at 4.

regulatory and governmental capacity, and the resulting slow pace of economic development. WTO acceptance would serve as a signal that Iraq has achieved world-class status in complying with internationally accepted rules and norms for global commerce, making it easier to expand trade relationships and attract investment.

Perhaps the most fundamental component of economic integration is gaining access to the markets of 156 other WTO-member countries on a non-discriminatory basis, pursuant to the Most-Favored-Nation and National Treatment principles that are the heart of the WTO system.¹⁴⁶ This market access is especially relevant for a country that has faced substantial past barriers against its exports under U.N. trade sanctions and based on political policy rationale that would be more difficult to justify against a WTO member given the market access and non-discrimination provisions of the WTO accords.¹⁴⁷ In other words, WTO access would offer Iraq some assurance that its goods and services will no longer face obstacles in world markets for arbitrary or political reasons.

As outlined above, Iraq has already started bilateral negotiations with existing WTO members as part of its accession process. Thus, the country is already making progress towards integration with key prospective trading partners around the world. Iraq has continued to engage in significant trade with the United States and the European Union, while also substantially increasing trade with China over the past decade.¹⁴⁸ On July 11, 2005, Iraq and the United States signed a Trade and Investment Framework Agreement (TIFA) to increase trade and investment cooperation between the

¹⁴⁶ See e.g., Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations (Apr. 15, 1994), 33 I.L.M. 1125, Annex 1A, General Agreement on Tariffs and Trade 1994 [hereinafter GATT] at Articles I and II of GATT 1947. The GATT 1994 supersedes, but incorporates, the original GATT 1947 as that had been amended from time to time. See *id.* para. 1(a); see also GATT art. II:4 (stating that the GATT 1994 is “legally distinct from” the GATT 1947).

¹⁴⁷ *Id.* at Art. XVI of GATT 1947. While such sanctions and barriers may still be feasible against a WTO-member, they would be more difficult and may be subject to dispute settlement, meaning the country imposing the barriers would be forced to justify such barriers. *Id.* at Art. XX of GATT 1947.

¹⁴⁸ See *Iraq: Trade Facts*, OFF. U.S. TRADE REP., <https://ustr.gov/Iraq> [<https://perma.cc/WY36-T5DU>] (last updated Oct. 2, 2020); see also Sophie Zinser, *A Quantum Leap Forward: Chinese Influence Grows in Iraq’s Oil Market*, THE DIPLOMAT (Dec. 23, 2020), <https://thediplomat.com/2020/12/a-quantum-leap-forward-chinese-influence-grows-in-iraqs-oil-market/> [<https://perma.cc/93VL-HK8F>].

two countries, leading to a bilateral FTA.¹⁴⁹ However, as of 2020, the Iraqi Parliament had yet to ratify the TIFA agreement with the United States, and new negotiations relating to the framework have only recently progressed again starting in 2019-2020.¹⁵⁰ The European Commission has also worked closely with Iraq to negotiate a Trade and Cooperation Agreement (TCA) and enter into a Partnership and Cooperation Agreement (PCA), which will help lay groundwork for productive WTO bilateral discussions between Iraq and the European Union as part of its accession process.¹⁵¹ Furthermore, Iraq has started bilateral accession discussions with a number of other countries involved in the WTO Working Party.¹⁵² Through these bilateral negotiations, Iraq is already making progress in opening access to key overseas markets, as well as laying the groundwork for attracting foreign investment into Iraq.

B. WTO Membership Can Help Iraq Enhance its Regional Integration

Another benefit of multilateral WTO membership is that it will help to facilitate deeper regional integration and commercial ties throughout the Middle East and North Africa (MENA) region, as well as between the MENA region and other regional trading block such as the European Union, North America, and ASEAN. Generally speaking, it is a more beneficial and cost-effective

¹⁴⁹ Trade and Inv. Framework Agreement between the Government of the United States and the Government of the Republic of Iraq Concerning the Development of Trade and Inv. Relations, Iraq – U.S., July 11, 2005, OFF. OF THE U.S. TRADE REPRESENTATIVE.

¹⁵⁰ See *Joint Statement on the U.S. – Iraq Strategic Dialogue*, U.S. EMBASSY IN GEORGIA, (Aug. 19, 2020), <https://ge.usembassy.gov/joint-statement-on-the-u-s-iraq-strategic-dialogue/> [<https://perma.cc/R53U-YMF2>] (stating that “[t]he two governments look forward to holding a Trade and Investment Framework Agreement (TIFA) Council meeting later this year to follow up on a June 2019 meeting.”); see also *2001 Investment Climate Statement: Iraq*, U.S. DEP’T OF STATE (Mar. 2020), <https://www.state.gov/reports/2021-investment-climate-statements/iraq/> [<https://perma.cc/7HZ4-9WDE>] (“The U.S. government and the GOI have revived the 2008 U.S.-Iraq Strategic Framework Agreement and the Trade and Investment Framework Agreement (TIFA) and held the second TIFA meeting in June 2019 and Strategic Dialogue in 2020 with good success.”).

¹⁵¹ EUR. COMM’N, COUNTRIES AND REGIONS: IRAQ, <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/iraq/> [<https://perma.cc/A2AA-HQWA>] (last updated June 21, 2021).

¹⁵² WTO Secretariat Report to Members, *WTO Accessions Newsletter*, *WTO Accession Development*, WTO (Dec. 2017), https://www.wto.org/english/thewto_e/acc_e/nl_e/2017_12_acc_newsletter_e.pdf [<https://perma.cc/849Y-7YPP>].

strategy for countries to negotiate WTO accession first, and then leverage the WTO process to negotiate additional regional and bilateral arrangements.¹⁵³ Once Iraq is a WTO member, the advances in legislation, implementation, and negotiation of the protocol of accession will all serve as a basis for negotiating additional regional arrangements more effectively.

Iraq already has existing bilateral free trade area (FTA) agreements with eleven regional countries (UAE, Oman, Qatar, Algeria, Egypt, Jordan, Lebanon, Syria, Tunisia, Yemen, and Sudan).¹⁵⁴ Additionally, Iraq is a signatory to thirty-five bilateral, and nine multilateral agreements in the region, which focus mainly on investment protections and promotion, and thus are not comprehensive FTAs.¹⁵⁵ Iraq has various bilateral agreements with other regional and international trading partners, including India, Iran, Japan, Jordan, Kuwait, Mauritania, Republic of Korea, Sri Lanka, Syria, Tunisia, Turkey, the United Kingdom, Vietnam and Yemen, among others.¹⁵⁶ In particular, Iraq has been actively seeking to enhance ties with Jordan and Egypt.¹⁵⁷

Previously, a pattern of countertrade has developed in Arab countries. In 1995, the U.N Security Council, for humanitarian purposes in Iraq, adopted Resolution No. 986, also known as the “Oil for Food Resolution.”¹⁵⁸ It provides for the export of specified quantities of Iraqi oil with the proceeds being deposited in an escrow account that may be used for the import of goods, products, and technology necessary for Iraq’s economic and social development.¹⁵⁹ Exports from Iraq to Jordan consisting mainly of

¹⁵³ *See Id.*

¹⁵⁴ ARAB ST. INV. BUS. GUIDE, ARAB LEAGUE COUNTRIES INVESTMENT CLIMATE AND OPPORTUNITIES 75 (2011).

