



**Economic Policy Programme**  
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**Palestine's future relations  
with the World Trade  
Organization**

Thomas Cottier  
Remo Arpagaus

July 27-31, 1997

**Mission Report**  
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**LONDON SCHOOL OF ECONOMICS  
AND POLITICAL SCIENCE**

**Economic Policy Programme  
Legal & Technical Support to the  
Ministry of Economy, Trade and  
Industry**

REPORT AND FOLLOW-UP  
MISSION TO THE WEST BANK

**PALESTINE'S FUTURE RELATIONS  
WITH THE WORLD TRADE  
ORGANIZATION**

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July 27-31, 1997

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The Economic Policy Programme is funded by the European Community (EC) and coordinated by the Ministry of Economy and Trade in collaboration with the London School of Economics and Political Science. The two-year project is an initiative launched as part of the European Community's programme of assistance to the Palestinian population of the West Bank and Gaza Strip. The objective is to provide the Palestinian Authority (PA) with policy support that will both assist it in clarifying and shaping trade policy and strengthen its capacity to negotiate with current and potential trading partners on economic and trade policy issues. The programme, which was launched in May 1996, works with a team of leading international experts - economists, political scientists and trade lawyers - in support of the ministry's policy agenda, and has held in collaboration with the ministry a number of roundtables on trade-related issues.

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## **Introduction**

This report was prepared by Professor Thomas Cottier of the Institute of European International Economic Law, Berne, and his assistant, Remo Arpagaus, following their mission to the West Bank on July 27-31, 1997. The aim of the mission, undertaken at the request of the Ministry of Economy and Trade, was to work with ministry staff on the elaboration of an approach to Palestine's future relations with the World Trade Organisation (WTO). Two papers submitted earlier this year by Professor Cottier on *The Israel-Palestine Protocol on Economic Relations and the Law of the World Trade Organization* and *The Possibility of Participation by Means of Observers Status for the Palestinian National Authority in the World Trade Organisation* provided a framework for the three days of informal talks. Both the mission and these legal opinions form part of the two-year **Economic Policy Programme**, which is funded by the European Community (EC) and coordinated by the London School of Economics and Political Science in collaboration with the Ministry of Economy and Trade.

The main results of the mission, as outlined in the report, are as follows:

- 1) An Action Plan detailing a possible approach to the WTO has been elaborated (Annex 2). The plan identifies a number of steps to be implemented by the Palestinian Authority in anticipation of achieving its goal of full membership in five to ten years. These include initiating informal talks with the European Commission and supportive member states, with the United States and the WTO secretariat in order to ensure a consensus in favour of Palestine's formal application for observer status - a first step towards membership; ensuring interministerial coordination with regard to preparing for unilateral de facto application of WTO rules and obligations; adjusting domestic legislation to WTO standards; and implementing trade policy with a view to achieving jurisdiction at least in those areas required under WTO rules for a separate customs territory.
- 2) A Lobbying Paper to assist in gaining international support for a Palestinian approach to the WTO has been drafted (Annex 3).

## **Recommended action**

With an appropriate path towards Palestinian membership of the WTO thus identified, Professor Cottier and Remo Arpagaus make the following recommendations for preparatory work in support of the goal of achieving observer status and eventual membership (para 3.1). They are as follows:

- 1) The PA might consider setting up interministerial task forces comprising officials, private-sector and research institute representatives to study the impact of WTO rights and obligations on key sectors of the Palestinian economy. Such studies will be essential to define the needs for structural adjustment. International trade experts could provide assistance to these task forces in order to assist in building capacity in PA ministries on WTO regulations.
- 2) It is recommended that the PA commission two studies:- the *first* to examine those

areas of law which need to be part of Palestine's jurisdiction if it is to qualify as a separate customs territory; the *second* to look at options for border control in relation to economic activities under alternative political outcomes.

3) Finally, the PA should update case studies demonstrating ongoing difficulties relating to market access under the Paris Protocol in trade with Israel and Jordan as well as with the EU and USA.

The **Economic Policy Programme** could assist in identifying and funding the visits of appropriate experts for capacity-building purposes and in the commissioning and funding of papers.

Following a successful third workshop in May on *Palestine's future trade relations with Jordan, Egypt and the wider Arab world* and the completion of a number of tasks on EC rules of origin and on the WTO, the **Economic Policy Programme** has embarked on a second year of policy support activities. Building on past work the programme, in collaboration with the Ministry of Economy and Trade, plans to invite a number of senior trade economists to the West Bank and Gaza Strip and to informal meetings in the region to share their expertise with regard to the development of Palestine's trade relations with third parties.

