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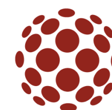

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Should the American Manufacturing Competitiveness Act of 2016 Be Transported in Arab States?

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Abstract
This article makes the case for the transposition of the American Manufacturing Competitiveness Act of 2016 within the legal frameworks of Arab States. This legislation provides for a temporary cut tariffs on raw materials and other products not or insufficiently available on local markets, thereby enhancing the competitiveness of U.S. manufacturers in both local and export markets, and easing access of U.S. consumers to more affordable products. Needless to say, the adoption of a similar tool in the Arab States would provide effective leverage to support the economic diversification and export strategies undertaken over the last decade.

Key Words: Arab States, MENA Region, Miscellaneous Tariff Bill, Raw Materials, Competitiveness, Diversification, WTO Disciplines.

INTRODUCTION

As part of the national competitiveness strategy, the U.S. Congress has enacted, on May 20, 2016 the so-called “American Manufacturing Competitiveness Act of 2016” (AMCA) with the purpose to correct, on a temporary basis, distortions in the Harmonized Tariff Schedule of the United States that place an unnecessary and anti-competitive tax on manufacturers, retailers and other businesses across the country relying on imported raw materials and intermediate products for which there is no domestic availability or insufficient domestic availability.

While Congress had effectively addressed such distortions through the enactment of specific legislation with strong bipartisan support for three decades, the U.S. Manufacturing Enhancement Act expired at the end of 2012. Since then, manufacturers throughout the country have faced an annual $748 million tax increase on their inputs, and the U.S. economy has suffered a $1.875 billion economic loss (National Association of Manufacturers, 2016). At the same time, some economists reveal that such legislation would increase U.S. production by $4.6 billion and support almost 90,000 jobs (SZAMOSSZEGI, 2009).

So far, American manufacturers are forced to pay tariffs on the materials they need but are not made in the United States. These needless taxes drive up the price of American-made products and make it harder for American business to compete in the global marketplace. By ensuring a more open and transparent process for the submission and consideration of petitions for temporary duty suspensions and reductions, the AMCA helps create economic benefits for consumers while bolstering the competitiveness of U.S. manufacturers on domestic

and foreign markets. While most Arab countries are engaged in comprehensive economic diversification strategies with mixed outcomes, the relevance of the introduction of such a mechanism in their legal frameworks is an inevitable issue.

It is widely assumed that the prevailing development model in Arab states still remains vulnerable. In the MENA region, the State is the most important economic actor, eclipsing all independent, productive sectors. This region's pathologies are mainly segmented labor markets, limited regional integration, and a weak private sector. Such a development paradigm is ultimately rooted in an economic structure that relies overwhelmingly on rents derived from fuel exports, foreign aid or remittances. Largely driven by geopolitical considerations, these external rents have expanded the public sector, bolstering its ability to provide employment and subsidized public consumption (MALIK and AWADALLAH, 2011).

Such a business environment adversely affects the performance of firms. The private sector in the MENA region is notable for its limited export presence, few productive spill-overs across firms, and has one of the lowest levels of productivity. In this context, a long-term vision for the region must, therefore, involve a gradual shift away from natural resources towards a globally competitive private sector. In virtually all countries that succeed in reducing poverty and unemployment, labor-intensive manufacturing was an essential component of the development strategy.

It is not a coincidence that the need for diversification has become the panacea of Arab policymakers. Government documents frequently cite diversification as a core development objective. International development institutions have, on their part, advanced globalization as a cornerstone, insisting on trade liberalization and deregulation of domestic economies. But apart from atrial success stories in some Gulf countries (UAE, Oman, and Bahrain), diversification has merely remained a paper aspiration. Despite reforms launched in a decade, Arab firms still remain insignificant in export markets, with limited success in entering new markets or introducing new products.

Within the context of wider industrial policies, four industries related to raw materials are of critical importance for industrial development. First, the metal industries process non-ferrous metals such as aluminum, copper, and zinc, as well as ferrous materials such as steel. Second, non-metallic mineral products comprise the production of cement, ceramics, glass, and lime. These manufacturing sectors are characterized by the transformation of naturally occurring minerals such as limestone, silica, and clays through an energy-intensive process. Third, minerals are raw materials essential for modern society. They are used to build roads and houses and to produce cars, computers, and household appliances. The mining and quarrying industry which extracts these minerals is very important to industrial, social, and technological progress in Arab societies. Finally, the MENA region forest-based industries consist of four major sectors: woodworking, furniture, pulp & paper manufacturing and converting, and printing.

It is clear that strengthening economic diversification and private sector competitiveness is not a gamble or a twist of fate. This is the outcome of a delicate strategy based on instruments with short and long-term impact. For Arab States, economic and export diversification policies require wide-ranging reforms, including a more stable macroeconomic environment, an intensification of investment in infrastructure, an improvement of educational outcomes, the development of specific sectors, an easier financing for companies, particularly small and medium-sized enterprises (SMEs), the promotion of entrepreneurship through SMEs, and more generally the strengthening of business climate across the Arab region.

