

Palestine's Accession to the WTO: Any Legal Barriers?

Osayd Awawda*

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This paper answers the question whether the Palestinian Authority (PA), the governmental entity in the West Bank of Palestine, meets the criteria of observer status in the WTO. It found that the PA does not meet all the criteria required to obtain that status. It does meet the first criterion by being a separate union, as it is not part of the metropolitan territories controlled by the Israeli Occupying Authorities. However, the PA falls short of the second criterion, which is the possession of full autonomy on its external trade relations. The lack of autonomy is a result of the Paris Protocol signed between the IOA and PA, which places almost all Palestinian trade relations under the control of to the Israeli customs and tariffs' policies.

* LL.B., Birzeit University (Palestine), LL.M. and Ph.D. Candidate, Melbourne Law School (Australia).

1 Introduction

In 1993, the Israeli Occupying Authorities (IOA) signed the Oslo I Accords with the Palestinian Liberation Organization (PLO). These Accords resulted in the establishment of the Palestinian Authority (PA) as the representative and governor of the Palestinian people through the limited competences that were granted to it.

In regards of the economic relations between the PA and the IOA, both sides signed the Protocol on Economic Relations in Paris (Paris Protocol).¹ It contained a lot of restrictions on the Palestinian trade policy, particularly regarding external trade and exports. The Paris Protocol classified the goods that the PA wanted to trade in into two main categories, according to the essentiality of those goods. For the 'essential goods' category, Art. 3(5)(a) of the Paris Protocol declares that:

'The Israeli rates of customs, purchase tax, levies, excises and other charges, prevailing at the date of signing of the Agreement, as changed from time to time, shall serve as the minimum basis for the Palestinian Authority. The Palestinian Authority may decide on any upward changes in the rates in these goods and exceeding quantities when imported by the Palestinians to the Areas.'

As such, from 1997 the PA started to seek observer status at the World Trade Organization (WTO) with the belief that it would be an economically beneficial step. The last attempt was made in 2011.² Unfortunately, the PA has yet to attain this status. In fact, the fundamental question in this context is whether the PA meets the criteria for observer status in the WTO.

This paper aims to provide reliable answers regarding the eligibility of the PA as an observer in the WTO. Additionally, it aims to examine the appropriateness of seeking the observer status considering the current economic and legal situation of the PA concerning foreign trade.

In the beginning, this paper explains the role of the Paris Protocol in regulating the economic affairs between the IOA and the PA, and the legal issues relating to it. Next, the paper attempts to elucidate the context for seeking the observer status in the WTO, especially concerning the political environment of Palestine. After that, it analyses the legal criteria related to the PA observership.

¹ 'The Declaration of Principles on Interim Self-Government Arrangements between the Government of the State of Israel and the Palestinian Liberation Organisation-Agreement on Gaza and Jericho Area' (signed and entered into force on 13 September 1993) (Oslo I Accords) Annex IV: Protocol on Economic Relations between the Government of the State of Israel and the P.L.O., representing the Palestinian people (signed and entered into force on 29 April 1994) (Paris Protocol). See Damien Cheong, *Economics and Political Survival: The Experience of the Palestinian Leadership under Yasser Arafat, 1994-2004* (2009) 34 *Melbourne Journal of Politics* 7, at p. 2.

² Michel Dombrecht, Mohammed Aref, and Said Khalil, *Analysis of the Demand Side in the Palestinian Economy 2012*, Palestine Monetary Authority, Palestine, at p. 6.

2 The Role of Paris Protocol in Regulating the Economic Affairs between the IOA and the PA

2.1 Historical background 1967-1994

In 1948, the IOA occupied all areas of Palestine except the West Bank (WB) and the Gaza Strip (GS). The occupation extended to include both territories in the Six-Day War of 1969. Before that, there were no economic ties between Palestinians who lived in those territories and the IOA. The WB was linked economically and administratively to Jordan, and GS was linked to Egypt in the same way.³ After the war, the IOA started governing both territories and established military order. This order was the ground for the economic relations between both territories and the IOA based on partial integration, which took the form of an incomplete customs union.⁴

Because of the huge economic gap between the Israeli and the Palestinian market, unemployed Palestinians went to Israeli employers seeking work, where the remuneration was considerably higher than that of other Palestinians in the WB and GS. Statistics show that in 1972, one out of every four Palestinians was employed by an Israeli businessman.⁵ In comparison, the economic indicators of the WB and GS showed an increasing shortage. Both territories were exclusive markets for the Israeli products.⁶ Meanwhile, the IOA adopted a strict policy of protectionism, and limited its imports until the mid-1980s, which included imports to both territories.⁷ Moreover, using its control of all cross-borders, the IOA imposed restrictions on the export of all products from the Palestinian market, and reduced the issue of investment permissions that Palestinians required to develop their businesses.⁸

Because of these policies, the trade imbalance between Israeli and Palestinian markets became emphatic. Palestinian exports were very low, while the imports, mostly from the Israeli market, were high. To counterbalance the trade deficit, the IOA required remittances from Palestinian who worked for Israeli employers.⁹ In fact, these remittances constituted almost 30 percent of the Palestinian GDP. As a

³ Thomas Cottier, M. and Arpagaus, R., *The Israel-Palestine Protocol on Economic Relations and the Law of the World Trade Organization*, 1997, London School of Economics, London, at p. 3.

⁴ The World Bank, *Stagnation or Revival? Israeli Disengagement and Palestinian Economic Prospects*, 2014, at p. 11-2.

⁵ The International Finance Corporation (IFC), *Microfinance Market Survey in the West Bank and the Gaza Strip*, 2007, at p. 12, 30.

⁶ Palestine Monetary Authority, *Financial Stability Report 2012*, 2013, at p. 17.

⁷ Gianfrancesco Costantini et al, *Mapping Study of Civil Society Organisations in the Occupied Palestinian Territory*, 2011, at p. 29-30.

⁸ Pierre Messali, *West Bank and Gaza: Public Expenditure & Financial Accountability (PEFA)*, 2013, at p. 11.

⁹ Asem Khalil and Jamil Salem, *The Legal Framework of Palestinian Economic (under) Development*, 2007, The Faculty of Law and Criminology at Vrije University, at p. 27.

result, the prices of essential goods in the WB and GS rose considerably, and the dependence on the IOA's economy grew more severe.¹⁰

In fact, the PLO has defined many characteristics of the future economic system of Palestine. It is true that the PLO had no power to apply its policies in the WB and GS. However, these characteristics are helpful to identify the aims and plans that the PLO had for the Palestinian economy, affirming that the forthcoming state of Palestine would adopt a market economy policy, which would be established on the free movement of goods, labour, and capital. Additionally, the policy required supply and demand to be determined in a competitive environment, with binding judicial and legal frameworks.¹¹

In the case of Palestine, the free economy as an option finds further justification. In particular, Palestine has a small domestic market, and it is one of the least endowed countries with regards to natural resources.¹² Therefore, it is hard to picture a self-sufficient Palestinian economy, except one riddled with high unemployment rates and harsh living standards. The market economy for Palestine would encourage foreign investment and facilitate the flow of trade projects from other Muslim and Arab countries.¹³

2.2 The Paris Protocol

The Paris Protocol aimed to regulate the economic relations between the IOA and the PA, through establishing an interim agreement, which was intended to remain in force for five years.¹⁴ It contains 11 articles about the economy of the PA, such as trade, taxation, labour, insurance, banking, water, energy, agriculture, and petroleum.¹⁵ Both parties agreed to establish a joint committee to supervise the process of implementing the Paris Protocol's provisions and to resolve any problems that might arise. Moreover, this committee was given jurisdiction to review any request to revise or modify the Paris Protocol, if the parties concurred.¹⁶

In general, the Paris Protocol came with policies to reduce the Palestinian economy to the Israeli one, and with a promise to achieve tangible improvements of the

¹⁰ Ummr Musa, *Value-Added Tax, and Its Relationship with the Income Tax*, 2006, Master of Taxation Conflicts Thesis, An-Najah National University, at p. 72.