¹⁵⁵ 2001 *Investment Climate Statement: Iraq*, *supra* note 150. For example, these investment agreements generally include clauses on profit repatriation, access to arbitration and dispute settlements, fair expropriation rules and compensation for losses. The investment agreements include the Multi Investment Guarantee Agreement (MIGA).

¹⁵⁶ *Id.*

¹⁵⁷ *See Iraq, Egypt, Jordan agree to boost security and economic ties at Baghdad summit*, FRANCE 24 (June 28, 2021, 9:20 AM), <https://www.france24.com/en/middle-east/20210628-iraq-egypt-jordan-agree-to-boost-security-and-economic-ties-at-baghdad-summit> [<https://perma.cc/W6YE-Afor9WW>].

¹⁵⁸ U.N., OFFICE OF THE IRAQ PROGRAMME OIL-FOR-FOOD, ABOUT THE PROGRAM, <https://www.un.org/depts/oip/background/index.html> [<https://perma.cc/NBQ9-D869>] (last updated Nov. 4, 2003).

¹⁵⁹ *Id.*

oil had nearly doubled during the first six months of 2009, and the two countries signed a new free trade agreement in September 2009, which entered into force in January 2010.¹⁶⁰ In 2010, Jordan pressed Iraq to double its crude oil exports from 10,000 to 20,000 barrels per day, and the trading partners expected quantities to increase dramatically once the oil pipeline between Kirkuk and Banias is repaired to replace the use of tanker trucks.¹⁶¹

Although the above regional and bilateral FTA and investment agreements have created frameworks for economic integration, compared to other areas, the Middle East North Africa (MENA) region is still not well integrated into the global economy in terms of trade, investment and capital flows.¹⁶² For example, Iraq is a member of the Pan Arab Free Trade Area, under which there has been some modest tariff liberalization, but significant non-tariff barriers continue to impede regional integration.¹⁶³ For most Arab countries, regional trade still accounts for less than 10 percent of total trade outside the petroleum sector.¹⁶⁴ The heavy dependence of several of the PAFTA members on oil as their largest export has made it difficult for many of these countries to integrate other sectors of their economies beyond the energy sector. World Bank studies conclude that the lack of MENA integration leads has a huge cost, lowering GDP growth by 1–2% and costing millions of jobs in markets that already suffering from high unemployment.¹⁶⁵

Regional upheaval and related political and sectarian tensions have historically inhibited Iraq's economic integration with neighboring trading partners. For example, Iraq was one of seven founding members in the League of Arab States in March 1945, along with Egypt, Jordan, Lebanon, Saudi Arabia, Syria, and Yemen.¹⁶⁶ The Arab League was later expanded to include Libya,

¹⁶⁰ *Jordan, Iraq sign free-trade agreement*, BILATERALS (Sept. 4, 2009), <https://www.bilaterals.org/?jordan-iraq-sign-free-trade&lang=fr> [https://perma.cc/J79Z-83SN].

¹⁶¹ *Id.*

¹⁶² *Trade Integration in the Middle East and North Africa*, WORLD BANK (Mar. 23, 2010), <https://www.worldbank.org/en/news/feature/2010/03/23/trade-integration-in-the-middle-east-and-north-africa> [https://perma.cc/33VK-RE3R].

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ Michael Moran, *The Arab League and Iraq*, COUNCIL ON FOREIGN RELATIONS (Oct. 20, 2005, 12:38 PM), <https://www.cfr.org/backgrounder>

Sudan, Morocco, Tunisia, Kuwait, Algeria, the United Arab Emirates, Bahrain, Oman, Qatar, Mauritania, Somalia, Palestine (a seat formerly held by the Palestine Liberation Organization), Djibouti, and the Comoros.¹⁶⁷ The Iraq War (and the Gulf War before it) badly split allegiances within the Arab League, but nevertheless the Arab League extended diplomatic recognition to the interim Iraqi government relatively quickly in September 2003.¹⁶⁸ However, there remains some ethnic and religious tensions on the part of Iraqi Kurds and Shi'ites in relation to the Arab League, most of whose twenty-two member states are ruled by Sunni Arabs; and similarly, some Arab league leaders have expressed concerns regarding potential Iranian Shi'ite influence in Iraq.¹⁶⁹

Sectarian tensions have impacted Iraq's relationship with the Gulf Cooperation Council (GCC) as well. Formed in May 1981, the GCC is a political, security, economic, and customs union of states in and around the Arabian Peninsula, namely Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and United Arab Emirates.¹⁷⁰ One of the original purposes of the council was to protect members from threats arising out of the Iran-Iraq war in the 1980s.¹⁷¹ Iraq was later approved to hold associate membership in certain GCC-related institutions, but was removed after Saddam Hussein's invasion of Kuwait.¹⁷² Although the GCC had earlier expressed strong support of the International Compact with Iraq (discussed above), members nevertheless announced a controversial decision in May 2011 to reject Iraq's recent efforts to join the GCC, while simultaneously approving the requests by Jordan and Morocco to

/arab-league-and-iraq [<https://perma.cc/FXL4-BW3X>].

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* (noting that the Gulf states of Kuwait, Saudi Arabia, United Arab Emirates, and Bahrain all supported, or at least refused to publicly object to, the U.S.-led military deployments in 2003).

¹⁶⁹ *Id.*

¹⁷⁰ Gulf Coop. Council Charter, May 25, 1981, SECRETARIAT GEN. OF THE GULF COOP. COUNCIL, <https://www.gcc-sg.org/en-us/AboutGCC/Pages/Primarylaw.aspx> [<https://perma.cc/TEG8-K3LG>].

¹⁷¹ *Id.*

¹⁷² Joel Wing, *Iraq Will Have To Wait For Its Return To The Regional Stage*, MUSING ON IRAQ (May 26, 2011), <http://musingsoniraq.blogspot.com/2011/05/iraq-will-have-to-wait-for-its-return.html> [<https://perma.cc/Z8MA-VFSX>].

join the Council.¹⁷³ Some members of the GCC may favor establishing strong Sunni presence in the council as a counterweight to perceived Iranian influence, thus supporting entry of Morocco and Jordan but not Iraq.¹⁷⁴ By contrast, some Shi'ite political leaders in Iraq had criticized the GCC decision to dispatch thousands of troops under the council's joint defense pact to Bahrain in March 2011 in order to assist the government there in suppressing protestors (many of whom were Shi'ite).¹⁷⁵ These and other shifts in the balance of power across the region since 2012 have contributed to tensions and uncertainty, further inhibiting stronger regional trade integration.

