

Measures Saudi Arabia Should Implement in Order to Prevent the Imposition of Anti-Dumping Duty on its Petrochemical Products

Abdullah M. Mattar¹
Brunel Law School
Brunel University London
England

Abstract

This paper proposes some actions that Saudi Arabia could take to avoid anti-dumping duty continuing to be raised against its petrochemicals products. It is important for Saudi Arabia to reform its relationship with other GCC countries, as being a member of this community will help it to avoid anti-dumping duty being levied against its petrochemicals products abroad. In this paper, nine measures will be discussed that could be taken to benefit Saudi Arabia. These measures will be helpful for the Saudi economic system, especially the petrochemicals sector. They will make the domestic market more competitive, by allowing sale of similar domestic products inside Saudi Arabia. Privatisation is one of these measures suggested for the Saudi petrochemicals sector, as this will open up the Saudi Arabian petrochemicals industry to foreign investments directed toward this sector.

Keywords: anti-dumping, WTO agreement, anti-subsidy, Saudi Arabia, petrochemicals products, GCC countries

1. Introduction

This paper will address the measures that Saudi Arabia should implement to prevent having to pay anti-dumping duty abroad in future. When analysing the recent anti-dumping cases against Saudi Arabian petrochemicals products,¹ it can be seen that some of the legal points mentioned require a solution in order to avoid condemnation. Anti-dumping cases may have the negative effect of reducing the quantity of exported petrochemicals products, as well as reducing the steps toward developing and improving the sector.

In addition, many legal issues within the Saudi Arabian domestic legal system need to be addressed, as they are directly implicated in the anti-dumping cases against its petrochemicals products. It is argued in this research, that in order to resolve the increase in the number of anti-dumping cases abroad levied against Saudi petrochemical products, some internal legal economic policies in Saudi Arabia must be amended. Discovering the reasons and scope of these internal legal matters will enable products to be exported abroad without being subject to anti-dumping cases; this will support a smooth operating mechanism in the export process, which will then run smoothly and be well controlled.

First, it is essential to note that Saudi Arabia is on the Cooperation Council for the Arab States of the Gulf (GCC) countries,² all of which share the same export situations, production circumstances and a considerable volume of oil and gas resources.³

¹ Indian case: 14/5/2009-DGAD, *India v Oman, Saudi Arabia and Singapore* [2009] www.commerce.nic.in, accessed 1 June 2014. Turkish case: 2008/40 and 2010/11, *Turkey v Saudi Arabia, Kuwait and Bulgaria* [2008] Turkish Gazette 27 092 – 27 569. EU case: 2011/c 49/10, *EU v Oman and Saudi Arabia* [2011], Official Journal of European Union c 49/16.

² The GCC is an international organisation, comprising six countries as full members: Saudi Arabia, Kuwait, Bahrain, Qatar, United Arab Emirates and Oman. It has admitted both Iraq and Yemen to partial membership. Discussion about establishing it began in 1968, and Saudi Arabia and Kuwait attempted to overcome the obstacles and difficulties threatening it. The announcement of the establishment of this council was finally made in Riyadh on 4 February 1981. See the official GCC website <<http://www.gcc-sg.org/>> accessed 1 June 2014.

³ The GCC countries are wealthy with oil and Gas, around 477.4 billion barrels of oil and 1479.5 thousand billion cubic feet, which they are around 50% of the total world's reservation of oil and gas. See the official GCC website <<http://www.gcc-sg.org/>>, accessed 1 June 2014.

These countries have an agreement in place in order to deal with anti-dumping cases abroad as a whole; in future all the cases will be dealt with by a special department in the GCC, called “The Secretariat of Anti-dumping”.⁴ This department will be responsible for managing anti-dumping proceedings inside these states, with the aim of protecting petrochemical products relative to imported similar products. The GCC countries must aim to manage anti-dumping cases in a similar way to cases brought in the European Union in order to protect their products inside the EU zone.⁵ However, experience with anti-dumping cases in India has shown that Saudi Arabia can deal with such cases without any cooperation or coordination with Oman, as it was one of the parties in that anti-dumping case.⁶ The GCC countries at present are demanding more consideration and a greater understanding of the need to extend special treatment to them.

This paper will discuss nine measures that Saudi Arabia should implement to avoid anti-dumping duty being imposed on its petrochemicals products abroad. The first measure relates to monitoring prices inside the Saudi markets. The second measure relates to reforming the Saudi domestic subsidy programme domestically. The third focuses on promoting competition between petrochemicals products inside the Saudi market. The fourth measure suggests privatising the government’s extensive shares in the petrochemicals sector. The fifth measure suggests enhancing coordination and cooperation between the related Saudi governmental departments, which handle exports. The sixth measure is to promote legal awareness of global anti-dumping legislation. The seventh measure is to review GCC anti-dumping law and related domestic regulations in Saudi Arabia. The eighth measure is to protect transparency in the Saudi Arabian petrochemicals sector. The final measure discusses the role of the GCC in the anti-dumping cases, in particular how it can positively affect Saudi Arabia and the other GCC countries.

2. Measures Saudi Arabia Should Implement to Avoid Anti-Dumping Duty

This section considers what measures Saudi Arabia should introduce to its domestic economic legal system to prevent the imposition of anti-dumping duty on its petrochemicals products. These measures directly relate to the export process, and could have a positive impact on the importing of Saudi petrochemical products. Pricing, subsidy, competition and the Saudi Government’s share in these industries, legal awareness of the WTO, and reviews of laws related to the export and economic mechanism, will all be considered in this section to discuss methods to resolve the problems associated with the anti-dumping cases levied against Saudi petrochemical products.

However, the Saudi petrochemical industry has found a legal way to avoid the anti-dumping cases brought against them by purchasing all or some shares in industrial producers inside complainant countries.⁷

This might not be considered a final solution for putting an end to anti-dumping cases against Saudi Arabian petrochemicals products. As required by anti-dumping regulations,⁸ domestic similar products must be supported by all other domestic industries producing the same products.⁹

⁴ For more information, see <<http://www.gcc-tsad.org/>> accessed 1 June 2014.

⁵ The European Countries deal with anti-dumping cases for the whole union under the auspices of the European Commission. For more information about the processes undertaken under this commission, see the official website <http://ec.europa.eu/trade/policy/accessing-markets/trade-defence/actions-against-imports-into-the-eu/anti-dumping/index_en.htm> accessed 1 June 2014.

⁶ Indian case: 14/5/2009-DGAD, *India v Oman, Saudi Arabia and Singapore* [2009] www.commerce.nic.in, accessed 1 June 2014.

⁷ On occasion, SABIC (Saudi Basic Industries Corporation) has announced its purchase of shares in other companies abroad or the establishing of new industries in other countries around the world in the media. The most recent announcement was after the Chinese government closed the anti-dumping cases with the Saudi petrochemical companies, which form SABIC. SABIC established an industrial base in China for similar products to those in dispute. Through SABIC’s financial reports, it can be seen that it has industries in the same countries that filed anti-dumping cases against Saudi petrochemical products. For example, it has industries in India, China, the USA, the UK and most EU countries. (See SABIC financial report 2011). SABIC official website <<http://www.sabic.com/>> accessed 1 June 2014.

⁸ Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement), 1868 U.N.T.S., 201.

⁹ Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement), 1868 U.N.T.S., 201, Article 5.4.

In this case, Saudi shares inside these countries might not equate to the required percentage,¹⁰ thus cases might still be brought against Saudi products. Thus, the Saudi government needs to take additional legal steps to avoid anti-dumping cases being brought against its petrochemicals products.

Pricing is the primary issue of debate, in particular, emphasising the reasons for different pricing in relation to Saudi petrochemical products. In addition to pricing, this section will address the issue of subsidies for the Saudi petrochemicals industries as a reason for anti-dumping cases being brought against these products. The issues of subsidy and government ownership and the management of the petrochemicals sector inside Saudi Arabia are interrelated, as will be highlighted in this section. Finally, the aim of the anti-dumping law is to insure fair competition between similar products, to support healthy competition in the international market, which will ultimately be reflected in the development of such products and improvements to their quality. However, in this research it can be seen that competition between petrochemicals products within the Saudi market is not sufficiently compatible with the WTO standard. The Saudi government needs to examine this economic legal issue seriously to insure *genuine* competition between petrochemicals products inside the domestic market, as this will have many benefits in the long term for the Saudi economy and revenue.