*Valerie Yorke*  
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*London School of Economics,*  
*August 1997*

# **PALESTINE'S FUTURE RELATIONS WITH THE WORLD TRADE ORGANIZATION**

## **Mission of Thomas Cottier and Remo Arpagaus to the West Bank July 27-31, 1997**

### **Report and Findings**

#### **1. Terms of reference**

1.1 The mission's objective was to work with the staff of the Palestinian Authority's Ministry of Economy and Trade with a view to elaborating an approach to Palestine's future relations with the World Trade Organization (WTO). At the request of the Ministry, made at the "Workshop on Palestine and regional trade: Prospects for future trade relations with Israel" held in Ramallah on December 2-4 1996, we had submitted early this year to the LSE-based **Economic Policy Programme (EPP)** two legal opinions on WTO issues:

(a) **The Israel-Palestine Protocol on Economic Relations and the Law of the World Trade Organization** (Institute of European and International Economic Law, University of Berne, February 27, 1997)

(b) **The Possibility of Participation by Means of Observer Status for the Palestinian National Authority in the World Trade Organization** (Institute of European and International Economic Law, University of Berne, February 27, 1997)

1.2 On the basis of these studies, the Ministry of Economy and Trade decided to proceed with its work on the WTO issue and invited us, within the framework of the **EPP**, for a three-day mission to Ramallah to engage in further informal exploratory talks on Palestine's future relations with the WTO and to work out a detailed programme of action with a view to approaching the WTO. The agenda of the mission was as follows:

- (i) **Exploratory talks** with ministry staff on the basis of discussion points listed and submitted by the Ministry of Economy and Trade (*see* Annex 1).
- (ii) **Elaboration of an Action Plan** on approaching the World Trade Organization, to build the Ministry's expertise and knowledge on the WTO with a view to using its rules to its advantage, and to gain observer status in the WTO with a view to preparing for accession.
- (iii) **Elaboration of a lobbying paper** to assist in gaining international support for Palestine's approach to the WTO.

These papers were drafted during the mission (*see* Annexes 2 and 3).

## **2. Report on the meetings**

2.1 During the mission, we met and exchanged views with Maher Masri, the Minister of Economy and Trade, and his staff, in particular Saeb Bamyeh (SB; Director General, Trade and International Cooperation) and Nisreen Haj Ahmad (NA), with whom we worked closely during our visit. At our first meeting on Monday we also met Mr Musa Bamyeh from the Ministry of Agriculture. In addition, informal discussions took place with Geoffrey Haley of the European Commission Technical Assistance Office (ECTAO). For a record of our programme see Annex 4.

### *Topics discussed*

2.2 The Palestinian officials expected advice with regard to formulating a clear position on WTO issues, in particular on (i) the current impact of WTO rules on Palestine vis-à-vis Israel and other countries; (ii) how to make the best use of WTO rules both in the current circumstances and in the short and long term and (iii) on the process of accession to the WTO (observer status and membership). The discussions mainly served to elaborate the basic framework for, and to assess the content of, the papers elaborated during the visit.

2.3 Discussions were based on a list of points submitted by ministry staff before the mission (Annex 1).

### *The current impact of WTO rules on Palestinian trade relations*

2.4 With regard to the current impact of WTO rules on Palestine's trade with third countries, we recalled the preliminary study on the relationship of the Protocol on Economic Relations between Israel and the PLO, representing the Palestinian People (*hereinafter* Paris Protocol):

"... Even if the Areas are considered not to be part of the Israeli customs territory, Members of the WTO are entitled that their rights under Article V GATT 1994 (Freedom of Transit) are respected by Israel customs authorities. Yet, beyond this, it is submitted that all activities regarding foreign products imported from, or exported to, a Member of WTO in the Israeli-PA customs territory fall under the rules of WTO law due to the membership of Israel and her obligations to other Members of the WTO. As a corollary, similar obligations can be invoked not only vis-à-vis Israel, but indirectly and as a result of the Protocol also vis-à-vis the PA. Any Member of the WTO could complain and bring suit under the WTO Dispute Settlement System against Israel for alleged violations of their rights within the uniform customs territory. It may be therefore concluded that WTO rules in effect apply de facto to and in the Areas already."<sup>1</sup>

"The Protocol does not establish a clear legal regime, but reflects the complexities of the political and economic situation in the region. Implicitly, it establishes an Israel-Palestine customs territory subject to exceptions of limited autonomy in trade regulations with third countries. In such a constellation, we argue that the obligations of Israel as Member of WTO fully apply to the Protocol with respect to trade not governed by listed exceptions. Its obligations can be invoked by third Member States when trade with the Areas is impaired by Israel. Dispute settlement machinery in WTO may be used in

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<sup>1</sup> see Thomas Cottier, *The Israel-Palestine Protocol on Economic Relations and the Law of the World Trade Organization*, legal opinion submitted to the Economic Policy Programme, London School of Economics, (Berne) February 27, 1997, at 4.

order to settle such problems. It can also be invoked by the PA in such constellations vis-à-vis the State of Israel, however short of using WTO dispute settlement. The law of WTO thus directly and indirectly assists the development of trade relations with Members of the WTO."<sup>2</sup>

We stressed our view that since Israel is a member of the WTO and Palestine is in fact considered to be within the Israeli customs territory (whether as a separate entity or not), any trade barrier imposed by Israel in connection with Palestine's trade with WTO members has to be in conformity with WTO rules. Therefore, WTO members have the option of invoking the dispute settlement regulations provided by the WTO. This is especially true since WTO rules also apply to the transit of goods through the customs territory of a WTO member (Article V GATT).