¹¹ Majed Rabi, *The Reasons of Reforming the Laws of Indirect Taxes in Palestine*, Master of Economic Policy Management Thesis, An-Najah National University, at p. 43.

¹² *ibid* at p. 88.

¹³ Iyad Bakron, *Decision-Making Systems in the Public Budget of the Palestinian Authority and Its Impact on Budgetary Estimates*, 2012, Master of Accounting and Finance Thesis, The Islamic University, at p. 90.

¹⁴ Michel Dombrecht, Mohammed Aref, and Said Khalil, *Analysis of the Supply Side of the Palestinian Territory Economy*, 2012, Palestine Monetary Authority, at p. 22.

¹⁵ Michel Dombrecht and Said Khalil, *Effective Exchange Rate Indices for Palestine*, 2011, Palestine Monetary Authority, Palestine, at p. 6.

¹⁶ Krystyna Zoladkiewicz, "Development of the International Economic Order: Constraints on Non-WTO Members" (2012) 10(1) *New Zealand Journal of Public and International Law* 75, at p. 105.

Palestinian economic situation.¹⁷ It was a precedent for affirming the Palestinian economic rights, which were ignored and unacknowledged since the beginning of the Israeli occupation on 1948. One of these was the right to impose direct taxes and to sign specific trade agreements with Arab countries, to a limit agreed upon by the IOA.¹⁸ Also, the Paris Protocol allowed the PA to establish its monetary authority, which functions as a central bank, but without giving the PA the right to have a national currency.¹⁹

However, due to numerous complications, and violations by the IOA in the implementation of the Paris Protocol, the temporary time limit of five years mentioned above has been exceeded. The Israeli violations included ignoring and selectively interpreting the rights of the PA. So, while the Paris Protocol is still effective, many of the Palestinian market's economic difficulties persist to this day.²⁰

The Paris Protocol gave the IOA extensive authority, to the extent of establishing a quasi-customs union. To elaborate further, Paris Protocol considered the trade between the PA and the IOA as domestic trade.²¹ Moreover, all imports and exports were required to be supervised by the IOA without giving the PA independent powers to manage its external trade relations. Additionally, the IOA had the unilateral right to levy and alter taxes on imported goods, all of which should serve as minimum standards for the PA.²² And while the Paris Protocol gave the PA limited exceptions regarding trade with Jordan, Egypt, and some other Arab countries, those did not help the PA overcome the difficulties caused by the one-sided, quasi-custom union with the IOA.²³

Several studies of the Paris Protocol identified its shortcomings and suggested solutions to stop its growing failure. Unfortunately, policymakers of the IOA disregarded these solutions and never accepted negotiation proposals by the Palestinians to amend the Paris Protocol.²⁴

¹⁷ See OECD Economic Surveys, *Reforming Indirect Taxes and Labour Levies*, 2009, Brazil, at p. 28.

¹⁸ Michel Dombrecht and Mohammed Aref, *A Short Run Reduced Form Equation for Real GDP Growth in OPT*, Palestine Monetary Authority, Palestine, at p. 15.

¹⁹ Palestine Monetary Authority, *Key Macroeconomic and Financial Indicators in Palestine, Israel and Some MENA Countries*, 2011, Palestine, at p. 8.

²⁰ Palestinian Central Bureau of Statistics, *The Annual Statistic Book of Northern Provinces of the West Bank*, 2012, Palestine, at p. 32.

²¹ Oussama Kanaan, Udo Kock, and Mariusz Sumlinski, *Recent Experience and Prospects of the Economy of the West Bank and Gaza*, International Monetary Fund, at p. 14, 40.

²² Konrad-Adenauer-Stiftung, *Fact Sheet: The Paris Protocol – Historical Classification*, 2011, at p. 2.

²³ Asem Khalil, *Rule of Law and Development in Palestine*, 2010, Law School of Cornell University, at p. 27.

²⁴ Said Khalil and Mohammed Aref, *An Econometric Simulation Model for Palestine*, 2011, Palestine Monetary Authority, at p. 14.

2.3 Major weaknesses of Paris Protocol

The preamble of the Paris Protocol gives the impression that the Palestinian side has received advantageous treatment under *Paris Protocol*. It declares that:

‘This Protocol lays the groundwork for strengthening the economic base of the Palestinian side and for exercising its right to economic decision making by its development plan and priorities. The two parties recognise each other's economic ties with other markets and the need to create a better economic environment for their peoples and individuals’.

However, this is not the reality. Analytical studies of the *Paris Protocol* show that it suffers major weaknesses that negatively affect the Palestinian economy.

The first weakness is related to the Paris Protocol in general. *Paris Protocol* was an annexe to the Oslo I Accords, which is not purely an economic agreement. Rather, it is an agreement that sought security and political peace between the IOA and the PA, from the perspective of the former.²⁵

Moreover, the Paris Protocol established a de facto quasi-custom union between both parties. The WB and GS were treated as completely separate territories, notwithstanding that they are, as the Paris Protocol explains, a contiguous geographic unit.²⁶ The IOA prohibited Palestinian custom officers, clearance agents, and people in business from accessing the Israeli ports to clear Palestinian imports. Therefore, in practice, the Paris Protocol was a one-sided, deficient quasi-custom union under Israeli control.²⁷

The second weakness concerns financial and customs policies. Art. III(5)(a) of the Paris Protocol stipulates that:

‘The Israeli rates of customs, purchase tax, levies, excises and other charges, prevailing at the date of signing of the Agreement, as changed from time to time, shall serve as the minimum basis for the Palestinian Authority’.

This article applies to almost all imported goods in the Palestinian market and completely neglects the gap between the Israeli and the Palestinian economy. In fact, the provision deprived the Palestinian economy of competing locally with Israeli products, and even internationally because of the high tax rates imposed by the IOA. All these effects were counterproductive to the main aims of the Paris Protocol, and diminished the welfare of Palestinian economic actors.²⁸

²⁵ Private Sector Coordination Council – PSCC, National Economic Dialogue Program: The Legal Frame of the Palestinian Economy, 2008, at p. 16.

²⁶ *ibid.*

²⁷ Hussein Al-Rimmawi, “Spatial Changes in Palestine: From Colonial Project to an Apartheid System” (2009) 8(4) *African & Asian Studies* 375, at p. 376-7.

