ECONOMIC AND SOCIAL COMMISSION FOR WESTERN ASIA

# COMPETITION LAWS AND POLICIES IN THE ESCWA REGION

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## EXECUTIVE SUMMARY

Improvements in information technology, communications and transportation have progressively reduced the economic distance in the global market-place. At the same time, the liberalization of domestic markets and deregulation of national government policies which traditionally inhibited international transactions, are providing new trade, finance and growth opportunities to nations across the world. As a result, the world is now more open to international trade.

In the context of globalization, a number of issues are common to all countries of the ESCWA region: trade and investment, membership of the WTO, diversifying the economic base, and sustaining and promoting exports, are all major concerns. In the increasingly globalized world economy the myriad issues covered by the WTO agreements, especially as they relate to competition policy and legislation, form the cornerstone of a future trade and export development strategy.

With increasing globalization, there is a growing consensus among most members that competition law and policy are important factors in the free and fair functioning of markets and global economic integration.

Competition policy seeks to promote and maintain healthy interfirm rivalry in markets by prohibiting anti-competitive market structures and enterprise practices that impede competition by applying competition legislation and/or procompetitive regulations. It also involves reducing and/or eliminating government measures that pose unnecessary obstacles to trade and competition. Competition policy is essential if the market is to allow firms to compete on a level playing-field. It encourages economic efficiency, improves the economy's competitiveness and the conditions for better supply of both goods and services to the consumer.

In today's globalized world, developing countries need to adopt competition law and policy to ensure that effective mechanisms are in place to control anticompetitive behaviour, not only in the domestic market, but globally. In the absence of appropriate domestic regulations, the developing economies risk being exposed to anticompetitive conduct by foreign firms.

This study analyses the relationship between competition, competitiveness and economic development in selected ESCWA countries. The objective is to identify and present issues related to free and fair competition in—and competitiveness of—the market as it relates to the sustainable economic development of the ESCWA economies.

At national level, most ESCWA member countries initiated structural adjustment reforms in the 1990s aimed at greater macroeconomic stability by removing structural imbalances and improving economic growth and efficiency. On the economic front, this required a major ideological shift in the model of economic governance from state-led development to a focus on a free, market-led economy for the future. This entailed reforming the trade and finance sectors, liberalization, privatization, and institutional and regulatory reform.

However, the resumption of growth following structural adjustment was slower and weaker, with key macro variables performing poorly, including investment and non-oil exports. These poorly performing variables are interlinked and point to the need for the state firmly to reestablish the boundaries between its own functions and those of the free market.

The export performance of the Middle East as a whole has been less than robust: during the first half of the 1990s, the region's exports grew at a nominal rate, against a backdrop of high trade and export growth in other regions of the world.

The exports and economic development of ESCWA countries are still cyclically linked to oil exports and revenues. Though its share has declined slightly, the region remains the world's leading oil exporter, accounting for 73 per cent of total merchandise exports in 1997, compared to 85 per cent in 1980. The region has exhibited a structure of commodity output and exports which has changed very slowly. Lack of diversification into other products is also a factor in the low levels of intra-regional trade.

Though progress has been made in the ESCWA region, the policy and institutional environment has not improved fast enough. Privatization has also been slow and private sector participation in infrastructure modest. The government-business relation continues to involve excessive transaction costs, both from tariff and non-tariff barriers. Moreover, progress in improving the regulatory framework governing business transactions has been slow and enforcement weak.

As part of their commitment to a free, market-led economic growth strategy, most ESCWA countries have taken steps to improve the business climate. The reforms include privatization, measures to attract foreign investment and a reduced role for direct state intervention. Although trade, financial sector and public sector reforms have improved the business climate compared to a decade ago, the private sector remains small and under-diversified compared to the countries of East Asia, Latin America and Eastern Europe. For example, in Egypt and Jordan, the private sector still accounts for only 64 to 66 per cent of GDP, compared with 80 per cent in Brazil, 74 per cent in Uruguay and 72 per cent in Indonesia. The main obstacles to private sector operation and expansion are inefficient tax administration, a costly judicial system, scarcity of skilled labour, elaborate collateral requirements to obtain finance, and weak support systems. Investors in the region claim that a number of obstacles continue to hinder the efficient operation of firms, exports and investment.

The obstacles to export competitiveness and competition in the ESCWA economies are: bureaucratic control procedures that hamper exports; a controlling regulatory framework, as opposed to a facilitating ethic; a comparatively higher level of taxation, and a multiplicity of charges and duties; inadequate and often outmoded distribution, storage and transport infrastructure; and an inefficient financial sector, especially with respect to credit flows for long-term investment and exports.

Despite recent progress, many ESCWA countries suffer from weaknesses in their economic policy and institutional frameworks. The public sector continues to be large in relation to the private sector, especially in terms of employment and economic activity; trade and investment regimes are characterized by high, uneven tariffs and high transaction costs that impede the diversification process, hamper the growth of non-oil exports and the attraction of FDI. The slow progress in structural reforms, especially manufacturing, are also impeding change in line with the rapidly changing globalized economy.

*Recommendations*

In the ESCWA region, competition and competitiveness are beginning to be recognized as important prerequisites for integration into world trade and the global economy. With more member States joining or preparing to join the WTO, the reduction and removal of trade barriers and fair and effective market competition issues are attracting more attention.

There is a need to recognize, identify and formulate priorities for adopting a holistic approach linking trade, investment and competition policy as the means of promoting the private sector and the free market economy in member States. This entails, above all, a recognition by member States of the importance of the linkages between competitiveness, competition and sustainable development, and ensuring free and equitable competition and a competitive, enabling environment in which market forces can thrive. It also requires the adoption of a competition regime which deregulates competition. A strong, consistent competition policy to bring about national competitiveness will require governments to prohibit mergers, acquisitions, and alliances that involve industry leaders.

Trade policy in ESCWA member States should seek to open markets wherever ESCWA members have competitive advantage and address emerging industries and incipient problems.

ESCWA member States should seek to promote goals that lead to sustained investment. Governments have a role in shaping the goals of investors, managers, and employees through policies in various areas and should aim to encourage sustained investment in human skills, innovation, and physical assets. Governments should promote factors that translate into competitive advantage which are advanced, specialized, and tied to specific industries or groups of industries which will ultimately yield competitive advantage.

Strict government regulation can promote competitive advantage by stimulating and upgrading domestic demand. Stringent product performance, product safety and environmental impact standards put pressure on companies to improve quality, upgrade technology, and provide features that respond to consumer and social demands. When tough regulations anticipate standards that will spread internationally, they give a nation's companies a head start in developing products and services that will be valuable elsewhere.

Finally, the role of the state and state regulatory institutions should be reformed in line with the emerging realities of a global economic order, in particular the needs and requirements of competition and free market enterprise as the engine of future growth.

## INTRODUCTION

In today's globalized, interdependent world economy, the dismantling of national trade barriers is accompanied by the erection of barriers to free, fair competition by large private firms. The regulation of private business practices that restrict competition is called competition (or antitrust) policy.

Competition policy is essential if the market is to allow firms to compete on a level playing-field. It encourages economic efficiency, and improves the economy and the conditions for a better supply of both goods and services to the consumer.

In the ESCWA region, competition and competitiveness are beginning to be recognized as important prerequisites for integration into world trade and the global economy. With more member States joining or preparing to join the WTO, the reduction and removal of trade barriers, and issues relating to fair, effective market competition are attracting greater attention.

Considerable strides have been made by ESCWA member countries undertaking structural adjustment reforms, including the liberalization and privatization of domestic economies, though much remains to be done, especially in those member States where liberalization, deregulation and privatization have been slow. Although there is an ideological commitment to a free, market-led economy, steps have to be taken to ensure that the dismantling of state-led tariff and non-tariff barriers is not followed by restraints on free and fair competition imposed by private firms, and that monopolistic behavioural patterns by large private enterprises do not limit access to the market.

In this context, a number of issues are common to all countries of the region: trade and investment, diversification of the economic base, improving the competitiveness of domestic products, and sustaining and promoting exports are all important concerns. In the increasingly globalized world economy the myriad issues covered by the WTO agreements, especially as they relate to competition legislation and policy, form the cornerstone of a future trade and export development strategy. There is therefore a need to recognize, identify and set priorities for promoting the private sector and the free market economy in member States. This entails, above all, recognition by member States of the importance of the linkages between competition, competitiveness and sustainable development, ensuring free and equitable competition and a competitive, enabling environment in which market forces can thrive. There is therefore a need to formulate competition policy and competition laws in the ESCWA countries.

This study analyses the state of competition laws and policies in selected ESCWA countries. The objective is to identify and present competition issues in the region that impact on and impede the competitiveness of ESCWA economies. Chapter I presents a definition of competition law and policy and explains why the ESCWA countries need them. Chapter II reviews the role of the donor agencies, discusses the current state of competition law and policy implementation, citing examples of 'good practice' from other parts of the world. Chapter III analyses the state of trade, competition and competitiveness in selected ESCWA member countries and the interrelationship between competition policy and trade and investment policy. Chapter IV presents the issues related to competition in the ESCWA region and discusses the institutional requirements for an effective competition policy in the ESCWA countries, focusing on the role of the state in providing a regulatory framework and an environment conducive to promoting both competitiveness and competition domestically, and greater integration in the global economy. Finally, Chapter V presents the conclusions and recommendations of the study.

## Methodology and Data

The measures for competition and competitiveness are both quantitative and qualitative or descriptive. Some of the standard measures of trade, finance and economic growth and development also serve as indicators of market efficiency and competitiveness—issues directly related to competition policy. As an example, the share of exports, especially manufactured exports, in GDP, FDI flows and tariff barriers, indicates an economy's integration into the global market. Other measures, however, are descriptive or qualitative. Descriptive measures have limited normative content, and describe prevailing regulatory arrangements, for example the number of days it takes to set up a business.

This study uses aggregate measures of qualitative and normative indicators calculated by various international organizations for the purposes of measuring governance issues.

In recent years, many private organizations have expanded the scope of their work into collecting both qualitative and normative data from a wide range of surveys; examples are the credit risk-rating services offered by Standard and Poor, and the Economist Intelligence Unit. These are based on the opinions of a panels of experts who rate countries (or institutions within countries) using a defined set of criteria. The use of common criteria provides some comparability across countries (and over time), but the ratings still depend on the experts' interpretation of the criteria and their subjective perception of each country. Other organizations, such as the World Economic Forum in its *Global Competitiveness Report*, Gallup, and Political and Economic Risk Consultancy, rely on participant surveys. One advantage of such surveys is that they reflect the opinions of many firms and citizens closely connected with the countries they are assessing, but many rely on voluntary responses and ask vague questions that may be misinterpreted by the respondent, limiting comparability across countries.

It should be noted that normative or qualitative indictors of governance are based on surveys that reflect the views of citizens, entrepreneurs, foreign investors, public officials and others about the state of the economy and the regulatory framework in their own or other countries, or the opinions of experts who are asked to rate the quality and effectiveness of government institutions. As such they inevitably involve value judgements.

## I. COMPETITION LAW AND POLICY: THE NEW PARADIGM

On the threshold of the 21st century, the world, and therefore the region, has entered in a new global economic era with rapidly changing development paradigms. The globalization of the world economy associated with the transnational revolution in information and technology in the last century has resulted in strong emphasis being placed on models of trade and economic development consonant with the new world economic order.

In the context of globalization, a number of issues are common to all countries of the region: trade and investment, membership of the WTO, diversification of the economic base, and sustaining and promoting exports, are all important concerns. In the increasingly globalized world economy, the myriad issues covered by the WTO arrangements, especially as they relate to reducing tariff and non-tariff barriers, form the cornerstone of a future trade and export development strategy. There is a need, therefore, to recognize, identify and set priorities for promoting the private sector and free market economy in member States.

This entails, above all, a recognition by member States of the importance of the linkages between competitiveness, competition and sustainable development, and ensuring free and equitable competition and a competitive, enabling environment in which market forces can thrive.

### A. WHAT IS COMPETITION LAW AND POLICY?

Current economic literature is replete with definitions of the objective(s) and scope of competition policy. The definition of competition policy changes not only with the context, but is also interpreted differently from country to country. In a narrow sense, it is considered synonymous with antitrust law and policy, while its broader connotations encompass all policies which affect competition in an economy. Competition policy refers to policies which affect competition in a market-place.

For the WTO, competition policy comprises the full range of measures that may be used to promote competitive market structures and behaviour, including a comprehensive competition law dealing with the anticompetitive practices of enterprises.[1] As such, it encompasses all policies that affect competition, or contestability, including trade and antitrust policies and a set of laws and policies adopted by a country to prevent or remedy restrictive business practices by enterprises, whether private or public. Restrictive business practices are those practices that reduce the degree of contestability of a market, such as cartels or other forms of horizontal or vertical market restraints, abuse of dominant market position, monopolization, and price discrimination.

The World Bank definition of competition policy includes '… government measures that directly affect the behaviour of enterprises and the structure of industry. An appropriate competition policy includes both: (a) policies that enhance competition in local and national markets, and (b) competition law, also referred to as antitrust or antimonopoly law …'.[2]

In the United States, which introduced the first formal competition or antitrust law, the Sherman Act prohibits agreements among enterprises that would harm competition, specifically prohibiting "monopolization", i.e. the attempt by a single enterprise to control a market through unfair practices. The Clayton Act prohibits mergers or other combinations among enterprises that would significantly reduce competition.[3]

Competition policy broadly defined encompasses all policy actions aimed at promoting competition in the economy. In practice, this includes a range of mechanisms and actions that have the immediate aim of

[1] WTO. *The Fundamental Principles of Competition Policy: Background Note by the Secretariat*. Working Group on the Interaction between Trade and Competition Policy. WT/WGTCP/W/1277. June 1999 (99-2281).

[2] World Bank. *Competition Law and Policy.* http://www1.worldbank.org/beext/part_i_cp/cp_main.htm.

[3] Pittman, Russell, Head of Competition Policy Section, Antitrust Division, US Department of Justice. *Why Competition Policy: Especially for Developing Countries*, in *Economic Perspectives. USIA Electronic Journal, Vol. 4, No. 1*, February 1999.

encouraging competition between providers of goods and services. Competition law, which, it should be remembered, is only one of the instruments of competition policy, seeks to allow the market-place to operate free of private encumbrances. Many other competition policy instruments are based on government regulation, structural reform and other fairly blunt, albeit often effective, instruments.[4]

Despite differences of emphasis, there is consensus on an accepted framework for competition: competition law is the set of rules and legal framework instituted nationally (or globally) which impede fair, efficient competition between firms. Competition policy includes competition law and other measures, mechanisms and processes by which authority is established in a market-place (national or global).

The key elements of competition law and policy are the following:

(a) Prohibiting direct or indirect price-fixing by agreement between firms (collusion);

(b) Prohibiting the use of market power to prevent or hinder the emergence of competition or prevent existing firms from competing effectively;

(c) Preventing firms from setting the actual or minimum price at which products may be sold by resellers (resale price maintenance);

(d) Prohibiting anticompetitive horizontal or vertical agreements between suppliers and resellers or distributors;

(e) Prohibiting anticompetitive mergers;

(f) Preventing unfair trading practices, for example misleading and deceptive claims about products.

## B. THE OBJECTIVES OF COMPETITION LAW AND POLICY

The objective of competition policy is to stimulate competition, protect consumers against monopolies and create an enabling environment for greater competitiveness in the domestic and global market. More specifically, 'A major objective of competition law … is efficient resource allocation, and thereby the maximization of national welfare, by ensuring that the competitive process is not distorted or impeded through the abuse of dominant positions (either through prohibition or through regulation) or competition-restricting agreements between competitors that are detrimental to social welfare'.[5] Competition policy seeks to promote and maintain healthy inter-firm rivalry in markets by prohibiting anticompetitive market structures and enterprise practices that impede competition by applying a competition law and/or pro-competitive regulation. It also requires the reduction and/or elimination of government measures that pose unnecessary obstacles to trade and competition.

Competition policy seeks to promote competition *by* ensuring efficiency and fairness in the market-place: efficiency of resource allocation and fairness in access to the market-place.

Economic efficiency comprises:

(a) '*Allocative efficiency*': when society's scarce resources are allocated to produce the goods and services that are most desired by consumers. This requires that the price be equal to the marginal costs of production and distribution from the social point of view;

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[4] Spier, Hank, General Manager, Australian Competition and Consumer Commission. APEC. *Competition Policy and Competition Law: Issues for APEC*. http://www.apeccp.org.tw/doc/Workshop/w1996/doc6.htm

[5] Hoekman, Bernard and Holmes, Peter. *Competition Policy, Developing Countries and the WTO*, World Bank. April 1999, p. 2.

(b) '*Productive efficiency*': when goods are produced using the most cost-effective combination of productive resources available under existing technology; and

(c) '*Dynamic efficiency'*: when an optimal rate of invention, development, and diffusion of new products and production processes are employed.[6] The consumer welfare objectives of competition policy seek to avoid any adverse impact on the consumer through higher prices and/or reduction in choice.

Competition policy promotes efficiency by:

(a) Providing a market environment where prices equal marginal costs;

(b) Ensuring that firms produce at the lowest attainable costs;

(c) Providing incentives for firms to undertake research and development (R&D) and introduce new products and production methods into the market-place. Competition policy reinforces this process by preventing or providing remedies for market structures and business practices that artificially weaken the degree of inter-firm rivalry in markets, thereby contributing to an inefficient allocation of resources;

(d) Preventing/addressing excessive concentration levels and resulting structural rigidities; addressing anticompetitive practices of enterprises (including multinational enterprises) that have a trade dimension, and that (may) impact particularly on developing countries;

(e) Protecting consumers from anticompetitive practices that raise prices and reduce output.[7]

### C. Competition Law and Policy in the global economy

Globalization has brought greater challenges but also enhanced opportunities. The liberalization of global trade has brought into sharp focus the benefits to be gained from greater penetration of foreign markets, technological advance and economic growth. Multinational companies and private capital flows, cutting across geographical boundaries, form the essential link between developing country trade, investment and economic development. An indication of how closely trade is linked with investment is the fact that about one third of the $6.1 trillion total for world trade in goods and services in 1995 was trade within companies, that is between subsidiaries in different countries or between a subsidiary and its headquarters.[8]

All this highlights the interrelatedness of competition policy international trade and trade policy. With tariff reductions, firms use non-border policies that distort trade to protect market share. As official barriers to trade and investment fall, firms may have a greater incentive to engage in anticompetitive conduct to protect markets. Both trade and competition policies complement and reinforce each other by promoting efficient allocation of resources, and free and fair market access.

Most industrialized countries have long taken the view that one important function of competition policy is to improve the efficiency of the economy. Improving efficiency is not an end in itself, but its objectives include increased national output, employment and income growth, production of goods which consumers want for the lowest possible price and of the best possible quality, the creation of industries which are dynamic, flexible and internationally competitive and better use of capital stock. The "engine" which

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6 WTO. *The Fundamental Principles Of Competition Policy: Background Note by the Secretariat*. Working Group on the Interaction between Trade and Competition Policy. WT/WGTCP/W/1277, June 1999 (99-2281).

7 UNCTAD. *Synthesis paper on the relationship of trade and competition policy to development and economic growth. Note by the Secretariat*. Working group on the interaction between trade and competition policy. WT/WGTCP/W/80, 18 September 1998 (98-3575). http://docsonline.wto.org.