2.5 Moreover, the fact that the Paris Protocol occasionally refers to WTO rules, in particular in relation to trade with third countries, indicates a general awareness on Israel's part of the need to be in line with international trade obligations.<sup>3</sup>

#### *The Palestinian request for accession to the WTO*

2.6 With regard to the question posed by the ministry on an appropriate approach by Palestine to the WTO and whether Palestine should seek observer status in the first instance or apply for full membership, we essentially stated:

- (i) In accordance with practice in the WTO Palestinian membership should be preceded by observership. Observership is the first step in preparing for accession to the organisation.
- (ii) With regard to the Paris Protocol, Israel and the West Bank/Gaza Strip currently form a *de facto* single customs territory under international trade law, despite the fact that the Paris Protocol establishes partial and limited autonomy provisions enumerating certain exceptions in Lists A1, A2 and B. At the same time, developments in Palestine's own trade policy, in particular as expressed by the recently concluded separate Interim Trade Agreement with the EU and the unilateral expansion of the US-Israeli Free Trade Agreement by the USA, constitute important moves in international law towards autonomy as a separate customs entity. Palestine, however, remains strongly linked to the Israeli economy both in law and fact. It does not at this stage meet the conditions for membership, as provided in Article XII of the Agreement Establishing the World Trade Agreement (Marrakesh Agreement). However, in legal terms it could achieve observer status, since such status does not require that conditions for membership be met at the time of application.
- (iii) In future talks and negotiations on a peace settlement between the PA and Israel, the Palestinians will need to keep in mind the provisions of Article XII of the Marrakesh Agreement in order ensure that any agreements reached enable Palestine to comply at the least with the WTO requirement that a separate customs territory possess full autonomy in the conduct of its external economic relations.

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<sup>2</sup> *Id.*, at 8.

<sup>3</sup> For details see, *id.*, at 5-7.

2.7 It is likely, that an accession of Palestine to the WTO will be closely linked to the overall peace process and will be difficult to realize before results are achieved. Meanwhile, Palestine has the option to apply WTO rules on a *de facto* basis and to notify this policy to the WTO. This action would lend credibility to Palestine's goal of membership, create goodwill among WTO members and increase awareness of Palestine's problems among them.

2.8 The degree of political risk for Palestine in applying for observer status is minimal provided this step is carefully prepared. It is important that the PA secure the support of the main members in the WTO. In the first place the support of and sponsorship of the EU should be secured. Also the support of the USA must be won, at least to ensure that it will not oppose observership for Palestine. The ministry's staff foresaw no problem in securing the support of the United States Trade Representative (USTR) and the Department of Commerce. However, the State Department would be likely to oppose the move. Thus, it was agreed that in the first instance consultations should be held with the two agencies responsible for trade. They would be likely to be interested in moves towards a WTO-compatible regional trading system.

2.9 We stressed that voting provisions on WTO membership or observer status are not key. Rather, consensus has to be achieved among the main members in order to isolate Israeli opposition.

2.10 *Conclusion:* Observer status would serve as a first step in the process of becoming a member of the WTO. Membership itself should be seen as a long-term goal of Palestinian trade policy. During the transition period, in which the PA has observer status, the aim is gradually to meet the conditions for accession. The fact that statehood is not a prerequisite and an independent customs' territory is sufficient in order to accede to the WTO works in favour of the current situation of the PA.

#### *Strategies to approach WTO on the international level*

2.11 SB stressed the need to clarify the possible roles of the EU and the USA in the "WTO approaching process". In our preparatory discussion SB, NA and the Minister, Maher Masri, considered that the main problem for Palestine in its approach to the WTO would be the need to obtain the political support and backing of the EU and USA. The Israelis have already objected to the WTO procedure examining the Euro-Mediterranean Interim Agreement between the EU and Palestine (*see* Financial Times, July 22, 1997).

We pointed out that Israel's reaction to the examination of the Euro-Mediterranean Interim Agreement, which was politically motivated, is rather encouraging, since it reflects Israel's concern with regard to the WTO's enhanced awareness of Palestine's trade problems. This indicates that Palestine is moving in the right direction.

2.12 We recalled that the Palestinian approach to the WTO is likely to be closely linked to the peace process. At the moment, security issues are at the forefront, and an effort has to be made to focus international attention on economic issues:-

- First, international awareness with respect to the Palestinian goal of approaching the WTO has to be raised. We therefore proposed that the PA should use the current Jordanian accession procedure to the WTO. More time to do the same would exist in the cases of the recent applications for accession by other Arab states like Saudi Arabia or Oman.
- Moreover, the EU could ask for observer status for Palestine in the WTO's examination procedure of the Euro-Mediterranean Interim Agreement between the EU and the PLO on the grounds that Palestine is directly concerned.
- We also advised that the Palestinians should make good use of the WTO dispute settlement mechanism and that they should encourage those of their trading partners who are WTO members, such as Egypt or the EU, to address obstacles imposed by Israel on their goods imported or exported through Israel. In this regard SB and NA pointed specifically to the current standards (Technical Barriers to Trade/TBT's) used by Israel causing obstacles to trade. Some of these are motivated by protectionist goals.
- Finally, in order to create goodwill among WTO members, Palestine could unilaterally notify its intention gradually to apply WTO law on a *de facto* basis.

#### *Domestic steps towards WTO approach*

2.13 SB and NA pointed to the problem of insufficient knowledge within the PA on WTO issues and the resources required to address it. We therefore discussed possible ways to build capacity within the PA. They included:-

- interministerial coordination and pooling of resources;
  - involvement of, and cooperation with, the private sector and research institutions;
- training of PA staff on WTO issues (sponsored by the Economic Policy Programme (EPP) or WTO members such as the EU);
- the need for detailed studies on key sectors of the Palestinian economy.

Since responsibility for WTO issues is cross departmental, coordination among the Palestinian ministries could be achieved by the creation of interministerial task forces (including representatives from the private sector and research institutions).