²⁸ Raja Khalidi, *The Economic Dimensions of Prolonged Occupation: Continuity and Change in Israeli Policy Towards the Palestinian Economy: A Special Report Commemorating Twenty-Five Years of UNCTAD's Programme of Assistance to The Palestinian People*, New York, 2009, at p. 16.

Lastly, the weakness of Palestinian economic performance. Through the subordination of the Palestinian economy to Israel's, and through increased dependency of Palestinians on the Israeli market, the Palestinian economy failed to accomplish any sustainable growth. The consequence was perpetual dependence on international aid and foreign donors. There is a clear decline, structural distortion, unsustainable operations, and fiscal instability.²⁹ Despite all these crises, the IOA continues to impose restrictions and obstacles against any economic improvement for the Palestinian market.

As a result of Paris Protocol, trade deficit between the PA and the IOA has grown. It reached USD 3,7 billion in 2011, which constitutes one-third of the Palestinian GDP.³⁰ The budget deficit of the PA reached USD 1,7 billion in 2012, with a high dependency on international aid that reached USD 1,4 billion in 2010.³¹

2.4 The Palestinian taxation system

The Paris Protocol based the Palestinian taxation system on the Israeli structure. Therefore, it is composed of two parts: the direct tax and the indirect tax.³² Firstly, the direct tax, which consists of income and property tax, is levied individually by the PA in areas under its control. Art. 5(1) of the Paris Protocol declares that:

‘Israel and the Palestinian Authority will each determine and regulate its tax policy independently in matters of direct taxation, including income tax on individuals and corporations, property taxes, municipal taxes and fees’.

Also, Art. 5(4) stipulated that the IOA should transfer 75 percent of the income taxes that they collect from Palestinians who work in the Israeli market. This provision declares that:

‘Israel will transfer to the Palestinian Authority a sum equal to 75% of the income taxes collected from Palestinians from the [GS] and the Jericho Area employed in Israel’.

The second part is the indirect tax. This tax consists of purchase tax, VAT, excise tax, and customs duties. In fact, Palestinian indirect taxes, if examined from the collection-method perspective, include two categories: taxes on imports from the IOA, and taxes on imports from countries other than the IOA.³³ Art. 6(5) of the Paris Protocol discusses how to collect the taxes on goods from the first category. It states that:

²⁹ *ibid.*

³⁰ Palestinian Ministry of National Economy, *The Economic Costs of the Israeli Occupation for the Occupied Palestinian Territory*, September 2011,

³¹ *ibid.*

³² See Rajesh Bhargave, “The Concept of Taxable Capacity” (1954) 2(1) *Indian Economic Review* 115, at p. 133.

³³ See Shelby Breger, Marshall Quast, “International Commercial Arbitration: A Case Study of the Areas under Control of the Palestinian Authority” (1999) 32 *Case Western Reserve Journal of International Law* 185, at p. 232.

‘There will be a clearance of VAT revenues between the Israeli and Palestinian VAT administrations’.

Article 3(15) discusses the tax collection method for goods in the second category. It states that:

‘Taxes revenues will be allocated to the Palestinian Authority even if the importation was carried out by Israeli importers when the final destination explicitly stated in the import documentation is a corporation registered by the Palestinian Authority and conducting business activity in the Areas.

In the Protocol, each of the three following taxation systems’ elements was regulated specifically: customs, purchase and production taxes, and tariffs.³⁴ Customs, in general, are imposed and modified according to the situation of the Israeli economy and its interests, without any consideration to the Palestinian economy. Therefore, customs revenues are insufficient for the PA to invest in public services and education.

Purchase and production taxes have been levied on the Palestinians since 1967, with the Israeli military orders.³⁵ In particular, these orders have weakened the competitiveness of Palestinian products against their Israeli counterparts, because the IOA have always favoured Israeli products with low tax rates to lower costs.³⁶

The trade policies on tariffs are frequently amended by the IOA, through modification of the structure of the customs tariff schedule. However, all these modifications happen without consulting the PA, despite the fact that the PA is inherently linked to, and affected by, them. This wilful disregard by the IOA deprives the PA of its ability to predict the prospective fiscal situation and plan for necessary changes.³⁷

3 The Context of Seeking Observer Status in the WTO

3.1 Palestine and the WTO

The WTO exercises two fundamental roles: running the dispute settlement system between its members and managing the accession of new countries and governments. With regards to the latter role, the last few years have witnessed

³⁴ See Yashwardhan Bandi, “Double Taxation in Indirect Tax Laws: A Move Towards a Uniform Goods and Services Tax (GST) Regime” (2010) 9(1/2) *The IUP Journal of International Business Law* 90, at p. 111.

³⁵ See Colin Picker, “Regional Trade Agreements V. The WTO: A Proposal for Reform of Art. XXIV to Counter This Institutional Threat” (2005) 26(2) *University of Pennsylvania Journal of International Economic Law* 267, at p. 282.

³⁶ See Kim van der Borgh and Hisham Awwad, “Palestine and the World Trade Organization: A Legal Roadmap for Accession” (2015) 18 *Palestine Yearbook of International Law* 144, at p. 158.

³⁷ See Majdi Shar’ab, *Privileges of Taxation Department: Analytical Study for Palestinian Taxation Law System*, 2006, Master of Taxation Conflicts Thesis, An-Najah National University, at p. 19.

some progress in relation to Arab states' accession.³⁸ Particularly, the PA has made a proposal towards being granted an accession to this organisation in the future. This proposal was a formal request for WTO observership. Concurrently, no significant developments have occurred in the Middle East and North Africa (MENA) intra-regional economic integration process. Therefore, the PA, as an Arab government, is interested to join global multilateral trading systems, like the WTO.³⁹

To study the Palestinian proposal, many political and legal issues must be examined. The Palestinian case, from a strict legal perspective, is unique. As this paper has mentioned, the Paris Protocol has established a hybrid connection between the IOA economy and the Palestinian one.⁴⁰ It is not easy to figure out whether Palestine meets the requirements of observership in the WTO, as this paper will elucidate. In fact, the combination of political sensitivity and economic uncertainty creates complications with Palestine's eligibility for observer status.⁴¹ However, with this regard, the General Council of the WTO is allowed to exercise its discretionary powers, which along with political conviction on the part of Palestine to pursue full membership will determine the outcome of Palestine's proposal for observer status.⁴²

The WTO was established in 1995 by the Marrakesh Agreement. Currently, 155 countries are members, and 29 governments, together with a large number of international organisations enjoy the observer status. The essential objective of the WTO is to reduce and lessen trade barriers between its members.⁴³ With regards to the decision-making process, Article IX(1) of the Marrakesh Agreement stipulates consensus among all members; however, the Agreement itself offers the majority vote as a technique on decisions when the censuses are unapproachable, which is quite rare.⁴⁴ For instance, the US blocked Iran's accession to the WTO from 1996 until 2005 by dismissing consensus. Therefore, some analysts hold to the view that Palestine must gain support, or no opposition, from the US in its observership proposal. This is expected to isolate Israel, and to make the General

³⁸ Fida Karam and Chahir Zaki, "On the Determinants of Trade in Services: Evidence from the MENA Region" (2013) 45(33) *Applied Economics* 4662, at p. 4662-3.

³⁹ Middle East Reporter, "Financing: Financial Crisis Begins to Bite Palestinians" (2011) 141(1262) *Middle East Reporter (Weekly Edition)*, at p. 13.