8 WTO. *Trading into the Future: the Introduction to the WTO: Investment, competition, procurement, simpler procedures.* http://www.wto.org/english/thewto_e/whatis_e/tif_e/bey6_e.htm.

drives efficiency is free, open competition. Effective competition is the mechanism by which the efficiency of the economy is increased.[9]

There is strong justification for adopting competition law and policy in the developing countries both from an economic point of view and from a national welfare perspective. Whereas liberal trade and investment regimes are conducive to free trade, they are not in themselves a sufficient condition. Efforts by large firms, either domestic or global, to collude in price fixing or restricting market access by other means could retard the efficient functioning of a free, fair market.

Competition policy supports sustainable economic development through:

(a) Promoting equity and fairness;

(b) Promoting an efficient allocation of resources;

(c) Protecting consumer welfare;

(d) Preventing concentration of business power, with its resultant structural rigidities;

(e) Addressing anticompetitive practices by entrepreneurs (including multinational enterprises) that have a trade dimension, and may impact particularly on developing countries;

(f) Increasing an economy's ability to attract foreign investment and maximize the benefits of such investment;

(g) Market integration;

(h) Reinforcing the benefits of privatization and regulatory reform/deregulation initiatives;

(i) The promotion of technological development, local production and employment;

(j) Establishing an institutional focal point for the advocacy of pro-competitive policy reforms and a competition culture.[10]

In today's globalized world, developing countries need to adopt competition law and policy regimes to ensure that effective mechanisms are put in place to control anticompetitive behaviour, not only in the domestic market, but globally. In the absence of appropriate domestic rules, these countries risk being subject to the extraterritorial application of other countries' competition laws, or being exposed to anticompetitive conduct by foreign firms.

According to UNCTAD, there are three broad areas where such restrictive business practices are most common: (i) practices affecting market access for imports; (ii) practices affecting international markets where different countries are affected in largely the same way; and (iii) practices with a differential impact on national markets.

Business practices which restrict market access for imports may take the form of domestic import cartels; international cartels (which allocate national markets among a select group of firms); abuse of dominant position, which means excluding others firms from entering the market; the unreasonable obstruction of parallel imports; control over import facilities; vertical market restraints that foreclose markets

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[9] Spier, Hank, General Manager, Australian Competition and Consumer Commission. APEC. *Competition Policy and Competition Law: Issues for APEC.*. http://www.apeccp.org.tw/doc/Workshop/w1996/doc6.htm.

[10] Source: WTO. *The Fundamental Principles Of Competition Policy: Background Note by the Secretariat,* Working Group on the Interaction between Trade and Competition Policy. WT/WGTCP/W/1277, June 1999 (99-2281).

to foreign competitors; certain private standard-setting activities and other anticompetitive practices of industrial associations.[11]

Business practices which affect international markets include the formation of international cartels; mergers between large international companies and abuse of dominant position affecting international markets.

Those practices by firms which affect national markets include export cartels and situations in which mergers are benign or even beneficial in one market, but have detrimental effects in others.

At the national level, competition policy includes measures and processes covering trade policy, the protection of intellectual property rights, market access in the service sector, regulatory framework governing investment, and governance. As such, competition policy comprises both a regulatory framework for competition, and policies and measures designed for both competitiveness and competition.[12]

## D. COMPETITIVENESS AND COMPETITION

Whereas a competition law and policy framework sets the parameters for an environment to promote efficiency and fairness in the market, it is ultimately private sector firms, and the competitiveness of their products, which will determine the efficacy of such regimes, so competition can only be optimal if a nation's goods and services are increasingly competitive.

A nation's competitiveness depends on the capacity of its industry to innovate and upgrade. The results of a four-year study of the patterns of competitive success in ten leading trading nations indicate that 'competitive advantage is created and sustained through a highly localized process. Differences in national values, culture, economic structures, institutions, and histories all contribute to competitive success … which (may) lead to differences in the patterns of competitiveness in every country. … nations succeed in particular industries because their home environment is the most forward-looking, dynamic, and challenging…'.[13]

**Box 1. Requirements for competitiveness**

*Factor conditions*

Competitive advantage results from the presence of world-class institutions that first create specialized factors and then continually work to upgrade them.

In the sophisticated industries that form the backbone of any advanced economy, a nation does not inherit but instead creates the most important factors of production, such as skilled human resources or a scientific base. Moreover, the stock of factors that a nation enjoys at a particular time is less important than the rate and efficiency with which it creates, upgrades, and deploys them in particular industries.

The most important factors of production are those that involve sustained and heavy investment and are specialized. Basic factors, such as a pool of labour or a local raw-material source, do not constitute an advantage in knowledge-intensive industries. Companies can access them easily through a global strategy or circumvent them through technology. Contrary to conventional wisdom, simply having a general work force that is high school or even college educated represents no competitive advantage in modern international competition. To support competitive advantage, a factor must be highly specialized to an industry's particular needs—a scientific institute specialized in optics, a pool of venture capital to fund software companies. These factors are more scarce, more difficult for foreign competitors to imitate - and they require sustained investment to create.

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[11] Ibid.

[12] Competitiveness is defined as a set of skills and qualities which enhance the market share of a firm/product.

[13] *The competitive advantage of nations*. http://www.priv.government.bg/informationb/10_2000/en/4.html.

**Box 1** (*continued*)

*Domestic demand*

A nation's companies gain competitive advantage if domestic buyers are the world's most sophisticated and demanding buyers for the product or service. Sophisticated, demanding buyers provide a window into advanced customer needs; they pressure companies to meet high standards; they prod them to improve, innovate, and upgrade into more advanced segments. As with factor conditions, demand conditions provide advantages by forcing companies to respond to tough challenges.

*Related and Supporting Industries*

Internationally competitive home-based suppliers create advantages in downstream industries in several ways. First, they deliver the most cost-effective inputs efficiently, early and rapidly. They also provide advantages in terms of innovation and upgrading. Suppliers and end-users located near each other can take advantage of short lines of communication, a quick and constant flow of information, and an ongoing exchange of ideas and innovations. Companies have the opportunity to influence their suppliers' technical efforts and can serve as test sites for R&D work, accelerating the pace of innovation.

*Firm Strategy, Structure, and Competition*

National circumstances and context create strong tendencies in how companies are created, organized, and managed, as well as what the nature of domestic competition will be. Competitiveness in a specific industry results from convergence of the management practices and organizational modes favoured in the country and the sources of competitive advantage in the industry.

*Human resources*

Individual motivation to work and expand sales is also important to competitive advantage. Outstanding talent is a scarce resource in any nation. A nation's success largely depends on the education its talented people choose, where they choose to work, and their commitment and effort. The goals a nation's institutions and values set for individuals and companies, and the prestige it attaches to certain industries, guide capital flows and human resources, which, in turn, direct the competitive performance of certain industries.

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*Source*: From *The competitive advantage of nations* http://www.priv.government.bg/informationb/10_2000/en/4.html.

## II. COMPETITION LAW AND POLICY IN THE DEVELOPING COUNTRIES: EXISTING POLICIES AND PRACTICES

In the wake of globalization there is a growing consensus that competition law and policy regimes are important factors in the free, fair operation of markets and global economic integration. There is, however, less agreement about a global legal framework for competition law. The World Trade Organization (WTO) and the United Nations Conference on Trade and Development (UNCTAD) are among the major multilateral agencies involved in the ongoing effort to provide a global platform for an agreement on competition laws and issues worldwide. Considerable effort is being made to build regional and global consensus, harmonize approaches, and identify mechanisms for a competition framework by the World Bank, the Organization of Economic Cooperation and Development (OECD), the European Union and individual countries.

At the ministerial meeting in 1996, WTO member States authorized the formation of a Working Group on Trade and Competition Policy 'to study issues raised by Members relating to the interaction between trade and competition policy, including anticompetitive practices, in order to identify any areas that may merit further consideration in the WTO framework'. A press release issued by the WTO emphasized that '[t]he issue is not whether the WTO should negotiate rules in this area but whether it should initiate an exploratory and analytical work programme to identify areas requiring further attention in the WTO framework.' [14]

### A. UNITED NATIONS EFFORTS TO PROMOTE COMPETITION

The only universal, voluntary instrument on competition in existence—the UN's 1980 Competition Code—was adopted in 1980 under the name Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices.[15] The objectives include ensuring that restrictive practices do not impede the benefits of trade liberalization. The Code was reviewed at the Third Review Conference in 1995, by which time most developing countries and economies in transition had shown interest in competition policy. Some 60 countries have already adopted competition laws, and many others have begun the drafting process (see box 2). Due to lack of experience, financial resources and political support, however, many of them have been unable to implement their competition rules in such a way as to have an effective impact on the economy.[16]

While globalization has increased opportunities for trade and development, it has also presented challenges to many countries. The dismantling of tariff and non-tariff barriers and the liberalization of global trade has adversely affected the industrial sector in many developing, and even developed, countries. In addition, instances of growing concentration, and potential abuse, of market power through mergers and acquisitions has caused scepticism as to the expected benefits of globalization. Many countries have called for more than voluntary principles and rules to regulate competition at the multilateral level.[17]

**Box 2. The United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices**

The United Nations Set of 1980 contains principles and rules for the control of restrictive business practices, which take the form of recommendations to states and focus on practices that impede or negate the realization of benefits from international trade and thereby economic and social development, particularly of developing countries.

[14] Graham, Edward M. and Richardson, J. David. *Competition Policies for the Global Economy***.** November 1997. http://www.iie.com/publications/pub.cfm?pub_id=56.

[15] UNCTAD. http://www.unctad.org/en/press/pr2862en.htm.

[16] Ibid.

[17] Ibid.

**Box 2** (*continued*)

- It calls for appropriate action to be taken at the national, regional and international levels to eliminate, or effectively deal with, restrictive business practices having such effects.

- It calls on states to take into account the development, financial and trade needs of developing countries.

- It contains principles and rules calling on enterprises, including transnational corporations, to desist from horizontal restraints of various types and the abuse or acquisition of a dominant market position.

- It further contains principles and rules directed at states, notably that states should, at the national level or through regional groupings, adopt, improve and effectively enforce appropriate legislation and implement judicial and administrative procedures for the control of restrictive business practices.

- The Set further seeks to encourage various forms of collaboration aimed at eliminating or effectively dealing with restrictive business practices.

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Source: *The Fundamental Principles of Competition Policy. Background Note by the Secretariat.* WTO Working Group on the Interaction between Trade and Competition Policy. WT/WGTCP/W/1277 June 1999. (99-2281).

The need to reconcile efficiency with equity in competition matters was recognized by UNCTAD X, which declared that: "In addition to national efforts, the international community as a whole has the responsibility to ensure an enabling global environment through enhanced cooperation in the field of trade, investment, competition and finance ... so as to make globalization more efficient and equitable" (Bangkok Declaration, paragraph 4). UNCTAD X accordingly mandated UNCTAD to:

(a) Help countries develop their national regulatory and institutional framework in the area of competition law and policy;

(b) Strengthen the capacity of public institutions for competition and consumer protection in developing countries; and
study the developmental impact of possible international agreements on competition.

A Fourth Review Conference was held in 2000 which reviewed all aspects of the UN Competition Code; experience gained in international cooperation; provisions on restraining anticompetitive practices, including international cartels; the role of competition policy in addressing the exercise of intellectual property rights; and best practices in enforcement of competition laws. It proposed a strengthened role for competition authorities in fostering a "culture of competition" by educating society, addressed competition policy in such strategic sectors as telecommunications and regulated industries, and considered an updated version of UNCTAD's Model Law, which contains specific merger control rules.[18]

The Fourth Review Conference adopted a resolution in which it "Reaffirms the validity of the UN Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, recommends to the General Assembly to subtitle the Set for reference as UN Set of Principles and Rules on Competition, and calls upon all member States to implement the provisions of the Set".[19]

In its ongoing work on competition law, UNCTAD has developed a model law on competition as a basis on which countries can begin to devise national competition laws (see box 3).

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[18] Ibid.

[19] Ibid.

**Box 3. Objectives of the UNCTAD Model Law on Competition**

Article 1 of the UNCTAD Model Law on Competition stipulates that the objective of such law should be "To control or eliminate restrictive agreements or arrangements among enterprises, or mergers and acquisitions or abuse of dominant positions or market power, which limit or otherwise unduly restrain competition, adversely affecting domestic or international trade or economic development".

This article has been framed in accordance with the UN Set of Principles and Rules on Competition which sets out the primary principles on which states should base their restrictive business practices legislation. As affirmed in section A of the Set of Principles and Rules, states may wish to indicate other specific objectives of the law, such as the creation, encouragement and protection of competition; control of the concentration of capital and/or economic power; encouragement of innovation; protection and promotion of social welfare and in particular the interests of consumers, etc., and taking into account the impact of restrictive business practices on their trade and development. Many countries try to combine the goal of economic efficiency with other political objectives that are of common public interest. Consequently, such factors as employment, diffusion of economic power, regional development and pluralism also play a role in decision-making. However, the difficulty is that it may not always be easy to balance such different and often conflicting interests. Therefore it is considered preferable to pursue non-economic objectives through separate government policies.

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*Sources*: *UNCTAD Model Law on Competition*. http://www.unctad.org/en/subsites/cpolicy/docs/modelaw00en.pdf; and Kheman, R. Shyam, *The Instruments of Competition Policy and their Relevance for Economic Development*, http://www.oecd.org/daf/clp/non-member_activities/dnme04.htm.

## B. CURRENT STATE OF COMPETITION LAW AND POLICES IN THE DEVELOPING ECONOMIES

Increased competition at all levels through economic reforms which rely more and more on market forces is a powerful tool for increasing efficiency. However, unbridled competition—that is, competition without rules—tends to increase inequalities and create monopolies. There is a growing recognition among developing countries of the need to adopt national competition legislation and effective enforcement mechanisms that promote competition, encourage innovation and avoid undue concentration of market power in a few hands.

Although some form of competition law was already in force in many developing countries, emphasis on trade and investment in the context of rapid globalization in the 1990s led many to review their competition laws and update them in the light of new economic realities. Others have devised new laws; still others are in the process of doing so. This has also involved dismantling barriers and opening up their economies to take advantage of enhanced trade opportunities. Table 1 presents a list of developing countries which have adopted competition legislation and those in the process of drafting it. Around 60 countries have drafted laws and/or updated previous commercial laws with a focus on controlling anticompetitive practices. In the ESCWA region, only Egypt and Jordan are in the process of drafting and adopting competition legislation; Lebanon is beginning the process. Kuwait has recently updated its commercial law with specific provisions on anticompetitive practices.

TABLE 1. ADOPTION OF COMPETITION LAW IN DEVELOPING COUNTRIES

| Country | Status | Country | Status | Countries in the process of drafting legislation |
|---|---|---|---|---|
| Africa | | Peru | 1991; 1994 | ESCWA countries* |
| Algeria | 1995 | Venezuela | 1992 | Egypt |
| Cote d'Ivoire | 1991 | Chile | 1959; 1973 | Jordan |
| Kenya | 1988 | Transition economies | | Other countries |
| Mali | 1992 | Belarus | 1992 | Cameroon |
| South Africa | 1979 | Bulgaria | 1991 | Gabon |
| Tunisia | 1991; 1995; 1999 | Czech Republic | 1991 | Ghana |

TABLE 1 (*continued*)

| Country | Status | Country | Status | Countries in the process of drafting legislation |
|---|---|---|---|---|
| Asia | | Estonia | 1993;1998-1999 | Morocco |
| China | 1993 | Georgia | 1992; under review | Senegal |
| India | 1969; 1991 | Hungary | 1990 | Zambia |
| Pakistan | 1970 | Kazakstan | 1991; 1994 | Indonesia |
| South Korea | 1980 | Kyrgyzstan | 1992 | Malaysia |
| Sri Lanka | 1987 | Latvia | 1991;1998-1999 | Philippines |
| Taiwan | 1991 | Lithuania | 1992;1998-1999 | Ecuador |
| Thailand | 1979 | Moldovia | 1992 | El Salvador |
| Latin America | | Poland | 1990 | Paraguay |
| Argentina | 1919; 1946; 1980; under review | Romania | 1991 | Albania |
| Brazil | 1962; 1994 | Russia | 1991 | Armenia |
| Colombia | 1959; 1992 | Slovakia | 1994 | Azerbaijan |
| Jamaica | 1993 | Ukraine | 1992 | Croatia |
| Mexico | 1992 | Uzbekistan | 1992;1994 | Macedonia |
| | | | | Tajikistan |

*Source*: Hoekman, Bernard. *Competition Policy and the Global Trading System: A Developing Country Perspective*. World Bank Policy Research Working Paper No. 1735, March 1997, p. 16.

*Note*: The list of countries may not be exhaustive.
* Lebanon is beginning the process of formulating a competition law.

## C. DEVELOPING COUNTRY EXPERIENCES OF COMPETITION REGIMES

Drafting and adopting competition laws is only the first step towards promoting free and fair market enterprise. It is only one aspect of competition policy and does not ensure that markets will behave as intended. A competition law must be set within the overall ambit of appropriate trade, finance, and investment policies and a sound, stable macroeconomic framework. A generic law is not applicable to all countries. Competition legislation has to be set within a nation’s own political, economic, social and cultural context. Many options are therefore available to the developing countries and many issues need to be addressed. Furthermore, an overall regulatory framework is required where the role of government institutions as players is clearly defined and effectively enforced. Enforcement may also raise issues, such as whether a specific competition authority be set up; if so, what relationship it should have with other government agencies (i.e. the Ministry of Commerce); whether special judicial courts be set up, and many others as to what will make for an effective framework for enforcement. Together, these constitute a holistic, integrated approach to competition, trade and economic development.

The experience of three developing countries which have adopted competition laws is outlined below.

### 1. *Competition law in Tunisia*[20]

Competition is regulated in Tunisia by a law enacted in 1991, which was amended in 1995 and again in 1999. Its general objective is to prevent anticompetitive behaviour and there is no explicit mention of ends such as efficiency or fairness.

[20] From Lahouel, Mohamed El Hedi. *Competition Laws in MENA: An Assessment of the Status Quo and the Relevance of a WTO Agreement*, Economic Research Forum Working paper 2011.

(a) *Nature of the law*

With respect to anticompetitive behaviour, the Tunisian law prohibits all concerted actions and agreements aimed at impeding or restricting competition. The abuse of dominant position is also prohibited if it involves the domestic market. The abuse of dominant position in foreign markets is not prohibited by the Tunisian law, however. Vertical agreements are dealt with in the amendments, the 1995 amendment bringing in outright prohibition of selective and exclusive agreements. As in most countries, these agreements are judged by a rule of reason approach, so the 1999 amendment now allows exceptions to these prohibitions which can be issued by the Minister of Commerce. The 1995 amendment includes provisions on the control of mergers.

Although the Tunisian competition law is supposed to deal with anticompetitive behaviour, paradoxically, it allows the government to fix prices in some cases. This provision, allowing for state intervention in price-setting, has been made use of seasonally, particularly for food products.

(b) *Enforcement of the law*

Cases may be brought before a Competition Council, which may also be consulted by the Minister of Commerce on any draft legislation pertaining to competition and any intended issuance of a ministerial exemption. However, the law does not allow the Council to decide on its own to open an investigation into cases of anticompetitive conduct. Moreover, the level of activity is too low for an institution that was assigned the task of protecting and fostering competition, as the Council issued only three decisions in a six-year period (from mid-1991 to mid-1997, with eleven cases pending as of mid-1997). *This record shows that developing a competition tradition and culture is a slow process and that the enactment of a competition law is only the first step.*

### 2. *Competition policy and law in Mexico*[21]

Mexico has adopted a modern competition policy as part of a broader effort to open itself to the world economy. Mexico's modern competition law is part of a comprehensive reform programme, which includes large-scale privatization and market liberalization.