#### *Palestinian trade policy: creating a separate customs territory*

2.14 The Minister and his staff elaborated on the PA's trade policy of creating a separate customs territory in the long term. Under the Paris Protocol the current status of Israel and Palestine is that of a semi-customs union. The exemption lists provided in the Protocol represent the starting point for a Palestinian customs book which the PA is asking to expand. The lists should, in the ministry's view, be renegotiated every six months as provided for under the Protocol. The policy of the Ministry of Economy and Trade is to increase the number of goods in the lists and to develop separate units with independent trade regulations. With regard to the latter the recently signed Interim Trade Agreement with the EU and the ongoing negotiations with EFTA and Canada constitute

important steps. The Minister considers that the creation of an independent customs territory is an essential step - politically necessary in the drive to gain independence and self-determination and economically necessary to bring about better conditions to negotiate with the State of Israel.

2.15 At present, trade relations with Israel are most difficult and these are accompanied by Israeli policies which obstruct better and more liberal relations with the PA. One example in point is Israel's requirement that agents importing Palestinian products for the Israeli market must be Israeli nationals. (In response, the PA recently implemented the same provision with regard to agents importing into the Palestinian market.) Moreover, the recently signed trade agreement between Israel and Jordan imposes further obstacles and challenges to the Palestinian economy, since customs tariffs on certain products (important to the Palestinian economy rather than to Israel's) were lowered to levels below the rates already agreed upon between the PA and Jordan. Thus while the lower tariffs of the Israeli-Jordan trade agreement are also applicable when Jordanian products are shipped to the West Bank/Gaza Strip, Palestinian exports of the same product to Jordan, as applicable under Palestinian-Jordan trade agreement, face a higher tariff rate. The PA is currently looking for a solution on a bilateral basis.

2.16 The Ministry has, therefore, opted for the establishment of a separate customs territory in order to break away from the status quo. Life under a separate customs territory could hardly be more difficult than in the present situation. Yet, the Minister clearly expressed the view that an economic separation from the Israeli economy would be impossible.

2.17 In order to clarify from a legal point of view the different concepts of customs territories, we outlined three possible alternatives: (i) two separate, fully independent customs entities, (ii) two separate customs territories under the umbrella of a free trade agreement between the two (free trade area with zero tariffs and autonomous tariffs vis-à-vis third countries) and (iii) a customs union, with the option of a joint customs authority and joint representation at the WTO.

2.18 We recalled that in the scenario preferred by the ministry (two separate customs territories), both customs territories would have their own tariffs and trade regulations. After a possible accession of Palestine to the WTO, tariffs would, at a maximum, be based on MFN commitments which would result in high levels of protection in particular in the field of agriculture. It is therefore vital that Palestine seek - simultaneously with the creation of the separate customs territory - a trade agreement with Israel with a view to both preventing the imposition of new (and to eliminating existing) barriers to trade. The very complex border situation provided another reason for doing so. The Palestinian bargaining chip in this process would be Israel's interest in exporting to the Palestinian market (\$2-2.5 bn; especially agricultural products such as dairy and crop). Whether or not such an agreement would take the form of a free trade agreement (ii above) or a customs union (iii above) will need further planning and will be strongly influenced by the overall climate in the peace process.

2.19 With regard to WTO accession we recalled the fact that Palestine in fact applies the

same, or almost the same, trade regime as Israel. This will facilitate its approach to the WTO as a full member. However, in addition to having its own tariff book, it will also be essential to have responsibility for setting lower tariffs unilaterally and to adopt trade regulations in all fields required to establish a separate customs territory. These requirements, which need further study, should be taken into account in all future negotiations relating to the Paris Protocol and any successor agreement.

2.20 We proposed that an examination of the costs and benefits of the options sketched above would assist the Palestinians develop a clear strategy. Detailed knowledge of the current tariff structure (applied as well as bound under the GATT 1994), especially in the agricultural sector, is needed. In addition, precise knowledge of the volume and composition of Israeli exports to the West Bank/Gaza Strip would help guide policy makers in formulating policy options. Moreover, studies on long-term goals of trade with regional states, especially with Jordan, but also with Syria and Lebanon as well as other Arab countries, would assist in assessing the potential options. It is important to define a policy which serves as a building-block and stepping stone towards a regional trade system compatible with WTO rules. This would also assist in generating widespread support from the international community.

2.21 The Minister and his staff agreed that it is necessary to examine the impact of WTO rules on sensitive sectors (agriculture, footwear, stone and marble, and services) and issues, such as laws on agencies. Following this mission, specific adjustments to the PA's actual trade policy have to be worked out, especially with a view to forthcoming negotiations with Israel.

#### *Elaboration of an Action Plan and a Lobbying Paper*

2.22 Based on these discussions, we developed an Agenda for Action (Annex 2) and a Lobbying Paper (Annex 3). A draft of the Agenda for Action was discussed with the Minister and approved by him. The lobbying paper may be further elaborated.

### **3. Findings**

3.1 The main findings of our discussions are as follows:-

(i) The path for Palestine towards membership of the WTO is now fairly clear. In the first instance, effort has to be geared towards achieving observer status, applying *de facto* WTO rules, adjusting domestic legislation to WTO standards, and achieving jurisdiction at least in all those areas required under WTO rules for a separate customs territory. The approach is set out in the Agenda for Action. Of key importance is detailed planning with regard to contacts to be made for the purpose of ensuring key support from member states of the WTO.