While Iraq's entry into the WTO may not fundamentally alter these challenging political and sectarian dynamics in the region, it would help to establish a common set of trading rules and additional channels for identifying and pursuing common commercial interests with neighboring countries.

C. Benefits of Access to WTO Rules-Based System with Built-In Dispute Settlement Mechanisms

It is also in Iraq's best interest to actively participate in the WTO system in order to help influence WTO rules and norms at a time when the Doha Development Agenda has fallen off track. In order to reinvigorate the Doha Development Round, the WTO needs to send a strong signal that developing and "FCA" economies will be given a greater voice in the system. In many respects, Iraq in particular and the Mideast region more generally, now have a historic opportunity to influence norms and trends in the trading system because the world's strongest economic powers (including the United States, Europe, and to a lesser degree even China and India), place great strategic importance on developing stable economic partnerships in Mideast region. There is a strong interest

¹⁷³ H. Varulkar, *Addition of Jordan and Morocco to Gulf Cooperation Council – A New Sunni Arab Alignment Against Iran*, MIDDLE EAST MEDIA RES. INST. (June 15, 2011), <http://www.memri.org/report/en/0/0/0/0/0/5376.htm> [<https://perma.cc/NMJ8-GLVS>].

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* See also Y. Admon, L. Barkan, & A. Savyon, *The Bahrain Situation: Media Clashes Between the Iranian-Shi'ite Camp and the Saudi-Sunni Camp*, MIDDLE EAST MEDIA RES. INST. (Mar. 18, 2011), <http://www.memri.org/report/en/0/0/0/0/0/5104.htm> [<https://perma.cc/XZ7W-WAR7>] (discussing how the deployment of foreign forces to Bahrain was criticized by Iranian officials, who claimed that it would lead to an escalation in the violence against the protestors in Bahrain).

in Western countries in stabilizing Iraq after decades of conflict and uncertainty, and this gives the Iraqi government an important source of leverage in its WTO accession negotiations as well as a stronger voice for influencing the WTO rules and norms applied to “FCA” developing countries more broadly.

Another benefit of gaining access to the WTO system is that it will provide Iraq with a strong and objective dispute settlement mechanism. Iraq is not a stranger to trade disputes. For example, in 1999, a consortium of independent U.S. crude oil producers alleged that companies in Saudi Arabia and Iraq, among other countries, were dumping crude oil that was subsidized by the Saudi and Iraqi governments in the U.S. market.¹⁷⁶ The WTO dispute settlement understanding helps to protect members against discriminatory or abusive trade practices, and creates a multilateral mechanism in which third parties are informed of violations and can automatically benefit from remedies litigated by other members under the WTO Dispute Settlement Understanding (DSU).¹⁷⁷ Perhaps it is fair to say that the dispute settlement mechanism under the WTO is the only rule-based body in the system.¹⁷⁸ Thus, Iraq would not only have access to bring its own cases under the dispute settlement mechanism, but also would benefit from jurisprudence developed in cases brought by other members under the DSU. In addition, the comprehensive set of market access requirements and trading rules under the WTO system may provide a more objective international system under which to resolve any future trade disputes that might

¹⁷⁶ The U.S. Department of Commerce denied the petition on the ground that there was no sufficient support from the domestic industry to initiate an investigation since opposition from U.S. producers exceeded support. On appeal, the CIT and Court of Appeals for the Federal Circuit affirmed the decision of the Commerce Department. *See Save Dom. Oil, Inc. v. U.S.*, 240 F. Supp. 2d 1342 (Ct. Intl. Trade 2002) (stating that this was the first case the Commerce Department had rejected a petition at the filing petition level). *See also* *Save Dom. Oil v. U.S.*, 357 F.3d 1278, 1284 (Fed. Cir. 2004) (the Commerce Department does not have a standard practice applicable to all industries of disregarding the opposition of domestic importer-producers with import levels beyond a certain percentage. There is an industry-specific analysis). One may speculate that the Commerce Department rejected the dumping petition because imposing an anti-dumping order would lead to political backlash from oil-producing countries as well as to increase in the price U.S. consumers would pay at the pump.

¹⁷⁷ Cattaneo & Primo Braga, *supra* note 26, at 5.

¹⁷⁸ *See* Miquel Montana I Mora, *A GATT with teeth: Law Wins over Politics in the Resolution of International Trade Disputes*, 31 COLUM. J. TRANSNAT'L L. 103, 107, 123-28, 129-36 (1993). *See also* John H. Jackson, *The Birth of the GATT-MTN System: A Constitutional Appraisal*, 12 LAW & POL'Y INT'L BUS. 21 (1980).

arise with other WTO members in the Mideast region given the current turmoil and historic changes occurring within the region.

D. Improved Domestic Governance as a Benefit of WTO Accession

Iraq's timing in seeking to join the WTO means that the country can also take advantage of significant political, financial, and practical support for completing the procedures involved in the accession process. This includes receiving substantial technical assistance and capacity-building support from the WTO itself as well as from other international organizations (e.g., the World Bank, U.N. Conference on Trade and Development) and the U.S. Agency for International Development. These efforts are intended to assist Iraq in understanding the technical aspects of the WTO system, and help to build capacity among Iraq's various ministries for administering and enforcing the various elements of the WTO system. Typically, such technical assistance programs can be of great benefit in improving the quality of domestic governance and increasing the capacity, skills, and expertise of key government ministries in developing countries.¹⁷⁹

Several private sector and World Bank studies provide evidence that WTO membership does in fact lead to improved institutional quality and efficiency, and also helps countries fight corruption and reduce rent-seeking behavior.¹⁸⁰ In part, this is because new WTO members must implement a comprehensive set of fully developed and well-established international norms that help make the new member's market more attractive to domestic and foreign investors.¹⁸¹

Another reason WTO membership tends to lead to actual improvements in institutional quality and expertise is because the

¹⁷⁹ See *WTO Technical Assistance and Training*, *supra* note 57.

¹⁸⁰ See Rolf J. Langhammer & Lücke Matthias, *WTO Accession Issues*, 22 *WORLD ECON.* 1, 33 (1999); see also Zdenek & Bacchetta, *supra* note 126, at 1083-125; see also Cattaneo & Primo Braga, *supra* note 26, at 5.