(a) *Nature of the law*

Analytical economic methods apply clear rules to the most harmful horizontal restraints and a full rule of reason analysis to other issues, including all vertical restraints and even resale price maintenance.

(b) *Enforcement of the law*

Competition principles are integrated into regulatory policy by giving the independent competition agency the power to determine whether firms may participate in privatization sales and concession grants and whether there is market power that would justify direct regulation by another agency, such as in transport or telecommunications. The competition agency has tried to assert competition principles in newly deregulated and privatized industries. There is strong opposition to the process. Competition problems arising from regulatory and privatization actions still call for close attention to be paid to enforcement and advocacy. For dealing with market power, the division of responsibility between the competition policy agency and other bodies, although conceptually plausible, is difficult to implement. *To make competition policy effective in these matters, it is necessary to give the competition agency even stronger tools to ensure that its identification of competition problems in regulated industries leads to effective measures to solve those problems.*

[21] From Wise, Michael O. *Review of Competition Law and Policy in Mexico*. http://www.oecd.org/daf/clp/ Country_ reviews/regrefmx.pdf.

### 3. *Competition Law 'good practice' in the Baltic countries: Estonia, Latvia and Lithuania*[22]

Estonia, Latvia and Lithuania have made significant progress towards achieving fully functioning market economies since regaining independence in 1991. An important part of this process has been the development of an effective competition policy. All three countries have competition laws and a competition agency actively enforcing them. All three are entering a critical second phase in competition enforcement, having recently enacted new competition laws, and each is undertaking the difficult steps that will lead, it is hoped, to full economic integration with Europe.

#### (a) *Characteristics of the respective laws*

Latvia first enacted a competition law in 1991, followed by Lithuania in 1992 and Estonia in 1993. These three laws were generally comparable in their substantive provisions. Each proscribed abuses of dominance and anticompetitive restrictive agreements, and the statutory definitions of such conduct were similar. The laws of Latvia and Lithuania also provided for merger control, but Estonia's did not. The three laws also proscribed certain types of anticompetitive conduct by executive bodies of government, a provision that is found in the competition laws of several transition countries and that is almost unique to them. The laws also contained provisions proscribing acts of unfair competition in comparable terms. All three countries enacted new competition laws in 1998 and 1999. One notable feature common to the new laws is the approximation of the substantive provisions of the laws to the competition law of the European Union, as required by the Europe Agreements between the EU and each of the three Baltic countries. In addition, the new laws spell out in greater detail the administrative procedures for the conduct of investigations and cases by the competition agency. These differ in several respects across the three countries, however, reflecting the different national legal systems and traditions in each country.

#### (b) *Establishment of specific competition authorities*

In both Lithuania and Latvia the competition agency is a five-member Competition Council, whose members are appointed by the government for terms of five years (Latvia) or six (Lithuania, except that the Chairman serves for five years). In Estonia the competition law is enforced by a Competition Board headed by a Director General. In Lithuania the Office of the Competition Council has recently been established under the new law. Formerly, cases were examined by the State Competition and Consumer Protection Office, which was divided into seven divisions, each with different enforcement responsibilities. The Lithuanian Competition Council, unlike the competition agencies in the other two countries, also has enforcement responsibility for consumer protection, monitoring state aid, and antidumping. In Latvia, a Competition Bureau within the Competition Council has the functions of investigator and prosecutor. The Bureau is further subdivided into five divisions or offices. In Estonia, investigations and prosecutions are conducted by four departments within the Competition Board. The Lithuanian Competition Council is the largest of the three competition agencies, with a total of about 50 staff at the end of 1998. Its larger size reflects the additional areas of responsibility noted above. The Estonian Competition Board employed a total of 38 people at the end of 1998, although it is expected that there will be an increase to 47 in 1999. The Latvian Competition Council had 30 employees as of mid-1998.

#### (c) *Enforcement of the laws*

The fact that all three countries are currently in the process of implementing completely new competition laws means that each is substantially in a state of flux, as the competition agencies adjusts to the substantive and procedural changes of the new laws. The agencies are facing significant challenges in making the transition quickly and effectively, but *the new laws also provide opportunities for bringing about a real improvement in the effectiveness and efficiency of competition enforcement in the three countries.*

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[22] From Clark, John W. *Competition Law and Policy in the Baltic Countries*. http://www.oecd.org/daf/clp/Publications/baltic.PDF.

### 4. *Competition law and implementation in Hungary*[23]

Hungary's competition policy institutions evolved as part of an extended process of transition from central planning to a market economy. Competition policy was part of a larger context of pro-market decisions about privatization, industrial policy, and market openness.

(a) *Hungary's competition Law*

Ten years after Hungary made the formal change from a centrally planned to a market economy, the competition issues that appear in Hungary's markets are comparable to those in European OECD countries. The general competition law is already 15 years old. It has been revised twice, most recently in order to mirror EU standards more closely. Hungary's law now closely follows that of the EU (although its economics-oriented approach to vertical agreements predated recent EU changes), the next important reforms including opening up traditionally monopolized sectors to competition.

(b) *Role of the competition authority*

The leading role of competition policy in reform is embodied in the spirit and vigour of the Hungarian Competition Office (HCO). This institution was designed in such a way as to keep enforcement independent from political influence, yet also permits it to play an active, public role in policy debate. Desirable technical corrections include removing the tight deadlines that could cripple the HCO in contested enforcement matters.

The HCO's initial focus on consumer-related issues such as deceptive advertising helped build market confidence. Horizontal restraints are now receiving increasing enforcement attention, as are mergers, where the quality of the HCO's analysis is improving. The substantive principles of the law and analyses for implementation purposes are sound, but court delays and some technical legal problems may hamper implementation. Nevertheless, *the HCO's independent position and organization have been critical to its success, and its advocacy role has been very important in building and maintaining commitment to competition principles.*

### 5. *Australian Competition Law Models*[24]

Like many countries newly experimenting with competition law, Australia experimented with a number of models before settling for its present system.

The first attempt was made in 1906 when legislation along the lines of the US Sherman Act was enacted by the then very new Australian Federal Government. However, that legislation was made ineffective by a judgement of the High Court of Australia. Subsequently, World War I, the Depression and World War II led to anticompetitive practices in the form of government -mandated price controls, rationing, orderly marketing arrangements and strict import controls.

(a) *Structure of the law*

In 1965 the Australian government introduced the first Trade Practices Act. This was modelled on the UK law, which was essentially a registration system where anticompetitive agreements (horizontals) were to be registered on a secret register and were exempt from the law until such time as the regulatory authority examined them, found them not to be in the public interest and had them declared invalid. That law did not prohibit resale price maintenance nor did it prohibit anticompetitive mergers. Resale price maintenance was prohibited in 1971 but it could be exempted from the law on public benefit grounds.

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[23] From Wise, Michael O. *Review of Competition Law and Policy in Hungary*. OECD. http://www.oecd.org/daf/clp/Country_reviews/hungary.pdf.

[24] From Spier, Hank, General Manager, Australian Competition and Consumer Commission. APEC. *Competition Policy and Competition Law: Issues for APEC.*

In 1974 the law was dramatically changed to bring in the US model whereby anticompetitive conduct was prohibited either *per se* or on the basis of a competition test. The hard core offences of price-fixing (horizontal and vertical), and misuse of market power were prohibited *per se*. Other conduct, including mergers, was subject to a competition test. The Australian government also introduced a slight variation which brought in some of the English concept and allowed conduct to be exempted from competition law if there were countervailing public benefits. However this would only apply to future conduct and after a public process.

(b) *Enforcement of the law*

Competition law is applied universally in Australia. There is national administration, private action and, generally, the law and its administration are maturing. The important challenges now are global issues and global enforcement cooperation.

## III. TRADE, COMPETITIVENESS AND COMPETITION IN THE ESCWA REGION

Improvements in communications, technology and transportation, as well as social and cultural changes have progressively reduced the effective economic distance between nations, leading to a growth in the economic opportunities for business all around the world. At the same time, many government policies that have traditionally inhibited international transactions have been relaxed and in some cases completely removed. Trade polices such as tariffs, import restrictions, subsidized exports and limitations on international capital movements have all had the effect of erecting barriers at the borders of nations. However, the gradual realization of the opportunities presented by a competitive global market-place for the world's consumers, producers and service providers has progressively led governments to lower these barriers and continue the push for trade liberalization. As a result, the world is now more open to international trade. For the ESCWA countries, as for others, firms have increasing access to foreign markets, while consumers look to foreign producers as important sources of price and quality options. This represents both a competitive opportunity and challenge for the ESCWA economies.

### A. HISTORICAL PATTERN OF ECONOMIC POLICY REGIMES IN THE ESCWA REGION

An assessment of economic development in the region over recent decades tells a story of mixed performance, tied closely to the rise and fall of oil revenues. The rise in oil revenues during the 1970s, and again in the 1980s, ushered in an era of economic boom in the Gulf Cooperation Council (GCC) countries[25]. Trade flows increased rapidly, with oil exports contributing more than three quarters of overall trade, and government investment surged in human and physical infrastructure. Ports, roads, telecommunications, hospitals and schools were built in the 1970s. At the same time, ESCWA member States have made considerable strides in human resource development over the last two decades. state-subsidized basic needs contributed to improvements in the standard of living of vast populations. The 1970s was a period of high growth for the region. The large spill-over effects in terms of remittances, grants and loans to other More Diversified Economies (MDEs)[26] of the region led to high rates of economic growth in these countries too. Expansionary fiscal policies commensurate with sharp increases in domestic liquidity, became closely related to oil earnings in the region, both in the GCC countries and the MDEs. Traditionally, economic development regimes in the ESCWA region have been based on state-led, state-centred, state-regulated development, and this remains the case in some countries.

With the drop in the price of oil at the beginning of the decade, the 1980s was a period of recession for most ESCWA member countries. During the 1990s, the increasing globalization of the world economy emphasized the importance of transnational corporations (TNCs) and private sector investment as the future source of investment flows, and led to a review of economic growth and development strategies in ESCWA countries, as elsewhere in the developing world. In particular, the WTO framework accepted by the majority of the countries of the world and several ESCWA member States, which necessitated a gradual reduction in tariff barriers through reform processes, required a shift away from state-led patterns of development to a free, market-led growth strategy. The Euro-Mediterranean partnership process initiated in the region in the1990s, which supported economic reform programmes to achieve a free trade area in the future, was yet another development affecting the overall economic climate.

At the national level, beginning in the 1990s, most ESCWA member countries initiated structural adjustment reforms aimed at greater macroeconomic stability by removing structural imbalances and improving economic growth and efficiency. On the economic front, this required a major ideological shift in the model of economic governance from that of state-led development towards a focus on a free, market-led economy for the future. This entailed reforming the trade and finance sectors, liberalization, privatization, and institutional and regulatory reforms.

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[25] The members of the GCC are: Bahrain, Kuwait, Qatar, Oman, Saudi Arabia, and the United Arab Emirates.

[26] The More Diversified Economies (MDEs) in the region are: Egypt, Jordan, Iraq, Lebanon, the Syrian Arab Republic, the Republic of Yemen, and the West Bank and Gaza Strip.

At the macroeconomic level, the ESCWA region performed relatively well in the 1990s in terms of stabilization, which was reflected in modest levels of inflation and budget deficits and in exchange rate stability. However, the resumption of growth following structural adjustment was slower and weaker with key macro variables performing poorly, including investment, non-oil exports and diversification. These poorly performing variables are interlinked and point to the need for the state firmly to reestablish the boundaries between its functions and those of the free market.

## B. SLOW GROWTH IN EXPORTS IN THE ESCWA REGION

The export performance of the Middle East as a region has remained less than robust. During the first half of the 1990s, exports of the MENA region grew at a rate of only 1.5 per cent at a time when world exports were growing at an average annual rate of 7.5 per cent. This was against a backdrop of high trade and export growth for other regions of the world. During the same period, overall merchandise exports from East Asia grew by an annual average of 14 per cent, and Central and Eastern European exports by 7.5 per cent. The trend was exacerbated by the drastic drop in oil prices in 1998 which, though affecting all regions in terms of trade, affected the Middle East most. Merchandise exports from the region declined by 21 per cent in 1998 alone (see table 2).

The trend of comparatively modest growth in exports from the Middle East has been a long-term phenomenon. As Table 2 shows, despite oil exports, the share of merchandise exports from the region have ranged from 2 to 4 per cent of world exports in the last 50 years, except in 1983, when the figure essentially reflects the 1980 rise in oil prices. In particular, the region was not able to capitalize on emerging world trade and export opportunities in the last decade as well as other regions. The share of exports from the Middle East as a proportion of world exports fell from 6.8 per cent in 1983 to 3.1 per cent in 1999. As in the case of annual percentage growth of exports across regions, the fast-growing developing economies of Asia, led by China, were instrumental in increasing their region's share of world exports from 19.1 to 25.5 per cent in the same period (see table 2).

TABLE 2. GROWTH IN THE VALUE OF WORLD MERCHANDISE TRADE BY REGION, 1990-1998
(*Annual percentage change*)

| | Exports (f.o.b.) | | | Imports (c.i.f.) | | |
|---|---|---|---|---|---|---|
| | 1990-95 | 1997 | 1998 | 1990-95 | 1997 | 1998 |
| World | 7.5 | 3.5 | -2 | 7.5 | 3 | -1 |
| China | 19 | 21 | 0.5 | 20 | 2.5 | -1.5 |
| East Asia | 14 | 2.5 | -7.5 | 15 | 0.5 | -17.5 |
| Central and Eastern Europe | 7.5 | 8 | 9 | 11 | 7 | 11.5 |
| MENA | 1.5 | 4 | -21 | 5.5 | 6.5 | -6 |
| Africa | 0.5 | 2 | -16 | 5.5 | 6 | -1.5 |

*Source*: Economic Research Forum. *Economic Trends in the MENA Region 2000*, http://www.erf.org.eg/html/economic_00/htm/f_chap3.html.

The exports and economic development of ESCWA countries remain cyclically linked to oil exports and revenues. Though the share has declined slightly, the region remains the leading exporter of world oil; it accounted for 73 per cent of total merchandise exports in 1997, compared to 85 per cent in 1980.[27] The region has exhibited a structure of commodity output and exports which has changed very slowly. Lack of diversification into other products has also had a bearing on the low levels of intraregional trade.

[27] Economic Research Forum. *Economic Trends in the MENA Region 2000*. http://www.erf.org.eg/html/economic_00/htm/f_chap3.html.

TABLE 3. WORLD MERCHANDISE EXPORTS BY REGION AND SELECTED ECONOMY, 1948-1999
(*Billion $, and percentage share in total world exports*)

| | 1948 | 1953 | 1963 | 1973 | 1983 | 1993 | 1999 |
|---|---|---|---|---|---|---|---|
| World (billion $) | 58 | 83 | 157 | 578 | 1835 | 3639 | 5473 |
| Percentage share in total | | | | | | | |
| World | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| North America | 27.5 | 24.6 | 19.4 | 17.2 | 15.4 | 16.8 | 17.1 |
| Latin America | 12.3 | 10.5 | 7.0 | 4.7 | 5.8 | 4.4 | 5.4 |
| Western Europe | 31.0 | 34.9 | 41.0 | 44.8 | 39.0 | 43.7 | 43.0 |
| C./E. Europe/Baltic States/CIS | 6.0 | 8.2 | 11.0 | 8.9 | 9.5 | 2.9 | 3.9 |
| Africa | 7.4 | 6.5 | 5.7 | 4.8 | 4.4 | 2.5 | 2.0 |
| Middle East | 2.1 | 2.1 | 3.3 | 4.5 | 6.8 | 3.4 | 3.1 |
| Asia | 13.8 | 13.2 | 12.6 | 15.0 | 19.1 | 26.3 | 25.5 |
| Japan | 0.4 | 1.5 | 3.5 | 6.4 | 8.0 | 10.0 | 7.7 |
| China | 0.9 | 1.4 | 1.3 | 1.0 | 1.2 | 2.5 | 3.6 |

*Source*: World Bank,.*2001 World Development Indicators*.

## C. LACK OF A DIVERSIFIED EXPORT BASE

Export performance is directly related to the competitiveness of firms and the market. An economy's rising share of total world manufactured exports is also indicative of increased global integration; since most firms are price takers in international markets, increasing market share over a sustained period usually requires the achievement of a competitive advantage. A country's firms and industries are considered 'competitive' in products in which they are increasing world market share. An export product is considered 'dynamic' in world trade if it is growing faster than the average for all products.[28]

Since increased competitiveness may be associated with value addition to exports and diversification into a broader base of products, with more stable and sustainable prices, analysis of manufactured exports is particularly relevant in assessing the competitiveness and diversification of an economy.

Table 4 and figure I show that, during the period 1990-1999, ESCWA countries achieved little diversification in manufactured exports. In the GCC countries the increase in the share of manufactures is due to diversification, but in oil-related manufacturing. In the MDEs too, diversification of the manufacturing base was not achieved. Manufactured exports as a percentage of the total declined from 42 to 37 per cent in Egypt, 36 to 7 per cent in the Syrian Arab Republic and remained the same at 1 per cent in Yemen. Only in Jordan was there an increase in the share from 51 per cent in 1990 to 56 per cent in 1999.

Bahrain, a GCC country, has made considerable strides towards diversification. The current strategy for development focuses on greater private sector investment, particularly in information technology, telecommunications, and tourism. In 2000, the Supreme Council for Economic Development, chaired by the Prime Minister, was created to identify, develop, and promote foreign investment opportunities. Coupled with the ongoing liberalization of business laws and practices, new initiatives in the financial services sector, are expected to contribute to further diversification from oil.

However, manufacturing industry in the region is concentrated in energy-intensive products, including fertilizers, steel and petrochemicals. Nitrogen-based fertilizers are produced in the Gulf region, as well as in Algeria, the Libyan Arab Jamahiriya and Egypt, while Jordan and the Syrian Arab Republic are producers of phosphates. At present, Arab countries are self-sufficient in fertilizers, with exports accounting for 39 per cent of total output. [29]

[28] World Bank. *Assessing Competitiveness: Indicators and Benchmarks of national, regional and local competitiveness.* http://www1.worldbank.org/beext/part_ii_csai/csai_mainb.htm#.

[29] Economic Research Forum. *Economic Trends in the MENA Region 2000*. Table 3.6. http://www.erf.org.eg/html/economic_00/html/f_chap4.html.

Another reason for the slow rate of diversification has been a slower process of trade, finance and economic reform in the economies of the region. Despite efforts to take advantage of increasing global trade opportunities in the 1990s, the pace of structural reforms affecting free market enterprise, such as privatization, exchange rate reform, reduction in tariff and non-tariff barriers, and reform of the overall regulatory environment, was slow, especially as compared with the economies of North Africa, e.g. Tunisia and Morocco.

Table 5 presents comparative quantitative indicators linking economies which undertook early reform to their share of manufactured exports in total exports for 1981 and 1994, the period during which the reforms were undertaken. These reforms included trade liberalization, tariff reduction and exchange rate alignment. As can be seen, Morocco, Tunisia, Turkey and Jordan, which started their respective reform programmes earlier, all improved their manufactured export performance considerably more than Egypt and the Syrian Arab Republic, which did not.