(ii) Resources and knowledge relating to trade matters in the Ministries need to be enhanced. Training could be organised in the context of studies of key sectors of the Palestinian economy by task forces comprising officials, private-sector representatives and researchers. The LSE-based **Economic Policy Programme** could assist in such an

effort by providing experts to participate/support the studies and work undertaken in Palestine by Palestinians.

(iii) In terms of legal studies: (a) It is suggested that a study be undertaken to deepen knowledge about those areas of law which need to be part of Palestine's jurisdiction if it is to qualify as a separate customs territory under WTO rules; (b) since the management of the border with Israel is likely to remain the most difficult problem, it is suggested that options for border control in relation to economic activities should be further studied in the light of alternative political outcomes. These studies would assist in preparing Palestinian positions for negotiations with Israel beyond the Paris Protocol.

#### **4. Concluding remarks**

The bombing in the Mahane-Yehuda-market in West Jerusalem Street took place during our visit to Ramallah. Reactions on all sides focused on the problem of terrorism and security. Scant attention was paid to the economic conditions which breed such acts. This has to change. The Palestinian effort to approach the WTO and to move discussion of trade issues to the international level would be an important step in restoring balance to the debate, which in the public domain at least has so far ignored one of the main causes of the conflict. As elsewhere, economic relations will eventually take centre stage in the Middle East.

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August 22, 1997

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**ANNEXES**

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## **Annex 1**

### **World Trade Organization: Discussion points submitted to Prof. Thomas Cottier and his assistant, Remo Arpagaus, by the Ministry of Economy and Trade July 27-31, 1997**

The Paris Protocol, which governs Palestine's trade relations with Israel, falls short of addressing the World Trade Organisation (WTO). It does not include, at any point, that WTO rules are to be respected or implemented between the parties.

But since Israel has been a WTO member since 1962, its trade policies follow the rules and regulations of the WTO. According to the Paris Protocol and the creation of a semi customs union between the Palestinian territory and Israel, "Palestine" follows to a large extent Israel's import and export policies. Thus, in its relations vis-à-vis third countries Palestine follows, to a large extent, WTO rules.

In trade agreements and arrangements concluded or negotiated between Palestine and third countries (i.e. not Israel), respecting WTO rules by the contracting parties is usually included in different subjects such as subsidies, dumping, competition, fair trading and some other issues.

Therefore, the Palestinian Ministry of Economy and Trade finds it necessary to explore the possibility of approaching the WTO and how to make best use of its rules in Palestine's trade relationship with Israel and other countries as well. Therefore, having commissioned Professor Thomas Cottier to write two papers on Palestine's relations with the WTO, the Ministry through the EU-funded **Economic Policy Programme** has invited Professor Cottier to visit the Ministry for discussions with senior officials to formulate a clearer Palestinian stand on the issue and drawing an Action Plan. The visit is to take place on July 27, 1997.

With the help of Professor Cottier's knowledge and experience, the Ministry expects to formulate a clearer vision on the following:

- current impact of WTO rules on Palestine vis-à-vis Israel and vis-à-vis other countries;
- ways to make best use of WTO rules in our relationship with Israel in the short term and long term;
- ways to make best use of WTO rules in our relationship with other countries in the short term and the long term;
- the positives and negatives of Palestine's membership or observership in the WTO;
- which, at the moment, would be the best course of action: to seek membership or

observership in the WTO?

- conditions to approach WTO for membership or observership. Accordingly, the Ministry intends to formulate with Professor Cottier and his assistant, Mr Remo Arpagaus, an Action Plan to reach what is most advisable taking into consideration needed time, skills, staff.

The following questions will be raised with Professor Cottier and Mr Arpagaus. Some have already been answered in the papers written by Professor Cottier, but nonetheless the issues will be raised and discussed further:-

1. Is there a relationship between Palestine and WTO at present?
2. Are WTO rules applied in Palestine's trade relationship with Israel? Are they applied in Palestine's trade relations with others?
3. What is the nature of the relationship the Palestinians want from WTO: **membership** or **observership**?
4. As a *developing country*: what effect is **membership** likely to have on the following:
  - market access of exports of products
  - market access of imports of products
  - market regulations of imports and exports
  - services
  - trade-related issues
  - trade policy review mechanism
  - plurilateral trade agreements
  - dispute settlement
  - training and other technical cooperation activities?

when looking at Palestine's relationship with the following:

- Israel with which a customs union is already existing?
  - EU with which we already have a free trade association agreement?
  - USA with which we already have a free trade area arrangement?
  - other countries, whether they are/are not WTO members.?
5. As a *developing country*: what is the effect of **observership** on the above, why would we prefer observership to membership?
  6. As a *least developing country*: what is the effect of **membership** on the following:
    - market access of exports of products
    - market access of imports of products
    - market regulations of imports and exports
    - services

- trade related issues
- trade policy review mechanism
- plurilateral trade agreements
- dispute settlement
- training and other technical cooperation activities

when looking at our relationship with the following:

- Israel with which a customs union is already existing?
- EU with which we already have a free trade association agreement?
- USA with which we already have a free trade area arrangement?
- other countries, whether they are/are not WTO members or not.?

7. What are the legal conditions to approach the WTO for membership?

8. What are the legal conditions to approach the WTO for observership?

9. The usual condition for membership and observership is statehood and, if not statehood, an independent customs territory? Is the Palestinian entity an independent customs territory? How to prove that?