¹⁸¹ See Langhammer & Lücke, *supra* note 180, at 837-73. These new rules and norms cover a wide range of areas, including better protection of intellectual property rights (Agreement on the trade-related aspects of intellectual property rights, TRIPS), better governance of so-called backbone services (e.g. telecoms, banking, transports) (General Agreement on Trade in Services, GATS), and better regulation of technical, sanitary and phytosanitary measures (Agreement on the application of sanitary and phytosanitary measures, SPS, and Agreement on technical barriers to trade, TBT).

accession process can help countries overcome internal and domestic resistance to reforms.¹⁸² This benefit is especially relevant for Iraq, where the government is still in transition. Political coalitions can be fragile, and political or sectarian tensions can easily lead to power struggles in the COR that cause rifts at the government ministry level. The climate of uncertainty and history of corruption in Iraq also has created entrenched practices and interests that are resistant to change and reform. In this sense, the WTO system further benefits countries like Iraq because it can provide an external anchor for needed reforms and limit government discretion by making politically-motivated recidivism costly.¹⁸³ In some respects, provided that various political factions can be persuaded that the overarching goal of joining the WTO system is of benefit to Iraq as a nation, then the process can become a common goal that is larger than any one group's narrower interests, making it a rallying cry for continuing progress on the economic reform initiatives already underway.

Once Iraq becomes a member, the WTO system also will require periodic reviews under the Trade Policy Review Mechanism (TPRM), which aids in implementation and prevents backsliding on commitments made in the protocol of accession due to domestic political pressures.¹⁸⁴ The WTO system mandates that a comprehensive trade policy reviews of member countries must be conducted every 2–6 years, depending on the size of the member's economy.¹⁸⁵

E. Attracting Foreign Investment to Improve and Diversify Iraq's Domestic Economy

These resulting improvements in domestic economic rules and institutional quality are essential to making Iraq's domestic market a fertile ground for investment and to increase domestic production of a wider variety of goods and services. Strategically, WTO accession is most critically important for diversifying Iraq's economy. Economic diversification is the only way that Iraq will be able to tackle the classic dilemmas that confront states dependent on

¹⁸² Cattaneo & Primo Braga, *supra* note 26 at 6.

¹⁸³ *Id.*

¹⁸⁴ *See id.*

¹⁸⁵ MATHIAS KENDE, *THE WTO TRADE POLICY REVIEW MECHANISM: A CRITICAL ANALYSIS* 63–64, 163 (Oxford Univ. Press, 2018).

key commodities such as oil and gas. Even when prices and quantities of oil produced and exported by Iraq increase, this will result in higher government revenues, yet have little impact in reducing high unemployment rates. When an economy is dependent on one sector such as petroleum, it is simply not possible to employ most citizens in a single industry. In addition to security threats and corruption, unemployment is inhibiting Iraq's stability and preventing development of a strong middle class. WTO accession has the benefit of providing the framework around which Iraq can increase trade, investment, and growth in other goods and services sectors beyond petroleum, thereby creating a wider variety of jobs.

**PART IV: Strategic Recommendations for Iraq and other
"FCA" Countries for Avoiding Pitfalls and Maximizing
Benefits of WTO Accession**

*A. Iraq Should Emphasize its Status as a Fragile and Conflict
Affected Country*

Iraq has declared itself to be a "developing country" in its WTO accession filings and discussions with the WTO Working Party, despite the fact that the country is classified as an "upper middle income" country under formal World Bank economic classification guidelines.¹⁸⁶ Thus, Iraq should consider going further to include in its accession materials detailed evidence supporting its unique status as a "FCA" country, demonstrating that Iraq has faced economic hurdles that are quite similar to those of least developed countries. For example, Iraq should seek assistance from the United Nations Conference on Trade and Development (UNCTD), which can provide substantial technical assistance to the GOI in preparing supporting materials for submission in the various phases of the WTO accession process. The UNCTD and other regional economists can assist Iraq in developing detailed data and evidence demonstrating that economic institutions have been ravaged and poverty is widespread.

The World Bank and Iraq Central Bank GDP data below reflects

¹⁸⁶ See, e.g., Safa Al Deen Al-Safi, *supra* note 85, at 2 (asserting that because Iraq is a developing country, it needs special treatment including "longer time periods for implementing WTO agreements and commitments, increase of trading opportunities, infrastructures for WTO work, handling trade disputes and implementing of technical standards"); see also *Iraq*, WORLD BANK, <https://data.worldbank.org/country/IQ> [<https://perma.cc/P6GJ-3AE9>] (last updated 2021).

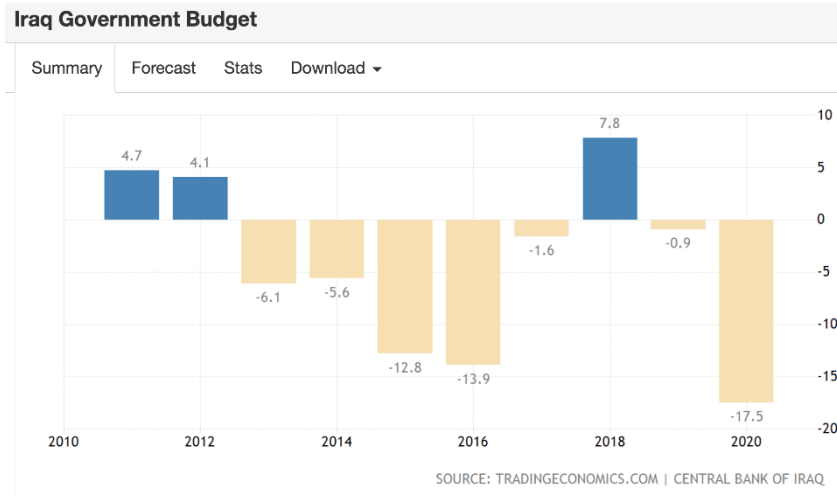
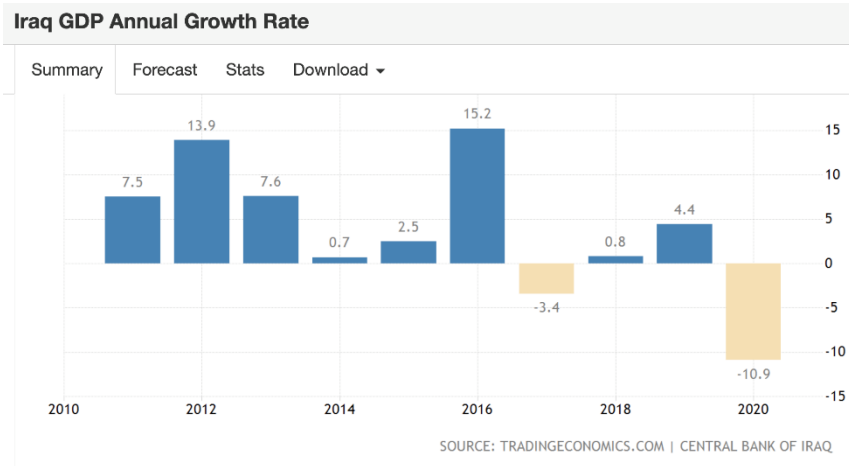
that between 1996–2020, Iraq has hovered near a GDP level comparable to least developed countries. This is also mirrored in poverty data, health statistics, and trade flow data.¹⁸⁷ In 2000, before the U.S. invasion, the U.N. humanitarian coordinator in Iraq, Hans von Sponeck, estimated that Iraq’s actual annual per capita income was actually only \$252 (a figure even lower than reflected in the World Bank chart shown below), which he stated “would be at the bottom of least developed countries [given that] [t]he Organization for Economic Development (OECD) considers a country that has a (per capita) income less than \$450 a year as a least developed Country[.]”¹⁸⁸ The economic outlook in Iraq has fluctuated substantially ever since, rising from 2004–2016, then falling significantly from 2016–2021.¹⁸⁹ Currently, a wide range of economic indicators reflect that Iraq can be classified as a low-income fragile country, as shown in the charts below¹⁹⁰:

¹⁸⁷ See e.g., Sabri Zire al-Saadi, *Oil-Rich Iraq Now One of the World’s Least Developed Countries*, 45 MEES, No. 40, (Oct. 7, 2002) (highlighting that the real GDP per capita data not only classifies Iraq as a least developed country, but also shows that the Iraqis are living below the \$360 poverty). See also, Development Policy and Analysis Division (DPAD) of the Department of Economic and Social Affairs of the United Nations Secretariat (UN/DESA), “World Economic Situation and Prospects (WESP) 2014”, Data sources, country classifications and aggregation methodology to delineate trends in various dimensions of the world economy, https://www.un.org/en/development/desa/policy/wesp/wesp_current/2014wesp_country_classification.pdf (last visited on Nov. 5, 2021). Note, this report classifies Iraq as a “developing country” and provides references to data and methodology used in determining that classification.

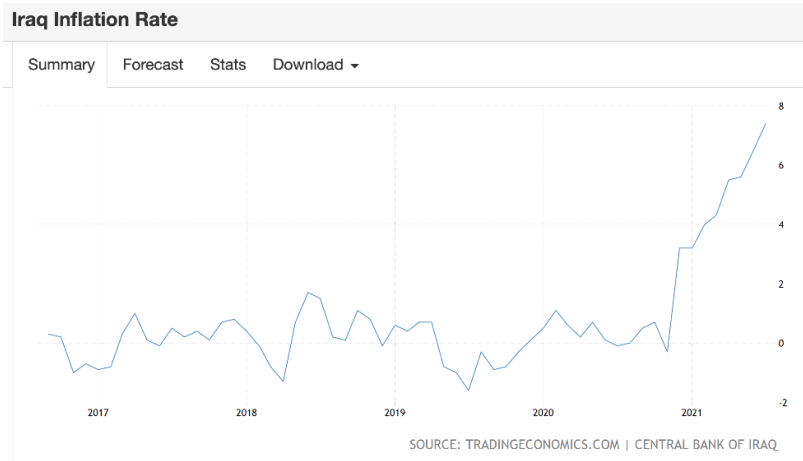
¹⁸⁸ *Iraq now a least-developed nation*, DESERET NEWS (Jan. 19, 2000, 12:00 AM), <https://www.deseret.com/2000/1/19/19486507/iraq-now-a-least-developed-nation> [https://perma.cc/E39V-WEM9].

¹⁸⁹ *Iraq GDP Per Capita*, TRADING ECON., <https://tradingeconomics.com/iraq/gdp-per-capita> [https://perma.cc/3V73-MDB3] (last visited Sept. 21, 2021).

¹⁹⁰ Bledi Celiku & Wael Mansour, *What will it take to bring back growth in Iraq?*, BROOKINGS (Oct. 27, 2020), <https://www.brookings.edu/blog/future-development/2020/10/27/what-will-it-take-to-bring-back-growth-in-iraq/> [https://perma.cc/YC4U-3RD2].



While Iraq's economy has improved above "least developed" status since 2005, it is worth emphasizing the extreme economic devastation Iraq suffered between 1990 and 2005, and more recently since 2016. The above data reflecting Iraq's latest economic hardships will be relevant in negotiating the most favorable



developing country terms available under the WTO's guidelines for "special and differential treatment of developing countries." Given extreme political destabilization within Iraq and across the wider region, along with the devastating impact of COVID-19 on the Iraqi economy, analysts in 2021 are worried about increasingly dire economic challenges Iraq currently faces.¹⁹¹ For example, Iraq's poverty rate has shot up from 20% in 2018 to 30% or more in the past year, with government revenues down by more than 47% and inflation steadily rising.¹⁹²

The WTO system provides specific support systems and flexibility for developing countries that date back to the original "Enabling Clause" (officially called the "Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries"), which was first adopted under GATT in 1979.¹⁹³ The Enabling Clause was formally incorporated into the WTO system as the legal basis under which members are expected to give "special and differential treatment to developing countries."¹⁹⁴ For example, the Enabling Clause

¹⁹¹ Alice Fordham, *In Iraq's 'Dire' Economy, Poverty Is Rising — And So Are Fears Of Instability*, NPR (Feb. 3, 2021, 11:42 AM), <https://www.npr.org/2021/02/03/961149079/in-iraqs-dire-economy-poverty-is-rising-and-so-are-fears-of-instability> [<https://perma.cc/LZ4Z-RLWL>].

¹⁹² *Id.*

¹⁹³ *Special and Differential Treatment Provisions*, WTO, https://www.wto.org/english/tratop_e/devel_e/dev_special_differential_provisions_e.htm [<https://perma.cc/6UB7-NGJ3>] (last visited Sept. 21, 2021).

¹⁹⁴ *Main Legal Provisions*, WTO, http://www.wto.org/english/tratop_e/devel_e/d2legl_e.htm [<https://perma.cc/L6UC-FBNU>] (last visited Sept. 21,

provides the more specific legal basis for the “Generalized System of Preferences (GSP)” and the Global System of Trade Preferences (GSTP) programs, under which developed countries offer non-reciprocal preferential treatment (such as zero or low duties on imports) to products originating in developing countries and developing countries exchange trade concessions among themselves.¹⁹⁵ Although the WTO Agreements formally give “special and differential treatment” to developing countries,¹⁹⁶ in practice, these concessions have not done nearly enough to fully integrate developing country economies into the international trading system.¹⁹⁷ In order to better address the developmental needs of these countries, the GSP was created to provide additional tangible advantages to developing economies with respect to trade in goods.¹⁹⁸ However, what actually transpired since the GSP went into effect has been that over time as trade negotiations reduce worldwide tariffs further, the Most Favored Nation (MFN) tariff rates become available to all WTO members. As the MFN rates come to equal the GSP rates over time, this erodes the practical value of such GSP benefits for developing countries.¹⁹⁹

The United States has already designated Iraq as a beneficiary under its GSP program, and Iraq should certainly seek the same

2021).