⁴⁰ Mohammed Hamdan, Mohamed Abd El-Aal, and Abidin Abdul Hamid Kandil, "Palestine's Joining the World Trade Organization" (2018) 14(1) *Asian social Science* 95, at p. 95-6.

⁴¹ Tom Moerenhout, "The Obligation to Withhold from Trading in Order Not to Recognize and Assist Settlements and Their Economic Activity in Occupied Territories" (2012) 3(2) *Journal of International Humanitarian Legal Studies* 344, at p. 350.

⁴² The Economist Intelligence Unit, "Country Intelligence: Report: Palestinian Authority" (2014) *Palestinian Authority Monitor*, at p. 17.

⁴³ See Van Kerckhoven, and Adriaan Luyten, "The Tale of a Trojan Horse or the Quest for Market Access? China and the World Trade Organisation" (2014) 57 *Rev. Bras. Polít. Int.*, at p. 193, 193-4.

⁴⁴ See Peter Carroll, "Policy Transfer and Accession: A Comparison of Three International Governmental Organisations" (2014) 16(3) *Journal of Comparative Policy Analysis* 280, at p. 291.

Council choose majority vote instead of consensus. This will prevent Israel from blocking this proposal.⁴⁵

Generally, governments consider granting observership in the WTO as a step towards full membership. This is the same for the PA, and Palestinian officials expressed the intention for Palestine to achieve full membership as soon as possible. In fact, the membership negotiations are generally very lengthy.⁴⁶ This is because they require the agreement of all current members, and demands significant modifications in the economic system of the applicant. To Palestine's benefit, economically unimportant or small applicants have a higher chance of quick acceptance, because the demands on them are lower than that on large and economically powerful and large members. Nevertheless, Palestine still faces two primary hurdles in achieving observership in the WTO: first, its lack of autonomy with respect to its foreign trade, as the *Paris Protocol* provides; and second, the format of consensus on decision-making in the WTO, in which the US or Israel can block that observership.⁴⁷

3.2 MENA and Arab accessions to the WTO

Palestinian observership must be tested according to the context of the accession of all the Arab states to the WTO because decisions of WTO members are affected by geopolitical and regional factors. This test will help economists and analysts understand what the nature of this observership is.⁴⁸ In fact, looking at that observership from a purely legal perspective is insufficient. Many, if not all, decisions taken by the WTO consider political interests of members as one of the priorities.⁴⁹

Thirty states are now undergoing the procedures of accession to the WTO. A fifth of these states are MENA members.⁵⁰ The populations of these MENA members are overwhelmingly Islamic and Arab, and the regimes are far from being considered as democratic, stable governance.⁵¹ Syria is a typical case that demonstrates the link between political interests of the WTO members and observership status in the WTO. In March 2010, Syria's observership application was granted consensus after the approval of the US. Two days before the US

⁴⁵ Claus Astrup, and Sebastien Dessus, "Exporting Goods or Exporting Labor? Long-Term Implications for the Palestinian Economy" (2005) 3(1) *Review of Middle East Economics & Finance* 39, at p. 42.

⁴⁶ See Kerckhoven and Luyten, *The Tale of a Trojan Horse or the Quest for Market Access?* (fn 43) at p. 208-9.

⁴⁷ Zaki Laïdi, "Towards a Post-Hegemonic World: The Multipolar Threat to the Multilateral Order" (2014) 51(3) *International Politics* 350, at p. 360.

⁴⁸ Shahe Emran and Joseph Stiglitz, "On Selective Indirect Tax Reform in Developing Countries" (2005) 89(4) *Journal of Public Economics* 599, at p. 622.

⁴⁹ "Country Intelligence: Palestinian Authority" (2014) *Palestinian Authority Monitor*, at p. 9.

⁵⁰ Khalil Abushamsieh, Antonio Hernández, and David Rodríguez, "The Transparency of Government Financial Information Systems in Arab Countries: Evidence from Palestine" (2013) 20(2) *Journal of Accounting, Business & Management* 99, at p. 103.

⁵¹ "Recognizing Palestine: An Investment in Peace" (Palestine Liberation Organization, 2012, at p. 11.

approval, the State Department's Inspector General on the US Embassy in Damascus published a critical report.⁵² This report recommended an inter-agency review to eliminate all sanctions on Syria, after claiming that they were inadequate and contradictory. This incident forebodes a high probability for Palestine's application being rejected by non-legal reasons, such as the political interests of Israel. Israel may even request joining the Palestinian observership working party, which will give a legal cover for its decisions.⁵³

The relationship between the IOA and the PA is not as it was in 1993 when the *Oslo I Accords* were signed. Many critical incidents have happened after that: the second Palestinian intifada, the disengagement of the IOA from GS, the Israeli clampdown in the WB, and the *de facto* coup d'état by the Hamas regime in GS and the Fatah regime in the WB.⁵⁴ All these incidents have had inevitable effects on the political affairs between the IOA and the PA and will influence the analysis of Palestinian observership in the WTO.⁵⁵

Beyond the cases of Syria and Lebanon, no significant progress has occurred in the accession process of other Arab countries like Sudan, Iraq, and Algeria. In 2009, some criticism was raised at the Geneva Ministerial Conference by the South Africa group. This criticism was related to the slow process and lengthy procedures for accession.⁵⁶ In fact, the accession is a negotiation process. Therefore, the responsiveness of the applicant is not the only factor that determines its pace. The concerns of incumbent members also constitute an essential factor.⁵⁷

3.3 The political environment of the PA's request

In October 2009, the Permanent Observer Mission of Palestine to the United Nations and other International Organisations submitted the Palestinian Request mentioned before. The Request was resubmitted one month before the meeting of the General Council in May 2010.⁵⁸ The resubmission was attached with a consultancy that supported the legal eligibility of Palestine for observer status. This created hope for the Request's approval, but unfortunately, it was excluded

⁵² US Department of State and the Broadcasting Board of Governors, Office of the Inspector General, Report of Inspection – Embassy Damascus, Syria, at p. 16. Available at <<https://www.stateoig.gov/system/files/141119.pdf>>.

⁵³ Zoladkiewicz, "Development of the International Economic Order: Constraints on Non-WTO Members" (fn 16) at p. 76.

⁵⁴ The Economist Intelligence Unit, "Country Intelligence Report: Palestinian Authority" (fn 42) at p. 11.

⁵⁵ Elizabeth Brownson, "Colonialism, Nationalism, and the Politics of Teaching History in Mandate Palestine" (2014) 43(3) *Journal of Palestine Studies* 9, at p. 15.

⁵⁶ *ibid.*

⁵⁷ Rolf and Langhammer and Matthias Lücke, "WTO Negotiation and Accession Issues" in Mansoob Murshed (ed), *Globalization, Marginalization & Development*, 2002, Routledge, at p. 137-8.

