

IRANIAN FOREIGN TRADE LAW PRINCIPLES IN HARMONY OR IN DISCORD WITH THE INTERNATIONAL TRADE LAW PRINCIPLES*

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ABSTRACT

There are principles in Iranian foreign trade (export-import) law, some of which, or some of whose exemptions, do not exist in or are not in harmony with the current principles of international trade law. Some of them are government monopoly over foreign trade, government encouragement of exports, discriminatory treatment among the countries trading with Iran, reciprocal trade conduct with the other countries, exemption of exports from customs duties, permission of imports *vis-à-vis* exports, and seeking a trade balance with other countries (trade partnerships). These are mainly because Iran aims as much as possible to maximize its non-oil exports and minimize its imports. On the other hand, as an oil-rich country with only a little production in goods, it serves as a great market for imports from other countries. Iran is keen to join the World Trade Organization. But, seemingly besides other mainly political reasons, some of its already established legal principles in the field of foreign trade and other related economic and commercial fields, bar its achievement of this important goal.

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1. Iran's Application to Join the WTO

The World Trade Organization (WTO) today stands as a central institution of international law and international economic relations. It is described as 'an institution of international law' (Charnovitz, 2006, p. 168) because of its judicial system¹. Iran is interested in joining this organization but notwithstanding its application² in 1997 (Shiroodi, 2004, p. 189), the WTO has yet to accept it as a full member. It has on 26 May 2005 accepted this country only as an observer member (Gilanpour, 2006, p. 1).

At present, concluding a huge number of bilateral trade agreements and taking part in some regional ones, Iran attempts to bridge the gap of membership in the WTO and avoid getting marginalized. However, even if it doesn't join, its economy is affected and continues to remain affected by the WTO's functions (Akbarian, 2002, p. 116; Valibeygi & Seif, 2003, p. 51- 52). This is because the effects of WTO policies are so wide-reaching and deep-rooted that their effects on other countries are unavoidable. At present Iran's imports as well as exports, particularly non-oil ones, are adversely affected by the trade barriers such as discriminatory tariff rates, imposed by the WTO on non-member countries.

Iran possesses 14 percent of the oil and 48 percent of the gas reserves of the Middle East, and 10 percent of the oil and 18 percent of the gas reserves of the world. Having an economy dependent on oil revenues, and importing most of its needs, joining the WTO is an inevitable task for it. Its main source of exports, namely the energy sector, has not yet been regulated and affected by the WTO. However, in the near future, it may also come under the WTO (Akbarian, 2002, p. 117). Iran hopes that joining the WTO will optimize its non-oil exports (Akbarian, 2002, p. 119). Besides import of goods and services and exports, including non-oil ones, joining the WTO is likely to affect the transfer of technology and the flow of foreign direct investment. Iran is in need of the participation of private domestic and foreign investors in its petrochemical and other industrial sectors. Its Government attempts to remove hurdles and provide facilities for promotion and security of investments. Therefore,

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¹ Panels, the Appellate Body, and arbitrators carry out independent adjudication in the WTO. For example, the appellate Body has upheld the Panel's finding that some EC measures are inconsistent with the requirements of Article 5.1 of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). (World Trade Organization, Appellate Body, 1998)

² In fact, "membership in the WTO is desirable for several reasons. [Reference omitted] First, the treatment guaranteed in WTO rules applies only to members, and so a non-member may be discriminated against with impunity. Second, only members of the WTO can play a role in crafting new rules. Third, joining the WTO paradoxically strengthens national sovereignty by according a country membership in good standing in an important organization. [Reference omitted] Fourth, being a WTO member gives a less powerful country some recourse against actions that are hurting it, especially when taken by a more powerful country. [Reference omitted] Fifth, the market may reward WTO membership by expanding inward foreign investment." (Charnovitz, 2006, p. 179)

to exploit advantages associated with that organization, Iran is eager to join the WTO and accession to that organization has been a topic of focus in various national conferences, seminars and discussions in that country.