In this toolbox, the AMCA can play a crucial role by rewarding firms that produce and export in tradable sectors to compete internationally. Such a legal instrument may constitute the "missing link" in current policies by creating incentives for firms to improve their industrial production and technology, create jobs, spend more on research and development thank savings achieved and, ultimately, develop export markets. In addition, such an initiative would be an appropriate solution to the failure of sporadic and opaque incentives for imports of raw materials provided for in some Arab countries, such as GCC States under GCC Common Industrial Law and Islamic financial instruments (Istisna).

The remaining article is organized as follows. Section I highlights the coverage and features of the AMCA. Section II discusses the compliance of the AMCA with WTO disciplines, particularly the Agreement on Subsidies and Countervailing Measures. Section III stresses the benefits for Arab economies of the transposition of the AMCA into their domestic legal frameworks. Finally, Section IV concludes.

Section I - Consideration and Assessment of Petition for Duty Suspensions and Reductions

Legislation providing temporary tariff suspensions on several hundred products of importance to U.S. manufacturing enterprises expired at the end of 2012, and tariff suspensions on two other lines expired at the end of 2014. The AMCA provides for a new process for the consideration and assessment of temporary tariff suspensions and reductions. Enterprises seeking tariff relief are to petition the U.S. International Trade Commission (USITC), which will examine such petitions, receive comments, and issue a report to Congress providing specified findings on the requested duty suspensions and reductions (AMCA, Sec.3). Based on this report, the Congress will consider a Miscellaneous Tariff Bill (MTB) that could authorize tariff relief for a period not exceeding 3 years, renewable if needed (AMCA, Sec.6). A report is submitted by the USITC not later than 12 months after the date of the enactment of a MTB on the effects on the United States economy of duty suspensions and reductions enacted pursuant to the AMCA, including a broad assessment on producers, purchasers, and consumers in the United States (AMCA, Sec.4).

With a closer look, it appears that the review process is built in four steps, and reflects the willingness to propose an open, transparent and effective tool.

In terms of openness, all domestic businesses can make their case in a first step. Large and small companies explain why they need manufacturing tax breaks to the independent, non-partisan International Trade Commission. The members of Congress, for their part, are not offered the possibility to launch an MTB process, thereby strengthening the confidence of domestic businesses in the procedures undertaken and measures that could be adopted (AMCA, Sec.2(a)(7)).

Analyzed from the perspective of transparency, the AMCA provides various guarantees for businesses. The Commission reviews the request, accepts comments from the American public, and reports to Congress with its recommendations. The final report shall be submitted to the appropriate congressional committees within a period not exceeding 12 months from the receipt of a petition for duty suspensions and reductions, along with the commission disclosure forms with respect to such duty suspensions and reductions (AMCA, Sec.3(b)(1)). The final report shall contain, among others, a determination of whether:

- The duty suspension or reduction can likely be administered by U.S. Customs and Border Protection;
- The estimated loss in revenue to the United States from the duty suspension or reduction does not exceed $500,000 in a calendar year during which the duty suspension or reduction would be in effect; and
- The duty suspension or reduction is available to any person importing the article that is the subject of the duty suspension or reduction.

A petition for a duty suspension or reduction may be excluded from an MTB if it is the subject of an objection from a member of Congress, or it relates to an article for which there is domestic production (AMCA, Sec.3(3)(F)). Ultimately, the Congress examines the recommendations, eliminates any controversial provisions, and then votes on the package. While the Congress can exclude products from the final report, it cannot, however, add products that were not recommended by the USITC.

With regard to the effectiveness, it is worth mentioning that each proposed duty suspension or reduction is subject to a meticulous and non-partisan vetting process to ensure that no domestic producers of the affected product exist. The speed of the process and the fact that the exercise of functions under the AMCA is not subject to judicial review are other reflections of such a requirement (AMCA, Sec.6). The possibility to turn a temporary duty reduction or suspension into a permanent measure is also a major characteristic of the AMCA. The latter provides that the USITC shall append to its abovementioned final report recommendations with respect to domestic industry sectors or specific domestic industries that might benefit from permanent duty suspensions or

reductions, either through a unilateral action of the United States or through negotiations for reciprocal tariff agreements, with a particular focus on inequities created by tariff inversions.

Section II - The MTB Compliance with WTO Disciplines

While the benefits of the MTB could be numerous, the nature of the MTB mechanism may raise a number of questions concerning its validity with WTO disciplines, particularly from two points of view: to what extent the temporary reduction followed by an increase of tariffs give fullness to the principle of binding all negotiated tariff lines, a cardinal principle of WTO system? And does the reduction of tariffs on certain products constitute a “specific subsidy” in the meaning assigned to it by the WTO agreement on subsidies and countervailing measures?