¹⁹⁵ *Id.*

¹⁹⁶ For example, article XVIII authorizes a country to restrict imports for the establishment of a particular industry or for balance of payment purposes. Developed countries should not expect reciprocity in concessions from developing countries. Article XXVIII*bis* stipulates that the needs of less-developed countries for the use of tariffs to protect their economies and for revenue purposes must be taken into account. Moreover, an enabling clause was developed so as to give permanent preferential treatment to developing countries during the Tokyo Round. The so-called “Enabling clause” was developed through a decision taken by the contracting parties to the GATT. The text of the clause states that contracting parties “may” accord differential and more favorable treatment to developing countries. Abdulqawi A. Yusuf, “*Differential and More Favourable Treatment*”: *The GATT Enabling Clause*, 14 J. WORLD TRADE L. 488, 496–98, 506 (1980).

¹⁹⁷ Part VI was qualified by many words that rendered it aspirational rather than legally binding. See Chantel Thomas, *Developing Countries and the Multilateral Trade Agreements: Law and the promise of Development*, 108 HARV. L. REV. 1715, 1720 (1995).

¹⁹⁸ See Bashar Hikmet Malkawi, *Jordan and the World Trading System: A Case Study for Arab Countries* 52–53, n. 148 (2006) (unpublished S.J.D. dissertation, American University Washington College of Law).

¹⁹⁹ See R. E. Baldwin & T. Murray, *MFN Reduction and Developing Country Trade Benefits Under the GSP*, 87 ECON. J. 30, 40 (1977).

duty-free benefits from all other WTO members.²⁰⁰ As a more specific reform to support trade integration, Iraq should seek to establish within its own domestic law a form of “Fast Track” trade negotiating authority for getting WTO accession passed via Council of Ministers/Parliament. Article 110 of the Constitution of Iraq appears to give the federal government the exclusive right to “formulate foreign sovereign economic and trade policy, meaning it could implement “fast track” negotiating powers and therefore streamline the WTO accession process.”²⁰¹

B. Iraq Should Leverage its FCA Status to “Seek Special and Differential Treatment” from WTO

Similarly, Iraq should emphasize its classification as a “developing country” in the United Nations system, while also highlighting the economic challenges it faces that are above and beyond those normally experienced by developing countries. Iraq should specifically focus on three factors in seeking the longest possible transition times in its Market Access negotiations:

- 1) “economic isolation”, including the impact of sanctions and economic turbulence over the past two decades;
- 2) “transition status”, meaning that the country is transitioning from a centrally planned to an open market based economy; and
- 3) ““FCA” status,” including recent history and long legacy of armed conflict and sectarian tensions, and efforts to achieve greater security.

Iraq should argue that having all three of these factors in play at one time gives Iraq a unique status that justifies greater flexibility and requires developed countries to offer Iraq greater concessions in the WTO accessions process. In particular, Iraq should seek maximum flexibility and longer transition periods for all domestically sensitive products such as agriculture, processed

²⁰⁰ Press Release, White House, Statement on Designating Iraq under the Generalized System of Preferences (GSP) Program (Sept. 7, 2004), <https://georgewbush-whitehouse.archives.gov/news/releases/2004/09/20040907-15.html> [<https://perma.cc/4QE9-E584>].

²⁰¹ Article 110, *Dustūr Jumh. ūrīyat al-’Irāq* [The Constitution of the Republic of Iraq] of 2005, available at: https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en (last visited on Nov. 5, 2021)

foods, and textiles. For example, higher initial tariff levels and longer transition times for reducing tariffs on such products will help provide a valuable buffer to domestic producers as the economy is adjusting to greater openness to imports.

Iraq should also take advantage of the fact that it has had only low levels of trade integration in the past as another basis for arguing in its WTO negotiations that it should not be forced to accept substantial “WTO-Plus” commitments and “WTO-minus” obligations in the accession process. Typically, the economies that are already highly integrated (e.g., China and Vietnam) have had to make the greatest level of additional WTO-plus commitments in their protocols of accession, whereas countries with low levels of existing trade integration (e.g., Cambodia, Tonga) are not perceived by WTO members as posing a major threat, and therefore can be permitted greater flexibility.²⁰² The point is that the vast majority of Iraq’s previous trade has been primarily in a single sector, petroleum. Therefore, Iraq can emphasize that it will need to start from a higher tariff baseline and be permitted longer transition times for more sensitive, non-petroleum products and services in order to give those industries time and capacity to adjust to free market competition. In particular, Iraq should emphasize the unique and critical importance of food security in a “FCA” environment as a basis for seeking longer higher baselines of allowable agricultural supports and longer phase-down periods for agricultural subsidies to Iraqi farmers and domestic producers of processed foods.

If it has not done so already, Iraq should map out in detail the specifics of its market access and services proposals by undertaking a comprehensive survey of all existing domestic industries to identify the goods and services sectors, and the specific products within those sectors, that are most likely to be adversely impacted by opening the economy to foreign competition. For goods, Iraq will need to seek to maintain higher baseline tariffs on key products, and also pay close attention to the rules of origin applicable in the relevant industries in order better moderate the impact of imports during a transition period while ensuring greater opportunities for

²⁰² See e.g., Julia Ya Qin, “WTO-Plus” Obligations and Their Implications for the World Trade Organization Legal System, 37 J. WORLD TRADE 483, 491 (2003) (highlighting the WTO-Plus obligations of China, including “(1) transparency, (2) judicial review, (3) uniform administration, (4) national treatment, (5) foreign investment, (6) market economy, and (7) transitional review”).

exports. Similarly, Iraq should specifically identify key services where greater flexibility is needed to permit domestic providers time to adjust, and structure its schedules of services commitments accordingly.