TABLE 5. MANUFACTURED EXPORTS AND POLICY REFORM IN SELECTED MENA COUNTRIES

| | Algeria | Morocco | Tunisia | Egypt | Jordan | Syrian Arab Republic | Turkey |
|---|---|---|---|---|---|---|---|
| MAN 1981* | 0.00 | 5.14 | 13.65 | 4.02 | 17.74 | 1.25 | 1.30 |
| MAN 1994 | 0.47 | 13.44 | 34.54 | 10.31 | 26.91 | 2.00 | 15.19 |
| Tariffs | 0.13 | 0.30 | 0.22 | 0.10 | 0.09 | 0.16 | 0.13 |
| Quota | 0.00 | 0.31 | 0.54 | 0.25 | 0.11 | 0.58 | 0.87 |
| Black market premium 1970s | 0.76 | 0.06 | 0.10 | 0.77 | 0.04 | 0.08 | 0.15 |
| Black market premium 1980s | 2.27 | 0.05 | 0.70 | 0.36 | 0.02 | 0.44 | 0.13 |
| Reform | No | Yes | Yes | No | Yes | No | Yes |
| Year of Reform | n.a. | 1984 | 1989 | n.a. | 1965 | n.a. | 1989 |

*Source*: Economic Research Forum. *Economic Trends in the MENA Region 2000*. Table 3.6. http://www.erf.org.eg/html/economic_00/html/f_chap3.html.

*Note*: * MAN stands for the share of manufactured exports in total exports.

## D. COMPETITIVENESS IN THE ESCWA REGION

Globalization has ushered in a new model of development based on competitiveness and competition. States all over the world are discarding their earlier roles and moving towards less involvement in the direct provision of goods and services and more in developing market mechanisms, creating supporting institutions and providing an enabling environment for private-sector-led growth.

Though progress has been made in the ESCWA region, the policy and institutional environment has not improved fast enough. Privatization has also been slow and private sector participation in infrastructure has been modest. The government-business relation continues to involve excessive transactions costs, both from tariff and non-tariff barriers. Moreover, progress in improving the regulatory framework governing business transactions has been slow and enforcement weak.

As part of the commitment to a free, market-led economic growth strategy, many ESCWA countries, such as Jordan, Lebanon and Egypt, have taken steps to improve the business climate. The reforms include privatization, measures to attract foreign investment, and a reduced role for direct state intervention. Although trade, financial sector and public sector reforms have improved the business climate compared to a decade ago, the private sector remains small and under-diversified compared with the private sector and the overall business environment in the countries of East Asia, Latin America and Eastern Europe. In Egypt, Tunisia and Jordan, the private sector still accounts for only 64 to 66 per cent of GDP, compared with 80 per cent in Brazil, 74 per cent in Uruguay and 72 per cent in Indonesia.[30] The leading constraints on private

[30] Economic Research Forum. *Economic Trends in the MENA Region 2000*. http://www.erf.org.eg/html/economic_00/htm/f_chap2.html.

sector operation and expansion are inefficient tax administration, a costly judicial system, scarcity of skilled labour, elaborate collateral requirements to obtain finance, and weak support systems. Investors in the region claim that a number of obstacles continue to hinder the efficient operation of firms, exports and investment.[31]

The constraints facing export competitiveness and competition in the ESCWA economies are bureaucratic control procedures that hamper exports; a controlling regulatory framework, as opposed to a facilitating ethic; a high level of taxation and a multiplicity of charges and duties; inadequate and often outmoded distribution, storage and transport infrastructure; and lack of efficiency in the financial sector, especially with respect to credit flows for long-term investment and exports.

The World Economic Forum's *Global Competitiveness Report* 1999 ranked 53 countries (representing 95 per cent of world output, trade and investment flows) in order of competitiveness. The Competitiveness Index (CI) compared these economies in terms of their 'prospects for medium-range economic growth' on the basis of both the quantitative and qualitative structural characteristics which were likely to determine their growth prospects. These include variables which, taken together, are a proxy for a 'sound enabling macro environment', namely:

(a) The role of the state;

(b) The extent of government intervention and the quality of public services;

(c) The quantity and quality of infrastructure;

(d) The quality of general business management;

(e) The economy's openness to the world (measured in terms of the liberalization of its external trade and investment regime);

(f) The soundness of legal and social institutions, including the Rule of Law and the protection of property rights;

(g) The role of the financial markets in achieving optimal consumption and savings behaviour, as well as the efficiency of financial intermediaries;

(h) Technology/R&D;

(i) The efficiency and flexibility of labour markets.

A lower ranking indicated a better score,1 being the top country in terms of competitiveness and prospects for growth.

Only two countries of the ESCWA region made it to the ranking. Both—Egypt and Jordan—have been in the vanguard of initiating reform programmes, including governance reform.

TABLE 6. OVERALL COMPETITIVENESS RANKING OF SELECTED ESCWA COUNTRIES, 1995-1999

| | 1995 | 1996 | 1997 | 1998 | 1999 |
|---|---|---|---|---|---|
| Egypt | 27 | 29 | 28 | 38 | 49 |
| Jordan | 41 | 28 | 43 | 34 | 40 |

*Source*: Economic Research Forum, *Economic Trends in the MENA Region 1999*, p. 38 and World Economic Forum, *World Competitiveness Report 1999*, p. 15.

[31] Ibid.

Interestingly, both Egypt and Jordan show a decrease in their overall competitiveness in 1999 compared with 1995 (see table 6), while Jordan's ranking had improved from 41 to 28 in terms of economic governance indicators in 1996, one year after it hosted the Amman MENA Economic Summit. This was the year the government made a concerted effort to promulgate investor-friendly laws and market Jordan as 'ready-for-business'.[32]

Foreign equity and investment inflows are a function of expected returns. Though much has been achieved by the countries of the region in the last few years in terms of providing macroeconomic stability, opening up markets and improving the institutional infrastructure, actual inflows of private foreign investment still depend upon how investors perceive the overall environment which serves to affect actual FDI flows.

Foreign direct investment flows are a function of several factors. The *Global Competitiveness Report* on the relative attractiveness of the MENA countries for FDI indicates that the determinants of attracting FDI inflows are, in ascending order of importance: societal attractiveness, which includes a society's openness and its general attitude to foreigners and foreign-owned property; infrastructure, including the quality and coverage of the infrastructure, property rights and their administration, and the stock of existing FDI; production factor attractiveness, which includes the availability and quality of human resources, capital resources and raw materials; governance attractiveness or general ability of the governing elite to achieve consensus within the Rule of Law; and competitive attractiveness or the importance of the country's situation and capabilities in the competitive game in which TNCs are involved. This may include particular arrangements, regulations and incentives related to a specific investment.

Using these parameters, the *Global Competitiveness Report* compiles an annual Competitiveness Index (CI) that is correlated with economic growth over five years. The index describing a country's performance is a weighted aggregate of eight qualitative factors, namely, Openness, Governance, Finance, Infrastructure, Technology, Management, Labour and Institutions. The index stems from both quantitative and qualitative data. The quantitative data comprises indicators of a country's economic performance, technological capacity and infrastructure, taken from national and international published sources. The qualitative data is derived from the survey results from the Executive Opinion Survey conducted by the World Economic Forum. This survey measures the *perceptions of leading business executives about the country in which they operate*.

Despite strenuous efforts to improve the domestic economic climate in order to attract FDI, the ESCWA countries still lag behind a number of other developing economies in terms of relative country attractiveness for FDI.

TABLE 7. SELECTED ESCWA COUNTRIES' RANKING IN THE COMPETITIVENESS INDEX, 1995-1999

| | Egypt | | | | | Jordan | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 1995 | 1996 | 1997 | 1998 | 1999 | 1995 | 1996 | 1997 | 1998 | 1999 |
| Openness | 24 | 21 | 36 | 31 | 50 | 45 | 35 | 32 | 43 | 45 |
| Governance | 15 | 30 | 15 | 25 | 31 | 16 | 16 | 29 | 16 | 30 |
| Management | 29 | 23 | 21 | 42 | 52 | 42 | 38 | 53 | 41 | 42 |
| Institutions | n.a. | 24 | 5 | 30 | 29 | n.a. | 24 | 47 | 25 | 24 |
| Overall Ranking | 27 | 29 | 28 | 38 | 49 | 41 | 28 | 43 | 34 | 40 |

*Source*: Economic Research Forum, *Economic Trends in the MENA Region 2000*, http://www.erf.org.eg/html/economic_00/html/f_main.html. November 2000.

n.a. = not available.

[32] UNESCWA. *Appraisal of the Middle East and North Africa Economic Conferences*. UNESCWA E/ESCWA/ED/1999/15.

The assessment of selected ESCWA countries' ability to attract FDI on this basis varies with respect to each factor. Jordan and Egypt rank well in terms of openness and management as a result of recent successful reforms, liberalization and investment laws, which provide liberal incentives to investors, cheaper labour and raw material, and having access to the large untapped market of the region.

Egypt has introduced a number of significant reforms to improve its economic regulatory framework. Consequently, its openness rating improved from 24 in 1995 to 21 in 1996; and then again from 36 in 1997 to 31 in 1998. During this period, some 90 laws and presidential decrees were passed in Egypt to enhance investment promotion and economic liberalization; streamline and eliminate bureaucracy, taxes and customs duties reform and protect the environment.[33] Despite this, the rating did not improve in the following year. For example, the sharp decline in the openness index from 1998 to 1999 was because of continuing high tariffs and misalignment, whereas the weak governance factor was the result of high payroll and corporate tax rates.

Jordan's world ranking dropped to 40 in 1999 after reaching 34 in 1998 as a result of a decline in several factors. The governance ranking declined from 16 in 1998 to 30 in 1999 because of an increase in the budget deficit (3.04 per cent of GDP). The finance indicator implicit in the rating also dropped because of low government savings (5 per cent of GDP) and the decrease in government investment by 6.25 per cent between 1994 and 1998.[34] The institutional environment ranking remains high at 24, indicating the need for improvement in institutional efficacy and efficiency.

## E. ECONOMIC CREATIVITY AS A MEASURE OF COMPETITIVENESS

In addition to policy factors, a country's competitiveness depends on the ability of its labour and institutions to create and enhance added value. 'Economic creativity' is the term applied by Andrew M. Warner of Harvard University to define a composite index to measure the enabling environment conducive to enhanced value addition.

**Box 4. Improving competitiveness: what is required?**

Competitiveness has productivity at its heart. It relates to measures that firms, industries, regions and governments consciously adopt in order to foster, maintain and increase productivity on a sustainable basis.

Firms achieve and sustain high levels of productivity by continuously improving the efficiency of use in their inputs through investments in new technology, training, good labour-management relations, superior management practices and improved organization of production.

Governments, both local and national, need to provide an environment that facilitates competitiveness by ensuring fair, consistent, transparent policies, as well as adequate infrastructure for private enterprise.

Assessing Competitiveness. While nations do not directly compete in markets, their business environments and business support institutions can be assessed. There are several methods for evaluating competitiveness, including analysing trade flows, assessing national, regional and local indicators of business environment conditions, and examining detailed information on firm-level performance and constraints, often derived from enterprise surveys. A final method linked to the others is public-private consultation, whether at the national, regional, local or sectoral level.

Competitiveness Strategy. There are three basic building blocks of competitiveness strategy:

[33] Ibid. pp. 23-26.

[34] Economic Research Forum. *Economic Trends In the MENA Region 2000*. http://www.erf.org.eg/html/economic_00/html/f_main.html. November 2000.

**Box 4** (*continued*)

(a) Strengthening the incentive framework for efficient resource use;

(b) Building supportive institutions and services, especially those motivating firms to adapt and upgrade technology and train workers;

(c) Fostering both domestic and international linkages among firms and between investors, firms and markets, including through export development and the promotion of foreign direct investment (FDI).

Competitiveness strategy cannot arise simply from an expertly derived blueprint, however; it must be developed through repeated consultative interactions between public and private sectors, and other relevant stakeholders. Donors can usefully encourage and support such consultation through dialogue with key government counterparts, technical assistance, participation in consultation fora, and by building on the outcomes of such consultations in their assistance programmes.

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*Source*: World Bank. Competitiveness Strategy, Assessment and Indicators http://www1.worldbank.org/beext/part_ii_csai/csai_main.htm.

The index includes two variables, both of which are themselves a composite of several qualitative variables. The first is 'access to technology by firms in a country, both through transfer of technology and/or innovation or adaptation to indigenous requirements', known as the Technology Index. The Technology Index measures 'which country is most active in adoption (either through innovation or import) of technology'. The second is 'access to finance and ease of starting a business', known as the Start-Up Index. The Start-Up Index is based on survey questionnaires on: how easy it is to start a business in the country and whether financing is available. The Economic Creativity Index is an average of the Technology and Start-Up Indices.[35]

TABLE 8. INDICES OF COMPETITIVENESS IN SELECTED COUNTRIES

| Country | Economic Creativity Index | Technology Index | Start-Up Index |
|---|---|---|---|
| Egypt | 0.04 | 0.24 | -0.17 |
| Jordan | -0.52 | -0.84 | -0.21 |
| China | -0.56 | -0.35 | -0.78 |
| Indonesia | -0.32 | -0.66 | 0.02 |
| India | -0.03 | 0.32 | -0.38 |
| Korea | 0.50 | 0.82 | 0.19 |
| Taiwan | 0.97 | 0.90 | 1.04 |
| Singapore | 1.63 | 1.95 | 1.31 |
| United States | 2.02 | 2.02 | 2.02 |

*Source*: World Economic Forum, *Global Competitiveness Report 2000/2001*.

The results indicate that the two ESCWA members for which ratings are available, Egypt and Jordan, are low on the Economic Creativity Indicator compared to other countries of the world (see table 8). Jordan's rating is negative, indicating that factors such as the adoption of imported technology, innovation in technology at the national level, and the ease and convenience of starting a business with respect to obtaining financial capital are less than optimal. Countries with liberalized trade regimes, including a competitive, enabling economic environment, such as Taiwan, Korea and Singapore, all score high on economic creativity as well. The US leads the other nations for all three indices.

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[35] For details see Warner, Andrew M. *Economic Creativity*. Background paper for the World Economic Forum. *Global Competitiveness Report 2000/2001*.

**Box 5. US Economy Rated as the Most Competitive in the World**

The Institute for Management Development (IMD) in Switzerland publishes an annual report on international competitiveness. The latest report shows the US with the world's most competitive economy, almost 20 per cent above its next closest competitor, Singapore. Some of the economic powerhouses of earlier years, such as Germany and Japan, were judged by IMD to be barely half as competitive as the US.

Privatization, deregulation, flexibility in labour markets and massive investment in new technology are key reasons for the US's high rating.

In years past, aggressive countries like Germany and Japan thrived on exports and foreign direct investment. However, those countries that are most competitive today rely on attractiveness -- an appealing business environment -- aimed at luring foreign investment and keeping local companies from massively investing abroad. Private capital shies away from countries that impose excessive taxes, maintain weak currencies and interfere with markets.

According to the IMD report, the capitalized value of all the companies in California's Silicon Valley now exceeds the total value of all companies on the French stock exchange (about $450 billion), and despite the fact that costs in Silicon Valley are among the highest anywhere, Eleven new companies are established there every week, one goes public every five days, and 62 new millionaires are created every day.

In short, it is not costs that determine competitiveness, but opportunities to add value; in other words, productivity. That is why the US can compete with countries where wage levels are considerably lower. Indeed, according to the Bureau of Labour Statistics, unit labour costs (wages adjusted for productivity) have actually fallen by 7 per cent in the US since 1992, while rising 10 per cent in Germany and 14 per cent in Japan.

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Source: Bruce Bartlett (Senior Fellow, National Center for Policy Analysis, Idea House), May 4, 1998. http://www.ncpa.org/pi/internat/pdinter/may98b.html.

## F. Low level of integration in the global economy

The increasing proportion of a country's trade in total world trade is an indication of its global integration, as are the international financial flows to the country. Table 9 presents indicators of global integration for ESCWA member States.

As services have grown in importance over the last few decades, the share of services in global trade has rapidly grown as compared with goods. Table 9 deducts services from total trade and then measures the relative importance of trade in goods in GDP as a better measure of global integration. Measuring merchandise trade after deducting value added by services provides a better measure of its relative size than comparing it with total GDP.[36]

As the table indicates, between 1989 and 1999, the trade in goods of ESCWA economies as a percentage of GDP valued in PPP dollars increased for Egypt, the Syrian Arab Republic, the Republic of Yemen and most notably for the United Arab Emirates. The fact that these economies undertook structural reforms aimed at trade liberalization helped to improve global integration, but other regions of the world had achieved higher levels of economic integration than the MENA region during this period.

Growth in GDP, however, far outpaced growth in merchandise trade. The decline in trade in goods as a percentage of goods GDP alone (i.e. excluding value added in services), indicates that in the last decade services grew faster than trade in goods. In both Egypt and Jordan, the merchandise trade as a percentage of goods GDP declined from 50.3 to 42.1 per cent, and 192.1 to 171.6 per cent, respectively between 1989 and 1999.

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[36] World Bank. *2001 World Development Indicators*. Definitions and data, p. 323.

Global integration as measured by trade in goods as a percentage of goods GDP declined in the MENA region, while it increased in East Asia and the Pacific, Latin America, and the world as a whole. For the MENA region as a whole, merchandise trade as a percentage of goods GDP, fell from 76.1 per cent in 1989 to 67.1 per cent in 1999. During the same period, the merchandise trade increased from 82.7 to 91.1 per cent for East Asia and the Pacific and by a huge 49.8 per cent to 74.6 per cent for Latin America.

TABLE 9. GLOBAL INTEGRATION INDICATORS OF SELECTED ESCWA COUNTRIES, 1989-1999

| | Trade in goods as: | | | | Growth in real trade less growth in real GDP | Gross private capital flows as: | | Gross foreign direct investment | |
|---|---|---|---|---|---|---|---|---|---|
| | Percentage of GDP (in $ PPP) | | Percentage of goods GDP | | 1989-1999 | Percentage of GDP (in $ PPP) | | Percentage of GDP (in $ PPP) | |
| Country | 1989 | 1999 | 1989 | 1999 | (in percentage points) | 1989 | 1999 | 1989 | 1999 |
| Egypt | 8.2 | 9.1 | 50.3 | 42.1 | -1.4 | 2.4 | 2.7 | 1 | 0.5 |
| Jordan | 30.9 | 29.4 | 192.4 | 171.6 | -1.1 | 1.2 | 2.6 | 0.2 | 0.9 |
| Kuwait | 86.8 | .. | 132.7 | .. | .. | 20.9 | .. | 4.9 | .. |
| Lebanon | 53.2 | 39 | .. | .. | .. | 3.5 | | | |
| Saudi Arabia | 37.5 | 36 | 109.6 | .. | .. | 9.9 | 11.6 | 0.5 | 0.4 |
| Syrian Arab Republic | 18.1 | 10.4 | 108.5 | .. | -2.4 | 4.5 | 4.3 | 0 | 0.4 |
| United Arab Emirates | 78.3 | 106.7 | 159.3 | | .. | | | | |
| Yemen | 25.9 | 34.1 | 90.2 | 116.2 | 1.3 | 6.2 | 3.9 | 1.5 | 1.7 |
| | | | | | | | | | |
| MENA | 19.4 | 16.8 | 76.1 | 67.1 | | 3.5 | 5.7 | 0.3 | 0.5 |
| East Asia and Pacific | 14.5 | 15.3 | 82.7 | 91.1 | | 1.3 | 3.8 | 0.4 | 1.1 |
| Latin America | 10.2 | 18.2 | 49.8 | 74.6 | | 2.2 | 7.3 | 0.4 | 1.1 |
| World | 22.5 | 27.4 | 85.2 | 111.5 | | 8.5 | 18.3 | 2 | 4.6 |

*Source*: World Bank, *2001 World Development Indicators*, Table 6.1.