2.1 Monitoring Price

In the international market place, dumping is perceived as a form of *price discrimination* and unfair competition,¹¹ as it affects all other similar products in that market. Thus, pricing has a direct effect on anti-dumping cases, and is the first element that is examined when seeking to impose anti-dumping duty on exports and to manage normal pricing.¹² Price is also referenced to clarify the margin for anti-dumping duty on any particular dumped product.

However, the price on a cost-basis has two important basic elements: costs and profits “Cost-based pricing involves setting prices based on the costs of producing, distributing, and selling the product plus a fair rate of return for its effort and risk”.¹³ The concern with Saudi anti-dumping cases, as has been examined in paper 3,¹⁴ is related to cost, not profit, “A company's costs may be an important elements in its pricing strategy”.¹⁵ The cost typically includes the price of raw materials and administration fees. Thus, the cost of raw materials is related to many other elements, whether the raw materials were imported or produced in the domestic marketplace. If they are imported, the price might be affected by currency exchange rate,¹⁶ as well as by the circumstances in the international market and in the countries from which these elements were imported. All these aspects are interrelated; thus, a single element can affect all the others and entire trade treatments. As a result, the internal market price for similar products in the exporting country has a direct effect on anti-dumping cases in the importing country. This is why governmental departments, to avoid cases of dumping, should undertake price monitoring.

Until now, the Saudi government has applied very weak monitoring to the internal market with regard pricing,¹⁷ uncovering clear statistics, will require clearer policies in regard to this point.

¹⁰ The share of SABIC in these countries might not reach 50%, which is necessary to apply for anti-dumping cases against imported similar products.

¹¹ Aradhna Aggarwal, *The Anti-dumping Agreement and Developing Countries, an Introduction*, (1st edition, Oxford University Press 2007) 16.

¹² Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement), 1868 U.N.T.S., 201.

¹³ Philip Kotler & Gary Armstrong, *Principle of Marketing*, (15th edition, Person Education Limited, 2014), 317.

¹⁴ Indian case: 14/5/2009-DGAD, *India v Oman, Saudi Arabia and Singapore* [2009] www.commerce.nic.in, accessed 1 June 2014. Turkish case: 2008/40 and 2010/11, *Turkey v Saudi Arabia, Kuwait and Bulgaria* [2008] Turkish Gazette 27 092 – 27 569. EU case: 2011/c 49/10, *EU v Oman and Saudi Arabia* [2011], Official Journal of European Union c 49/16.

¹⁵ Philip Kotler & Gary Armstrong, *Principle of Marketing*, (15th edition, Person Education Limited, 2014), 317.

¹⁶ A case between the United States and Korea regarding unnecessary conversion from the US Dollar to the Korean Won. See the Panel Report, *United States – Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea*, WT/DS179/R, adopted 1 February 2001.

¹⁷ The Saudi government started monitoring the price to market several years ago, through the Ministry of Commerce, but its role remains very weak. It only focuses on prices related to food and no attention is paid to prices related to the Saudi industries, whether petrochemicals or others. Moreover, four years ago, it established a private organisation, the “Consumer Protection Association”, to help monitor prices, but it is still not at the level it should be. For more information see the

Stronger monitoring can protect the internal market from unfair competition between domestic products and imported products brought against the Saudi market. Meanwhile, it will help to have reliable data regarding the pricing of products inside the Saudi market, especially petrochemical products, to help avoiding anti-dumping cases being brought against Saudi exports.

Prices can be monitored and transparent statistics need to be held, regarding not only the internal market, but also the external markets, which is crucial in this section. Relevant government departments and internal industries in Saudi Arabia are required to employ a strong data set regarding similar product pricing. They also need to gather more information about market circumstances and the costs associated with producing products inside the importing countries. This information will help to establish a suitable price for Saudi products accounting for the exporting process; this will help to reduce and avoid anti-dumping cases brought against these products abroad.

Saudi Arabia needs to implement more rules and guidelines to monitor prices inside the Saudi market. Monitoring has to be done on the basis of the free market and free trade principles without interference from the government and to insure reliable data outside the Saudi market. In recent years, the Saudi government realised the importance of price monitoring, but it is still focusing on food products only;¹⁸ there is as yet no emphasis on other products required to protect Saudi industries. Thus, the Saudi government strongly recommends paying more attention to the element of price, as a priority when defending Saudi products abroad from anti-dumping duty, and thereby avoiding legal action in the future.

How can the monitoring of prices be achieved in Saudi Arabia? This is an important question to answer, especially as it relates to the free market price. This means, the Saudi Arabian government should avoid any interference in pricing and allocate price setting according to market competition between all producers and traders. Initially, this will require the establishment of a legal framework, enforcing regulations for these actions in order to insure a legal basis for collecting information from different areas. This will help the authority to legalise their actions and procedures, and to collect information without raising conflicts with other regulations domestically or with the WTO.

In addition, this demands the establishment of an authority to manage the collection of this information and to establish databases by cooperating and coordinating with different governmental and non-governmental sectors inside Saudi Arabia. The authority has to locate different sources of information, which will then enable market price figures to be correct and to correspond to reality. After the appointed authority has collected all the relevant information, it would then continue monitoring by checking the domestic market regularly to guarantee up to date prices and manage any changes to prices. Internationally, the database on pricing would help to maintain a balance between the prices inside the country and those outside when these products are being exported abroad. This would then facilitate a reduction in the number of anti-dumping cases against Saudi petrochemical products in particular and against other Saudi exported products in general. It would also help to generate an authentically competitive atmosphere inside the Saudi marketplace.¹⁹

Price monitoring, as detailed in this research is not prohibited under the WTO provision.²⁰

It is useful in any country, including the United Kingdom, and is frequently done to clarify economic and political factors and to make important economic policies.²¹

Consumer Protection Association and the Ministry of Commerce official website in Saudi Arabia <www.cpa.org.sa> and <www.mci.gov.sa> accessed 1 June 2014.

¹⁸ The Ministry of Commerce and Industry in Saudi Arabia <www.mci.gov.sa> accessed 1 June 2014.

¹⁹ It will help to establish real competition without such a cartel in the petrochemicals products.

²⁰ Under footnote 4 in article 11 of the Agreement on Safeguards, it mentions the prohibition of the monitoring system on prices. However, monitoring requires genuine statistics about prices inside the market. Yet, developing countries has been excluded by a special measure under article 9 of the same agreement. However, the only purpose to monitoring prices inside Saudi Arabia is to make sure there is no illegal movement between goods inside the market. Thus, this agreement cannot be applied as there is no option to fix the price or reduce the quantities of imported products. See the Agreement on Safeguards, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, Legal Instruments - Results of the Uruguay Round, 33 I.L.M. 1125 (1994).

²¹ The UK department of energy monitors energy and power prices and publishes these statistics in public as described in the article *Industrial price statistics: data sources and methodology* <<https://www.gov.uk/government/publications/industrial-price-statistics-data-sources-and-methodologies>> accessed 1 June 2014.

Insuring government agencies are monitoring prices in the internal market will help to manage inflation and allow the government to adjust taxation and minimum income. This information is important to establish the direction of the internal market in terms of growth, when following international regulations and WTO provisions.²²

2.2 Reforming Saudi Arabian Subsidy Programmes

Subsidy programmes raise legal issues against Saudi petrochemical industries, leading to anti-dumping duty being applied against products. However, the subsidy usually has to be applied either directly or indirectly to domestic industries. Directly by giving financial support to these industries²³, and indirectly by giving facilities or materials to the domestic industries, such as giving free land to establish industries or waiving taxes in order to support the product pricing.²⁴

In the Trade Policy Review by the WTO, Section 71 states, Saudi Arabia has notified the WTO that it does not have any subsidy programmes that are inconsistent with the provisions of the Agreement on Subsidies and Countervailing Measures, and does not maintain or use any prohibited subsidies within the scope of Article 3 of the Agreement...²⁵

This statement includes the Saudi Arabian official announcement to the WTO in regard to subsidy programmes: there are no prohibitions on subsidy programmes, which could affect the Saudi market or Saudi industries. However, the same report continues in Section 72:

To this end, three main entities are aiming to expand Saudi non-oil exports: (i) the Saudi Export Programme (SEP) of the Saudi Fund for Development (SFD); (ii) the Saudi Export Development Centre (SEDC); and (iii) the Saudi Export Development Authority (SEDA).²⁶

These forms of support are characterised as not compatible with anti-subsidy's regulations under the WTO agreement.²⁷ Such subsidy programmes have a direct effect on product pricing, as identified in Article 1 of the Subsidies Agreement.²⁸ Programmes initiated by the Saudi government must, therefore, be reformed to meet WTO provisions.