C. Iraq Should Ask WTO Members to Formally Take Into Account Specific Aspects of its “FCA” Status in Negotiating its Protocol of Accession

Finally, Iraq should argue that the unique combination of reconstruction issues faced by “FCA” countries saddle them with all of the same challenges as those attributed to least developed countries in the WTO special “Guidelines for Accession of Least Developed Countries” that were formally adopted by the General Council in December 2002. “FCA” nations with economies that have been ravaged by war therefore should be entitled to the same treatment as in these LDC accession guidelines, as a means of facilitating and accelerating the accession of war torn countries in support of their reconstruction efforts. More specifically, these special LDC accession guidelines state²⁰³:

WTO Members shall exercise restraint in seeking concessions and commitments on trade in goods and services from acceding LDCs, taking into account the levels of concessions and commitments undertaken by existing WTO LDCs’ Members;

[T]ransitional periods/transitional arrangements foreseen under specific WTO Agreements, to enable acceding LDCs to effectively implement commitments and obligations, shall be granted in accession negotiations taking into account individual development, financial and trade needs

[E]fforts shall continue to be made, in line with information technology means and developments, including in LDCs themselves, to expedite documentation exchange and streamline accession procedures for LDCs to make them more effective and efficient, and less onerous.

WTO has become familiar with some of the unique transitional

²⁰³ General Council, *Accession of Least-developed Countries*, WTO Doc. WT/L/508, at 2–3 (Jan. 20, 2003).

issues that face “FCA” economies though the recent accessions of countries such as Croatia, Cambodia, Vietnam, and countries of the former Soviet Union. In response, the WTO has taken some formal steps to demonstrate an increasing interest in providing special assistance to FCA countries since 2017, when the “Trade for Peace” initiative was launched at the 11th WTO Ministerial Conference in Buenos Aires.²⁰⁴ This initiative is in very early stages, and thus far Iraq and several other FCA countries seeking WTO admission have not participated, as the benefits of the program remain unclear. The transition of “FCA” states into the WTO has become an even more critically important issue since then, given that over half of the countries currently in the accession process are conflict torn states, such as Syria, Sudan, Libya, Bosnia and Herzegovina, and others.²⁰⁵ Thus, if the WTO can be convinced to formally apply “special and differential treatment” in the case of Iraq, this would set an important precedent in giving maximum flexibility to “FCA” countries that are negotiating their WTO accession during critical periods of peace-building, reconstruction and economic transition.

Iraq also should leverage its unique “FCA” status to argue for special “reconstruction exemptions” under the WTO system. Specifically, Iraq should seek to keep special reconstruction related tax provisions in place (e.g., levies on imports, and/or tax breaks for infrastructure investments) to be gradually phased down over time, in order to help finance the costs of major trade-related infrastructure reconstruction projects (e.g., ports, rail, highways, statistical tracking systems, customs compliance programs, etc.). If feasible, Iraq should avoid any agreement to phase down its reconstruction tax on a set timetable, and instead base the phase-down on actual achievement of enumerated benchmarks of reconstruction projects in key sectors (electricity, ports, roads, telecoms, broadband, etc.).

Under the category of special reconstruction exemptions for “FCA” rebuilding, Iraq should also seek to maintain special tax and investment privileges in its Free Zone system. To the greatest extent possible, Iraq should seek formal agreement from other WTO

²⁰⁴ *Trade for Peace Programme*, WTO, https://www.wto.org/english/thewto_e/acc_e/tradeforpeace_e.htm [https://perma.cc/6J5D-AA7B] (last visited Sept. 22, 2021).

²⁰⁵ See *Summary Table of Ongoing Accessions*, *supra* note 24.

members in bilateral and multilateral negotiations that such programs qualify as “non-actionable” subsidies or for other exceptions under the WTO Agreement (e.g., for regional development of “disadvantaged regions” or “research and development” of manufacturing capabilities), given that many free zone activities are targeted at capacity-building and educational processes needed for Iraq’s industries to learn how to comply with international standards and develop world-class manufacturing capabilities.

D. The WTO System Should Interpret the “Special and Differential” treatment language as applicable to FCA countries, even if they were not previously categorized as “developing” or “least developed” in the WTO System

Finally, the World Trade Organization should be urged by major member countries and trading blocs to formally accord the specific “special and differential treatment” provisions of the various GATT and WTO agreements to FCA countries, including specifically with respect to easing and streamlining the accession process. While the “Trade for Peace” initiative is well intended, it is a long way from formalizing tangible accession benefits for FCA countries. Adopting a formal policy of extending existing “special and differential treatment” provisions to FCAs in their accession negotiations would be a more dramatic, tangible, and meaningful step in helping countries such as Iraq to enter the WTO in a manner that helps to ease the economic transitions and policy changes typically required of new WTO members.

CONCLUSION

Although Iraq first filed its WTO accession application in 2004, that was at a time of U.S. occupation. Since then, Iraq’s various elected governments have reiterated their interest in seeking WTO admission, but the country has faced numerous seemingly insurmountable challenges as described above, which have led the World Bank to classify Iraq as a “Fragile and Conflict Affected” state. As discussed in Section II, Iraq made some initial procedural progress on its WTO accession application, and has also started to engage in the substantive bilateral negotiations that will be necessary to finalize the specific terms to be included in Iraq’s protocol of accession in order to gain admission to the WTO. But this process was put on hold for many years due to the significant

political, economic, and practical hurdles throughout this process. As of early 2021, the Iraqi delegation to the WTO appears ready to try and get these negotiations “back on track.”

As outlined in Section III above, Iraq should now reinvigorate and reorient its WTO accession, as the substantial benefits of WTO membership would make the process worthwhile, particularly if accession could be completed on a “special and differential treatment” basis due to its status as an FCA country. Iraq’s membership in the WTO should lead to wider international integration into the world trading system, as well as deeper integration with regional trading partners in the Middle East and North Africa region. In addition, Iraq stands to gain a whole host of internal benefits, not the least of which is the ability to attract investment for reconstruction and building private industry, which in turn will help to diversify Iraq’s economy and lower the high rates of unemployment. More specifically, WTO accession process may serve as a framework that will actually help Iraq overcome domestic political resistance and divisions and help pave the way for reforming its laws, regulations, and ministries and increasing transparency.

Finally, as summarized in Part IV above, Iraq may be able to gain specific strategic advantages and concessions in the WTO accession negotiating process by leveraging its unique status as a “FCA” developing country that is also undergoing transition from a centrally controlled to a market based economy. Iraq can emphasize in its WTO negotiations that it has special needs given these highly unique circumstances, and thus it should be given “special and differential treatment” under WTO guidelines in terms of greater flexibility and longer transition periods for full compliance with key aspects of WTO requirements. More specifically, Iraq should encourage the WTO to apply to FCA countries that have security and reconstruction challenges the same special treatment in accession that is provided to Least Developed Countries under the 2002 “Guidelines for Accession of Least Developed Countries.” If Iraq is successful in gaining such treatment, this would set a powerful and beneficial precedent that could be applied to the many other FCA nations currently seeking to join the WTO.