Whereas the MENA region had higher levels of gross foreign direct investment—primarily due to investments in the oil sector—in 1989, during the next decade (1989-1999) the proportion of FDI flows to the other regions of the world exceeded those to the MENA region. As the table shows, by 1999 FDI as a percentage of GDP in the MENA region was 0.5 per cent, compared to 1.1 for both East Asia and the Pacific and Latin America and 4.6 for the world as a whole. Gross private flows increased though, as in the case of FDI and exports, a greater share of world capital flows were going to Latin America than MENA by 1999.

# IV. COMPETITION ISSUES IN THE ESCWA REGION

## A. EXISTING COMPETITION POLICIES AND PRACTICES

With a fast developing global market-place and interdependent economies, there is increasing recognition that competition policy and law can complement the advances being made in trade policy and reform to achieve open, accessible markets. Sound, effective competition law enforcement can ensure that the benefits of trade liberalization are not defeated by the imposition of private barriers to trade.

Competition requires a level playing-field among domestic firms and between domestic and international firms. The slow pace of liberalization and opening up of markets in the ESCWA countries has contributed to downward trends in export growth, competitiveness and global economic integration. Moreover, the current accession to the WTO, globalization and structural reform require increased focus on improving the competitiveness of industry. The economic growth strategy of many ESCWA countries focuses on a free, market-led, export-oriented growth strategy spurred by the information technology, tourism and manufacturing sectors as the engines of growth.

Despite recent progress, many ESCWA countries suffer from weaknesses in their economic policy and institutional frameworks. The public sector remains large in relation to the private sector, especially in employment and economic activity; trade and investment regimes are characterized by high, uneven tariffs and high transaction costs that impede the diversification process, the growth of non-oil exports and the attraction of FDI. The slow progress in structural reform, especially manufacturing, are also impeding changes in line with the rapidly evolving globalized economy.

### 1. *Restrictive business practices*

Regulations in most GCC countries require foreign businesses to operate only with a local partner and with a maximum 49 per cent of shares. In Qatar, all importers are required by law to have an import licence for almost all products and these are issued only to Qatari nationals. Even in the case of joint ventures between foreign and Qatari partners, agency/dealership agreements issued by foreign suppliers can be registered only in the name of the Qatari partner. In Bahrain, import licences for items to be sold in Bahrain are issued only to locally established companies that are at least 51 per cent Bahraini-owned. In Kuwait, licences are only issued to Kuwaiti nationals and are obtained from the Ministry of Commerce. The approval of a Ministry of Finance Committee is required for industrial development. A licence confers eligibility for a loan from the Industrial Bank of Kuwait.[37]

Bahrain is the principal financial centre for the Gulf region and much of the Arab world. In 2000, Bahrain's financial sector comprised 19 full commercial banks (FCBs), two specialized banks, 48 offshore banking units (OBUs), 33 investment banks (IBs), 36 representative offices, 11 investment advisory and other financial services, 18 money changers and six money brokers.[38] Bahrain is promoting further growth of the Bahrain Stock Exchange (BSE). GCC nationals are now permitted 100 per cent ownership of listed companies on the exchange. Non-GCC foreign nationals may own up to 49 per cent, but the new law allows the Minister of Commerce to increase this percentage if it is in the general interest of the national economy.[39] Despite the government's efforts to diversify, oil and gas continue to play a dominant role in the country's economy, providing about half of government revenue and two-thirds of total exports.

The government of Bahrain has introduced regulations permitting 100 per cent foreign ownership of new industrial establishments and the establishment of representative offices or branches of foreign companies without local sponsors. However, all commercial investments are subject to government approval and most must be made in partnership with a Bahraini national controlling at least 51 per cent of the equity.

[37] *Kuwait Business*. http://www.arab.net/kuwait/business/kt_bizlicences.html.

[38] US Commercial Service, Department of Commerce. *Bahrain Country Commercial Guide Fy2001*. http://www.usatrade.gov/website/ccg.nsf/CCGurl/CCG-BAHRAIN2001-CH-6:-0065DA7C.

[39] Ibid.

Most ESCWA countries operate with monopolies, especially in the telecommunications sector. Until recently, Bahrain was no exception, but the state-controlled monopoly Internet service provider (ISP) has now begun to reduce Internet access rates, introduced new Internet and wireless services, and continued to promote e-commerce.

In Qatar, the letter of credit (L/C) is the most common instrument for controlling exports and imports. When an L/C is opened, the supplier is required to provide a certificate of origin, and a certificate from the captain of the ship or the shipping agency stating that the ship is allowed to enter Arab ports. Both documents must be authenticated by an Arab Embassy or consulate or an Arab Chamber of Commerce in the exporting country. In order to clear goods from Customs zones at ports or land boundaries in Qatar, importers must submit a variety of documents, including a bill of lading, certificate of origin, pro forma invoice and import licence.[40]

In Jordan, the Customs Department controls the entry and exit of goods entering though export licences are not required for Jordanian-made products, transit goods, free trade zone goods, re-exports or goods entering the country under temporary status. Although most imports are subject to tariffs and duties, capital equipment imported by licenced industrial projects is exempt. The ceiling on all duties was brought down to 30 per cent in 2000, with a 10 per cent ceiling on materials used as industrial inputs. Most supplementary customs taxes, fees and duties on regular imports have been abolished. However, automobiles and certain imported luxury goods (tobacco, alcohol, etc.) are still charged additional sales taxes, though these have also been reduced recently.[41]

Under the Economic Reform Programme instituted in 1990, trade policy in Egypt is being liberalized. The main component of trade liberalization is phasing out conditional import bans, prior permission and special requirements. In 1991, the stipulation for prior permission for some exports was abolished. In order to offset this lowering of non-tariff barriers, customs duties were raised from 25 to 42 per cent.[42]

However, a number of measures restricting trade remain, ranging from a direct shipment requirement to restrictions on letters of credit and domestic standards at variance with generally accepted international standards. Despite a genuine commitment to trade liberalization, there are measures that reflect implicit import-resistance, although some export-restrictive measures, such as the imposition of a no-drawback system for duties on inputs used domestically for goods for export, have been removed.

Egypt has recently signed an agreement for a Euro-Mediterranean Association to establish a Euro-Mediterranean Free Trade Area. The Agreement will allow duty-free access for nearly all European industrial exports to the Egyptian market after a 12-year transitional period from the date of entry into force [the transitional period for luxury cars is 15 years]. It provides substantial concessions for Egyptian agricultural exports to the EU market, as well as some improvement in EU agricultural exports to Egypt. It will replace the Cooperation Agreement, which entered into force on 1 November 1978. This latter Agreement, along with a 1987 protocol, gives Egypt a preferential non-reciprocal export regime to the Community, including free access for industrial goods, and largely duty-free access for agricultural products. Community exports to Egypt still benefit from MFN treatment.[43]

In Lebanon the law does not differentiate between local and foreign investors, though there are some restrictions on foreigners acquiring property and establishing companies in Lebanon. Foreign investors can generally establish a Lebanese company, participate in a joint venture, or establish a local branch or

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[40] US Commercial Service, Department of Commerce. *Qatar Country Commercial Guide Fy2000.* http://www.usatrade.gov/ website/ccg.nsf/CCGurl/CCG-QATAR2000-CH-VI-006DFCDE.

[41] US Commercial Service, Department of Commerce. *Jordan Country Commercial Guide Fy2001.* http://www.usatrade.gov/website/ccg.nsf/CCGurl/CCG-JORDAN2001-CH-6:-0042280E.

[42] European Union. Market Access Sectoral and Trade Barriers Database. *Egypt: General Features of Trade Policy.* http://mkaccdb.eu.int/mkdb/chksel.pl.

[43] Ibid.

subsidiary of their company without difficulty. There are, however, a number of limitations on foreign participation in joint-stock companies in terms of management participation, indirect limitations with regard to acquisition of capital share, limitations on capital share with regard to public utilities and commercial representation.

Foreign investment in industrial projects has been limited as a result of some restrictions. In the insurance sector, foreign companies need to provide twice the guarantees required of Lebanese firms, though domestic insurance companies are subject to capital requirements not applied to foreign firms. Broadcast Media licences are restricted to Lebanese joint-stock companies, all of the shares in which are owned by Lebanese and not transferable to foreign legal or natural persons.

Egyptian customs procedures are complicated and rigid in some areas, such as duty rates. There is no formal appeal process and the authorities do not have to justify their decisions. Customs procedures are subjective when it comes to identifying whether a commodity fits in one tariff category or another. Local businesses resort to under-invoicing as a means of tax avoidance. The ability to fulfil local content requirements is no longer required in order to obtain approval to set up an assembly project. However, assembly industries must meet a minimum local content requirement of 40 per cent in order to benefit from customs tariff reductions on imported industrial inputs.[44]

The textile sector in Egypt, for example, was historically restricted to public companies. Textile companies had to comply with government instituted mandatory requirements, including controlled retail prices on domestic consumption. Though this began to change in the 1980s when some privatization was allowed, years of state control of the textile industry retarded the adoption of modern, innovative production and technological processes. In the 1990's, the textile sector was particularly affected by the economic reform programme and changes in trade and fiscal policy, including cotton pricing policy.

In Lebanon, some goods, such as high-tech computer hardware and software, firearms, munitions, and some agricultural products, require an import licence from the appropriate government authority. Restrictions on foreigners wishing to invest in Lebanon are few, although there is a ceiling on real estate acquisition by foreigners, and in particular non-Arabs.[45] There are 30 types of administrative controls available to ministries, which may issue and administer a range of prohibitions, restrictions, licences and certificates. There is also one external government technical control, the Consular Invoice, administered by Lebanese embassies, and one private sector technical control, the Certificate of Origin, administered by the Chambers of Commerce. More than 4,000 products are subject to import controls. Some 2,000 are subject to an average of three types of import control.[46]

### 2. *Tariff and non-tariff barriers*

In the ESCWA countries, progress has been made to take advantage of enhanced global trade and attract FDI. In the GCC countries, trade barriers and tariff rates have been progressively reduced. In the last year, Bahrain has reduced rates on many products, such as clothing, appliances, electronic equipment, communication devices, and computers and peripherals. It has abolished import duties on 43 food items, including most fresh fruits and vegetables, fresh and chilled meats, coffee, grains, rice, flour, seeds for planting, sugar, vegetable oil, and baby milk products. There is still a protective duty of 20 per cent on corn and palm oil imports.

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[44] US Commercial Service, Department of Commerce. *Egypt Country Commercial Guide Fy2001.* http://www.usatrade.gov/website/ccg.nsf/CCGurl/CCG-EGYPT2001-CH-6:-00516EC6.

[45] US & Foreign Commercial Service and US Department of State. *International Copyright,* 1998. http://strategis.ic.gc.ca/SSG/da91090e.html.

[46] US Commercial Service, Department of Commerce. *Lebanon Country Commercial Guide Fy2001.* http://www.usatrade.gov/website/ccg.nsf/CCGurl/CCG-LEBANON2001-CH-6:-006A153B.

In January 2000, the government eliminated customs duties on a range of basic food products and reduced tariffs on many consumer goods.[47] Bahrain remains committed to lowering its tariffs further in the next few years in accordance with a unified GCC customs union due to take effect in 2005. The tariff range for the customs union calls for tax-free foodstuffs, 5.5 per cent duty on consumer goods, and a 7.5 per cent tariff on luxury items.

Egypt's current customs regulations came into effect in 1986. Since 1991, under its economic reform programme developed in conjunction with the IMF and the World Bank, the government has reduced its tariffs to a maximum rate of 40 per cent, with a few exceptions such as cars with engines larger than 1300CC, alcoholic beverages, and certain luxury items.[48] However, in 1998 tariffs on textiles increased from 40 per cent to 54 per cent as the result of an earlier lifting of the ban on textile imports into Egypt and subsequent protests by local textile manufacturers.

Egypt substantially reduced tariffs on capital goods/machinery (from rates of between 20 and 70 per cent to 10 per cent) in 1995 and early 1996. However, tariffs on products previously on the list of prohibited goods have been increased (tractors, cement, frozen vegetables and, most recently, poultry and fabrics). While all MFN import licensing requirements appear to have been discontinued, there has been a tendency to place previously prohibited imports on a list of imports subject to compulsory quality control.[49]

There are still some restrictions on the import of textiles and machinery. The European Union Operators describe Egypt as a very closed market with respect to textiles. Although there appear to be few barriers, those there are are complex and important: some operators stress their inability to export to Egypt because of an embargo or a very high tariff barrier. Others face technical barriers such as labelling and production requirements.[50]

In Yemen, import licensing was eliminated in 1996. Tariff rates were cut to four bands between 5 per cent and 25 per cent *ad valorem*. An excise tax on industrial inputs and a production tax on local manufacturers were introduced to create a level playing-field between imports and local industrial products. Although customs procedures were streamlined to some extent, they are considered the main barrier to trade.

Despite much progress, tariff and non-tariff barriers in ESCWA countries remain an obstacle to free, market-led growth, compared to those in other developing countries.

TABLE 10. TARIFF BARRIERS IN SELECTED COUNTRIES IN THE LATE 1990S
(*Percentage*)

| | | All products | | | | Primary products | | Manufactured products | |
|---|---|---|---|---|---|---|---|---|---|
| Country | | SM* | SDTR** | WAT*** | SLIP§ | SM | WA§§ | SM | WA |
| Egypt | | | | | | | | | |
| | 1995 | 25.6 | 33.2 | 16.7 | 53.1 | 24.5 | 7.6 | 25.8 | 22.4 |
| | 1998 | 20.5 | 39.5 | 13.7 | 47.4 | 22.7 | 7.4 | 20.2 | 17.5 |
| Oman | | | | | | | | | |
| | 1992 | 5.5 | 8.2 | 7.4 | 1.5 | 7.2 | 14.1 | 5.2 | 5.5 |
| | 1997 | 4.8 | 0.9 | 4.7 | 0.0 | 4.0 | 3.0 | 4.9 | 5.0 |

[47] US Commercial Service, Department of Commerce. *Bahrain Country Commercial Guide* Fy2001. http://www.usatrade.gov/website/ccg.nsf/CCGurl/CCG-BAHRAIN2001-CH-6:-0065DA7C.

[48] US Commercial Service, Department of Commerce. *Egypt Country Commercial Guide* Fy2001. http://www.usatrade.gov/website/ccg.nsf/CCGurl/CCG-EGYPT2001-CH-6:-00516EC6.

[49] Ibid.

[50] European Common Market Access. Sectoral and Trade Barriers Database. *Egypt, General Features Of Trade Policy*. http://mkaccdb.eu.int/mkdb/chksel.pl.

TABLE 10 (*continued*)

| Country | | All products | | | | Primary products | | Manufactured products | |
|---|---|---|---|---|---|---|---|---|---|
| | | SM* | SDTR** | WAT*** | SLIP§ | SM | WA§§ | SM | WA |
| Saudi Arabia | | | | | | | | | |
| | 1994 | 12.5 | 3.3 | 10.7 | 10.2 | 12.1 | 9.1 | 12.6 | 11.0 |
| | 1999 | 12.6 | 3.8 | 10.8 | 11.0 | 12.2 | 11.5 | 12.6 | 10.7 |
| Morocco | | | | | | | | | |
| | 1993 | 66.5 | 29.5 | 45.3 | 96.8 | 55.0 | 29.7 | 68.1 | 55.8 |
| | 1997 | 22.1 | 19.3 | 21.1 | 61.8 | 28.9 | 26.0 | 21.3 | 19.6 |
| Malaysia | | | | | | | | | |
| | 1988 | 20.6 | 19.9 | 13.8 | 54.0 | 21.9 | 12.1 | 20.3 | 14.3 |
| | 1997 | 7.1 | 31.0 | 4.9 | 15.9 | 6.0 | 7.3 | 7.5 | 4.6 |
| Taiwan | | | | | | | | | |
| | 1989 | 12.3 | 9.5 | 9.9 | 16.7 | 17.5 | 8.0 | 11.2 | 10.7 |
| | 1999 | 8.8 | 9.4 | 5.2 | 10.6 | 16.0 | 7.4 | 7.1 | 4.6 |
| EU | | | | | | | | | |
| | 1988 | 3.2 | 5.6 | 3.6 | 3.6 | 7.9 | 2.8 | 1.9 | 4.1 |
| | 1999 | 3.5 | 5.0 | 2.7 | 2.3 | 6.4 | 1.8 | 2.7 | 3.0 |
| United Sates | | | | | | | | | |
| | 1989 | 5.7 | 6.7 | 4.1 | 8.0 | 3.9 | 2.1 | 6.1 | 4.5 |
| | 1999 | 4.3 | 11.4 | 2.8 | 6.3 | 4.8 | 2.0 | 4.2 | 2.9 |
| Singapore | | | | | | | | | |
| | 1989 | 0.5 | 2.2 | 0.5 | 0.1 | 0.2 | 0.0 | 0.6 | 0.6 |
| | 1995 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

*Source*: World Bank. *2001 World Development Indicators*, table 6.6.

*Notes*: * SM: simple mean
** SDTR: standard deviation of tariff rates
*** WAT: weighted average tariff
§ SLIP: share of lines with international peaks
§§ WA: weighted average

Countries with high volumes of trade and global integration tend to have a lower average, and weighted tariff rate regimes. Though tariff barriers declined in selected ESCWA countries, as shown in the table, they remained high in comparison with other fast-developing countries and the developed economies. In Egypt, trade liberalization led to a decline in the weighted average tariff burden on all products from 16.7 per cent in 1995 to 13.7 per cent in 1998. Other developing economies reduced the burden: for example, Malaysia from 13.8 per cent in 1988 to 4.9 per cent in 1997, and Taiwan from 9.9 per cent in 1989 to 5.2 per cent in 1999. As a comparison, in 1999, the weighted average tariff barriers stood at 2.8 per cent in the US and 2.7 per cent in the EU, while in Singapore it was zero.

Figure II presents the tariff on manufactured products for a group of countries in the late 1990s and shows that the average tariff rate on manufactured products of ESCWA countries was the highest in the group.

## B. Business environment in ESCWA countries

In addition to restrictive business practices and tariff and non-tariff barriers, there are other factors that combine with competition laws and policies to produce a favourable business environment. These include a regulatory framework; competition law and policy, and institutions able to monitor, implement and enforce them, and the impartial role of the state as a facilitator of free enterprise.

The Economist Intelligence Unit (EIU) compiles indicators that rank each country according to the quality or attractiveness of its business environment. The survey covers 60 countries and the scores are assigned on a scale of 1 (worst environment for business) to 10 (best environment for business).[51]

The factors taken as a proxy for 'sound business environment' are political and macroeconomic environment; availability of market opportunities; incentive to private enterprise; policies for attracting FDI; exchange and trade regimes; taxes; availability of financing; labour market constraints; and the level of available infrastructure conducive to business transactions. Rankings by individual variables appear in table 11.

Table 11. Forecasts for Business Environment Ranking in selected ESCWA countries, 1995-2004

| | Overall ranking in 60 countries | | Value of the index in 60 countries | |
|---|---|---|---|---|
| Country | 1995-1999 | 2000-2004 | 1995-1999 | 2000-2004 |
| Egypt | 41 | 42 | 5.44 | 5.98 |
| Saudi Arabia | 42 | 45 | 5.39 | 5.92 |
| Iraq | 60 | 60 | 1.82 | 2.04 |

*Source*: Economic Research Forum, *Economic Trends in the MENA Region*, based on Economist Intelligence Unit (EIU), *Country Forecasts 1999*.