10. If Palestine has a case for proving that it is an independent customs territory, what steps need to be taken in Palestine on a national and international level at first? And what steps are needed to approach WTO, whether for membership or observership?

11. What effect is Israel's objection to the EU Association Interim Agreement with Palestine likely to have on the Palestinians' approach at a later date on the WTO? Is there a need for the Palestinians to defend their case in the WTO?

12. After the required steps nationally and required steps to approach WTO for membership or observership are taken, what is the Palestinian Authority risking in case of WTO refusal to Palestinian Authority's request?

13. If the PA's request for membership or observership in the WTO is refused, what other options are available to the Palestinians?

14. What is the nature of joint membership in the WTO? How does it operate? Is joint Palestinian-Israeli membership in the WTO workable? From a technical point of view? Politically?

15. What are the different consequences and effects of i) joint membership with Israel; ii) independent membership for the Palestinian entity? In the interim period? In the long run?

16. If the option of joint Palestinian-Israeli membership is conceivable, then what steps are required?

17. What are the financial burdens associated with each of the possible ways to approach the WTO?

18. What are the prospects for attending WTO meetings and committee meetings without membership or observer status?

19. How can the Palestinians prepare for and benefit from all of the above in final status negotiations with Israel?

20. Finally after answering the above questions, what should the Palestinians aim for and within what time-frame? What would be an appropriate Action Plan to promote this aim within such a time-frame?

## **Annex 2**

### Strictly Confidential

## **The Path to the World Trade Organization WTO An Agenda for Action**

### **Introduction**

1. The law of the World Trade Organization affects trade policy of Palestine in manifold ways, whether or not it is a member, due to its close relationship with the economies of present and future members of the WTO.
2. The application of rules of the WTO will reinforce trade policy of the P.A. in the region. It will offer the P.A. adequate rights and means of dispute settlement under the umbrella of international surveillance and monitoring.
3. The P.A. therefore aspires to achieve full membership in WTO as a medium term goal, i.e. from five to ten years. The peace process should assist in achieving this goal, as this goal will equally influence the peace process. The way to full membership necessarily leads first to a status of observer status and gradual de facto application of WTO rules in Palestine.

### **Medium and Long-term Goals of PA Trade Policy**

1. The medium and long-term goal of P.A. trade policy aspires the creation of a separate customs territory with full autonomy in economic matters, complying and compatible with conditions set forth by WTO law and former state practice in GATT. The autonomy to be achieved will allow for full membership in WTO as a State or an independent customs territory. The status will depend on renegotiations of the Paris Protocol on Economic Relations as part of final peace negotiations with Israel. We recall that for WTO membership and autonomous trade policy, full statehood is not required. However, it is required to have full autonomy over economic matters affecting trade. This includes external relations and relevant domestic legislation.
2. Therefore, it is WTO law which defines the minimum level of autonomy in economic matters which eventually has to be achieved. This particularly includes treaty-making power and domestic jurisdiction, regarding tariff policy (including lowering of tariffs), non-tariff barriers (subsidies, standards, licensing and customs procedures), regulation of commerce and agriculture, environmental protection, services (including labor as relating to providing services) and intellectual property protection (including enforcement by criminal sanctions as well as by civil remedies). It is further required that Palestine has jurisdiction to extend diplomatic immunities and privileges to the WTO and that it constitutionally can fully participate in WTO decision-making. As to the WTO

jurisdiction needs to extend diplomatic privileges and immunities and participation in decision-making. In the future, it may also include further topics, in particular competition law, environmental law as well as labor policies

3. The status of full autonomy in external economic matters and all matters regulated by WTO, as well as full membership of WTO, should be achieved within five years. The peace negotiations and settlement should assist in preparing accession of Palestine to the WTO. Membership will in particular afford MFN treatment by other members of WTO and therefore will provide a basic safety net on regional and world markets.

4. The concept and goal of an autonomous customs territory and the WTO membership will provide the appropriate basis for the conclusion of trade agreements with neighboring countries in the region, in particular with Israel. As a practical matter, market access rights and levels existing within the Paris Protocol should be kept as a minimum. The strong interests of Israel to keep current market access to the Areas (more than 2 bn \$ export value from Israel, more than 2.5 bn including shipments through Israel) provides the most important bargaining chip of the P.A. Short of agreement in particular issues, treatment by both parties will not be worse than MFN treatment once membership in WTO is achieved.

5. The observer status in WTO and the declared goal of membership will reinforce the negotiating position of P.A. in the process of revising the Paris Protocol towards enlarged autonomy. WTO law will need to be taken into account with a view to achieve a solution favorable to the conditions set forth for WTO membership. On all account, P.A. negotiators will have to insist on solutions compatible with WTO rules.

6. Options under WTO law to shape relations with Israel comprise the possibility of a free-trade agreement (keeping separate customs), or the creation of a customs union with different possible internal models of decision-making and representation. Selective privileges will no longer be possible, either in goods or in services. The agreements will need to be comprehensive. In case of a customs union, questions and options as to internal organization and external representation of the custom union will have to be addressed. Answers here are likely to be closely related to the overall peace agreement.

### **Short Term Goals of Trade Policy**

In the light and perspective of medium and long-term goals, the following short-term actions should be envisaged within the next five years as a maximum:

1. Capacity-building in matters of WTO trade regulation within P.A. staff should be made familiar with WTO trade policy by training and by taking these rules into account in daily work. At this stage, there is no need for special WTO department, but full integration into all trade policies.