APPENDIX I: WTO ACCESSIONS WORK PROGRAMME SUMMARY CHART AS OF OCT 2020²⁰⁶

WTO ACCESSIONS NEWSLETTER
...safeguarding, enlarging and strengthening the rules-based multilateral trading system

N° 102 — September/October 2020

WTO Accessions 2020 — Evolving Work Programme

Accession WP	WP Establishment	Last WP Meeting	State of Play	Upcoming Activity
1. ALGERIA (DZA) Chair: H.E. Mr. José Luis CANCELA GÓMEZ (Uruguay)	17 June 1987	14WPM, 31 March 2014	- Preparation of updated inputs (replies, LAP, AGSTs, LEG)	
2. ANDORRA (AND)	22 October 1997		Inactive	
3. AZERBAIJAN (AZE) Chair: H.E. Dr. Walter WERNER (Germany)	16 July 1997	14WPM, 28 July 2017	- Preparation of updated inputs (replies, LAP, AGSTs, LEG, as well as DWPR)	- 15WPM (Q1 2021 – TBC)
4. THE BAHAMAS (BHS) Chair: H.E. Mr. Andrew STAINES (United Kingdom)	18 July 2001	4WPM, 5 April 2019	- Preparation of updated inputs (replies, EDWPR)	- 5WPM (TBC)
5. BELARUS (BLR) Chair: H.E. Mr. Kemal MADENOĞLU (Turkey)	27 October 1993	12WPM, 10 July 2019	- Updated inputs (LAP, LEG, replies, DWPR) circulated between November 2019 and March 2020. Revised AGST circulated in July	- 13WPM (TBC)
6. BHUTAN* (BTN) Chair: H.E. Dr. Elisabeth TICHY-FISLBERGER (Austria)	6 October 1999	4WPM, 30 January 2008	No activity since 2008	
7. BOSNIA AND HERZEGOVINA (BIH) Chair: H.E. Mr. Atanas PAPARIZOV (Bulgaria)	15 July 1999	13WPM, 7 February 2018	- Preparation of updated inputs (replies, LAP as well as DWPR)	- 14WPM to be held in 2021 (TBC)
8. COMOROS* (COM) Chair: H.E. Mr. Luis Enrique CHÁVEZ BASAGOTIA (Peru)	9 October 2007	5WPM, 14 September 2020	- Deadline for submission of questions: 12 October 2020	- 6WPM (TBC)
9. CURAÇAO (CUW) Chair: Pending	3 March 2020	No WPM held to date	- Preparation of MFTR	- Secretariat's TA in preparation of MFTR (Q4 2020)
10. EQUATORIAL GUINEA (GNQ) Chair: Pending	5 February 2008	No WPM held to date	- Preparation of MFTR	- Secretariat's TA mission to Malabo (TBC)
11. ETHIOPIA* (ETH) Chair: H.E. Mr. Morten JESPERSEN (Denmark)	10 February 2003	4WPM, 30 January 2020	- Preparation of updated inputs (replies, LAP, as well as Elements of DWPR)	- 5WPM (Q1 2021 – TBC)
12. IRAN (IRN) Chair: Pending	26 May 2005	No WPM held to date	- Preparation of updated inputs (MFTR and MA offers)	
13. IRAQ (IRQ) Chair: H.E. Mr. Omar HILALE (Morocco)	13 December 2004	2WPM, 2 April 2008	- Updated MFTR circulated in Feb. 2018. - Preparation of full range of updated inputs (replies, LAP, LEG, AGST, checklists and questionnaires, MA offers)	
14. LEBANESE REPUBLIC (LBN) Chair: Mr. Jean-Paul THUILLIER (France)	14 April 1999	7WPM, 28 October 2009	- Updated inputs (AGST, LAP, LEG, checklists and questionnaires, as well as DWPR) circulated to WP in April-June 2017 - Preparation of updated MA offers	
15. LEBYA (LBY) Chair: Mr. Victor ECHEVARRIA UGARTE (Spain)	27 July 2004	No WPM held to date	Inactive	
16. SAO TOMÉ AND PRÍNCIPE* (STP) Chair: Pending	26 May 2005	No WPM held to date	- Preparation of MFTR	
17. SERBIA (SRB) Chair: H.E. Mrs. Marie-Claire SWÄRD CAPRA (Sweden)	15 February 2005	13WPM, 13 June 2013	- Preparation of updated inputs (AGST, LAP, LEG as well as DWPR)	- 14WPM (TBC)
18. SOMALIA* (SOM) Chair: Pending	7 December 2016	No WPM held to date	- MFTR circulated in May 2020 - Preparation of replies and LAP	- 1WPM in 2021 (TBC)
19. SOUTH SUDAN* (SSD) Chair: H.E. Mr. Mohammad Qurban HAQJO (Afghanistan)	13 December 2017	1WPM, 21 March 2019	- Preparation of updated MFTR, as well as other inputs (replies, checklists, LAP, LEG, initial MA offers)	- WTO/ITC TA mission - 2WPM (TBC)
20. SUDAN* (SDN) Chair: Mr. Katsuro NAGAI (Japan)	25 October 1994	4WPM, 14 July 2017	- Preparation of updated FS and other inputs (AGSTs, LAP and LEG)	- 5WPM in 2021 (TBC)
21. SYRIAN ARAB REPUBLIC (SYR) Chair: Pending	4 May 2010	No WPM held to date	Inactive	
22. TIMOR-LESTE* (TLS) Chair: H.E. Mr. Rui MACIEIRA (Portugal)	7 December 2016	1WPM, 1 October 2020	- Deadline for submission questions: 30 October 2020	- 2WPM (Q1 2021 – TBC)
23. UZBEKISTAN (UZB) Chair: H.E. Ms. PAIK Ji-ah (Republic of Korea)	21 December 1994	4WPM, 7 July 2020	- Preparation of updated inputs (replies, LAP, AGSTs, LEG, questionnaires, draft subsidies notification, and FS)	

Notes: * LDC — AGST (Agricultural Supporting Tables); CVO (Customs Valuation Questionnaire); DWPR (Draft Working Party Report); FS (Factual Summary of Points Raised); BQ (Import Licensing Questionnaire); LAP (Legislative Action Plan); LEG (Legislation); MA (Market Access); MFTR (Memorandum on the Foreign Trade Regime); Q1 (1st quarter); STQ (State Trading Questionnaire); TA (technical assistance); WP (Working Party); WPM (Working Party meeting).

WORLD TRADE ORGANIZATION

²⁰⁶ WTO Accessions Newsletter, WTO, Sept.–Oct. 2020, <https://mailchi.mp/4cc113baeffe/wto-accessions-newsletter-n-102-september-october-2020-5970381?e=9c067e1dee> [https://perma.cc/7P8K-WQN6].