Table 12. Ranking and forecast of selected ESCWA countries by Business Environment Indicators, 1995-2004

| | Egypt | | Iraq | | Saudi Arabia | |
|---|---|---|---|---|---|---|
| | 1995-1999 | 2000-2004 | 1995-1999 | 2000-2004 | 1995-1999 | 2000-2004 |
| Political environment | 41 | 39 | 60 | 60 | 41 | 43 |
| Macroeconomic environment | 15 | 36 | 60 | 60 | 25 | 41 |
| Market opportunities | 42 | 42 | 54 | 60 | 37 | 41 |
| Private enterprise | 44 | 46 | 60 | 60 | 28 | 33 |
| Policy towards attracting FDI | 21 | 28 | 60 | 60 | 54 | 54 |
| Trade & exchange controls | 44 | 49 | 60 | 60 | 39 | 43 |
| Taxes | 38 | 42 | 60 | 60 | 28 | 26 |
| Financing | 43 | 40 | 60 | 60 | 40 | 45 |
| Labour market | 42 | 33 | 60 | 59 | 53 | 46 |
| Infrastructure | 38 | 45 | 51 | 51 | 35 | 36 |
| Overall | 41 | 42 | 60 | 60 | 42 | 45 |

*Source*: Economic Research Forum, *Economic Trends in the MENA Region*, based on Economist Intelligence Unit (EIU), *Country Forecasts 1999*.

As the table shows, the overall business environment ranking for Egypt is expected to decline from 41 in 1995-1999 to 42 in 2000-2004; the macroeconomic ranking is expected decline substantially from 15 to 36 during the same period. If allowed to continue, the slow pace of privatization, and the current exchange rate crisis, which has led to trade and exchange controls, are expected to push down the private enterprise indicator from 44 for 1995-1999 to 46 for the forecast period 2000-2004.

[51] Economic Research Forum. *Economic Trends in the MENA Region 2000*. http://www.erf.org.eg/html/economic_00/htm/f_chap2.html.

Iraq is at the bottom of the EIU business environment rankings because of expectations of continued UN sanctions for the next five years. Iraq comes last in all factors except two: the labour market, where it ranks 59 in the forecast period, up from 60 in 1995-1999; and infrastructure, where it ranks 51, the improvement being the result of the increase in oil income and infrastructure projects coming online.

## C. ENABLING ENVIRONMENT TO SUPPORT COMPETITIVENESS AND COMPETITION

A transparent and effective competition policy can be an important factor both in enhancing the attractiveness of an economy to foreign investment, and in maximizing the benefits of such investment. Along with other incentives to investors, a level playing-field, a stable economic environment, free, fair entry into the domestic market, and an effective regulatory (including judicial) framework, increase investor confidence and therefore the propensity to invest. Competition in markets, reinforced by competition policy, also helps to maximize the benefits of such investment to host countries by encouraging participating firms to invest, transfer technology, and generate employment.

### 1. *Investment climate*

There is a relationship between FDI liberalization and competition policy: FDI liberalization is conducive to economic development. However, improving the enabling environment for foreign inflows alone is not a sufficient condition. It needs to be complemented by competition policy, and other policy reforms, to promote the contestability of - or competition in - markets so that the gains from liberalization can be consolidated.

As table 13 shows, most ESCWA economies have free entry and exit regulations on foreign capital and income invested. Most of the GCC economies also enjoy good credit rating, reflecting their higher ability to repay thanks to oil revenues.

TABLE 13. INCENTIVE STRUCTURE FOR ATTRACTING FDI IN SELECTED COUNTRIES AND REGIONS, 1999 AND 2000

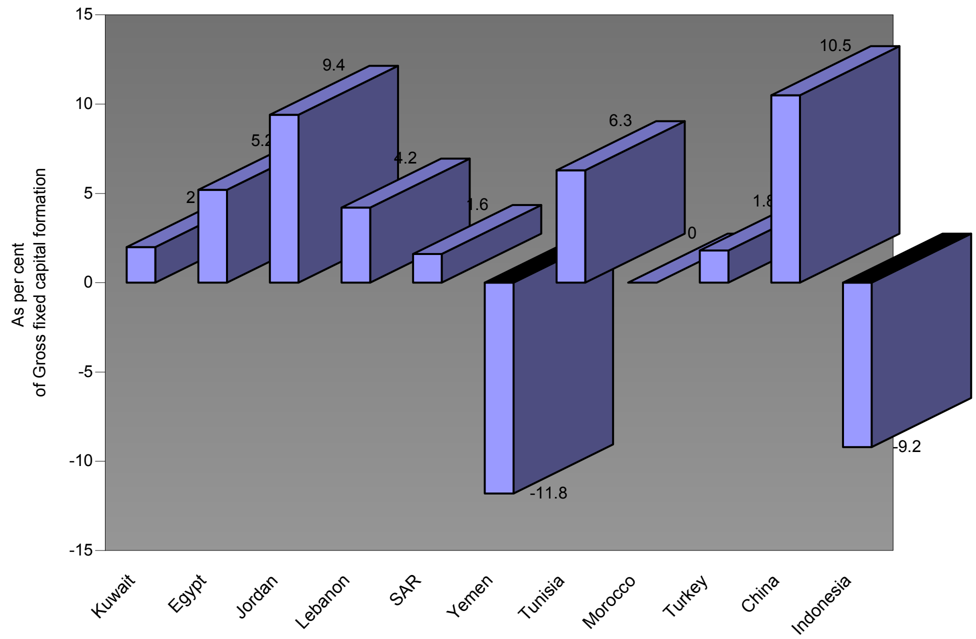
| | FDI as percentage of gross capital formation | | Entry and exit regulations | | Euro-money country credit-worthiness rating | |
|---|---|---|---|---|---|---|
| Country | 1990 | 1999 | Entry 1999 | Repatriation of income 1999 | Repatriation of capital 1999 | September 2000 |
| Kuwait | n.a. | 2.0 | n.a. | n.a. | n.a. | 73.3 |
| Oman | 10.2 | n.a. | Free | Free | Free | |
| Saudi Arabia* | n.a. | n.a. | Closed | Restricted | Restricted | 68.3 |
| United Arab Emirates | n.a. | n.a. | n.a. | n.a. | n.a. | 75.6 |
| Egypt | 5.9 | 5.2 | Free | Free | Free | 56.4 |
| Jordan | 3.0 | 9.4 | Free | Free | Free | 46.3 |
| Lebanon | 1.2 | 4.2 | Free | Free | Free | 46.8 |
| Syrian Arab Republic | 3.7 | 1.6 | n.a. | n.a. | n.a. | 39.0 |
| Yemen | -19.2 | -11.8 | n.a. | n.a. | n.a. | 34.0 |
| Tunisia | 1.9 | 6.3 | Free | Free | Free | 57.5 |
| Morocco | 2.5 | 0.0 | Free | Free | Free | 55.1 |
| Turkey | 1.9 | 1.8 | Free | Free | Free | 52.7 |
| China | 2.8 | 10.5 | Special classes of shares | Free | Free | 59.8 |
| Indonesia | 3.1 | -9.2 | Relatively free | Restricted | Restricted | 38.5 |
| MENA | 2.3 | 0.8 | | | | 46.3 |
| East Asia & Pacific | 3.5 | 9.6 | | | | 38.4 |
| Latin America & Caribbean | 3.8 | 22.3 | | | | 45.6 |
| Europe & Central Asia | 0.3 | 11.6 | | | | 36.9 |
| World | 4.2 | 10.2 | | | | 38.8 |

Source: World Bank. *2001 World Development Indicators*, Table 5.2.

*Note*: * Foreigners are barred from investing directly in the Saudi Arabian stock market, but they may invest through mutual funds.

In recent years, however, FDI flows to the region have declined. Between 1990 and 1999, FDI as a percentage of capital formation declined in Egypt and the Syrian Arab Republic, while it increased in Jordan and Lebanon, though the ratio remained small compared to other comparable countries. FDI as a percentage of gross capital formation in the MENA region as a whole, was not only much below the world average, but also declined from 2.3 in 1990 to 0.8 in 1999, while, during the same period, it increased from 3.5 to 9.6 per cent in East Asia, 3.8 to a high 22.3 per cent in Latin America and from 0.3 to 11.6 per cent in Europe and Central Asia, respectively (see figure III).

**Figure III. Foreign direct investment in selected countries, 1999**




*Source*: See table 13.

Jordan has been one of the ESCWA member States in the vanguard of adopting reform programmes. Along with rapid progress in its structural adjustment programme, Jordan has made a special effort to revise its investment laws and regulatory framework. An Investment Promotion Law was passed in early 1995 which streamlined investment procedures and provided incentives to investors, indicating that Jordan was 'ready for business'. The Investment Law accorded generous incentives to domestic as well as international investors in terms of freedom from customs duties, tax holidays, income tax exemptions and unrestricted transfer of capital and profits. The law irrevocably affirmed that both Jordanian and non-Jordanian investors are treated on an equal footing. As a result, FDI increased more than fourfold from US$3 million in 1994 to US$13 million in 1995. FDI flows increased in subsequent years too; in 1998 Jordan received US$223 million in foreign direct investment.[52]

In addition, other reforms aimed at liberalizing the exchange rate regime, export promotion and so forth were put in place. The government amended the Income Tax Law and the General Sales Tax Law to make them more receptive to private sector initiatives, streamlined the cumbersome import licensing requirements, lowered and restructured the tariff regime, reduced income taxes and streamlined tax procedures to encourage both foreign and domestic inward investment. New laws were also passed in the areas of labour, electricity, and telecommunications, with a view to opening these sectors up to private sector

[52] UNESCWA. *Appraisal of the Middle East and North Africa Economic Conferences*, UNESCWA, E/ESCWA/ED/1999/15, p. 37.

investment and greater competition on a level playing-field. In 1997, all controls were lifted on foreign exchange flows in order to attract investment. Gradual shifts in reform of the investment regulatory framework continue. More problematic is the administrative governance and reform area, especially management and reform of the large civil service.

Jordan is politically committed to this course of closer integration into the global economy, but institutionally not well prepared to cope with the accompanying domestic changes and the new, fiercely competitive, commercial environment. There is an ongoing effort to facilitate the integration process by building up the necessary institutional capacity to enable Jordan to adapt to the emerging globalized economy.

### 2. *Regulatory burden*

The role of the government is an important determinant of competitiveness and economic development in the long run. A regulatory environment with the state as an impartial facilitator of fair, free competition is required if competition laws are to be effective.

In addition to the traditional economic preconditions, there are several sources of economic growth, including a stable political environment and peace. In today's globalized world, one of the most important factors in sustainable economic growth and development is good economic governance as a prerequisite of enhanced trade and financial capital inflows. In this context, the role of the state in the economy, high government expenditure, unsustainable budget deficits, price controls and subsidies are likely to create economic distortions. A complicated, investor unfriendly investment regulatory framework will further exacerbate these imbalances. Traditionally, and still in some cases, the overall model of governance in the ESCWA region has been one of state-led, state-centred, state-regulated development.

Governments in ESCWA countries have traditionally been interventionist, with price controls, subsidies and high government expenditure and the public sector heavily involved in the production of tradable goods and services—manufacturing, services, factories, cement companies, banks—industries, that are essentially competitive. However, reforms undertaken in the 1990s have already begun to change the face of economic governance from direct state involvement in the economy towards a more regulatory role. Some countries are now dismantling large inefficient public sector companies, and privatizing state owned enterprises, including in infrastructure and services. There have been instances of privatization of power, transportation and telecommunications. However, the pace of deregulation and reform are slower than in other regions of the world.

Figure IV presents a comparative ranking of the state regulatory burden in the ESCWA countries compared to the rest of the world in 1997/1998. The aggregate indicator Regulatory Burden is a composite of several qualitative indicators, such as incidence of market unfriendly forces, including price controls, inadequate bank supervision and perceptions about excessive regulation in the areas of foreign trade and business development.[53]

Government effectiveness is the perception of the quality of public service provided, the quality of bureaucracy, the competence of civil servants, independence of the civil service from political pressure, and the credibility of government commitment to policies.

All countries for which data are available are ordered in ascending order according to the governance index on the horizontal axis. The range of statistically likely values of the index for each country (the associated 90 per cent confidence interval) is shown on the vertical axis as a vertical line. The bold vertical lines for each country show its relative position vis-à-vis the rest of the countries of the world. The indicator is measured in units ranging from about -2.5 to 2.5, *with higher values corresponding to better outcomes.*

The figure indicates that Jordan, Oman, Qatar and Bahrain have a lower regulatory burden compared to other ESCWA member States. Moreover, the relatively higher position of these countries on the ascending value-estimate curve of all countries indicates a relatively more market-friendly environment, fewer

[53] Source: Kaufmann, Daniel, Kraay, Aart and Zoido-Lobaton, Pablo. *Governance Matters,* World Bank, Washington DC. May 2000. pp.8-9.

regulations and greater incentives for trade and foreign direct investment. Although Egypt has undertaken substantial reforms aimed at better economic governance, much remains to be done.

A large public sector also has adverse affects in terms of service delivery because of loss of clear jurisdiction across a multitude of institutions and personnel with overlapping job descriptions and responsibilities. Lack of clearly delineated regulations hampers reform.

Figure V presents a graphical representation of government effectiveness in the ESCWA countries compared to the other countries of the world. 'Government effectiveness' is a composite indicator of a qualitative survey of perceptions of the quality of public services, the quality of bureaucracy, the competence of civil servants, independence of the civil service from political pressures, and the credibility of government commitment to policies.[54]

Figure V indicates that in Jordan, Oman, Qatar and Bahrain the state is more effective in providing an overall enabling environment than in the other countries. Their relatively higher position on the ascending value-estimate curve indicates greater effectiveness of the judiciary and enforcement of contracts, perceptions of better quality services provided by the government, and the competence and independence of civil servants.

Country risk ratings are becoming important indicators for investors, creditors and governments in deciding on a country's overall stability. Table 14 presents the credit rating of several MENA countries that are likely to attract foreign investment, as measured by major international rating services. The composite International Country Risk Guide (ICRG) is an overall rating based on 24 components of risk grouped into three major categories: political, financial and economic. The higher the rating, the lower the risk. The Institutional Investor Credit ratings are based on information provided by leading international banks. Responses are weighted according to the bank's worldwide exposure and level of sophisticated country analysis. Countries are rated on a scale of 0 to 100: the higher the rate, the more credible is the country in terms of return on investment. The second set of ratings is also scaled from 0 to 100 and reflects the opinion of economists and political analysts provided with macroeconomic data. The higher the rating, the lower the risk in investing in a given country.

TABLE 14. INTERNATIONAL CREDIT RISK RATING OF ESCWA COUNTRIES, 1996-2000

| | ICRG risk rating | | | Institutional investors | | |
|---|---|---|---|---|---|---|
| | 1996 | 1998 | December 2000 | 1996 | 1998 | December 2000 |
| Egypt | 67.5 | 70.8 | 69.3 | 35.1 | 43.2 | 51.0 |
| Iraq | 35.0 | 45.8 | n.a. | 9.1 | 7.0 | n.a. |
| Kuwait | 85.0 | 78.3 | 80.3 | 72.1 | 57.4 | 64.4 |
| Lebanon | 62.5 | 56.3 | 61.0 | 27.2 | 31.8 | 36.8 |
| Oman | 92.5 | 75.0 | n.a. | 83.1 | 53.4 | n.a. |
| Saudi Arabia | 73.0 | 73.0 | 76.0 | 55.1 | 55.7 | n.a. |
| Syrian Arab Republic | 66.5 | 70.5 | 69.3 | 24.5 | 24.5 | 23.1 |
| United Arab Emirates | 76.0 | 78.3 | 80.0 | 61.2 | 61.8 | 66.3 |
| Yemen | 64.0 | 67.0 | 63.5 | n.a. | n.a. | n.a. |
| MENA* | n.a. | 70.5 | 68.5 | n.a. | 34.3 | 39.3 |
| East Asia & Pacific | n.a. | 66.7 | 67.0 | n.a. | 32.9 | 39.8 |
| Europe & Central Asia | n.a. | 65.9 | 66.2 | n.a. | 33.8 | 30.3 |
| Latin America & Caribbean | n.a. | 67.0 | 69.5 | n.a. | 33.7 | 40.1 |
| World | n.a. | 67.7 | 67.8 | n.a. | 35.3 | 37.0 |

*Source*: Economic Research Forum. *Economic Trends in the MENA Region 2000*. http://www.erf.org.eg/html/economic_00/html/f_chap23.html. November 2000.

*Notes*: * MENA includes all ESCWA countries except Jordan, plus Algeria, Iran, the Libyan Arab Jamahiriya, Morocco, Sudan, Tunisia and Turkey, and excludes the WBGS.

[54] Ibid.

Overall, the Middle East and North Africa (MENA) region performed well in terms of improving its risk ratings criteria. MENA's average risk ratings compare well with the world average. MENA's average ICRG rating was 70.5 in 1998, compared with an average world rating of 67.7. By 2000, however, the index had declined to 68.5: in December 2000, institutional investors rated MENA 39.3, compared to 37.0 for the world as a whole.

However, the high rating for the region as a whole obscures wide differences in the performances of individual ESCWA countries. Despite a decrease in the ratings (because of a fall in oil prices in 1998), the GCC countries, Kuwait, Oman, Saudi Arabia and the United Arab Emirates, understandably achieve the highest risk ratings in the region. These oil producers enjoy high per capita and GDP growth that attracts private investment (Saudi Arabia attracted the highest FDI in the region accounting for \$2.4 billion in 1998) and this raises the aggregate ranking for the region.[55]

For the MDEs, the ratings indicate a less rosy picture. Egypt's ratings improved between 1996 and 1998 for the three risk ratings, reflecting the government's efforts to improve the business climate, maintain a stable macroeconomic environment, open the economy to foreign investors, pursue the process of privatization and attract more FDI. Despite these efforts, the market faced a dollar liquidity problem in 1999. Interest rates and investment bonds were raised by 50 points and the Central Bank started injecting dollars into the market. Egypt's rating fell from 70.8 in 1998 to 69.3 in December 2000.

## D. Competition laws in ESCWA economies

### 1. *The requirements*

ESCWA countries do not have competition laws at present. Jordan and Egypt have drafted competition laws to be submitted to parliament soon; Lebanon is beginning the drafting process; in Kuwait, the 1980 Commercial Law was amended in 1996 to prohibit restrictive business practices which affect free, fair competition, such as price collusion, preventing market entry or creating circumstances to harm another operator. The law also prohibits restrictive practices such as abuse of dominant position, charging excessive prices and withholding goods from the market in order to charge higher prices.[56] The law does not allow for any exemptions on public interest grounds, nor does it call for a specialized competition agency to be set up to monitor the law.[57]

Globalization offers developing countries opportunities to create wealth through export-led growth, expand international trade in goods and services, increase consumption and gain access to new ideas, technologies, and knowledge. Globalization is manifest in the proliferation of regional blocs that cooperate in such areas as trade and legal frameworks, the power of intergovernmental bodies such as the World Trade Organization and the spread of transnational corporations. But globalization also entails problems and tensions that need to be appropriately managed. With financial markets so highly integrated, problems are transmitted rapidly from one country to another.