However, there would be some disadvantages too. The WTO is based on the comparative advantage principle (also called relative efficiency principle) (Razavian, 2003, p. 39). According to that principle, to gain maximum benefit, nations need to specialize in the production of goods in which they have a comparative advantage, exporting them to other nations in exchange for goods in which they lack comparative advantage (Sykes, 1998, pp. 52-3). Hence, Iran has to restrict its exports and production to crude oil and industries relying on it such as petrochemicals, also to its traditional products like carpets and dried fruit. In this way, once it joins the WTO the country's development model will change (Razavian, 2003, p. 39). Besides, on entering the WTO, Iran would accept some international commitments (Mojaver, 2006, p. 24). In the event of accession, it would have a difficult duty to bring its trade policy in harmony with WTO rules. Nevertheless, conditions for joining the World Trade Organization are flexible and subject to negotiation. This is because according to Article XII (1) of the *Agreement Establishing the World Trade Organization*, any state may accede to that Agreement, on terms mutually agreed. Such accession shall apply to this Agreement and to the Multilateral Trade Agreements annexed thereto. For example, Japan in 1996 definitely joined the WTO. In order to protect its domestic rice production, and with the organization's agreement, Japan imports only 10% of its consumed rice, whereas the WTO demanded complete liberalization of rice imports and exports to and from Japan (Shiroodi, 2004, p. 195).

The government of Iran has made some attempts to prepare to join the WTO. For example, Section 115 of the *Third Socio-Economic and Cultural Development Plan of the Islamic Republic of Iran 2000-2004* provides that for foreign trade to flourish, the government while observing religious prohibitions, is required to remove non-tariff and non-technical trade barriers, to take necessary action in order to prepare and announce the timing schedule for reforming the par exchange tariff, and determine the customs tariffs. But that Section is surrounded with many regulations encouraging non-oil exports.³ Besides, since the 1990s Iran has started limited trade liberalization, but the process has not received commensurate support from its trade partners so far (Gilanpour, 2006, p. 2).

³ Article 113 - In order to achieve an export expansion during the country's Third Economic, Social and Cultural Development Plan period:

A - the customs duties and trade tariff of the raw material, intermediate and imported goods used in production of exportable goods shall be refunded upon export of the products on the basis of a by-law that will be prepared on the recommendation of the Ministry of Commerce and will be approved by the Cabinet.

B - the exported goods and services shall not be subject to any taxes or charge.

C - export of goods and services shall be exempted from any permit except the mandatory standards and the usual certificate in the international trade (as the buyer may require).

D - all the incentives and privileges that exist for export of goods shall be also applicable to export of services.

E - the non-governmental funds, established for export development, will be supported by the government.

2. Trade in Services and Intellectual Property Rights

The services sector, as the largest and fastest-growing sector of the world economy, provides more than 60 per cent of global output and, in many countries, an even larger share of employment. And apparently, much of this takes place through the establishment of foreign enterprises abroad. It is estimated that the value of cross-border trade in services alone, in 1999, amounted to about 20 per cent of global trade, in balance of payment-terms (Steger, 2003, p. 5).

Principles of the WTO also include the trade in services and intellectual property rights. After the end of the negotiations of GATT members at the Uruguay Round, which was mainly considering the trade in goods, for the first time there was made an independent agreement titled 'the Agreement

F - in order to support export of non-oil goods, technical and engineering services, from the year 1379 (21 march 2000) on, a portion of the local and foreign exchange resources out of the surplus income of the oil export proportional to the increase in non-oil export of technical and engineering services will be devolved with the Export Development Bank as the government contribution to raise the capital of the export Development Bank at a rate compatible with the objectives indicated in this Law for each year and for the terminating year of the Plan.

G - The Export Development Bank is required to collect by the end of the Third Plan, at the latest, the unclaimed balance of the foreign exchange revolving fund for export content of Item (E) of Note (25) of the Second Five-year Economic, Social and Cultural Development Plan Law enacted on 12/1/1995. The collected sum will be settled with the bank as the government contribution to the bank's capital. Using these funds, financing facilities shall be given to exporters. The manner of settlement of all the said foreign exchange revolving funds and the applied profit rate shall be determined by the Cabinet within three months from enactment of the Law and shall be conveyed to the Export Development Bank.

H - All ministries, agencies, the government-owned enterprises, institutions and non-governmental public entities, also the real and legal residents of Iran are obliged to coordinate their programs with the Iran Export Development Center prior to organizing any international trade/industrial fair domestically and/or out of the country, or participating in any international trade fair, and have their plans confirmed by the said center.

Article 114 - Regulating domestic market will not prohibit export. Export of all goods and services, with the exception of the following items, is permissible:

A - Antiques and objects of cultural heritage,

B - Animal, plant and vegetable items that are considered to be of genetic reserve or environmental protection significance,

C - Export of goods subsidized by government will be authorized upon proposal by the relevant agency and approval of the Economic Council.