However, officials²⁹ in the Petroleum and Petrochemicals Research Institute in King Abdul-Aziz City for Science and Technology (KACST)³⁰ announced the Saudi government is planning to input around 26 billion US dollars into the petrochemicals sector in Saudi Arabia³¹ in order to develop and improve related industries.

²² WTO Agreement: Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations 4 (1999), 1867 U.N.T.S. 154, 33 I.L.M. 1144 (1994).

²³ The Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations 231 (1999), 1869 U.N.T.S. 14. Article 1.1.

²⁴ The Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations 231 (1999), 1869 U.N.T.S. 14. Article 1.1.

²⁵ Trade Policy Review, prepared by the Secretariat of the World Trade Organization, Report no. WT/TPR/256, 21 December 2011, 40.

²⁶ Trade Policy Review, prepared by the Secretariat of the World Trade Organization, Report no. WT/TPR/256, 21 December 2011, 40.

²⁷ The Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations 231 (1999), 1869 U.N.T.S. 14.

²⁸ The Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations 231 (1999), 1869 U.N.T.S. 14. Article 1.

²⁹ Dr Abdul Malik Bin Taleb is one of the researchers in the Petroleum and Petrochemicals Research Institute in King Abdul-Aziz City for Science and Technology (KACST).

³⁰ King Abdul-Aziz City for Science and Technology is an independent scientific organisation, which aims to develop the national policy in many areas, to enable greater diversity of national income with increased use of advanced technology. For more information about this, see their website <<http://www.kacst.edu.sa/en/Pages/default.aspx>> accessed 1 June 2014.

³¹ This was a TV interview on a famous official economic Arabian channel (CNBC Arabic TV). See <<http://www.youtube.com/watch?v=lZmk49du3LU>> accessed 1 June 2014.

It can be seen that these funds will ultimately be paid to SABIC, as it owns the majority of these industries or has part shares in recipient companies, as mentioned above.³² This represents a direct subsidising of the sector, which is prohibited under the WTO provisions,³³ by reason of applying anti-dumping and anti-subsidy's measures against these products.

In another report, by the Minister for Petroleum and Gas in Oman, the Minister warned all GCC countries against subsidising programmes, as this can have a direct effect on associated prices, including fuel and electricity prices;³⁴ thereby reducing the power and wealth in these GCC countries, including Saudi Arabia. This statement show that Saudi Arabia's approach to supporting the petrochemicals industries differs from approaches elsewhere, and this affects the price of petrochemicals when exported to other countries.

It is recommended that support be given equally to Saudi and non-Saudi petrochemicals industries inside Saudi Arabia, to produce more wealth and develop products, regardless of whether the capital for these industries is obtained from local or foreign investors. However, it can be seen that Saudi Arabia has initiated a subsidising programme with regard to fuel, electricity, duty-free goods and finally long-term loans without interest. Moreover, the form of subsidising programmes can directly affect the prices of exported petrochemicals products. The Saudi government must offer access to these types of subsidising programmes to those who need them directly, rather than using them to reduce the price of products domestically, which then effects export prices. For example, it is more acceptable to directly assist people on a low income, in terms of fuel provision. The WTO Trade Policy Review mentioned earlier refers to "...gradually reforming domestic energy pricing to create a more energy-efficient economy"³⁵, which can be understood as meaning that Saudi Arabia must make some changes in its energy pricing by reforming its subsidising programme. In this way, it would ensure that subsidy programmes would not have an effect on market price, and would then be deemed acceptable under the WTO provisions.

However, other options can be considered as akin to subsidies. On the one hand, the management of the petrochemical sector in Saudi Arabia is in reality run by the government, because the Saudi government owns 70% of this sector.³⁶ On the other, there are no foreign investors in this sector in Saudi Arabia, as will be discussed later in this paper. This company (SABIC) receives assistance from the government in order to successfully export its products abroad.

Another important issue concerns the raw materials produced by the petrochemical's sector. The problem with this sector is that the Saudi Arabian government owns the majority of available shares. This has an effect on the strategies employed, and has a direct effect on competition in this product area. Moreover, the raw materials for SABIC products can be obtained at very low cost, [was] based on costs and export price. However, in these countries, which [provide] the basic raw materials used in the production of MEG, "Ethane" is only produced by state-owned companies and the price of the supply/demand conditions are identified and announced by the authorities.³⁷ It is well known that Saudi Arabia has many sources of oil, gas and carbohydrate, which are crucial to petrochemicals production.³⁸ As a result, the Saudi government, through Saudi Aramco, which is owned completely by the Saudi government³⁹, supplies SABIC, and the other petrochemicals companies owned by SABIC with raw materials at a very cheap price; there is no reason to impose resorting global pricing.⁴⁰

³² Saudi Arabian government owns 70% of the total capital of SABIC, See the website <www.sabic.com> accessed 1 June 2014.

³³ The Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations 231 (1999), 1869 U.N.T.S. 14.

³⁴ See report by Reuters Arabic news website <<http://ara.reuters.com/article/businessNews/idARACAE9B2FFP20131110>> accessed 1 June 2014.

³⁵ Trade Policy Review, prepared by the Secretariat of the World Trade Organization, Report no. WT/TPR/256, 21 December 2011, vii .

³⁶ See the SABIC official website <<http://www.sabic.com>> accessed 1 June 2014.

³⁷ The Turkish Anti-dumping case against Saudi Arabia: 2008/40 and 2010/11, Turkey v Saudi Arabia, Kuwait and Bulgaria [2008] Turkish Gazette 27 092 – 27 569, 4.

³⁸ The Saudi Ministry of Petroleum and Minerals. See the website, <http://www.mopm.gov.sa/> , accessed 1 June 2014.

³⁹ Saudi Aramco website <<http://www.saudiaramco.com/>> accessed 1 June 2014.

⁴⁰ As mentioned in the Turkish Anti-dumping case against Saudi Arabia: 2008/40 and 2010/11, Turkey v Saudi Arabia, Kuwait and Bulgaria [2008] Turkish Gazette 27 092 – 27 569, 4.

This is why the price of Saudi petrochemical products is usually lower than that of products produced elsewhere in the world; explaining the root cause of the anti-dumping cases brought against them.

To resolve this issue, the government could think about applying taxes on petrochemicals product when they are exported abroad, in order to continue supporting programmes that require petrochemicals prices to conform to the price principle, as in China. The Chinese government formerly applied a tax on Urea products,⁴¹ which raised pricing to a level equivalent to the international market. However, this is not applicable in the case of Saudi Arabia for a number of reasons. First, the Saudi government has undertaken not to apply any direct taxes, as mentioned in the WTO report,⁴² although this strategy could be changed. Second, an effect on pricing will remain because of the supportive programmes mentioned previously; these would therefore have to be removed in every case.

In this regard, the government should supply the Saudi petrochemical industries with raw materials on a global scale, as this will help to open up the Saudi market to foreign investments, thereby enabling them to establish enterprises in this sector inside Saudi Arabia. This proposal will be developed in the following section of this thesis. The Saudi government could rationalise its subsidies programme so funds benefit only those in need of them, without any negative impact on the Saudi market or industries. This should then avoid the negative impact faced when anti-dumping cases are brought against them.