2. Enhancing awareness among WTO members and the public at large of current trade policy issues and difficulties within the region, in particular in relations with Israel and

Jordan. To this effect, negotiations of accession by Jordan and approval of the EC-P.A. Interim Agreement may be used. Member States should be encouraged to raise issues relating to trade relations with P.A. in WTO committees.

3. Members of WTO, in particular EC and Egypt, should be encouraged to address their trade issues relating to P.A. with Israel within WTO dispute settlement mechanisms (e.g. issues relating to border controls or transit rights).
4. Updating of case studies demonstrating past and current difficulties relating to market access under the Paris Protocol in trade with Israel and Jordan, as well as problems relating to other partners, in particular the EU and the US.
5. Achieving observer status in WTO within 12-18 months.

### **Observer Status in WTO**

The following efforts in cooperation with the Ministry of Planning and Cooperation are necessary to obtain observer status in WTO:

1. Long-term trade policy goals of membership (above) need be explained to trading partners while seeking support for observer status. You cannot achieve observer status without clearly defining your long-term goals and will to achieve membership in WTO.
2. Exploration in informal talks for the achievement of observer status in specialized committees dealing with matters directly affecting trade issues of P.A. (Jordan and Saudi Arabian, Oman, and Sudanese accessions, but foremost in approval procedures of EC-Palestine Interim Association Agreement). This can be used to test the broader ground for P.A. participation and to raise awareness.
3. Exploration in informal talks for the achievement of general observer status in WTO. Consultations with EC Commission and capitals of supportive member states, in particular U.K, France and Sweden and Denmark. Exploration with other countries, in particular Japan, Canada and EFTA (Switzerland and Norway) and islamic members of ASEAN. Convince these countries to raise relevant issues in WTO committees or to provide support.
4. Exploration in informal talks of the issue with the United States, in particular USTR. We note that a rejection of observer status of P.A. may frustrate overall goals to bring Arab states into WTO.
5. Exploration with WTO secretariat in particular for purposes of awareness of P.A. trade problems within Secretariat, generation of general support, and for the requirements for formal application, exploration of potential future qualification as a least developed country, and of technical issues (training programs, fees, etc.). Such talks should take place within 3 months, but not before adequate information and briefing of the EU and the US.

6. Formal application for observer status provided that adequate support and, at least, willingness of the United States not to block a consensus is assured. Opposition by Israel may make a vote (simple majority required) possible.

### **Steps towards Domestic Implementation of WTO Law**

In WTO, observer status is granted with a view to full membership and therefore, full application and implementation of WTO obligations. During observer status, preparation for full membership is sought by way of unilateral de facto application of WTO obligations. In order to build the case of membership, it is necessary to take into account domestically WTO laws and structural requirements as of today:

1. Examination of implications of WTO rights and obligations in key sectors of the P.A. economy as developing or possibly least developing country, in particular agriculture and processed foodstuffs, textiles and garments, footwear, furniture and construction materials (marble). The same holds true for essential activities in the service sector. Sectoral studies will be essential to define needs for structural adjustments. Prepare private sector well ahead of schedules.
2. Organizational structure in Ministeries to assure coordination in matters transcending the jurisdiction of particular ministries (task forces). Experience shows that particular efforts are required to cope with modern needs of policy coordination.
3. Intensive briefing and cooperation with the private sector and research institutions is necessary. Representatives of main sectors and researchers should be included in the interministerial task forces from the beginning.
4. Representation of P.A. at WTO needs to be secured (person dealing with WTO and UNCTAD posted in Geneva) plus ½ additional staff in capital for time being. Capacity-building, training and experience to be expanded.
5. New legislation is to be enacted in a manner consistent with WTO obligations. There should be a systematic examination of proposals from the point of view of future trade policy commitments and planning under WTO.
6. Gradual adaptation of existing legislation in order to render it in conformity with WTO rules (and other international agreements, as the case may be).
7. In existing, new and revised legislation, however, due consideration should be given to the fact that some regulations should be spared for possible concessions in accession negotiations to WTO. This is likely to be relevant in the field of services where activities are being reserved for nationals and should eventually be extended by granting national treatment (e.g. regulations relating to sales agents).

8. Conformity of legislation is both necessary to prepare P.A. and private sector for membership and to demonstrate the willingness and seriousness of the goal of membership vis-à-vis Members of WTO.

9. In addition, provision of adequate means to enforce such legislation, as a measure to reinforce the rule of law and to attract foreign direct investment. This will require additional resources in particular in the field of law enforcement.

### **Negotiations for Accession to WTO**

Since P.A. already is de facto part of a customs territory subject to WTO rules, it is open at this stage whether accession will be effected by negotiations of a protocol of accession containing additional, bilateral concessions, or whether informally a model of sponsorship will take place without substantial negotiations. Preparations, however, need to consider possible concessions which could be offered to interested members of the WTO.

### **Annex 3**

## **Palestine Seeks Observer Status in the World Trade Organization**

### **Non Paper**

With the increasing importance of principles and disciplines of World Trade Law in the region, Palestine is convinced that her trade policies should be based upon these rules with a view to foster its trade in the region and worldwide. As a first step Palestine therefore seeks to achieve observer status in the WTO in order to become fully acquainted with the multilateral trading system and with the view to de facto application of WTO rules. The initiative shall eventually result in the membership of Palestine in WTO as a state or a separate customs territory, depending on the outcome of bilateral negotiations with Israel.