Note: In order to regulate the domestic market and offset the emerging scarcity, the Ministry of Commerce is authorized upon its findings to satisfy the domestic needs by importing the required commodities without any foreign exchange transfer.

Article 116 - To strengthen the competitive potentiality of the country's exportable goods in the international markets:

C - In order for the Iranian companies and technical and engineering firms including both the contractors and consultants to actively participate in the world market and to export technical and engineering services, government is required to provide the following facilities and continually monitor their proper performance:

1 - To provide the ground for insuring the bank guarantees with minimum required deposit,

2 - Create the possibility of dispatching the machinery needed to execute the projects without any security pledge,

3 - Provision of insurance and banking services with minimum cost and charge,

4 - Setting up a system of granting export credit to development projects in the form of buyer-supplier credit,

5 - To project and determine a special quota in the banking system's credit allocation,

6 - To provide necessary funds for inclusion in the country's annual budget for the government participation in financing these types of export credits,

7 - To prepare the ground for export and supply of the partnership bonds by the exporters of technical and engineering services as one source of financing their projects.

for Trade in Services or GATS'. According to its Article I, that Agreement applies to measures by Members affecting trade in services. According to its Article I: 3 (a), the GATS covers virtually all levels of government activity – central, regional or local as well as activities of the non-governmental bodies that have powers delegated to them by governments. With regard to Article XXVIII of the GATS, a 'measure' includes laws, regulations, rules and decisions of courts and administrative authorities, also practices and actions of governments or non-governmental bodies with delegated governmental powers (Steger, 2003, pp. 8-9).

The GATS agreement includes insurance, banking and other financial services. The GATT requirements for insurance and banking are determined in Sections 16 and 19 of the GATS agreement. These sections relate to the manner of foreign investment partnerships and procedure for gradual liberalization respectively. In this connection, Iran has some regulations which contradict the liberalization of services. For example, Article 6⁴ of the *Export-Import Regulations Act 1993* restricts foreigners' opportunities to carry on local transportation services. However, after Iran's accession to the WTO, foreign companies may also join the club and passengers and cargo holders would choose domestic enterprises only if they are of relative efficiency, e.g., in comparison with foreign enterprises they preserve equal quality but offer cheaper prices (Razavian, 2003, p. 39).

As another example, Section 44⁵ of Iran's constitution has exclusively allocated to the government banking; insurance and many other sectors such as large-scale and mother industries; foreign trade; major mines; power generation; dams; large-scale irrigation networks; radio and television; post, telegraph and telephone services; aviation; shipping; roads and railroads; in such a way that even if the government permits the private sector's operation in these sectors, due to some likely incorrect interpretations, still Section 81 of the constitution would bar foreigners.⁶ Besides,

⁴ Article 6: Iranian means of transport shall have priority to transport all goods imported into the country.

⁵ Article 44 [Sectors]:

(1) The economy of the Islamic Republic of Iran is to consist of three sectors: state, cooperative, and private, and is to be based on systematic and sound planning.

(2) The state sector is to include all large-scale and mother industries, foreign trade, major mines, banking, insurance, power generation, dams, and large-scale irrigation networks, radio and television, post, telegraph and telephone services, aviation, shipping, roads, railroads and the like; all these will be publicly owned and administered by the State.

(3) The cooperative sector is to include cooperative companies and enterprises concerned with production and distribution, in urban and rural areas, in accordance with Islamic criteria.

(4) The private sector consists of those activities concerned with agriculture, animal husbandry, industry, trade, and services that supplement the economic activities of the state and cooperative sectors.

(5) Ownership in each of these three sectors is protected by the laws of the Islamic Republic, in so far as this ownership is in conformity with the other articles of this chapter, does not go beyond the bounds of Islamic law, contributes to the economic growth and progress of the country and does not harm society.

(6) The law specifies each of these sectors' scope as well as the regulations and conditions governing their operation.

⁶ However there are some facilities for foreign investment. According to Article (3) of the *Foreign Investment Promotion and Protection Act (FIPPA) 2002* foreign investments may be admitted under the following two categories:

a) Foreign direct investment in areas where the activity of private sector is permissible;

Section 21⁷ of the *Usury Free Banking Operations Act 1983* contrasts with the relevant Sections of the GATT agreement concerning access to the services market and liberalization of trade in services (Razavian, 2003, p. 38). Within the past decade a few private banks have been established, and they are currently operative, but they do not seem to be competitive with foreign banks (Madani, 2003, p. 110). These all show the need for fundamental and structural changes.