⁵⁸ "Palestinian Minister Asks Israel to Back WTO Membership", 2010, available at <http://www.americantaskforce.org/daily_news_article/2010/12/02/1291266000_12>.

from the meeting's agenda. As a result, the Request was postponed for future discussion.⁵⁹

In fact, this Request was a component of a comprehensive process led by the Palestinian Prime Minister at that time, Salam Fayyad. He held a view that the PA should be prepared for the Palestinian Statehood by September 2011. A status like an observer in the WTO would allow the Palestinian delegation to attend, participate, and engage within the permissible limit in the WTO meetings.⁶⁰ This process would facilitate achieving the long-term purpose, which is being a member of the WTO. The Request declared that:

‘This observership comes with the comprehensive plan and vision of state building set forth by Palestinian National Authority. Observership in the WTO is an important requisite to help build the necessary infrastructure of state institutions, provide the premise to review and establish a new comprehensive trade regime in line with rules governing multilateral trade as prescribed by the WTO Agreement, with the aim of encouraging sustainable development throughout Palestine, all of which are key objectives in creating an independent viable state’.⁶¹

According to the WTO Rules of Procedure, the Palestinian vision of observership to prospective membership in the WTO is reasonable.⁶² These Rules state that

‘[t]he purpose of observer status in the General Council and its subsidiary bodies is to allow a government to acquaint itself with the WTO and its activities better, and to prepare and initiate negotiations for accession to the WTO Agreement.’⁶³

Furthermore, any government that requests observer status is obliged to indicate its intention to start negotiations concerning WTO membership.⁶⁴ Five years, counting from the date of attainment of observership, is the maximum period to

⁵⁹ Samuel Brazys, “Outside Looking In: Non-Accession to the WTO” (2014) 27(4) *Cambridge Review of International Affairs* 644, at p. 660.

⁶⁰ Susan Aaronson Rodwan Abouharb, “Unexpected Bedfellows: The GATT, the WTO and Some Democratic Rights” (2011) 55(2) *International Studies Quarterly* 379, at p. 405.

⁶¹ *Palestine – Request for Observer Status*, WTO Doc WT/L/700/Add.1 (23 October 2009) (Communication from Palestine - Addendum) (*The Palestinian Request*), available at <https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=81374,100187,69359,18792,5051,37291,79076&CurrentCatalogueIdIndex=2&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True>

⁶² See Rima Ariss, Rasoul Rezvanian, and Seyed Mehdian, “WTO Membership, Ownership Deregulation, and Market Efficiency: Evidence from China” (2012) 22(3) *Applied Financial Economics* 177, at p. 189.

⁶³ See Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council, WTO Doc WT/L/161 (25 July 1996), Annex 2, Paragraph 3 (Rules of Procedure).

⁶⁴ Claudia Carpio and Jaime Mir, “The Least-Developed Countries Services Waiver: Any Alternative under the GATS?” (2014) 6(1) *Goettingen Journal of International Law* 115, at p. 113.

commence membership negotiations.⁶⁵ And in spite of that, there is a chance for extending the observer status beyond that period for those governments that face administrative hardships. The systematic nature of Palestine's submission might come to its aid here. Moreover, the WTO membership, in principle, is open to non-sovereign entities like Separate Custom Territories (SCT).⁶⁶ Thus progress in this regard would not necessitate Palestine's sovereign status, which would have worked as a deterrent to the approval of several parties.⁶⁷

To avoid any politicisation in the submission process, the Request indicated that it 'is a technical application, not a political action'.⁶⁸ In fact, politically, the IOA and PA are still at odds. This was manifested through the diplomatic efforts of the PA in May 2010, when it attempted to prevent the acceptance of the IOA in the Organisation of Economic Cooperation and Development (OECD) as a full member. This demonstrates the state of the diplomatic relations between the PA and the IOA, which could weigh against Palestine's submission to the WTO.⁶⁹

To avoid any politicisation in the submission's process, the Request indicated that it 'is a technical application, not a political action'.⁷⁰ In fact, the IOA still hold a negative position towards the PA.⁷¹ This is established through the diplomatic efforts of the PA in May 2010, in which the latter attempted to prevent the acceptance of Israel in the Organisation of Economic Cooperation and Development (OECD) as a full member. This fact shows that diplomatic relations between the PA and the IOA are in their worst condition, which out favour of Palestine's submission to the WTO.⁷²

3.4 The conditions for Observership and the criteria for accession

The Request did not adequately address a fundamental question: is the government required to satisfy the formal eligibility criteria for WTO membership at the time of submitting the Request, or at the time of the observership's approval? In fact, Art. XII(1) of the Marrakesh Agreement states that:

'Any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations and

⁶⁵ Rules of Procedures [4].

⁶⁶ See Theo Eicher and Christian Henn, "In Search of WTO Trade Effects: Preferential Trade Agreements Promote Trade Strongly, but Unevenly" (2011) 83(2) *Journal of International Economics* 137, at p. 148.

⁶⁷ Eric Neumayer, "Strategic Delaying and Concessions Extraction in Accession Negotiations to the World Trade Organization: An Analysis of Working Party Membership" (2013) 12(4) *World Trade Review* 669, at p. 678.

⁶⁸ The Palestinian Request.

⁶⁹ Lisa Toohey, "Accession as Dialogue: Epistemic Communities and The World Trade Organization" (2014) 27(2) *Leiden Journal of International Law* 397, at p. 406.

⁷⁰ The Palestinian Request.

⁷¹ 'Contract Notice: European Union Issues Contract Notice for "Palestinian Territory-Ramallah: ENPI-EU Support to the Palestinian Ministry of National Economy for Trade Policy Formulation and WTO Accession"', 2013.

⁷² Monika Mrázová, David Vines, and Ben Zissimos, "Is the GATT/WTO's Art. XXIV Bad?" (2013) 89(1) *Journal of International Economics* 216, at p. 231.

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'.⁷³

Based on the above, being a state or at least a Separate Customs Territory (SCT) is a fundamental requirement for the WTO membership⁷⁴ because one of the clear clauses for observership is that the government will start negotiations for WTO membership within five years.⁷⁵ The answer to the question above is quite obvious: the government – the PA in this case – is required to satisfy the criteria at the time of submitting its Request, as Palestine has assured that it intends to seek membership to the WTO.⁷⁶

According to the General Council's Rules of Procedure, any decision regarding observership is to be established on a 'case-by-case basis'.⁷⁷ This discretionary authority indicates two important points: first, the General Council can reject observership submissions even if the applicant meets the criteria of a state or a SCT; and second, which is more crucial to the PA's case, the General Council can, by employing its discretion, accept applicants that meets neither state's criteria, nor those of the SCT. In addition, the permissibility of ad hoc derogations, once approved by the General Council, allows for more flexibility in the submission's process.⁷⁸

Despite this conclusion, the consultancy which the Palestinian delegation has attached to its submission clearly linked two matters: the criteria of observer status, and the membership criteria. Admittedly, this is not the quickest way to do obtain member status, because if the PA believes that it satisfies the criteria of membership, then it should have submitted an application for direct attainment of membership, rather than asking for observer status first.⁷⁹ This criticism of the PA's actions is based on the fact that those, which submit membership applications, naturally receive observership in the WTO.⁸⁰ However, the PA wanted to benefit from the discretionary authority of the General Council, as a hope for being granted observer status.⁸¹

⁷³ *The General Agreement on Tariffs and Trade*, 55 UNTS 194, (signed and entered into force 1 January 1948) (*GATT*).