2.3 Promote Competition within the Saudi Arabian Petrochemicals Sector

Saudi Arabia has established a good environment for foreign investment,⁴³ and encourages investments through regulations that govern them. This can be seen after the establishment of the Saudi Arabian General Investment Authority (SAGIA),⁴⁴ in order to reveal as many foreign investments as possible inside Saudi Arabia. The report by the WTO shows how much has changed in regard to this point; “Saudi Arabia has become the eighth biggest recipient of foreign direct investment (FDI) in the world. Its annual inflow of FDI jumped from an annual average of US\$1.534 million during 1995-2005 to about US\$25.000 million over 2005-09”.⁴⁵ Abundant regulations facilitate investment, as evidenced by these figures; however, the authorities have not devoted adequate attention toward local investors (Saudis and GCC citizens).

Moreover, the trade and investment authorities in Saudi Arabia have supported competition inside Saudi Arabia and are trying, as far as possible, to create an effective competitive atmosphere between products, whether local or foreign. However, these efforts do not establish foreign investment in the petrochemical industries in particular or in the industrial sector in general, as the majority of foreign investments target trade and other services.⁴⁶

⁴¹ See the Website of State Administration of Taxation in China <<http://www.chinatax.gov.cn/>> accessed 1 June 2014.

⁴² Trade Policy Review, prepared by the Secretariat of the World Trade Organization, Report no. WT/TPR/256, 21 December 2011

⁴³ Saudi Arabia has issued Competition Law by a Royal Decree No. M/25 date 22 June 2004, in order to improve the competitive atmosphere inside the Saudi market. See the Competition Law on the Bureau of Experts at the Council of Ministries <<http://boe.gov.sa/ViewSystemDetails.aspx?lang=en&SystemID=60&VersionID=73>> accessed 1 June 2014.

⁴⁴ A Royal Decree No. M/1 date 10 April 2000 has issued the Foreign Investment Law and established the General Investment Authority by the Primer Ministries decision No. 2 date 20 April 2000 in order to encourage foreign investors to establish more enterprises in Saudi Arabia. Since then, many foreigners have invested in Saudi Arabia, but their investments have missed the point, which is to encourage investments in order to create more jobs for people. The investors have not realised that their investments should be in the petrochemical industries sector, as most of them have focused on trade investment only. See SAGIA official website, <https://www.sagia.gov.sa/> accessed 1 June 2014.

⁴⁵ Trade Policy Review, prepared by the Secretariat of the World Trade Organization, Report no. WT/TPR/256, 21 December 2011, p.8.

⁴⁶ As an example, in 2006, Saudi Arabia has registered 328 new foreigners' investment in the industry sector. In addition, it has registered 1094 new forgivers' investment in the services sector. However, it is not clear in the industrial sector, what type of industries and also it can be seen the huge different in the number between these two types. See the website of Jeddah Economic Getaway http://jeg.org.sa/index.php?sec_code=eco_cat§orId=138 accessed 1 June 2014.

The Saudi government has afforded its (70% government owned) domestic petrochemical industries, special treatment in all areas.⁴⁷ This special treatment of this sector threatens investment by foreign or local investors, as in reality they are unlikely to receive the same attention from the government.

The Saudi government should also encourage local and foreign investors to establish more industries in general and in the petrochemical sector in particular; it must also treat them as equal to the Saudi industries, such as SABIC. This equivalent treatment would then help to increase the quantity of exports for petrochemical products and thereby generate more jobs inside Saudi Arabia, and thereby an increase in national revenues. Moreover, this would facilitate genuine competition among all industrial parties in Saudi Arabia. Without this, equivalent and other legal processes, investment in this sector would not be a success.

As an example, in regard to equivalence between investors, Saudi Airlines, which is 100% owned by the Saudi government,⁴⁸ has also been afforded special treatment by the government, in particular, inside Saudi Airports and in terms of fuelling and other related services.⁴⁹ However, when the Saudi government has encouraged competing airlines to enter the Saudi market, the new companies are unable to compete with Saudi Airlines, as they are subject to different treatment. Consequently, they could not continue to perform inside the Saudi market and so have gone into liquidation.⁵⁰

It can be clearly seen that the Saudi government prioritises SABIC. Thus, Article 6 of the Implementation of the Saudi Competition Law states:

1-Any “entity” of a dominant position in the market is prohibited from exploiting such a position to violate, limit or prevent competition, including the following: B. committing any act that leads to hindering the entry of another “entity” into the “market”, forcing it out or exposing it to losses, including selling at a loss. C. Imposing unrealistic price for a “commodity” through the dominant entity’s hindering, limiting or refusing the sale or purchase of a “commodity” in any other manner.⁵¹

In this Article, it can clearly be seen that SABIC is breaching Saudi competition law; it is in a position to block petrochemical enterprises from entering the Saudi market, which renders it liable to the penalties mentioned in Saudi Competition Law in regard to its implementation. However, it operates a legalised monopoly inside the market, as shown in this article and by government behaviour regarding SABIC, which is also considered in reference to WTO provisions. Article 7 of the Implementation of the Saudi Competition Law states “.....A. Any “entity” intending to realize “Economic Concentration” in order to dominate 40% (forty percent) of a commodity’s total supply in the market shall submit a written application.....”.⁵²

This Article also attempts to legalise SABIC behaviour while opening the market to foreign petrochemical industries to compete inside the Saudi market, against SABIC or others.

As Saudi Arabia is a wealthy country with substantial oil and gas resources and the appropriate legal atmosphere to attract foreign investment into the petrochemical sector, it will be able to attract huge international investment inside Saudi Arabia, rather than establishing ownership or control over the sector by the government.

⁴⁷ Even with the Saudi Competition Law, such Saudi companies might be given special treatment so that this law would be regarded as not being applicable to them. Article 3 of this law states that “*This Law will apply to all institutions which work in the Saudi markets except public institutions and companies wholly-owned by the government*”. So this Article could be used in order to give SABIC special treatment in Saudi Arabia, which in fact it already has.

⁴⁸ Trade Policy Review, prepared by the Secretariat of the World Trade Organization, Report no. WT/TPR/256, 21 December 2011, 46.

⁴⁹ Article by Abdullah S. Alshamasi in Aleqtsadia Newspaper <http://www.aleqt.com/2011/07/09/article_557260.html> accessed 1 June 2014.

⁵⁰ See the article <<http://www.al-madina.com/node/370828>> accessed 1 June 2014.

⁵¹ The Implementation of the Saudi Competition Law issued by a Royal Decree No. M/1 date 10 April 2000, article 6 paragraph b and c. See this law in the Bureau of Experts at the Council of Ministries <<http://boe.gov.sa/ViewSystemDetails.aspx?lang=en&SystemID=60&VersionID=73>> accessed 1 June 2014.

⁵² The Implementation of the Saudi Competition Law issued by a Royal Decree No. M/1 date 10 April 2000, article 7. See this law in the Bureau of Experts at the Council of Ministries <<http://boe.gov.sa/ViewSystemDetails.aspx?lang=en&SystemID=60&VersionID=73>> accessed 1 June 2014.

It would also enable greater liquidity to be pumped into Saudi Arabia by foreign investments, and would also include long-term investments. Moreover, it would enable more job creation for Saudi citizens, which in turn would generate more income to the government, who could apply a direct tax on this sector. The most important reason for increasing the presence of competitors is to attract more advanced technology into these industries, than is possible with the government ownership model. With regard to this point, it is stated in a report issued by SAMBA, that foreign investment in this sector would facilitate the use of new technology:

The integration model will also open the door to further foreign direct investment into Saudi Arabia from established global energy and petrochemicals firms. These large joint ventures should allow considerable technology transfer, though their sheer size will also necessitate more diversified and imaginative financing solutions.⁵³

This statement confirms that the new technology can be transferred by means of foreign investment.

Furthermore, competition law requires that foreign and local investment should have the same legal facilities granted to them as the Saudi petrochemical industries, unless they start producing and exporting products. However, if there is any support for Saudi industries wishing to export products, this support should be halted immediately and the industries should seek to ensure implementation of the provisions of the WTO agreement on this point.⁵⁴

2.4 Privatise the Government's Shares in the Petrochemicals Sector

The National Champion idea was introduced after the Second World War, when some EU countries began to support their industries in order to compete with other companies, whether inside or outside their own states. There are many ways for this idea to be applied in reality: "Governments may create national champions directly, by acquiring several private firms and merging them into a single government-owned company..."⁵⁵ This happened to the British government in 1967 "... the UK government did [this] for example in 1967 when it acquired the largest fourteen domestic steel companies so as to create the British Steel Corporation..."⁵⁶ The other reason for applying this idea is to assist state-owned companies to join with the private sector "...by having a government-owned company merge with a private firm..."⁵⁷ as is the case in France, where the GDF and Suez companies merged. Another approach is to give direct support and subsidies to a preferred company in order to improve its ability to succeed in the market.