There has been some liberalization in respect to the banking sector. For example, in 1993 an Act was approved and later ratified by the Expediency Council, according to which three foreign trade zones were to be established in the areas of Kish, Gheshm and Chabahar. Some of the characteristics of these zones, which are presently in operation, are entry of foreigners without visas, sale and purchase of foreign currencies at market rates, and the establishment of branches of foreign banks (Madani, 2003, p. 111). Sections 2, 4 and 7 of the *Bylaw for implementation of monetary and banking operations in free zones 2000* provide that banks and institutions with Iranian or foreign capital and with Iranian and/or foreign partnership are entitled to be registered in a zone. However, establishment of banks and institutions and setting up of branches of Iranian and foreign banks or institutions in a zone shall be subject to a proposal made by the respective authority, issuance of the establishment permit by Bank Markazi (Central Bank of Iran) and registration in the same zone. The capital of banks and institutions may belong as much as 100 percent to foreign or Iranian nationals or a combination thereof. These regulations are exceptional and clearly show that establishing branches of foreign companies are prohibited in the mainland (Madani, 2003, p. 114). But foreign insurance companies and institutions are not yet allowed to operate in free trade zones. However, with regard to Sections of the *Regulations on the Establishment and Operation of Insurance Institutes in the Free Trade-Industrial Zones*, foreigners may have stakes in the Iranian insurance corporations operating in those zones.

On the other hand, there are some impediments regarding foreign employment in Iran. According to Section 82⁸ of the constitution, the government is not allowed to employ foreign experts unless it is necessary and approved by parliament. Moreover, foreigners are not allowed to enter many fields. For example, according to Section 9 of the *Act concerning Cooperative Sector of the Economy 1991*, a person, whether real or legal, who is not an Iranian national cannot enter an Iranian cooperative.

In respect to intellectual property rights, Iran is a signatory to the Paris Convention, but is not a member of the Berne Convention; therefore, with reference to Article 22 of the *Act for the protection*

b) Foreign investments in all sectors within the framework of “partnership”, “buy-back” and “build-operate-transfer” arrangements.

⁷ Section 21: In its dealing with other banks, the Central Bank of Islamic Republic of Iran CBIRI is not authorized to engage in banking operations which involve usury; nor are the banks among themselves.

⁸ Article 82 [Foreign Experts]: The employment of foreign experts is forbidden, except in cases of necessity and with the approval of the Islamic Consultative Assembly.

of Authors, Composers and Artists 1970, the main Act in this field, literary and artistic works in Iran are protected if they have been created in Iran, or they have been first printed, published, distributed or performed in this country and they have not already been printed, published, distributed or performed in any other country.

3. Import Restrictions

The WTO aims to help further liberalization of global trade currents on the basis of reciprocal commitment of states (Mojaver & Feyzbakhsh, 2006, p. 33). This aim ends in privatization of public services, declining government economic regulation and increased free trade and investment (Labonte, 1998, pp. 245, 246). The fundamental principles of the WTO including internationalism, rejection of discrimination and transparency are to the benefit of the member countries. This agreement obliges member countries to spread multilateral trade among themselves with minimal trade restrictions, reduction of tariffs and import quotas, and abrogation of agreements for trade concessions (Razavian, 2003, p. 17).

The main aim of GATT is free trade under fair competition situations. The entire framework of this policy is based on four simple and fundamental principles. A. Protecting the domestic industry merely through tariffs and non-utilization of quantitative restriction. B. Stabilization of tariffs. C. Trade according to most favored nation treatment (about imports as well as exports). D. National treatment (Razavian, 2003, pp. 17-18).

The WTO insists on elimination of discrimination, transparency of government programs, reduction of subsidies and removal of the economic drifts (undeserved windfall wealth arising out of unfair opportunities) (Akbarian, 2002, p. 120). In fact “the WTO’s remit is to govern restrictions affecting trans-border trade” (Charnovitz, 2006, p. 169). Its “decisions can so often affect domestic regulations, destroy jobs, and create new industries” (Stokes, 2005, p. 220). Therefore, it affects its members’ trade policy such as antidumping duties and government subsidies. Also, to achieve the goal of globalization, it “supervises domestic policies that affect trade in goods or services [reference omitted] particularly, a Government’s use of taxes, regulations, and standards to correct market failure” (Charnovitz, 2006, p. 169). Therefore, merely utilizing tariffs as instruments for trade protection is authorized and any kind of domestic product protection must be transparent and in the tariffs framework.