⁷⁴ WTO Public Forum, *How Can the WTO Help Harness Globalisation?* 2008, at p. 17.

⁷⁵ Lisa Toohey, "Barriers to Universal Membership of the World Trade Organization" (2012) 19 *Australian International Law Journal* 97, at p. 114.

⁷⁶ *ibid* at p. 115.

⁷⁷ Rules of Procedures, annex 2 [4].

⁷⁸ See Majdi Shar'ab, *Privileges of Taxation Department: Analytical Study for Palestinian Taxation Law System*, at p. 31.

⁷⁹ See Shaker Sarsour, Reem Naser, and Mohammad Atallah, *The Economic and Social Effects of Foreign Aid in Palestine*, 2011, Palestine Monetary Authority, at p. 31.

⁸⁰ See Organisation for Economic Co-Operation and Development (OECD), *Fundamental Reform of Personal Income Tax*, 2006, at p. 24.

⁸¹ See Samer Abdelnour, Alaa Tartir, and Rami Zurayk, *Farming Palestine for Freedom*, 2009, Al-Shabaka - the Palestinian policy network, at p. 9.

In practice, the debate about the Palestinian submission will become strangely chaotic, and at the same time, it will be unpleasant for the WTO delegates, because they conventionally avoid any politicisation of their decision-making process.⁸² However, the fulfilment of membership criteria will not be a matter of concern, because of the reasons related to the General Council's discretion, which have been explained earlier.⁸³ It is expected that the General Council will demand further justifications for any rejection again the Request for observership, so as to guarantee the legality of any rejection, and to ensure its detachment from highly political concerns.⁸⁴

4 Palestine's Eligibility according to the Observership Criteria

4.1 The historical uniqueness of the PA's claim

As mentioned before, the Request for observer status established its position on the claim that the PA meets the criteria for accession to the WTO. In fact, it is considerably important to understand the uniqueness of the Request, which is contradicting the following terms used by the editors of the consultancy attached to that Request.⁸⁵ Those editors subtitled a section in that consultancy with the following terms: 'Normal Case, Normal Rules: A "Separate Customs Territory" on the Way to Statehood.'⁸⁶ The Palestinian case is not normal at all. This uniqueness manifests itself through multiple aspects, which makes the Request of an unprecedented nature. Mainly, the incomplete autonomy given to the PA, the existence of external controlling authorities, which are the IOA, and the assertion of independence without sponsorship for accession.⁸⁷

Before the establishment of the WTO, the SCTs, which had been considered as contracting parties to the GATT, have attained their status with the sponsorship of their overlords. For example, in 1948, Southern Rhodesia, which was a SCT and a contracting party to the GATT, received effectual sponsorship from the United Kingdom.⁸⁸ It remained as such until declaring independence in 1980. Moreover, Myanmar and Sri Lanka were considered contracting parties to the GATT. Both states were SCTs and once they were decolonised, they were granted that status directly after declaring their independence, without going through the accession

⁸² See Michel Dombrecht, and Said Khalil, *Estimation of the Equilibrium Real Exchange Rate in the Occupied Palestinian Territory*, 2011, Palestine Monetary Authority, at p. 16.

⁸³ See The Palestinian Economic Policy Institute (MAS), *Income Tax - the Palestine Investment Conference*, 2008, at p. 18.

⁸⁴ See Palestine Monetary Authority, *Report on Payment Systems Oversight in Palestine 2013, 2014*, at p. 14.

⁸⁵ See Odd-Helge Fjeldstad, and Adel Al-Zagha, "Taxation During State Formation: Lessons from Palestine, 1994-2000" (2004) 31(1) *Forum for Development Studies* 89, at p. 111-2.

⁸⁶ The Palestinian Request.

⁸⁷ Tomer Broude, "MENA: The Question of Palestinian Observership and Accession to the WTO" in Herrmann, C., and Terhechte, J., (eds), *European Yearbook of International Economic Law*, 2011, Springer Science & Business Media 309, at p. 324.

⁸⁸ See 'Israel to Transfer Tax Funds to Palestinians', 2013, available at <<https://www.telegraph.co.uk/news/worldnews/middleeast/israel/11548278/Israel-to-transfer-tax-funds-to-Palestinians.html>>.

negotiations.⁸⁹ These actions were in accordance with Art. XXVI(5)(c) of the GATT, which facilitates the transference of GATT's rights and obligation from overlords to new states. This provision states that:

‘If any of the customs territories, in respect of which a contracting party has accepted this Agreement, possesses or acquires full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement, such territory shall, upon sponsorship through a declaration by the responsible contracting party establishing the above-mentioned fact, be deemed to be a contracting party’.

There are many other examples of GATT members who benefited from this article before the establishment of the WTO: Macao, Hong Kong, Liechtenstein, which were sponsored by Portugal, the United Kingdom, and Switzerland, respectively.⁹⁰ Furthermore, the case of Chinese Taipei, which is composed of Taiwan, Matsu, Kinmen, and Penghu, is not similar to that of Palestine.⁹¹ Chinese Taipei's autonomy with respect to its international economic relations, and its factual independence from China were obvious. As a result, there was no overlord or an external controlling authority on it, unlike Palestine.⁹²

In conclusion, in these examples of SCT accession, the recognised eligibility of their formal governments for admission was manifest.⁹³ Moreover, declaring sponsorship of their submission by the relevant overlords, if there were any, has been proven. Both actions of recognition and sponsorship are absent in the Palestinian case, because there is no sponsorship provision in the Marrakesh Agreement.⁹⁴ Additionally, the PA is under the *de jure* constraints of the IOA according to the Paris Protocol, as it has been explained before. So, Palestine is neither an administrative part like Hong Kong, nor an entity with *sui generis* status like Chinese Taipei.⁹⁵

4.2 Legal critique of the PA's eligibility for accession

In its Request, the PA argued that it meets the criteria ‘to obtain full WTO observership status, i.e. observership in the General Council and its subsidiary

⁸⁹ *ibid.*

⁹⁰ See As'Ad Ghanem and Aziz Khayed, “In the Shadow of the Al-Aqsa Intifada: The Palestinians and Political Reform” (2003) 6(3) *Civil Wars* 31, at p. 49.

⁹¹ See Tarcisio Gazzini, “The Legal Nature of WTO Obligations and the Consequences of Their Violation” (2006) 17(4) *The European Journal of International Law* 723, at p. 740.

⁹² See Ronald Daniels and Michael Trebilcock, “The Political Economy of Rule of Law Reform in Developing Countries” (2005) 26(1) *Michigan Journal of International Law* 99, at p. 134.

⁹³ See Kent Jones and Yunwei Gai, “Joining the WTO: Why Does It Take So Long?” (2013) 24(4) *Open Economies Review* 695, at p. 716.

⁹⁴ See Neumayer, “Strategic Delaying and Concessions Extraction in Accession Negotiations” (fn 64) at p. 689.