A free market by itself may not be conducive to achieving competition, especially in the developing countries. The efficient operation of competitive markets can be affected by various kinds of market failures which may necessitate some form of government intervention such as (i) the problem of monopolies and other market structures and practices that enable "market power" to be exercised; (ii) "externalities", such as environmental pollution; and (iii) situations in which economic actors have asymmetric information regarding product characteristics or other aspects of particular transactions.[58]

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[55] Economic Research Forum *Economic Trends in the MENA Region 2000*. http://www.erf.org.eg/html/economic_00/html/f_chap23.html. November 2000.

[56] Lahoul, Mohammad El Hedi. *Competition Laws in MENA: an assessment of the status quo and the relevance of a WTO agreement*, Economic Research Forum Working Paper 2011.

[57] Ibid.

[58] Ibid.

According to the WTO, the enabling environment for competition policy entails: a minimum level of economic development and a culture of quality and competition; regulatory mechanisms that are constantly improved in the light of widespread usage and practice; freedom of prices and price formation through the free play of competition (supply and demand mechanism); surveillance of market structures and anticompetitive practices, including cartels, collusion, exclusive arrangements and abuse of dominant position; transparency and fairness of transactions to ensure a degree of fluidity; freedom to enter and leave markets; and the neutrality of the state in its dealings with economic agents.

Competition policy and law is dependent on the theoretical economic precepts inherent in the concept of a free market mechanism, such as free market entry/exit, freedom of trade, and availability of financial information and other resources in order to decide quickly among available options. At the same time, on the demand side, it assumes that consumers make choices to enhance their utility; are not subject to restrictions when making those choices; have the information and financial resources to make decisions; and are not impeded in their choice by 'other' constraints. The requisites of competition are: free market entry and exit; freedom of trade and contract; an efficient monetary system; protection from restrictive business practices (RBPs); transparency of the market; an effective regulatory and legal framework; and an effective state enforcement mechanism. Imperfections in the market or market failures result in the absence of these conditions.

The characteristics of many developing country markets do not lend themselves to these requirements. Although structural reforms aimed at free, market-led growth are being adopted in most developing countries, prices as an indicator of supply and demand are still either controlled by governments or distorted by other constraints. Both consumers and producers have less than perfect knowledge of the market. Access to credit facilities is distorted, with small businesses particularly affected. There is a lack of transparency in transactions and procedures, and the regulatory framework for the effective functioning of a free market is weak or non-existent.

In addition to the basic requirements discussed above, a functioning concept of competition law and policy also presupposes the following:

(a) A certain educational level;
(b) Availability of, and access to, information systems;
(c) Access to an effective judicial system.

While these are in place in the developed economies, the same cannot be said of the developing countries, where there are wide disparities, in educational level and access to modern information and justice. Literacy, skills and productivity levels are low compared to the developed economies. Infrastructure for modern information systems, including modern information technology systems, is only beginning to be set up. Moreover, access to education and knowledge remains the preserve of the wealthy elite in many developing countries. In some, ideological, political and economic constraints prevent mass access. The same constraints often conspire against speedy justice. Where a judicial system exists, its workings are less than perfect because of a lack of an effective legal framework, as well as the vested interests of powerful groups.

Governments need to be cognizant of the following: firstly, market forces alone will not generate optimal benefits from trade liberalization and competition. ESCWA governments need to play a leading role in providing an enabling environment in order to derive maximum potential benefit for the country. Secondly, the benefits of free market competition will depend crucially on the state of the world economy. All other things being equal, it is easier to open trade and attempt global integration when the world economy is growing fast than in adverse economic conditions. Thirdly, the speed of integration and opening up of the domestic market is important.

The advent of globalization means that competition law and policy are no longer a matter of choice for developing economies. The imperatives of integration in the global market and enhancing domestic competitiveness dictate that a framework for effective competition legislation and policy be adopted sooner rather than later.

Competition laws are especially important as developing countries liberalize their economies. In most developing countries, state-owned public enterprises dominate certain industries. Even with privatization, many such enterprises do not welcome increased competition on the domestic market and take measures to deter the import or distribution of such competing products. Even where the industry has been deregulated and liberalized, firms appear to have a penchant for collusion and cooperation to form cartels. Such 'abusive' behaviour tends to thwart attempts at competition and, in the long run, undermines the competitiveness of the industry.

The following is a generic model of 'best practices' in developing competition policy which ESCWA countries may wish to consider when devising competition law and policy regimes.

**Box 6. Best practices in competition policy**

*Objectives of national competition laws*

Competition laws should have the explicit objective of furthering consumer welfare, innovation, productive and allocative efficiency, and open markets. Other goals, such as preservation of small businesses and consumer protection should be seen as possible benefits of robust competition, but are best pursued, to the appropriate extent, in legislation specifically directed to those ends and should not dilute laws protecting competition.

*Competition advocacy role of competition agencies*

Competition agencies should play a critical role within national governments in advocating pro-competitive outcomes before other agencies and branches of government, and in furthering a culture of competition throughout domestic economies.

*Scope of application of competition and exceptions*

Exemptions from the coverage of competition law should be minimized, and exempt sectors or practices should not become excuses for harmful anticompetitive conduct or the erection of market access barriers. If regulation displaces competition laws, pro-competitive and non-discriminatory regulatory principles must be put in place. Coverage of state enterprises and monopolies needs to be addressed to ensure that other trade liberalization measures are not impaired by their conduct.

*General prohibitions*

Hard-core cartels and bid-rigging. Certain types of hard-core anticompetitive conduct (price-fixing, market-allocating cartels and bid-rigging) should be universally condemned as they have no redeeming pro-competitive or efficiency-enhancing benefits.

*Conduct subject to the rule of reason*

Provisions relating to this category of conduct, which covers most vertical practices, joint ventures, and unilateral private firm conduct, need to be firmly grounded in economic analysis so as to ensure that rigid prohibitions on practices such as exclusive territorial distribution rights or intellectual property licences are not automatically imposed. Although these practices can lift market access or entry barriers, there is also a danger that they will be prohibited outright and not judged by their actual effect on competition. Economies also need provisions to review mergers and concentrations, so as to prevent anticompetitive outcomes.

*Enforcement agencies*

Enforcement bodies need to be independent of political pressures, and to have adequate resources.

*Investigative powers of enforcement agencies*

Enforcement bodies need to have adequate investigative powers and the right to obtain necessary evidence by compulsory process. Competition agencies must also be able to provide adequate guarantees for the protection of confidential business information to ensure the legitimacy of the system. At some point, there must be an independent review, most likely by the judiciary, of the enforcement agency's decisions. Transparency of decision-making is also critical.

**Box 6** (*continued*)

*Administrative and/or legal sanctions*

Any system of remedies must have adequate remedial and deterrent effect. The precise mixture of injunctive powers, criminal sanctions, civil fines, or private damage suits may vary; the important thing is the overall impact on business conduct. Enforcement agencies or courts must also have adequate powers to ensure that necessary structural relief is available.

*Non-discrimination and national treatment*

All economies must ensure non-discrimination in the application of their competition laws, and a right for foreign complainants to initiate proceedings before enforcement agencies or to have recourse to domestic courts.

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*Source*: UNCTAD. *Competition Policy Best Practices Discussion Paper*.

### 2. *The role of government in promoting competitiveness*[59]

The role of government in promoting competitiveness is to encourage firms to raise their aspirations and move to higher levels of competitive performance, even though the process may be inherently unpleasant and difficult. Government cannot create competitive industries—only businesses can do that. Government should play a role that is inherently partial in maintaining competition and a competitive environment.

Some of the specific policy approaches to guide nations seeking to gain competitive advantage include the following:

(a) *Deregulating competition.* Regulation of competition through such policies as maintaining a state monopoly, controlling entry into an industry or fixing prices has two strong negative consequences: it stifles rivalry and innovation as companies become preoccupied with dealing with regulators and protecting what they already have; and it makes the industry a less dynamic and less desirable buyer or supplier. Deregulation and privatization on their own, however, will not succeed without vigorous domestic competition—and this requires a strong, consistent competition policy.

(b) *Enforcing strong domestic competition policies*. A strong competition policy—especially for horizontal mergers, alliances, and collusive behaviour—is fundamental to innovation. Real national competitiveness requires governments to disallow mergers, acquisitions, and alliances that involve industry leaders. The same standards for mergers and alliances should apply to both domestic and foreign companies. Competition policy should favour internal entry, both domestic and international, over acquisition. Companies should, however, be allowed to acquire small companies in related industries when the move promotes the transfer of skills that could ultimately create competitive advantage.

(c) *Rejecting managed trade.* Trade policy should pursue open market access in every foreign nation. It should seek to open markets wherever a nation has competitive advantage and actively address emerging industries and incipient problems.

(d) *Focusing on specialized factor creation*. Factors should be promoted that translate into competitive advantage which are advanced, specialized, and tied to specific industries or industry groups. Mechanisms such as specialized apprenticeship programmes, industry-related research in universities, trade association activities, and, most important, the private company investments, ultimately create the factors that will yield competitive advantage.

(e) *Avoiding intervention in factor and currency markets*. By intervening in factor and currency markets, governments hope to create lower factor costs or a favourable exchange rate that will help

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[59] From *The competitive advantage of nations*. http://www.priv.government.bg/informationb/10_2000/en/4.html.

companies compete more effectively in international markets. Evidence from around the world indicates that these policies are often counterproductive. They work against the upgrading of industry and the search for more sustainable competitive advantage.

(f) *Enforcing strict product safety, and environmental standards*. Strict government regulations can promote competitive advantage by stimulating and upgrading domestic demand. Stringent standards for product performance, product safety, and environmental impact put pressure on companies to improve quality, upgrade technology, and provide features that respond to consumer and social demands. When tough regulations anticipate standards that will spread internationally, they give a nation's companies a head start in developing products and services that will be valuable elsewhere.

(g) *Sharply limiting direct cooperation among industry rivals*. Projects should be in areas of basic product and process research, not in subjects closely connected to a company's proprietary sources of advantage. They should constitute only a modest portion of a company's overall research programme in any given field. Cooperative research should be indirect, channelled through independent organizations to which most industry participants have access. Organizational structures, such as university laboratories and centres of excellence, reduce management problems and minimize the risk to competition. Finally, the most useful cooperative projects often involve fields that touch a number of industries and that require substantial R&D investment.

(h) *Promoting goals that lead to sustained investment*. Governments have a vital role in shaping the goals of investors, managers, and employees through policies in various areas. Governments should aim to encourage sustained investment in human skills, innovation, and physical assets.

**Box 7. The Political Background to the Adoption of Competition Legislation**

Since proposed legislation, regardless of how carefully thought out or well drafted, runs the risk of being waylaid by vested interest groups or failing to gain sufficient political support, the political context of new legislation is an important issue.

In many countries competition legislation has been introduced as part of a wider economic reform programme, which may include reform of company law, deregulation and privatization. This approach has the advantage that, although the benefits of competition and the market economy are appreciated, the need for a competition policy may not be so obvious. Some interest groups may view it as another form of government regulation of business and therefore indistinguishable from any previous forms of government regulation which were in the process of being dismantled. As part of a package, it is easier to place competition policy in the context of necessary structural reforms as a policy designed to monitor firms' behaviour in a less heavy-handed way.

There are possible pitfalls with this approach, however, since the success of the adoption of competition legislation may stand or fall with the rest of the programme, regardless of its individual merit. In addition, there may be pressure for the competition legislation to encompass provisions dealing with other regulatory problems whose objectives are not the same as those of competition policy.

In every economy there are vested interest groups which oppose the introduction of new competition laws. To some extent, the degree of that opposition is determined by the general level of familiarity with the aims and purposes of competition laws. Enterprises operating in international markets will necessarily be exposed to the competition laws of countries which have such laws and will therefore not encounter anything unknown if legislation is introduced domestically. Enterprises operating purely in domestic markets may be more suspicious of the purposes of competition law.

The lack of exposure to competition and competition policy in the non-traded sectors is a common theme and often a major source of opposition. Historically, even where competition laws applied widely to most sectors of the economy, the professions and a number of other major service industries (e.g. finance and insurance) were largely exempt, being subject either to self-regulation or direct government regulation on broader public interest grounds related to health, safety or simply quality. Part of the task of introducing new legislation is convincing interest groups that exposure to competition (e.g. in terms of prices and advertising as regards the professions) is not synonymous with a loss of quality of service, nor does it imply that there should be no regulation in the consumers' interest. Equally, most competition laws provide the opportunity for enterprises or persons to justify practices if they can demonstrate that benefits accrue to the consumer.

**Box 7** (*continued*)

The professions are only one example of the interest groups that may require special persuasion. In a number of economies, the promotion of domestic industry has resulted in industrial groupings or cartels, many of which have grown up with the support and encouragement of governments and tariff protection. It usually takes some time for such industries to adjust to thinking in competitive rather than cooperative terms.

Another important aspect of introducing new legislation is for governments to consult with all interest groups before and during the actual drafting of a bill and before submitting it to Parliament. An extensive and timely consultation process can play a key role in the adoption and successful enforcement of new legislation. Input from the business community, consumer groups, professional and trade associations, in particular, can be valuable in ensuring that the final outcome is workable and consistent with market realities.

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*Source*: OECD, *1994 Competition Policy Workshop: Background Paper.* http://www.oecd.org/daf/clp/non-member_activities/dnme10.htm.

### 3. *Cooperation and consultation mechanisms for promoting competition law and policy*

Finally, the lack of information and communication between government and business, associated with lack of transparency and ad hoc decision-making by many governments, have led to scepticism on part of the private sector and businesses about the benefits of adopting competition policy and law. Another private sector concern is that opening up economies will adversely affect many weak, inefficient industries in developing countries. The associated job losses would compound other social costs of adjustment. Lack of appropriate information about the benefits of a free market economy has led the private sector to reject or ignore competition laws and policies in several developing countries. When devising a framework for competition law and policy, ESCWA countries should review and take into consideration other practices, such as the need for an informal national and international consultative process in their efforts to put in place an effective competition regime.

**Box 8. Consultative Mechanisms as a Means of Promoting Competition**

Consultative mechanisms between government and the private sector are increasingly being looked upon as a means of generating support for competition policies. According to the World Bank, consultative mechanisms (CMs) are groups or committees that bring economic and political actors together for dialogue and consensus-building with respect to economic policy and reform. CMs are most commonly found in East Asia, but are increasingly being adopted in other regions. CMs may be organized on an industrial, sectoral, functional (e.g. export promotion, tax reform) and even national basis. Generally, they are informal bodies without legal authority but are often influential because of the participation of high-ranking government officials, career bureaucrats, business association representatives and captains of industry.

The motivating rationale for the creation of consultative mechanisms is that they may allow economic actors to find solutions to the common challenge of enhancing competitiveness by addressing both market and government failures. Thus, CMs are believed to be able to (a) enhance the flow of information between government, business and civil society, (b) engender a sense of common ownership over reform strategies among participants, (c) help conserve resources by pooling technical expertise and sharing costs, (d) increase governance capacity by helping to mobilize both public and private resources, and (e) generate trust and social capital which, in turn, lower the transaction costs of business and economic governance.

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*Source*: World Bank. *Assessing Competitiveness. Indicators and Benchmarks of national, regional and local competitiveness.* http://www1.worldbank.org/beext/part_ii_csai/csai_mainb.htm#.

## V. CONCLUSIONS AND RECOMMENDATIONS

Improvements in communications, technology and transportation, as well as social and cultural changes, have progressively reduced the effective economic distance between nations, leading to a growth in business opportunities all around the world. At the same time, many of the government policies that have traditionally inhibited international transactions have been relaxed and in some cases completely removed. Trade polices such as tariffs, import restrictions, subsidized exports and limitations on international capital movements have all had the effect of erecting barriers at the borders of nations. However, the gradual realization of the opportunities presented by a competitive global market-place for world consumers, producers and service providers has progressively led governments to lower those barriers and continue the push for trade liberalization. As a result, the world is now more open to international trade.

At national level, in the 1990s, most ESCWA member countries initiated structural adjustment reforms aimed at greater macroeconomic stability by removing structural imbalances and improving economic growth and efficiency. On the economic front, this required a major ideological shift in the model of economic governance from state-led development to a focus on a free, market-led economy for the future. This entailed reforming the trade and finance sectors, liberalization, privatization, and institutional and regulatory reform.

However, the resumption of growth following structural adjustment was slower and weaker, with key macro variables performing poorly, including investment, non-oil exports and diversification. These poorly performing variables are interlinked and point to the need for the state firmly to reestablish the boundaries between its own functions and those of the free market.

The export performance of the Middle East as a whole has been less than robust: during the first half of the 1990s, the MENA region's exports grew at a rate of only 1.5 per cent at a time when world exports were growing at an average annual rate of 7.5 per cent.

The exports and economic development of ESCWA countries remain cyclically tied to oil exports and revenues. Though its share has declined slightly, the region remains the world's leading oil exporter, accounting for 73 per cent of total merchandise exports in 1997, compared to 85 per cent in 1980. The region has exhibited a structure of commodity output and exports which has changed very slowly. Lack of diversification into other products is also a factor in the low levels of intraregional trade.

Though progress has been made in the ESCWA region, the policy and institutional environment has not improved fast enough. Privatization has also been slow and private sector participation in infrastructure modest. The government-business relation continues to involve excessive transactions costs, both from tariff and non-tariff barriers. Moreover, progress in improving the regulatory framework governing business transactions has been slow and enforcement weak.

As part of their commitment to a free, market-led economic growth strategy, many ESCWA countries, such as Jordan, Lebanon and Egypt, have taken steps to improve the business climate. The reforms include privatization measures to attract foreign investment and a reduced role for direct state intervention. Although trade, financial sector and public sector reforms have improved the business climate compared to a decade ago, the private sector remains small and under-diversified compared to the private sector and the overall business environment in the countries of East Asia, Latin America and Eastern Europe. In Egypt, Tunisia and Jordan, the private sector still accounts for only 64 to 66 per cent of GDP, compared with 80 per cent in Brazil, 74 per cent in Uruguay and 72 per cent in Indonesia. The main obstacles to private sector operation and expansion are inefficient tax administration, a costly judicial system, scarcity of skilled labour, elaborate collateral requirements to obtain finance, and weak support systems. Investors in the region claim that a number of obstacles continue to hinder the efficient operation of firms, exports and investment.

The obstacles to export competitiveness and competition in the ESCWA economies are bureaucratic control procedures that hamper exports; a controlling regulatory framework, as opposed to a facilitating ethic; a high level of taxation and a multiplicity of charges and duties; inadequate and often outmoded distribution, storage and transport infrastructure; and an inefficient financial sector, especially with respect to credit flows for long-term investment and exports.

Despite recent progress, many ESCWA countries suffer from weaknesses in their economic policy and institutional frameworks. The public sector continues to be large in relation to the private sector, especially in employment and economic activity; trade and investment regimes are characterized by high, uneven tariffs and high transaction costs that impede the diversification process, the growth of non-oil exports and the attraction of FDI. The slow progress in structural reforms, especially manufacturing, are also impeding changes in line with the rapidly evolving globalized economy.

## RECOMMENDATIONS

In the ESCWA region, competition and competitiveness are beginning to be recognized as important prerequisites for integration into world trade and the global economy. With more member States joining or preparing to join the WTO, the reduction and removal of trade barriers and fair, effective market competition issues are attracting more attention.

In the context of globalization, a number of issues are common to all countries of the region: trade and investment, WTO membership, diversifying the economic base, and sustaining and promoting exports, are all major concerns. In the increasingly globalized world economy, the myriad issues covered by the WTO agreements, especially as they relate to competition policy and law, form the cornerstone of a future trade and export development strategy.