- Trade policy of Palestine is increasingly regulated by international agreements such as the Euro-Mediterranean Interim Association Agreement between the EU and the PLO/PA and the Trade Agreement between the Government of the Hashemite Kingdom of Jordan and the Palestinian National Authority or unilateral acts under international law extending benefits to Palestine. Therefore, Palestine believes that her trade policy should find a sound foundation in the global trading system.
- It is recalled that Israel was a Contracting Party to the GATT since 1962. It is a founding Member of the World Trade Organization. Imports and exports from other WTO members not only to the State of Israel, but also to Palestinian territories are subject to rules and disciplines of the WTO. Moreover, existing agreements binding to Palestine on more than one occasion implicitly or explicitly refer to WTO rules and thereby affect the framework of Palestinian trade policy.
- Palestine is also convinced that future trade talks with her neighbors, in particular that with the State of Israel, should be based and led in the spirit of the World Trade Organization. Palestine is committed to open markets and to the removal of trade barriers which are still paramount in the region and which impair the development of Palestine's economy.
- Palestine is convinced that the principles and disciplines of WTO will assist the peace process to which Palestine is committed. It will also provide the essential building blocks in the process of creating an open regional trading system.

- Observer status will bring about full information on the activities in WTO. It will assist Palestine in building capacities and know how in the field of trade regulation. It will facilitate the process towards de facto application of WTO law in Palestine.
- Observer status in WTO will also support Palestine to seek trade agreements with its neighboring states in compliance with WTO law.
- {Observer status in WTO is the first step towards full autonomy of Palestine in matters related to trade in goods, services and intellectual property.}
- While observer status in WTO will assist all parties concerned to reach agreement on trade matters in conformity with GATT rules, it will also prepare the ground for full membership of Palestine in WTO as a state or as an independent customs territory. Autonomy in matters relating to trade as goods and services, including intellectual property rights, are necessary to shape policies which better respond to the needs of the Palestinian market.
- We recall that Article XII:1 of the Marrakesh Agreement Establishing the World Trade Organization allows for membership as a state or a separate customs territory with full autonomy in external trade relations and jurisdiction over internal economic affairs.
- The status of Palestine will to some extent depend on renegotiations of the Protocol on Economic Relations as part of the final peace negotiations with Israel. Palestine is convinced that the WTO rules will provide an adequate framework for the achievement of an appropriate trade agreement with Israel.
- Palestine seeks to accede to the WTO within five years upon the granting of observer status.

For all these reasons, Palestine respectfully requests the support of members to the WTO in achieving the goal of observer status and eventual membership. Such support is fully in line with widely shared perceptions and goals to promote the rules of WTO as a common basis for trade policy in the region and worldwide.

**Annex 4**

**Mission to the West Bank on WTO issues, July 27-31, 1997**

**Record of meetings**

**Sunday, July 27, 1997**

Arrival Jerusalem

**Monday, July 28, 1997**

09.30 Ministry of Economy and Trade, Ramallah

Saeb Bamyeh, Director General, Trade and International Cooperation, Ministry of Economy and Trade

Nisreen Haj Ahmad, Ministry of Economy and Trade

Musa Bamyeh, Ministry of Agriculture, attends our discussion for one hour

Discussion of mission programme and of the questions submitted by the Ministry of Economy and Trade (*see* Annex 1)

14.00 Q&A between us and Nisreen Haj Ahmad on WTO issues in Ramallah

16.00 Return to the American Colony Hotel. Elaboration of a draft Action Plan to submit to the Minister and debriefing of the day

**Tuesday, July 29, 1997 at the Ministry of Economy and Trade**

09.30 Ministry of Economy and Trade

Saeb Bamyeh and Nisreen Haj Ahmad. Short briefing on the Action Plan paper

10.00 Maher Masri, Minister of Economy and Trade

Briefing on the discussions held on Monday and presentation of the Action Plan.

Discussion on Action Plan

Present: Saeb Bamyeh and Nisreen Haj Ahmad

10.30 Continuation of the 9.30 meeting with Saeb Bamyeh and Nisreen Haj Ahmad

12.30 Final Draft of the Action Plan according to the results of the discussion (together with Nisreen Haj Ahmad)

Elaboration of a Lobbying Paper

15.00 Return to American Colony Hotel. Debriefing.

19.00 Dinner at the Park Hotel in Ramallah

Present: Saeb Bamyeh  
Nisreen Haj Ahmad  
Geoffrey Haley, European Commission Technical Assistance Office

Discussion on lobbying possibilities and channels to use

24.30 Return to American Colony Hotel

**Wednesday, July 30, 1997 at the Ministry of Economy and Trade**

09.30 Briefing on the Lobbying Paper and the informal discussion with Geoffrey Haley

10.00 Meeting with the Minister, Maher Masri.

Presentation of the final draft of the Action Plan and of the draft Lobbying Paper

10.30 Discussion with Saeb Bamyeh and Nisreen Haj Ahmad on follow-up of the mission

11.00 Elaboration of the final draft of the Lobbying Paper (together with Nisreen Haj Ahmad)

18.00 Return to American Colony Hotel

**Thursday, July 31, 1997**

12.00 Leave for Ben Gurion Airport