At present the Saudi Arabian government prioritises oil products, and these are considered as a National Champions by the government. However, the WTO agreement, as will be seen in this research, protected oil products and continued this protection as agreed in the GATT. However, all Saudi government activity in regard to the petrochemicals sector, and particularly SABIC, shows the sector is considered in this light. The Saudi government has relied on its petrochemical products being the best in the world, and thus far this appears to be the case; despite the emergence of legal issues.

The Saudi government owns 70% of the shares in SABIC,⁵⁸ and SABIC in turn owns or has a high percentage ownership in the petrochemicals industries in Saudi Arabia. An early report by the King Abdul-Aziz City for Science and Technology states,

... the great improvement of the petrochemical industry in the Saudi Arabia was by The Saudi Basic Industries Corporation (SABIC), which currently produces 95% of the petrochemicals products.

⁵³ Saudi American Bank in Saudi Arabia (SAMBA), Report Series August 2009 <<http://www.samba.com/>> accessed 1 June 2014.

⁵⁴ The Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations 231 (1999), 1869 U.N.T.S. 14.

⁵⁵ The Global Forum Competition OECD, *Policy Roundtables: Competition Policy, Industrial Policy and National Champions* (2009).

⁵⁶ The Global Forum Competition OECD, *Policy Roundtables: Competition Policy, Industrial Policy and National Champions* (2009).

⁵⁷ The Global Forum Competition OECD, *Policy Roundtables: Competition Policy, Industrial Policy and National Champions* (2009).

⁵⁸ See the website <www.sabic.com> accessed 1 June 2014.

Saudi Arabia is making an effort actively to reduce this ratio to 75% by 2010 in order to promote private investment in order to speed up the manufacturing of petrochemicals...⁵⁹

It is possible to explain why these industries are owned by the Saudi government as follows:

- 1- It was difficult, toward late 1976, for the petrochemical industries to be established as private companies, whether Saudi or foreign investments, because Saudi Arabia had recently been founded and lacked the necessary infrastructure. The cost of establishing these industries was high and was considered a long term investment.
- 2- The majority of Saudi investors were focusing on other industrial sectors, which were essential to the Saudi market, such as foodstuffs and construction materials like cement and other materials; the majority of these were short term investments. Investors were also focusing on service companies like banking and insurance, and they took a special interest in real estate. These industries also have very high annual profits.
- 3- At that time, it was difficult to find investors with large sums of capital who would be prepared to attempt to establish petrochemical industries at a similar level because of the running costs involved and the high risk proceeding from this type of long-term investment.
- 4- At that time, there was no legal environment to help and encourage the investors to invest in petrochemicals by offering incentives and guarantees on investments.

However, SABIC now holds majority shares in this sector in Saudi Arabia and most of these reasons are now not relevant. It can be seen that most investors, local or foreign, are looking to invest in this sector under equal conditions and a clear legal framework. The government shareholdings inhibit competition between petrochemicals products inside Saudi Arabia. However, in order to develop this sector, private investment must be supported in this type of investment. Thus, although there is a share between SABIC and the private sector through individuals, this ownership has not yet provided true competition in accordance with the WTO standard.

The Trade Policy Review by the World Trade Organisation has clarified some points about SABIC as a major producer of petrochemicals, The government appoints the Chairman of the board, the CEO and three other Board members. Two other Board members represent the private sector and are nominated and selected by shareholders at a general meeting. The Government is represented on the Board, but does not play any role in setting company policy or in making operational decisions.⁶⁰

The question that arises here regarding the previous statement is how can the Saudi government appoint four out of six of the Board of Directors of SABIC and avoid playing an active role. At present SABIC reflects government strategy, and the votes and Board of Directors are largely intending to benefit and advantage the government, since 4 out of 6 are appointed by the government and the CEO is also from the government. Furthermore, the CEO is also head of the Director of the Royal Commission for Jubail and Yanbu (RCJY), which is the government department responsible for industrial government strategy in two important industrial cities, where the petrochemicals industries dominate.⁶¹ Therefore, it can be seen that SABIC management is by the RCJY, not a separate company; this supports the idea of managing SABIC through the government.

It is vitally important that the Saudi government continue to relinquish its shares in these companies and privatise them, to create a truly competitive atmosphere, especially since the Council of Ministry has approved a privatisation programme for SABIC.⁶² The first step should be to prevent any privileges being afforded to this sector, to support competition on equal terms. The second step is to sell all, or most of, the Saudi government shares in these companies on the stock market and to allow them to function without interference from the Saudi government. This change would then also be reflected on the stock market, because the value of Saudi government shares in the sector at present would have a direct effect and influence.

⁵⁹ Report issued by King Abdul-Aziz City for Science and Technology, which can be found at <<http://www.kacst.edu.sa/en/Pages/default.aspx>> accessed 1 June 2014.

⁶⁰ Trade Policy Review, prepared by the Secretariat of the World Trade Organization, Report no. WT/TPR/256, 21 December 2011, page 70, section 93.

⁶¹ See The Royal Commission for Jubail and Yanbu (RCJY) website <<http://www.rcjy.gov.sa/>> accessed 1 June 2014.

⁶² Trade Policy Review, prepared by the Secretariat of the World Trade Organization, Report no. WT/TPR/256, 21 December 2011, 46-47.

Thus, the market would then be wholly independent from Saudi government influence. The next step after this could be to deal equally with all petrochemicals companies, whether owned by SABIC or by new investors, foreign or Saudi, with regard to establishing future privileges and the legal process. This could be achieved in two steps: first, by selling the raw materials to the investors at a global price for all industries; and second, by taking the same amount of taxes, fees and any other payments due to the government from these companies.⁶³ These two steps would bring more benefit to the government than if they continued to run these industries, and, as a result, the issues related to anti-dumping would then gradually decrease.

The intention behind privatisation is to reduce the attention directed by the government toward enterprises “...that government has grown to unmanageable proportions was premised on the need to reduce the constrictions to economic growth and to provide opportunities for the private sector within state”.⁶⁴ Privatisation offers many advantages within national economic systems. It can help to introduce investment by offering a high rate for domestic funds “...keeping interest rates for domestic funds higher than they would have been had the government...”.⁶⁵ It will also improve the efficiency for those sectors that have been privatised.⁶⁶ In addition, privatisation will create a competitive environment, impacting positively on products in the marketplace.⁶⁷ All these advantages will be beneficial in improving product quality, and achieving a fair market price, which will be to the advantage of consumers and national revenue.

Were the government to privatise the petrochemicals sector in Saudi Arabia, this would have many advantages on the petrochemicals sector. First, it would be one reason to reduce anti-dumping cases against the Saudi Arabian petrochemicals products abroad. Second, it would help to increase opportunities to build more industries. At present, most investors do not want to invest because the government controls the majority of the local petrochemical industries. Therefore, it has become difficult for anyone else to invest in the sector, as unequal competition makes the situation impossible. Therefore, although all the regulations related to the competition are at the standard of the WTO provisions,⁶⁸ the fact is that this sector is still owned by the government, which is making competition difficult. Third, this will improve petrochemicals production, which will help to create more jobs for Saudi people. Fourth, as more industries will be built by a foreign investors, this will help to introduce new technology from outside Saudi Arabia. There will then be no costs associated with this to the Saudi government as the technology moves with new investors.

2.5 Developing Coordination and Cooperation among Saudi Governmental Departments

With regard to the trade and export processes in Saudi Arabia, many government departments share the same responsibilities and duties.