Competition policy seeks to promote and maintain healthy inter-firm rivalry in markets by prohibiting anticompetitive market structures and enterprise practices that impede competition by applying a competition law and/or pro-competitive regulations. It also involves reducing and/or eliminating government measures that are unnecessary obstacles to trade and competition.

For the ESCWA countries, as for others, firms have increasing access to foreign markets, while consumers look to foreign producers as important sources of price and quality options. This is both a competitive opportunity and a challenge for ESCWA economies.

Some of the specific policy approaches for ESCWA members when devising competition law and policy regimes are:

There is a need to recognize, identify and set priorities for adopting a holistic framework linking trade, investment and competition policy as the means of promoting the private sector and free market economy in member States.

This entails, above all, a recognition by member States of the importance of the linkages between competitiveness, competition and sustainable development, which means ensuring free, fair competition and a competitive and enabling environment in which market forces can thrive.

Adopting a competition regime which deregulates competition. Deregulation and privatization on their own will not succeed without vigorous domestic competition, and this requires a strong, consistent competition policy.

A strong competition policy, especially for horizontal mergers, alliances, and collusive behaviour, is fundamental to innovation. Building national competitiveness will require governments to disallow mergers, acquisitions, and alliances that involve industry leaders. Moreover, members should create a level playing-field for domestic and foreign companies.

Further trade liberalization. A trade policy that seeks to open markets wherever ESCWA members have competitive advantage and actively address emerging industries and incipient problems.

Supporting specialized factor creation. Promoting factors that translate into competitive advantage which are advanced, specialized, and tied to specific industries or industry groups which will ultimately yield competitive advantage.

Strict government regulations can promote competitive advantage by stimulating and upgrading domestic demand. Stringent standards for product performance, product safety, and environmental impact put pressure on companies to improve quality. upgrade technology, and provide features that respond to consumer and social demands. When tough regulations anticipate standards that will spread internationally, they give a nation’s companies a head start in developing products and services that will be valuable elsewhere.

ESCWA members should seek to promote goals that lead to sustained investment. Governments have a role to play in shaping the goals of investors, managers, and employees through policies in various areas. Governments should aim to encourage sustained investment in human skills, innovation, and physical assets.

Providing for sustained macroeconomic stability in the country.

Finally, the role of the state and state regulatory institutions should be reformed in line with the emerging realities of the global economic order, in particular the needs and requirements of competition and free market enterprise as the engine of growth for the future.

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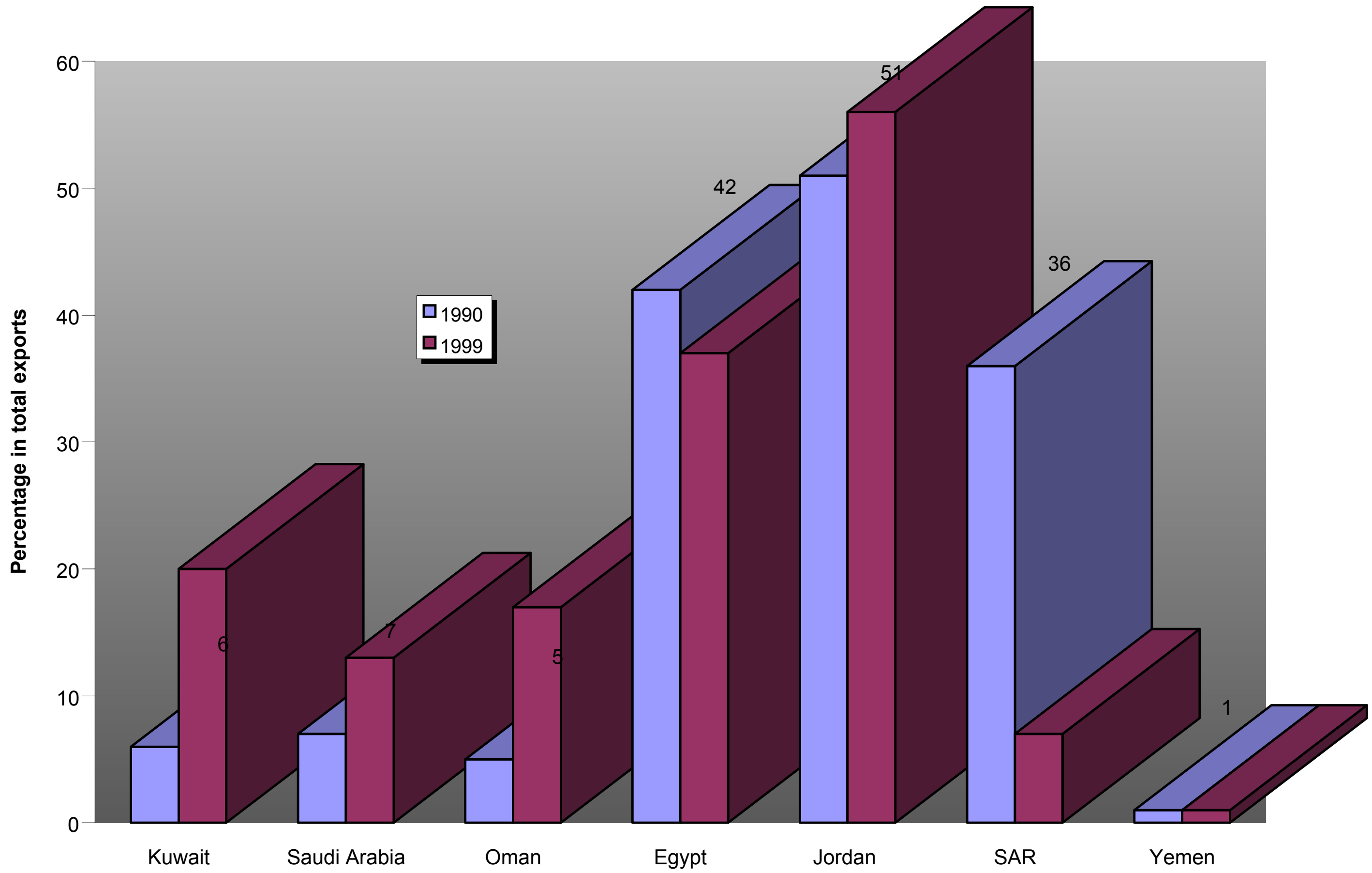
TABLE 4. EXPORT DIVERSIFICATION IN ESCWA COUNTRIES, 1991 AND 1999

| | Merchandize exports million dollars | | Food percentage of total exports | | Agricultural raw materials | | Fuels | | Ores and minerals | | Manufactures | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Country | 1990 | 1999 | 1990 | 1999 | 1990 | 1999 | 1990 | 1999 | 1990 | 1999 | 1990 | 1999 |
| Kuwait | 7042 | 12181 | 1 | 0 | 0 | 0 | 93 | 79 | 0 | 0 | 6 | 20 |
| Saudi Arabia | 44417 | 50500 | 1 | 1 | 0 | 0 | 92 | 85 | 0 | 1 | 7 | 13 |
| Oman | 5508 | 7231 | 1 | 4 | 0 | 0 | 92 | 77 | 1 | 1 | 5 | 17 |
| Egypt | 2585 | 3559 | 10 | 9 | 10 | 8 | 29 | 37 | 9 | 4 | 42 | 37 |
| Jordan | 1064 | 1782 | 11 | 17 | 0 | 0 | 0 | 0 | 38 | 27 | 51 | 56 |
| Syrian Arab Republic | 4212 | 3464 | 14 | 15 | 5 | 5 | 45 | 68 | 1 | 1 | 36 | 7 |
| Yemen | 692 | 2300 | 75 | 5 | 10 | 1 | 8 | 93 | 7 | 0 | 1 | 1 |
| MENA | 127739 | 135767 | 3 | 4 | 1 | 1 | 78 | 73 | 3 | 1 | 17 | 21 |
| East Asia and Pacific | 220817 | 585640 | 12 | 7 | 5 | 2 | 10 | 5 | 2 | 2 | 68 | 81 |
| South Asia | 27675 | 56164 | 16 | 16 | 5 | 2 | 2 | 0 | 4 | 2 | 71 | 79 |
| Latin America and Carribean | 143367 | 294456 | 26 | 24 | 4 | 3 | 24 | 17 | 12 | 6 | 34 | 51 |

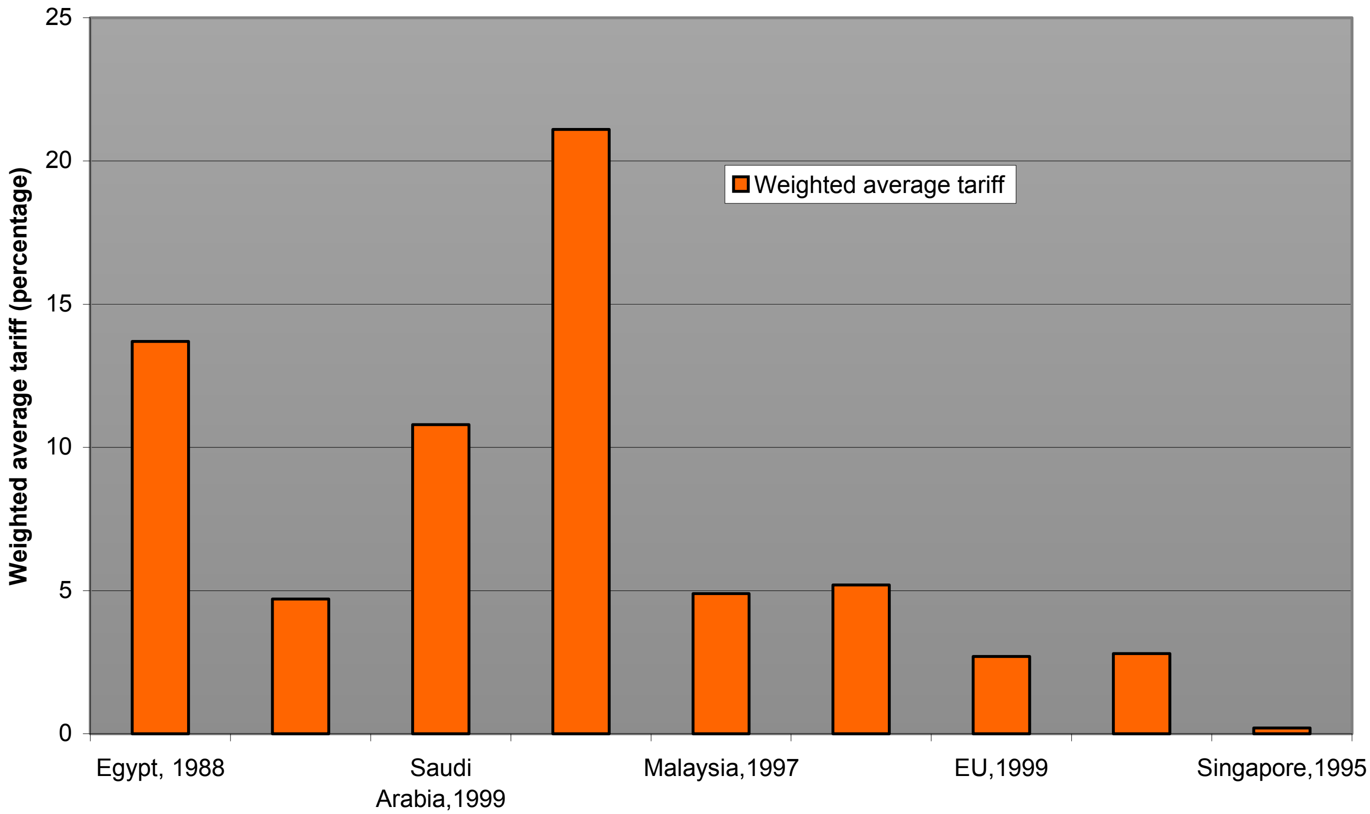
*Source*: World Development Indicators 2001. The World Bank.

**Figure I. Manufactured exports of selected ESCWA countries, 1990 and 1999**



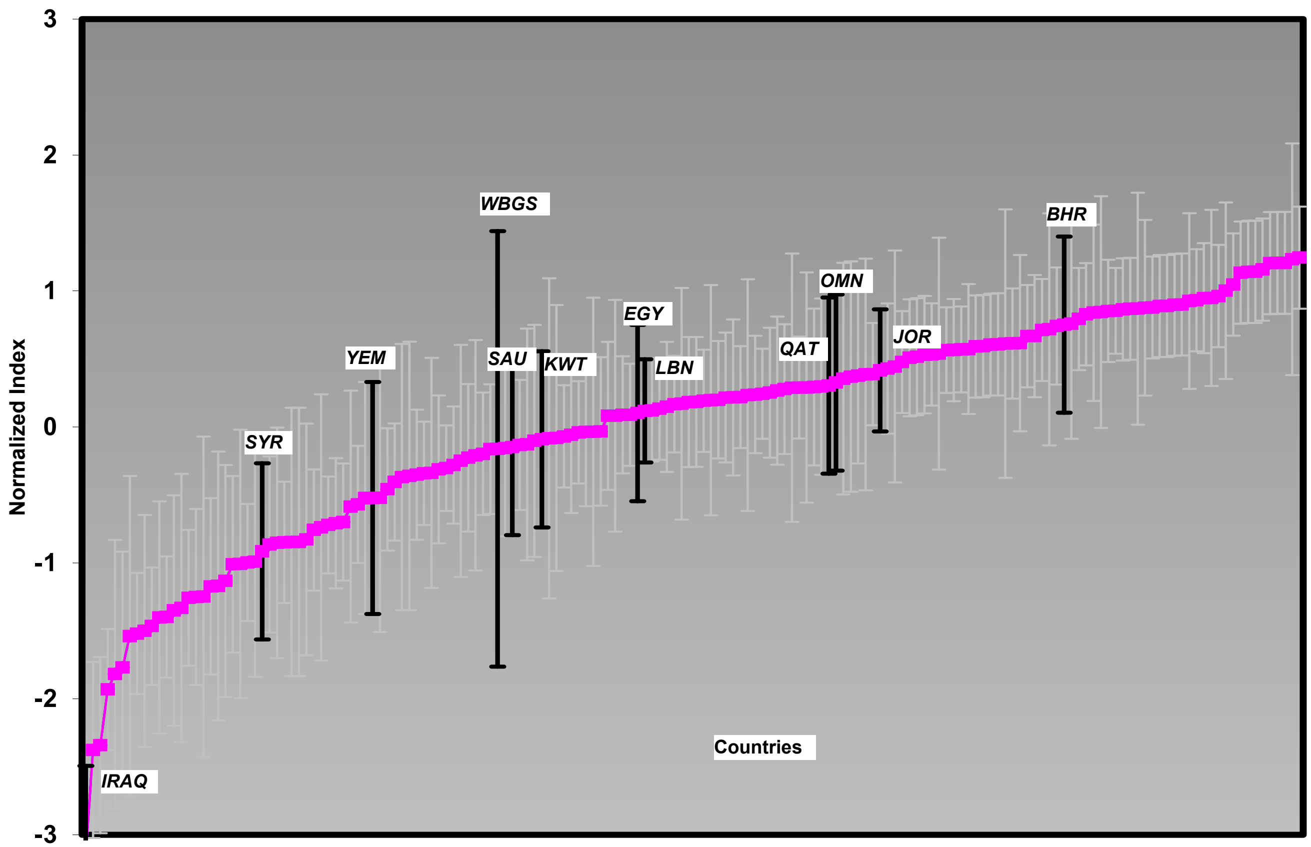

*Source*: see table 4.

**Figure II. Weighted average tariff in selected countries**



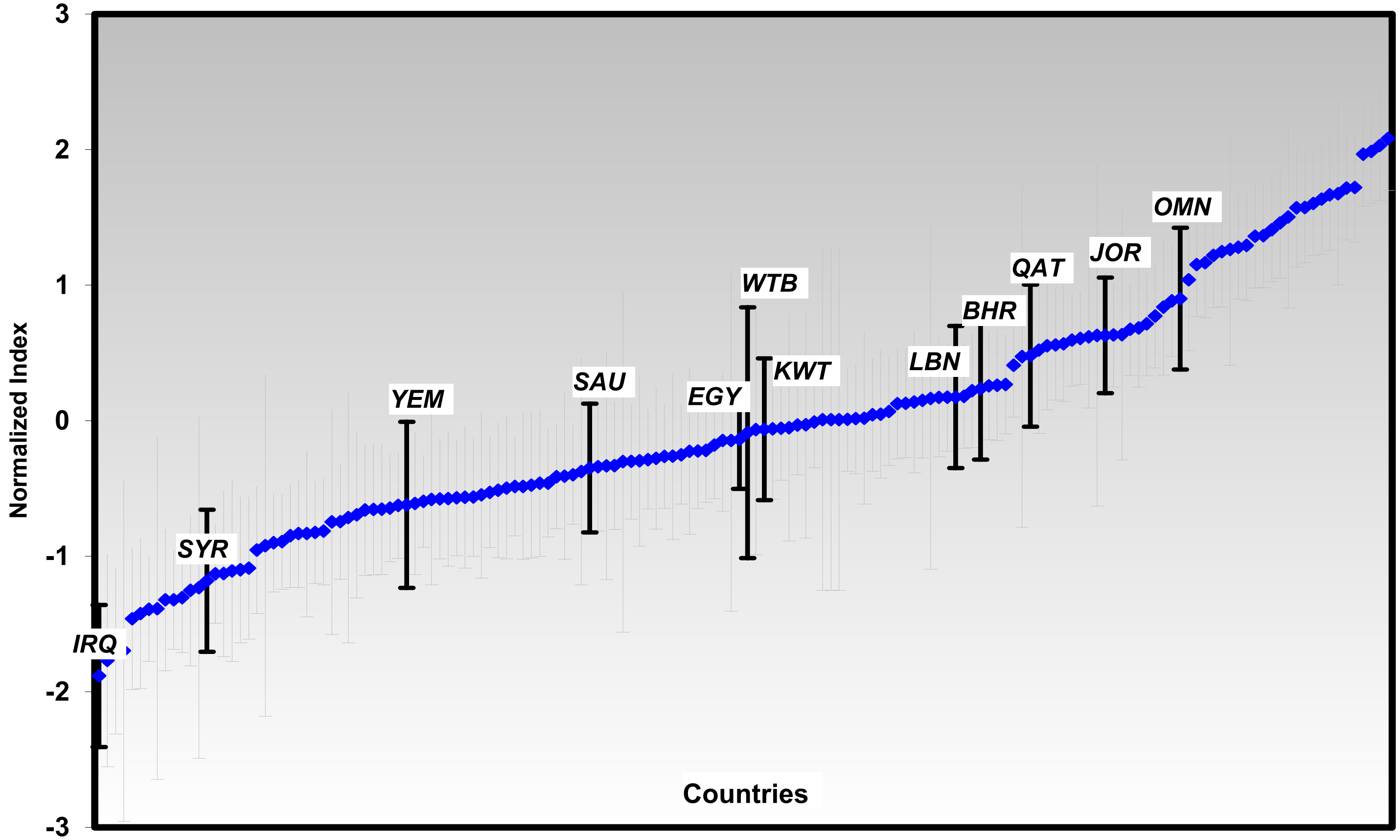

*Source*: see table 10.

**Figure IV. Regulatory Burden in the ESCWA countries, 1997-1998**




*Source*: Calculated from Daniel Kaufman et al. Dataset from: "Aggregating Governance Indicators" and "Governance Matters".

**Figure V. Government Effectiveness in the ESCWA Region, 1997/1998**




*Source*: Calculated from Daniel Kaufman et al. Dataset from: "Aggregating Governance Indicators" and "Governance Matters".