In Iran, the government has made some attempts at privatization. But during the last two decades it has concluded too many agreements for trade promotion, which *inter alia* contain some concessionary provisions. On the other hand, there are many examples of provisions or practices containing trade restrictions. For example, the organization for protection of consumers and producers, based on the economy council’s directives, is to pay subsidies for basic goods and this is in contrast to

the principles of the WTO (Akbarian, 2002, p. 120). As we know, “using government subsidies to promote equity and social justice within a country⁹ is also covered by the WTO rules” (Charnovitz, 2006, p. 170). But, due to high money devaluation, Iran pays and has to pay subsidies for many items. With the devaluation continuing and subsidies not allotted the factories will close, unemployment rate soar, and most of the people live under the poverty line.

As another example, Section 2¹⁰ of the *Export-Import Regulations Act 1993* divides importing and exporting goods into four categories of allowed, conditionally allowed, non-allowed and prohibited. This division is against the GATT rules concerning market access. Also, Article 5¹¹ of that Act contains some other restrictions. These provisions are based on the principle that according to the *Act concerning Government Monopoly over the Foreign Trade 1932* and also according to Section 44 of the constitution, it is the government of Iran which determines the yearly importable and exportable goods and conditions of foreign trade. Therefore, according to Article 8¹² of the *Export-Import Regulations Act 1993* importers have to apply for import permits from the Ministry of Commerce. As another example, according to Article 15¹³ of the same Act the Iranian Government restricts imports to

⁹ For example in the *United States—Byrd Amendment* case, a United States law providing a direct payment to certain companies in an import-injured industry was ruled a violation of the *Agreement on Subsidies and Countervailing Measures* (SCM Agreement) (Charnovitz, 2006, p. 170).

¹⁰ Article 2: Exportable and importable goods are classified into the following three categories:

1. Permissible goods: with the observance of the relevant criteria, the exportation or importation of these goods shall not require a license.
2. Conditional goods: the exportation or importation of these goods is possible by obtaining a license.
3. Prohibited goods: the exportation or importation of these goods (purchase, sale or consumption) is forbidden under the sacred Islamic Shari'a and/or by law.

Note 1: The Government may, with the observance of the relevant laws and depending on the prevailing exigencies and circumstances, prohibit the exportation or importation of certain goods.

Note 2: The types and specifications of goods falling under any one of the aforesaid three categories shall be set forth by an ordinance drawn up by the Ministry of Commerce and approved by the Council of Ministers.

¹¹ Article 5: All productive ministries are required to forward to the Ministry of Commerce, not later than the 4th of February (15th of Bahman) of each year, their proposals for the following year concerning the export and import conditions in respect of goods similar to those produced domestically, having taken into account the internal requirements and exigencies of the country.

Note 1: Other relevant organizations and the Chamber of Commerce, Industries and Mines may send in to the Ministry of Commerce, not later than the 4th of February (15th of Bahman) of each year, their proposals in respect of the relevant items, having taken into account the internal requirements and exigencies of the country.

¹² Article 8: Importers of various goods, whether governmental or not shall refer exclusively to the Ministry of Commerce, for licensing their imports and registration of their orders.

Note 1: The import license shall serve also as a clearance permit, and no separate permit shall be required.

Note 2: Households inhabiting in the frontier zones or their co-operatives, mariners, hawkers and vessel crews importing goods for their personal consumption shall be excluded from the provisions of this Article.

¹³ Article 15: In order to simplify the calculation of collectable funds in respect of any imported goods, the Ministries of Commerce and Economic Affairs and Finance, having regard to the protection of domestic production, are bound to consolidate into a unified heading called ‘Commercial Benefit’, such collectable levies as commercial benefit tax; the ‘difference’ payable to the Organization for Consumer and Producer Protection; order registration fee; monopoly right dues; municipal dues; local municipal dues (Cooperation); Red Crescent dues; asphalt dues; airport taxes; port charges; health dues; etc., except sums collectable under customs duties, charges and fees, in respect of each tariff line, at reasonable rates, and to communicate it to the Customs Administration for collection.

protect domestic industries. Also, Sections 172 and 192 of the *Implementing bylaw of the customs Act* diverges from Section 5 of the *GATT Constitution*, which provides for free passage of all goods. Further, Section 7 of that regulation which determines the way for customs assessment of imported goods and their varieties contradicts the GATT laws (Razavian, 2003, p. 37).