⁹⁵ See Han-Wei Liu, “An Entity *Sui Generis* in the WTO: Taiwan's WTO Membership and Its Trade Law Regime” (2009) 4(4) *Journal of International Commercial Law & Technology* 252, at p. 260.

bodies as an interim step on the way towards WTO Membership.⁹⁶ As Art. XXII provides, the criteria for Palestine consist of two elements: first, being an SCT, and second, enjoying the status of full autonomy.⁹⁷ Concerning the first element, the Request states that ‘[t]here can be no doubt that Palestine under the Palestinian Authority is such a separate customs territory’.⁹⁸ To support this claim, the Request insisted that:

‘The very fact that Palestine entered into a bilateral trade agreement with partners such as Israel, the EC, EFTA, Canada or Turkey confirms its legal autonomy in trade matters.’⁹⁹

The PA knew that the Paris Protocol, and the restrictions mentioned therein as has been explained, will be an obstacle to accept its claim. Therefore, the Request emphasised that:

‘Even if the agreed cooperation with Israel under the Paris Protocol was taken as defining Palestinian regulatory autonomy (a result no government engaged in bilateral trade agreements would want to accept), the remaining policy space still leaves a Palestinian separate customs territory with regulatory authority in all key WTO areas such as tariffs, quantitative restrictions, subsidies, SPS, TBT, Services and IP.’¹⁰⁰

Moreover, to avoid causing fears of economic disconnection with the IOA,¹⁰¹ the Request declared that

‘[w]hile continued, and growing trade with Israel as a neighbour will remain a key element of Palestine’s current and future economic policy, Palestine’s producers, traders, service providers and intellectual property owners are taking a global outlook to gain and retain competitiveness in the future.’¹⁰²

The intent behind this declaration was to prove its commitment to its obligations under Paris Protocol and to assert the depoliticised nature of this Request.¹⁰³ Furthermore, the Request claimed that the Palestinian trade competences are ‘also explicitly confirmed in the text of the Paris Protocol itself. The agreement under the Paris Protocol of both the Israeli and the Palestinian side to set standards for,

⁹⁶ The Palestinian Request.

⁹⁷ See Toohey, “Barriers to Universal Membership of the World Trade Organization” (fn 75) at p. 85.

⁹⁸ The Palestinian Request.

⁹⁹ *ibid* at p. 1.

¹⁰⁰ *ibid*.

¹⁰¹ Thomas Cottier and Remo Arpagaus, *The Path to the World Trade Organization: Legal Opinion*, 1997, London School of Economics, at p. 2.

¹⁰² The Palestinian Request, at p. 2.

¹⁰³ Thomas Cottier and Remo Arpagaus, *Palestine Seeks Observer Status in the World Trade Organisation: Legal Opinion*, London School of Economics, at p. 2-4.

and cooperate on, aspects of the regulation of trade with third parties does not diminish, but rather confirms their autonomy.¹⁰⁴

Moving to the second element, which is full autonomy, the Request showed the *Paris Protocol* as a limited scope agreement.¹⁰⁵ It insisted that the Paris Protocol

‘primarily concerned with bilateral trade and economic cooperation, leaves enough room to both sides that both would qualify as separate customs territories even if the agreed cooperation under the Paris Protocol were understood to be superimposed.’¹⁰⁶

In conclusion, these are the two distinct and vital elements that need to be examined. The Request contained some paragraphs with regards to the Palestinian state-building process, peace in relations between Palestine and the IOA, and prosperity of Palestinian economy.¹⁰⁷ The discussion will be concentrated exclusively on the criteria and its two elements.¹⁰⁸

4.3 Is the PA a separate customs territory?

The Request did not pay much attention to this condition of being an SCT. Instead, it gave considerable explanation for PA meeting the second condition. The customs territory's definition is mentioned in Art. XXIV(2) of the GATT, which is:

‘Any territory with respect to which separate tariffs or other regulations of commerce are maintained for a substantial part of the trade of such territories with other territories’.

This definition does not indicate that states will no longer remain a customs territory if they engage in a customs union.¹⁰⁹ Rather, any harmonisation between states with regards to their tariffs systems will not affect their being categorised as customs territory, because each of them will still hold its administrative authorities over its national customs. Separateness, as a description, is not related to the issue of authority, but to the territorial dimension of Palestine in this case.¹¹⁰

The original structure of the GATT gives a proper explanation of separateness. In 1947, the GATT Contracting Parties wanted to guarantee effective application of

¹⁰⁴ The Palestinian Request.

¹⁰⁵ See Dombrecht and Khalil, *Effective Exchange Rate Indices for Palestine* (fn 15) at p. 11-12.

¹⁰⁶ The Palestinian Request, at p. 5.

¹⁰⁷ See Michel Dombrecht and Shaker Sarsour, *International Trade in Palestinian Territory*, 2011, Palestine Monetary Authority, at p. 2-4.

¹⁰⁸ Mahmoud Bsharat, *The Effect of Exogenous Factors on the Performance of External Sector in Palestine: A Vecm Approach*, 2014, Palestine Monetary Authority, at p. 11.

¹⁰⁹ Thomas Cottier and Serge Pannatier, *Overview of Palestine's Economic Policy and Foreign Trade Regime: Draft Memorandum for Application for the Observer Status at the WTO*, 2000, London School of Economics, at p. 3.

¹¹⁰ See The New England Committee to Defend Palestine, *A Short History of the Colonization of Palestine*, 2005, at p. 1-2.

the GATT's provisions, not only in their metropolitan territory, but in 'any of their territory.'¹¹¹ So, those Parties deemed the territories under their sovereignty as separate territories,¹¹² because these were given the authorities to administrate their commerce and tariffs.¹¹³ Therefore, a customs territory means not different tariffs. Rather, it means that products entering the territory will be under a separate tariffs' administration.¹¹⁴

By applying this meaning of separateness to the relation between the PA and the IOA, Palestine is not part of the metropolitan territory of the IOA; therefore, Palestine meets the criterion of being an SCT.¹¹⁵ However, the economic arrangements of the PA are subject to the control of the IOA as the Paris Protocol emphasises. Art. III(5)(a) of the Paris Protocol asserts that:

'The Israeli rates of customs, purchase tax, levies, excises and other charges, prevailing at the date of signing of the Agreement, as changed from time to time, shall serve as the minimum basis for the Palestinian Authority. The Palestinian Authority may decide on any upward changes in the rates on these goods and exceeding quantities when imported by the Palestinians to the Areas'.

This provision shows how Israeli rates and charges serve as minimum for the PA. Additionally, the last line in this provision shows that the PA has a limited authority to increase its rates.¹¹⁶ Therefore, the PA has the power to regulate and levy different tariffs for these goods, and for the exceeding quantities.¹¹⁷ This power is understood through Art. III(2)(a) of the Paris Protocol, which declares the exceptions given to the PA:

'The Palestinian Authority will have all powers and responsibilities in the sphere of import and customs policy and procedures with regard to the following: 1. Goods on List A1 [...]. locally produced in Jordan and in Egypt particularly and in the other Arab countries, which the Palestinians will be able to import in quantities agreed upon by the two sides up to the Palestinian market [...] 2. Goods on List A2 [...] from the Arab, Islamic and other countries, which the Palestinians will be able to import in quantities agreed upon by the two sides up to the Palestinian market needs'.

¹¹¹ *Protocol of Provisional Application*, TIAS 1700, 55 UNTS 308 (30 October 1947) Art. 2.

¹¹² Rolf Langhammer and Matthias Lucke, *Working Paper: WTO Accession Issues*, 1999, Leibniz Information Centre for Economics, at p. 20.