These departments require a very high level of cooperation and coordination to export products without being affected by the legal issues associated with dumping. This does not mean there is a lack of coordination among them at present. Nevertheless, such coordination has not yet achieved the level required in order to counter fully legal issues, whether in Saudi Arabia or abroad. If there is good coordination and cooperation, cases like the anti-dumping case against Saudi petrochemicals products would continue to emerge.⁶⁹

⁶³ As when the Saudi Arabian government privatises the telecommunications companies.

⁶⁴ Claude V. Chang, *Privatisation and Development, Theory, policy and Evidence*, (1st Edition, Ashgate Publishing Limited, 2006) 79.

⁶⁵ Claude V. Chang, *Privatisation and Development, Theory, policy and Evidence*, (1st Edition, Ashgate Publishing Limited, 2006) 80.

⁶⁶ Claude V. Chang, *Privatisation and Development, Theory, policy and Evidence*, (1st Edition, Ashgate Publishing Limited, 2006) 82.

⁶⁷ Claude V. Chang, *Privatisation and Development, Theory, policy and Evidence*, (1st Edition, Ashgate Publishing Limited, 2006) 85.

⁶⁸ WTO Agreement: Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations 4 (1999), 1867 U.N.T.S. 154, 33 I.L.M. 1144 (1994).

⁶⁹ There were 34 anti-dumping cases against the Saudi products, accounting for 76.47% of the total anti-dumping initiations against Saudi petrochemicals products. See The Global Anti-dumping Database under the World Bank <<http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/0,,contentMDK:22574930~pagePK:64214825~piPK:64214943~theSitePK:469382.00.html>> accessed 1 June 2014.

Were the Ministry of Industry and Commerce effectively coordinated with Saudi Customs, there would be better avoidance of conflict or overlap effecting Trade and Industry.⁷⁰ This will be discussed in greater depth toward the end of this section.

Coordination and cooperation should be put in place from the outset of the establishment of industries and trade, and should be encouraged. This would help to minimise cases against the Saudi petrochemical products in relation to anti-dumping. Then government departments would filter out legal issues pursued against products, whether in Saudi Arabia or abroad.

At present there are many conflicts between different government departments in Saudi Arabia, and such conflicts are anticipated to be likely to affect trade and industry and production eventually. There is a conflict of responsibilities between the Ministry of Commerce and Industry and other departments such as the Saudi General Investment Authority, especially abroad. Both of these have their own offices outside Saudi Arabia, which attract foreign investment to Saudi Arabia. In addition, there is a conflict between, on the one side, the Saudi Industrial Property Authority and the Royal Commission for Jubail and Yanbu, and on the other side, new economic cities in Saudi Arabia, which are governed by the Saudi Investment Authority. The conflict between these parties is very clear and there is a need to reorganise these in order to achieve a high standard of coordination and cooperation without causing conflict between them. Furthermore, this will help to achieve the aim of promoting diversity in terms of economic revenue streams and to improve the trade and industry sectors.

2.6 Promoting Legal Awareness of the Anti-Dumping Legal System

Legal awareness has a direct impact on the kind of trade treatment imposed, as it targets those people directly involved in exporting products abroad. It describes anti-dumping and anti-subsidy legislation and related processes, as well as other relevant regulations, established to help those who are involved attain a clear understanding of all legal processes to avoid any breach of regulations. However, a country like Saudi Arabia has limited experience with such cases or legal dealings under the WTO provisions “Many developing-country Members do not have the specialised ‘in-house’ legal expertise to participate in the most effective manner in WTO dispute settlement”.⁷¹ Moreover, Saudi Arabia as a developing country, requires additional legal skills in order address cases under the WTO agreement

...particularly developing countries. The system’s legalization or the increasing precision of rules and their bindingness has brought about the need for greater legal skills, expertise and sophistication in institutional engagement.⁷²

Nonetheless, this description must include all other processes in order for a claim to be filed in relation to regulations, whether inside Saudi Arabia or abroad, and concerning exports in order to protect Saudi products. This should include all legal techniques in reference to anti-dumping and anti-subsidy cases, as these may lead to issues being face raised abroad.

For example, Brazil has become a well known member of the WTO agreement engaging in many steps, which have all been performed by the Saudi government as well; “Brazil's aspirations for successful WTO participation led to the mobilisation of interest in WTO expertise, new institutes, courses and research groups, private sector engagement with the WTO and civil society engagement”.⁷³

All government employees and lawyers involved in the export and trade procedures inside Saudi Arabia are targeted by this description, so that they will be ready to address any legal issues. They will be able to take preventative action before the export process starts, in order to avoid potential legal action being brought against Saudi products abroad, especially targeting petrochemicals.

⁷⁰ There are many overlaps between the Saudi government sectors; for example, between the General Investment Authority and the Ministry of Commerce and Industry. The trade mechanism needs extensive reorganisation in Saudi Arabia in order to reach the aims of the WTO as well as to benefit the Saudi market.

⁷¹ Peter van den Bossche & Werner Zdouc, *The Law And Policy of the World Trade Organization* (3rd edition, Cambridge University Press, 2013), 300.

⁷² Mihaela Papa, ‘Emerging Power in International Dispute Settlement: From Legal Capacity Building to A Level Playing Field?’ 2012, *Journal of International Disputes Settlement*, 83, 85. (Footnote Omitted).

⁷³ Mihaela Papa, ‘Emerging Power in International Dispute Settlement: From Legal Capacity Building to A Level Playing Field?’ 2012, *Journal of International Disputes Settlement*, 83, 93.

For example, if customs in Saudi Arabia have sufficient legal knowledge and are in receipt of advice from their legal department, they will be able to evaluate better whether exported products are in danger of facing anti-dumping duty. If so, then the legal department could make the exporters and implicated departments aware of this, in order to minimise the probability of legal action. The customs department in Saudi Arabia should be regarded as the final line of defence for Saudi exported products. Certainly, government departments require a highly efficient and up-to-date database detailing the trade environment of importing countries; this means they also require good cooperation and coordination with other government departments, as mentioned above, to collate these databases. They might also use a questionnaire to obtain a clear view of the exported products, in order to find a way to protect them from anti-dumping and anti-subsidy legal processes being brought against them in importing countries.

It is necessary to train Saudi lawyers who are capable of handling these cases at any stage. This can be achieved through legal training and participation in conferences highlighting the best methods for dealing with anti-dumping and anti-subsidy cases. Also, Saudi lawyers should build strong relationships with well-known international law firms who specialise in anti-dumping cases, so that they can exchange experiences and have access to well qualified local lawyers who can handle cases both within Saudi Arabia or abroad. An example of this approach applies to Brazil, which has pursued it thus:

Parallel to the use of foreign law firms, the government helped develop the domestic legal sector (e.g. through association of law firms Law Firm Study Centre/CESA's technical group on trade) and 53 young lawyers from 38 Brazilian law firms 2003-07 went to Brazil's Mission in Geneva for training.⁷⁴

It is true that many training programmes and conferences have been provided by the private sector, but there are still too few establishing in depth understanding of the legal requirements for all legal issues in order to deal with cases professionally inside or outside Saudi Arabia. The Saudi government needs to take a more emphatic approach to this issue as it has a direct effect on Saudi industries as well as on the entire Saudi domestic economy.

Moreover, Saudi Arabia must consider a potential role as a member in the Advisory Centre on WTO Law (ACWL)⁷⁵, which is an intergovernmental centre with a long history of handling WTO dispute settlements, "Since its establishment, the ACWL has become a major player in WTO dispute settlement..."⁷⁶, and which provides help free of charge to its members. Were Saudi Arabia to join the ACWL and support it financially it would have access to a broader understanding of dispute settlement practices under WTO provisions. The centre will also differ in taking advice from law firms, as it has a vast experience of dealing with WTO dispute settlement systems on the one hand, and aims to support its members on the other. In contrast, the aim of law firms is typically to make more money from clients; thereby limiting clients' understanding of how to use the WTO dispute settlement mechanism.

Therefore, it would be beneficial for Saudi Arabia to join this centre to improve its ability to handle WTO provisions in relation to dispute settlement. India exemplifies a country that has benefitted from such involvement, noting:

As a result, India first became one of the founders of the ACWL in 2001 and then one of its most frequent users. Even as India developed domestic in-house capacity, it would still occasionally seek legal opinion from the ACWL and also from outside law firms before initiation a WTO disputes.⁷⁷

⁷⁴ Mihaela Papa, 'Emerging Power in International Dispute Settlement: From Legal Capacity Building to A Level Playing Field?' 2012, *Journal of International Disputes Settlement*, 83, 94. (Footnote Omitted).