Still further, apart from exceptional cases, the Iranian Government by Section 2 of the *Act concerning the Government Monopoly over the Foreign Trade 1932* permits imports merely *vis-à-vis* exports. Therefore, the government, to create a trade balance on a reciprocal basis, imports from countries that Iran exports to in a proportion almost equivalent to their imports from Iran.

In addition, Section 4¹⁴ of the constitution provides for all laws to be consistent with Islamic rules. This principle restricts the import of goods prohibited in Islam, such as wine, beer and pork. That would be the same for the importation of gambling tools. Besides, banking operations, even if by foreign banks, must be done according to the *Usury (interest) Free Banking Operations Act 1983*. Bank operations must not contain any kind of ignorance and uncertainty (*gharar*), gambling (*maysir*) or interest (*riba*).

4. Export Promotion

According to Articles 19¹⁵ and 20¹⁶ of the *Export-Import Regulations Act 1993* and with regard to the provisions of other laws, particularly the *Act for the Promotion of Exports and trade 1954* the government considers various advantages for the promotion of non-oil exports from Iran. Some of those advantages are exemption from customs duties, exemption from tariffs of imports of machinery required for the manufacture of export products, requiring importation from export revenues (foreign currencies), exemption from payment of tax and other domestic duties, providing marketing facilities, export assistance payments, export rewards, and stagnation subsidies. Different government institutions such as the export promotion center of Iran and the fund for export promotion provide services for this purpose.

¹⁴ Article 4 [Islamic Principle]: All civil, penal, financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria. This principle applies absolutely and generally to all articles of the Constitution as well as to all other laws and regulations, and the wise persons of the Guardian Council are judges in this matter.

¹⁵ Article 19: The government may allocate funds in the annual budgets for the encouragement of exports. Such funds shall be dispensed to exporters to enable them to benefit from financial facilities, on the recommendation of the Ministry of Commerce and approval of the Council of Ministers.

¹⁶ Article 20: As of the beginning of the year 1373 (21 March 1994), the government shall be required to collect from importers in non-governmental sectors who import goods for commercial purposes, an additional levy of 1 per cent of the total customs duties and commercial benefit tax as an "especial charge", in respect of any imported goods. Funds collected thereby shall be credited to the country's general revenue account. Each year 100 per cent of funds so credited to the general revenue account shall be included in the annual budget law and allocated to the relevant executive organizations, with the approval of the Council of Ministers, to be used for the encouragement and expansion of non-oil exports, commissioning of the Export Guarantee Fund, organizing business training and promotional programs, in accordance with the executive ordinance of this law.

5. Foreign Exchange, Interest Rate and Elimination of Monopolies

From the legal viewpoint, member countries to the WTO accept 9 principles. These are:

1. liberalization of trade;
2. liberalizing rates of goods and services and eliminating all indirect subsidies¹⁷;
3. liberalizing the foreign currency rate;
4. liberalizing the interest rate;
5. eliminating governmental and private monopolies;
6. free flow of information;
7. optimal distribution of resources by markets;
8. distinguishing the concepts of economy and social security;
9. creating a supervising government instead of acting government at the policy and economy sphere (Razavian, 2003, pp. 20- 21).

For the purpose of distinguishing social security from the economy, the cooperative sector must be distinguished from the economic sectors mentioned in Section 44 of the constitution. Iran has maximized the role of cooperatives in the country's economy to the point where they have a minister in the cabinet. Priorities have been established for the cooperatives in comparison with the private sector. For example, with reference to Section 4 of the *Act on Cooperatives Sector of the Economy 1991* (amended in 1998), the cooperative sector enjoys priority over the others in operation of government projects.

Iran has only a few provisions about the prohibition of restrictive business practices. Constitutionally the government monopolizes the economy. It has shown interest in privatizing the economy, but in practice the government sector has grown further. Outside the government sector too, some monopolies are being shaped but are not yet regulated by the law. A series of public institutions have also been created which are privileged with discriminatory advantages.

With reference to continuing devaluation of the Rial (Iranian currency), the interest rate cannot be decreased to less than the devaluation plus the inflation rate, which according to government surveys is around 30% per year in total. Since a few years ago, the foreign exchange rate has been stabilized. But regarding the high devaluation and inflation rates, seemingly it was stabilized by

¹⁷ According to Article 1 (1) of the *Agreement on Subsidies and Countervailing Measures*, for the purpose of this Agreement, a subsidy shall be deemed to exist if: (a)(1) there is a financial contribution by a government or any public body within the territory of a Member (referred to in this Agreement as 'government'), i.e. where:
(i) a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees);
(ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits);
(iii) a government provides goods or services other than general infrastructure, or purchases goods;
(iv) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (i) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments; or
(a)(2) there is any form of income or price support in the sense of Article XVI of GATT 1994; and (b) a benefit is thereby conferred.

pumping foreign currency into the market. If so, this in the long run will end up plundering the national wealth, and destabilizing the economy.