¹¹³ See Dombrecht and Sarsour, *International Trade in Palestinian Territory* (fn 107) at p. 8.

¹¹⁴ See Michel Dombrecht and Shaker Sarsour, *Indicators of Fiscal Policy Sustainability and Vulnerability*, 2012, Palestine Monetary Authority, at p. 6.

¹¹⁵ *ibid.*

¹¹⁶ See Majdi Khalil, *Guide to Palestine – Israel Economic and Trade Relations*, 2008, Czech Representative Office in Palestine, at p. 32-5.

¹¹⁷ See Ahmad Qurai, *Paris Economic Transitional Protocol after 19 Years*, 2012, Arab Thought Forum, 2002, at p. 2-3.

4.4 Does the PA enjoy a full autonomy?

The affirmation of this condition is the main difficulty for the Request. As mentioned before, the Paris Protocol practically vests most, if not all authorities with regards to external commercial affairs in the IOA.¹¹⁸ This fact cannot be rejected by claiming that the PA still has full control over lists A1 and A2 mentioned in the provision above,¹¹⁹ because these lists are exceptions to that general rule, which is the IOA control on tariffs.¹²⁰ These tariffs are the fundamental element in examining whether the PA meets the condition of full autonomy or not.¹²¹

Erroneously, the Request described the relationship between the PA and the IOA as evidence of evenness.¹²² It claimed that they agreed to 'largely align their policies' in the area of tariffs, as in typical customs union.¹²³ This claim is wrong because of two reasons.¹²⁴ First, the Request relied on the 'very fact that the Israeli and Palestinian sides possessed the legal capacity to enter into [Paris Protocol], 'to '[demonstrate] their autonomy to regulate trade.'¹²⁵ The PA did not exist at the time of signing of the Paris Protocol. As the name of the Protocol indicates, it is signed between the IOA and the PLO,¹²⁶ which represented the Palestinians at that time,¹²⁷ since the establishment of the PA was a result of Oslo I Accords, of which the Paris Protocol is an annex. According to the Paris Protocol, the PA's authority in import policies is subject to several constraints. Therefore, the Paris Protocol is not quite a mutual consensus between two even parties.¹²⁸

Second, the Paris Protocol shows that the import policy is aligned in a one-way manner, which means that the IOA did not hand over any of its authorities to the prospective PA. Rather, the PA is required to consider the Israeli standards as a minimum in almost all imported goods. The PA cannot levy tariffs lower than

¹¹⁸ Thomas Cottier and Remo Arpagaus, *The Possibility of Participation by Means of Observer Status for the Palestinian National Authority in the World Trade Organization*, 1997, London School of Economics, at p. 6.

¹¹⁹ *The Palestinian Request*. For a comprehensive explanation of what Lists A1 and A2 include, see specially Majdi Khalil, *Guide to Palestine – Israel Economic and Trade Relations*, at p. 46-9.

¹²⁰ See Brett Schaefer, *What Palestinian Membership Means for UNESCO and the Rest of the United Nations*, 2011, The Heritage Foundation, at p. 17-8.

¹²¹ Thomas Cottier and Remo Arpagaus, *Palestine's Future Relations with the World Trade Organization*, London School of Economics, at p. 10-1.

¹²² The Palestinian Request.

¹²³ *ibid.*

¹²⁴ See Ricardo Fenochietto and Carola Pessino, *Understanding Countries' Tax Effort*, 2011, International Monetary Fund, at p. 22-3.

¹²⁵ The Palestinian Request.

¹²⁶ See Metin Coşgel, "Taxes, Efficiency, and Redistribution: Discriminatory Taxation of Villages in Ottoman Palestine, Southern Syria, and Transjordan in the Sixteenth Century" (2006) 43(2) *Explorations in Economic History* 332, at p. 350-1.

¹²⁷ See Damien Cheong, "Economics and Political Survival: The Experience of the Palestinian Leadership under Yasser Arafat, 1994-2004" (2009) 34(10) *Melbourne Journal of Politics* 7, at p. 19.

¹²⁸ See in particular Oslo I Accords, Art. I(1).

those set by the IOA,¹²⁹ so the PA cannot engage in tariffs negotiations.¹³⁰ As a result, it has no significant ability to manage its external trade commitments. For example, the PA has been deprived of the tariff reduction in the Greater Arab Free Trade Agreement (GAFTA),¹³¹ because of its ‘geopolitical situation’.¹³² This reference to the geopolitical situation is related to the PA’s limited control of its external trade commitments. Moreover, even if the IOA violate their obligations under the WTO agreement by imposing high tariffs, the PA would have no choice but to commit to these high rates.¹³³

Moreover, the PA is restricted to use trade remedies imposed by the IOA if the latter decides to do so, as part of their import policy.¹³⁴ There is an indirect restriction even against some of the limited competences granted for the PA under Art. III(5)(a) of the Paris Protocol. Furthermore, concerning the protection of intellectual property, the PA is not in a position to prevent any strict border-procedures taken by the IOA against imported or exported goods,¹³⁵ which are considered legal by the PA itself. Based on the above, the PA does not meet the condition of full autonomy, which is integral to the attainment of observer status in the WTO.

5 Conclusion

The analysis above examined the PA’s request to become an observer in the WTO, assessing whether the PA meets the criteria that the WTO has set for such position. The assessment demonstrated that the PA meets the first criterion: being a separate union, as it is not part of the metropolitan territories controlled by the Israeli Occupying Authorities. However, the PA fails to meet the second criterion, which is the possession of full autonomy on its external trade relations, since the *Paris Protocol* places almost all Palestinian trade relations under the control of the Israeli customs and tariff policies.

Further research can be conducted to suggest practical steps for adjusting the shortcomings of *Paris Protocol* from the Palestinian perspective, especially through modifying it according to international law to give the PA substantial

¹²⁹ See IHS Economics and Country Risk, *Country Reports – Palestine*, 2014, at p. 10.

¹³⁰ See Mizan Centre for Human Rights, *Social Aspects of Tax in Gaza Strip*, 2011, at p. 33.

¹³¹ GAFTA was declared within the Social and Economic Council of the Arab League as an executive program to activate the Trade Facilitation and Development Agreement that has been in force since January 1st, 1998. See Nicolas Peridy and Javad Abedini, ‘The Greater Arab Free Trade Area (GAFTA): An Estimation of Its Trade Effects’ (2008) 23 *Journal of Economic Integration* 848, p. at 872.

¹³² See Mohammed Aref, Said Khalil, and Mahmoud Bsharat, *Financial Programming Using an Econometric Simulation Model for Palestine Version (2)*, 2013, Palestine Monetary Authority, at p. 2-5.

¹³³ See Jihad Al-Wazir, *Role of the National Committee for Anti-Money Laundering*, 2011, Palestine Monetary Authority, at p. 9.

¹³⁴ See Palestinian Ministry of Planning and Administrative Development, *Unlocking Statehood*, 2013, Palestine, at p. 4-6.

¹³⁵ See Palestinian Monetary Authority, *Palestine and the World Trade Organization*, 2011, at p. 14

authorities in external trade affairs. Moreover, such research should focus on international alternatives that can help enhance the PA's level of autonomy on its economy. ■