⁷⁵ ACWL is a non-profit organisation based in Geneva. It was established in 2001 and is an advisory centre for any legal issues relating to WTO provisions. It aims to help members of the WTO who have the ability to challenge legal matters under this agreement. This centre is focused on those WTO Members in developing countries, as they do not have much experience of such disputes and legal matters and may not have the financial ability to obtain legal consultations. For more information about this centre, see their website <http://www.acwl.ch/e/about/about_us.html> accessed 1 June 2014.

⁷⁶ Peter van den Bossche & Werner Zdouc, *The Law And Policy of the World Trade Organization* (3rd edition, Cambridge University Press, 2013), 301.

⁷⁷ Mihaela Papa, 'Emerging Power in International Dispute Settlement: From Legal Capacity Building to A Level Playing Field?' 2012, *Journal of International Disputes Settlement*, 83, 95. (Footnote Omitted).

It is important for Saudi Arabia to participated in dispute settlements as a third party, as this will further understanding of the scope of the WTO agreement; i.e. “Being a third party allowed them to monitor the proceedings and express their views on the interpretation of WTO rules”.⁷⁸ It will also help Saudi Arabia acquire a larger knowledge base regarding the anti-dumping and anti-subsidy agreement.⁷⁹ It will keep Saudi Arabia up to date with new techniques to manage anti-dumping and anti-subsidy cases, which will be beneficial when seeking to defend Saudi petrochemicals products against such cases applied against them.

2.7 Reviewing the GCC Anti-Dumping law and Related Domestic Regulations

Saudi Arabia is tied to the GCC in regard to anti-dumping and anti-subsidy legislation and processes.⁸⁰ The anti-dumping committee of the GCC usually undertakes the entire process. However, anti-dumping legislation includes a defect, formulated in some Articles of this legislation. For example, in Article 2 of the Union Legislation for Anti-dumping and Countervailing Measures for GCC countries, which concerns definitions, the legislator has defined dumping as “exporting to any of the GCC members a product with an export price lower than the normal price in the normal trade”.⁸¹ In this definition, there is no need to include the term “normal trade”, as the normal price under the WTO does not distinguish between different trade circumstances. Thus, there is no concept of “normal trade” under the WTO. However, this definition does not tie this product to similar products from the exporting country. In my view, the definition of dumping should therefore be: Exporting to any of the GCC members a product similar to GCC products with an export price lower than the normal price.

Moreover, in the GCC anti-dumping legislation, dumping, subsidy and countervailing measures are combined and identified as either temporary or final measures.⁸² The anti-dumping and anti-subsidy regulations are expressed in a number of different articles and implementations under the WTO agreement,⁸³ and should be in separate pieces of legislation under the GCC also. However, GCC legislation does not focus on the anti-dumping process, rather it refers to the anti-dumping committee under the GCC and how it can cooperate with GCC government sectors. Nevertheless, the GCC has issued an implementation law to support anti-dumping legislation, which covers and amends most of these legal and technical issues.

On the other hand, Saudi Arabia has to make a huge change to its legislation in relation to other industries and the trade sector. At present, it is still increasing subsidy programmes to these sectors, despite GCC issued union legislation regarding trade and industry, which were illegal and in breach of WTO provisions.

This legislation needs further revision to make it compatible with the WTO. Furthermore, additional Saudi legislation requires updating in relation to these sectors, as some of it is very old legislation; meanwhile other pieces of legislation, such as competition law, need to be activated.

An example of the above is the priority given in Saudi regulations to companies, which are wholly owned by the Saudi government, by not applying competition law against them. Article 3 of the implementation of Saudi Competition Law states,

⁷⁸ Mihaela Papa, ‘Emerging Power in International Dispute Settlement: From Legal Capacity Building to A Level Playing Field?’ 2012, *Journal of International Disputes Settlement*, 83, 94.

⁷⁹ The Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations 231 (1999), 1869 U.N.T.S. 14. Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement), 1868 U.N.T.S., 201.

⁸⁰ In the GCC Summit No. 31 in Abu Dhabi on 7 December 2010, anti-dumping and anti-subsidy measures were adopted for all the GCC countries. After which, Saudi Arabia was issued a Royal Decree to accept this law as part of its internal legal system. See the official GCC website <www.gcc-sg.org> accessed 1 June 2014.

⁸¹ GCC Common Law of Anti-dumping Countervailing Measures and Safeguards available at the GCC official website <<http://sites.gcc-sg.org/DLibrary/index-eng.php?action=ShowOne&BID=190>> accessed 1 June 2014.

⁸² GCC Common Law of Anti-dumping Countervailing Measures and Safeguards available at the GCC official website <<http://sites.gcc-sg.org/DLibrary/index-eng.php?action=ShowOne&BID=190>> accessed 1 June 2014.

⁸³ The Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations 231 (1999), 1869 U.N.T.S. 14. Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement), 1868 U.N.T.S., 201.

...A. The provisions of the “Law” and the “Regulation” shall apply to all entities operating in the Saudi markets and various activities thereof. They shall also apply to any activity taking place abroad that leads to consequences contrary to fair competition within the Kingdom. B. The following shall be exempted from the provisions of Paragraph (a) above: 1) any company or establishment fully owned by the state...⁸⁴

The Saudi regulations give public institutions and government-controlled companies’ priority by not applying competition law against them, facilitating breaches of the WTO provisions. These regulations must therefore be re-regulated to insure compliance with the WTO provisions and to give the private sector priority to enter the Saudi market and compete without exception against companies who offer products inside the Saudi market.

Finally, Saudi Arabia must issue regulations to legalise the process of exporting from Saudi Arabia to abroad. A legal framework for these processes will enable the proportion of anti-dumping and anti-subsidy cases against the Saudi petrochemicals products to be reduced. Another legal framework that is important to establish relates to organising Saudi investments abroad, in order to establish a link between Saudi industries and those abroad about prices, for example. It is anticipated that they might have less authority over investments abroad, as they fall outside Saudi jurisdiction. However, as the roots of these investments are inside Saudi Arabia, they will still have some influence, as is evident in regard to SABIC, which has investments outside Saudi Arabia.

2.8 Protecting Transparency in the Saudi Arabian Petrochemicals sector

In the case of Saudi Arabia, regarding the WTO, the Saudi government must do more if it is to fulfil all requirements to insure transparency, whether inside the country or outside when exporting products abroad.

Regarding the principle of transparency, Saudi Arabia must work harder to achieve this. It is evident that there is limited transparency in relation to WTO provisions, especially concerning anti-dumping and subsidy agreements. For example, it has not been an easy process, for this researcher to obtain a copy of anti-dumping cases between Saudi Arabia and others, whereas it was easy to obtain such information from other countries.⁸⁵ There is still no clear understanding regarding why such matters must be confidential in these cases.

Saudi Arabia must present clear information about the relationship between the government and the petrochemicals sector. This information will help to identify legal matters in regard to this sector to resolve problems. In regard to anti-dumping cases against the Saudi petrochemicals products,⁸⁶ and during anti-dumping investigations, Saudi petrochemicals industries were not given sufficiently clear information and did not give attention to the investigation.

The Saudi Arabian government should make transparent all data about subsidising programmes associated with the petrochemicals sector. As noted above, Saudi Arabia will support this sector financially, but it has not been clarified in public exactly how this financial support would be used or distributed. Moreover, the Saudi Arabian government should stop any type of privilege to this sector, whether offering additional facilities, cheap power or raw materials.

The Saudi Arabian anti-dumping authority must employ and present annual anti-dumping statistics for all. It should endeavour to publish all details about anti-dumping cases, both inside Saudi Arabia and abroad. It is a requirement within the WTO agreement that there should be transparency in such cases with all information to be made available to the public.