6. Principle of Non-Discrimination

The preamble of the *Marrakech Agreement Establishing the World Trade Organization (the WTO Agreement)* proclaims “the elimination of discriminatory treatment in international trade relations” as one of the chief objectives of that organization. The principle of nondiscrimination as a fundamental principle of the world trading system is embodied in numerous provisions of the WTO Agreement, which render the principle into concrete legal obligations for WTO members (Ya Qin, 2005, pp. 215-216). Among these, the most prominent provisions are the most-favored-nation treatment (MFN) and national treatment (NT) clauses.¹⁸ For example, GATT Article I comprehensively expressing the GATT MFN obligation, requires a WTO member to accord, immediately and unconditionally, ‘any advantage, favor, privilege or immunity’ it grants to any product of any other country to the ‘like product’ of all other WTO members, with respect to (i) customs duties and charges levied on imports and exports or on the international transfer of payments for imports or exports, (ii) the method of levying such duties and charges, (iii) all rules and formalities in connection with importation and exportation, and (iv) internal taxation and regulations affecting the sale and use of imported products. Also GATT Article III, stating the GATT NT obligation, prohibits a member from imposing internal taxes or charges on products imported from another member ‘in excess of’ those applied to ‘like domestic products’ and obliges a member to accord to such imported products ‘treatment no less favorable than that accorded to like products of national origin’ with respect to internal regulations (Ya Qin, 2005, p. 217).

At present, a number of the developing countries limit foreign investment to tie-ups with domestic investment, aiming to restrict the foreign portion in the domestic industry (Madani, 2003, pp. 99-109). The situation is the same in Iran. According to Section 2 (d)¹⁹ of the *Foreign Investment*

¹⁸ These clauses, in one form or another, appear in the *General Agreement on Tariffs and Trade (GATT)*, the *General Agreement on Trade in Services (GATS)*, the *Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)*, and various other agreements of the WTO. In addition to the MFN and NT clauses, the WTO agreements also contain more generally worded anti-discrimination provisions, the most notable examples of which include the nondiscrimination clauses in GATT Article XX, GATS Article XIV, and the *Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement)*. (Ya Qin, 2005, p. 216-17)

¹⁹ Article (2): Admission of foreign investment shall be made, in accordance with the provisions of this Law and with due observance of other prevailing laws and regulations of the country, subject to the following criteria:

- a. Help create economic growth, upgrade technology, enhance, development of the quality of products, increase employment opportunities, exports, and penetrate into international markets;
- b. Does not threaten the national security and public benefits, and deteriorate the environment; does not distort the country's economy and impose unfair implication on products based on local investments;

Promotion and Protection Act (FIPPA) 2001 the ratio of the value of the goods and services supplied by foreign investment to the total value of the goods and services supplied to the local market shall not exceed 25% in each economic sector and 35% in each field (sub-sector). However, Section 81 of the constitution provides that the granting of concessions to foreigners or the formation of companies or institutions dealing with commerce, industry, agriculture, services, or mineral extraction, is absolutely forbidden. To cover the risk of contravening the constitution, establishment of wholly owned subsidiaries of the foreign companies are not allowed. This is against Article XVI (2) of the GATS, which describes how market access commitments operate. According to this, for the service sectors listed in its Schedule, a member is required to not maintain or adopt any of the limitations or restrictions on market access that are specified in the six subparagraphs of paragraph 2, unless the member has indicated otherwise in its Schedule. For sectors where a member makes market access commitments, the list contained in paragraph 2 is a list of limitations and restrictions that would otherwise be inconsistent with the GATS unless a member has inscribed specific conditions or qualifications protecting such measures. Subparagraph (f) of that paragraph provides against limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment (Steger, 2003, p. 29-30).

7. National treatment, Most Favored Nation Treatment and Transparency

According to WTO rules, every foreign company from member countries may have the right to set up in other member countries. Discrimination against foreigners in this connection is against the principle of national treatment. Restrictions such as high tariff rates (import taxes) and government payments and other ‘domestic support’ to exports or domestic industries which were also shown in this study are other examples of failure to observe the national treatment principle.

According to Articles 10²⁰ and 11²¹ of the *Export-Import Regulations Act 1993* the government of Iran establishes some border markets and gives priorities in respect to import and export to and

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- c. Does not involve granting of concessions by the Government to foreign investors. The word concession as used herein means special rights which place the foreign investors in a monopolistic position.
 - d. The ratio of the value of the goods and services produced by the foreign investments, subject matter of this Law, to the value of the goods and services supplied to the local market at the time of issuance of the investment license, shall not exceed 25% in each economic sector and 35% in each field (sub-sector). The fields and investment ceilings in each field shall be determined in the by-law to be approved by the Council of Ministers.

Foreign investment for the production of goods and services specifically for export purposes other than oil, shall be exempted from the aforementioned ratios.

²⁰ Article 10: The government is required to specify the following matters in the executive ordinance concerning border trade exchanges:

1. Localities or the depth of border tracts, residents of which are authorized to engage in border trade business.

from those markets. But it seems that border markets and priorities given to natural and legal persons domiciled near the border are against the national treatment principle and also discriminate among Iranians.

On the other hand, concluding too many trade agreements is likely to bring about discrimination among the nationals of different countries and lead to infringement of the most favored nation treatment principle.

8. Dispute Settlement

The WTO provides a dispute settlement mechanism that has been quite effective (Deardorff & Stern, 2002, p. 421). Seemingly (Shiravi, 2000, p. 22) accepting the dispute settlement system of the WTO is against Section 139 of Iran's constitution which provides: "the settlement of claims relating to public and state property or the referral thereof to arbitration is in every case dependent on the approval of the Council of Ministers, and the Assembly must be informed of these matters. In cases where one party to the dispute is a foreigner, as well as in important cases that are purely domestic, the approval of the Assembly must also be obtained. Law will specify the important cases intended here."

9. Concluding Remarks

Various studies have shown that Iran's accession to the World Trade Organization is a must and inevitable. Joining the WTO may bring Iran in line with other countries of the world. But, in addition to the resistance inside that organization to Iran's membership, Iranian regulations and its economic situation are not in harmony with its accession to the WTO. Imprudent pumping of the oil revenues to the economy, constant devaluation of money and mainly government-caused high inflation have brought about a complicated situation. Iran has a very long way to go to bring its

2. Types and quantities of goods which may be exported or imported by households, residing in border regions or their co-operatives, authorized Iranian workers employed abroad, hawkers residing in frontier zones, mariners and crew members of vessels commuting between the shores of the Islamic Republic of Iran and other countries.

3. The requirements to be met by the aforesaid persons or groups.

4. Conditions for exportation and importation of goods and fulfillment of obligations.

Note 1: Goods imported by households residing in frontier zones or their co-operatives, and by vessel crew members for their own personal consumption shall be exempted from 30 per cent up to a maximum of 100 per cent of customs duties and commercial benefit tax in the case of public provisions, and up to a maximum of 50 per cent of customs duties and commercial benefit tax in the case of home appliances, by the approval of the Council of Ministers.

Note 2: Iranian workers and nationals permissibly employed abroad may import industrial machinery, tools and primary materials needed in the country, within the quantitative thresholds, and taking advantage of such percentage exemptions from commercial benefit tax as may be jointly set by the Ministry of Commerce, the Ministry of Labor and Social Affairs and the relevant industrial ministry, and approved by the Council of Ministers.

²¹ Article 11: The government is authorized to set up border marketplace in any of the frontier zones as may be deemed beneficial, having taken into consideration such priorities as local potentiality, employment generation requirements and the expansion of commercial relation with the respective neighboring country.

economic regulations in harmony with WTO rules. These regulations have been made within more than half a century and portray the Iranian economic situation. They are rooted in places and things that cannot or may not be easily and harmlessly changed.

In Iran, there are regulations contradictory to the liberalization of services, for example in banking, insurance, transportation, establishment of foreign institutions and employment of foreign experts. There are also regulations contradictory to international protection of intellectual property rights associated with literary and artistic works. In addition, there are regulations contradictory to liberalization of trade, such as imposing government monopoly, considering various advantages for promotion of non-oil exports, imposing import quotas, making agreements for trade concessions, providing effective protection for domestic products, allotting subsidies, creating economic drifts (windfall wealth), and discriminatory and unfair competition situations.

It seems that Iran needs the assistance of international institutions to overcome the barriers of joining the WTO. Not only Iran, but also the international community is in need of Iran's accession to the WTO.

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