2.9 Saudi Arabia Should Work Under the GCC in Anti-Dumping Cases

⁸⁴ The Implementation of the Saudi Competition Law issued by a Royal Decree No. M/1 date 10 April 2000, article 3. See this law in the Bureau of Experts at the Council of Ministries
<<http://boe.gov.sa/ViewSystemDetails.aspx?lang=en&SystemID=60&VersionID=73>> accessed 1 June 2014.

⁸⁵ For example, there is now information about the anti-dumping cases between Saudi Arabia and India, Turkey and the EU countries. However, all the relevant documents for cases between Saudi Arabia and India are available to the public via the Indian Ministry of Commerce website <http://commerce.nic.in/> accessed 1 June 2014. The same thing applies for other cases with Turkey and EU, as these are available to the public, who cannot find any such information about these cases in Saudi Arabia.

⁸⁶ Indian case: 14/5/2009-DGAD, *India v Oman, Saudi Arabia and Singapore* [2009] www.commerce.nic.in, accessed 1 June 2014. Turkish case: 2008/40 and 2010/11, *Turkey v Saudi Arabia, Kuwait and Bulgaria* [2008] Turkish Gazette 27 092 – 27 569. EU case: 2011/c 49/10, *EU v Oman and Saudi Arabia* [2011], Official Journal of European Union c 49/16.

The GCC countries play a major role in the anti-dumping cases against Saudi Arabia and other GCC members. As the GCC is now responsible for handling these cases when brought against any GCC countries,⁸⁷ it has more power in order to push forward and end these cases quickly. As a result, this should have a positive effect on the Saudi petrochemical industries and on all the GCC countries as a group.

In the cases brought abroad, the GCC countries have faced a number of issues; for example, when Saudi Arabia acted alone when negotiating its case with India⁸⁸ to bring about an end to anti-dumping duty levied against Saudi petrochemicals products.⁸⁹ However, Oman, another GCC country, was also involved, and its interests were not represented by either Saudi Arabia, or the GCC; this lack of coordination or cooperation between the GCC countries in the legal processes is a matter for concern.

In order to avoid the bringing of anti-dumping cases against GCC products in the future, a number of points must be agreed upon by the GCC countries before they unite to challenge anti-dumping cases:

- 1- The GCC countries must have a legal framework clarifying a range of anti-dumping cases and processes. The GCC should establish close coordination and cooperation by establishing a strong core. This will benefit them when working and moving together in cases brought against them abroad and when defending products inside their home countries against illegal action by the producers of similar competitive products.
- 2- The GCC countries must act as a GCC- *conglomerate* when negotiating with non-GCC countries to resolve anti-dumping disputes. This conglomerate must also be present in support of exported products, for example, through including a label *Made in GCC*, which would help avoid illegal anti-dumping movement against them.
- 3- When these products are exported by one conglomerate, all GCC countries would be considered when legal cases are brought against them on this issue. For example, competition will exist between domestic products, as there are many companies in the GCC countries, all competing against one another.

This would involve a similar resolution to disputes as that pursued in EU countries. EU countries usually deal with the cases as a single body in order to show a united and strong presence.⁹⁰ This is clearly seen in the following statement:

Measures by EU Member States can, and have been, challenged in dispute settlement proceedings brought: (1) against the EU Member States concerned; (2) against the European Union and the EU Member State(s) concerned; or (3) against the European Union alone. In all disputes involving measures of EU Member States, it was always the European Union which made the submissions and defended the EU Member State measure(s) concerned.⁹¹

This clearly shows that when resolving cases under WTO provisions, EU members act together and defend their products as a conglomerate not individually. This process gives EU member industries more strength and power in the international marketplace as well as affording them greater protection and legal support.

Such a conglomerate would be helpful in supporting all GCC countries when exporting petrochemical products, especially when looking to resolve and reduce anti-dumping cases.

Such a conglomerate could then be considered active in resolving cases against Saudi Arabia and against other GCC countries in the case of disputes related to anti-dumping provisions.

However, the GCC members must also establish a clear legal framework in regard to the relationship between themselves and third parties in any legal treatment or disputes.

⁸⁷ After the issuing of the GCC common anti-dumping law.

⁸⁸ Indian case: 14/5/2009-DGAD, *India v Oman, Saudi Arabia and Singapore* [2009] <www.commerce.nic.in> accessed 1 June 2014.

⁸⁹ It can be seen in Indian decision No. 14/5/2009-DGAD date 9 August 2012, that when the Indian anti-dumping authority withdrew anti-dumping duty on Saudi petrochemicals products and left the duty on Oman and Singapore, there were parties to this case.

⁹⁰ See the European Commission official website <http://ec.europa.eu/trade/policy/accessing-markets/trade-defence/actions-against-imports-into-the-eu/anti-dumping/index_en.htm> accessed 1 June 2014.

⁹¹ Peter van den Bossche & Werner Zdouc, *The Law And Policy of the World Trade Organization* (3rd edition, Cambridge University Press, 2013), 171 (Footnote Omitted).

All the GCC members are also in the WTO, therefore agreements between both the GCC and WTO must be clear and uniformly applied. This applies to NAFTA members, when they experience conflicts between themselves or with third parties. Article 2005 section two states:

Before a Party initiates a dispute settlement proceeding in the GATT against another Party on grounds that are substantially equivalent to those available to that Party under this Agreement, that Party shall notify any third Party of its intention. If a third Party wishes to have recourse to dispute settlement procedures under this Agreement regarding the matter, it shall inform promptly the notifying Party and those Parties shall consult with a view to agreement on a single forum. If those Parties cannot agree, the dispute normally shall be settled under this Agreement.⁹²

Under this article, the relationship between the parties, third parties, NAFTA and finally the GATT is well organised, so that the parties have appropriate free trade movement between them and clear legislation pertaining to this.

Finally, the GCC acting as a conglomerate will insure a robust legal framework with which to defend petrochemical products against future disputes, clarify the price inside the market, and smooth competition between domestic parties inside GCC countries. It will also provide a strong legal agency to represent GCC members when facing anti-dumping provisions abroad, and to protect them from dumping.

3. Conclusion

Saudi Arabia needs to deal with contracting parties in the WTO in good faith, whether internally or internationally. In order to act in good faith, Saudi Arabia needs to consider changes to its internal economic and trade legal system, in particular to introduce a truly competitive investment atmosphere between all parties, whether Saudi or foreign, especially in the petrochemicals sector. A truly competitive atmosphere will help to create more jobs for Saudis and improve the economic capability of the country in the long term. It will also be of benefit by generating a greater national income for Saudi Arabia and encouraging new technology to produce products to improve Saudi economic diversity.

The measures discussed in this paper can help to resolve and reduce anti-dumping cases against Saudi petrochemical products in the future. Authentic competition between Saudi petrochemical products can be achieved by privatising the sector and ending government involvement in it. Moreover, the Saudi government should treat all investors in petrochemicals, whether Saudi or foreign, equally. This can be achieved by selling the raw materials to the petrochemical industries at global prices. Although Saudi Arabia has proportionally more resources in terms of the raw materials than elsewhere, it must treat all industries equally under the law. It should not subsidise any sector, unless this type of subsidising is legally acceptable under the WTO provisions.⁹³ Meanwhile, Saudi Arabia should end its current plans for additional subsidies of this sector, to avoid facing anti-dumping cases against its petrochemicals products when they are exported abroad.

The major issue regarding the Saudi petrochemical industries is the government's share in these sectors and SABIC's ownership of the other petrochemical industries inside Saudi Arabia. Saudi Arabia needs to address this issue seriously to privatise the entire petrochemicals sector and open the door to foreign investment. Such precautionary measures can protect the Saudi petrochemical products from anti-dumping cases, and help to increase the quantity of exports without breach of the WTO provisions.

Finally, exporting products under the umbrella of the GCC would help to avoid cases being brought against them abroad. Exporting products under the GCC will create an environment of domestic competition, as exports will be from a single nation.

However, the relationship between these countries, third parties and the WTO must be clarified, as all are members of the WTO. A framework of dispute resolution between GCC members must be introduced to resolve any legal issues to avoid the need to consult the WTO to manage legal issues between them.

⁹² See Article 2005 of NAFTA available at, <https://www.nafta-sec-alena.org/>, accessed 1 June 2014.

⁹³ The Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations 231 (1999), 1869 U.N.T.S. 14.