With respect to the first issue, the tariff binding, under WTO rules, may be defined in the hypothesis when a State has undertaken a formal international commitment not to change a trade measure or concession in ways less favorable for other Members unless another form of compensation is agreed by the Members concerned.
The increase of a customs duty is reprehensible only if it exceeds the threshold of consolidation. Below this threshold, any variation in tariffs falls within the discretionary customs policy of each Member, without violation of WTO commitments. In short, the MTB mechanism does not violate the bound tariffs negotiated under the aegis of the WTO.

As regards to the second issue, one should remind that the purpose of the SCM Agreement is the establishment of multilateral disciplines on the premise that some forms of government intervention distort international trade, or have the potential to distort it. It should be noted that the Agriculture Agreement contains its own disciplines with respect to the subsidization of agricultural products covered by that Agreement. SCM Agreement strengthens and improves GATT disciplines relating to the use of both subsidies and countervailing measures while recognizing the right of Members to impose such measures under certain conditions. Indeed, it provides detailed rules on the concepts of subsidization, actionable subsidies, and material injury/serious prejudice. It contains many procedural provisions that WTO Members, wishing to take countervailing duty action (the unilateral track), must comply with. It also provides provisions for attacking certain subsidies in the WTO (the multilateral track).

The concept of subsidy defined in Article 1 of the SCM Agreement captures situations in which something of economic value is transferred by a government to the advantage of a recipient. A subsidy is deemed to exist where two distinct elements are present: First, there must be a financial contribution by a government, or income or price support, and secondly, any financial contribution, or income or price support, must confer a benefit to the recipient.

Under the SCM Agreement, the subsidy has a very particular meaning and can take various forms, including:

- A direct transfer of funds (e.g., a grant, loan, or infusion of equity);
- A potential transfer of funds or liabilities (e.g., a loan guarantee);
- The purchase of goods, or the provision of goods or services (other than general infrastructure); or
- Foregone government revenue (e.g., a tax credit).

The latter category corresponds perfectly to the MTB mechanism and the temporary tariff reduction granted on certain products.

However, it is worth noting that, under the SCM Agreement, actions can only be taken against subsidies that are "specific." A specific subsidy is one that is only given to one company, or to a special group of companies. Such a condition is obviously not fulfilled in this case. Tariffs reduction granted on certain products do not target a particular sector, but rather adopt a transversal approach benefiting all companies that operate across the U.S. territory and use the concerned products in their production tools.

In the same vein, the MTB mechanism should not be defined as an « export subsidy » in the meaning of the SCM Agreement. A subsidy granted by a WTO Member government is prohibited *per se* if it is contingent, in law or in fact, on export performance, or on the use of domestic over imported goods. In this case, the MTB mechanism reduces the cost of production of manufacturing products, thereby favoring greater competitiveness on the export markets. But by no means, this mechanism subordinates or ties the support to the performance on foreign markets.
At the same time, the introduction of a similar mechanism within Arab legal frameworks would constitute an effective defense mechanism for handling the chronic low compliance by WTO Members with the obligation to notify subsidies to the WTO's Committee on Subsidies and Countervailing Measures pursuant to the SCM Agreement. Article 25 of the SCM Agreement provides for the obligation for WTO Members to notify any subsidy, as defined under Articles 1 and 2 of the Agreement, which is granted or maintained within their territories. Members shall submit subsidy notifications no later than 30 June of each year. However, the compliance with the obligation to notify subsidies "remains discouragingly law," what constitutes a "serious problem in the proper functioning of the WTO system" (WTO, news Item, 25 October 2016). For the Arab States, the prejudicial effect of this opacity would be magnified by the fact that they do not possess a wide range of raw materials and have to tackle unfair competition in local and foreign markets with subsidized industrial products, thereby lessening the competitiveness of their manufacturers on the global market.

Section III - The AMCA, a Blueprint for Economic Diversification and Growth in the Arab States

It is common to assert that the prevailing development model in Arab states is vulnerable. Arab countries are mostly centralized states with a dominant public sector and, with few exceptions, weak private enterprise. External revenues, whether derived from hydrocarbons, aid or remittances, profoundly shape the region's political economy (IMF, 2016). In many respects, the unfolding crisis in the MENA region is not just about the Arab State, its recurrent failures in redistributing, reforming and representing ordinary citizen's interests. It is also about the absence of private sector. A notable failure of the Arab world is indeed that it has been unsuccessful in developing a strong private sector that is connected with global markets, survives without state crutches and generates productive employment for its young.

How can one justify this situation?

Several reasons can be, in fact, put forward. First, there is a political problem, since a private sector can create income streams independent of the patronage network of the regime, thereby challenging the ruler's position. The outcome is that, with few exceptions, the private sector generally remains weak and dependent on state patronage; success in it is determined more by patronage than entrepreneurship. The limited economic opportunities that do exist are rationed by connection rather than competition.

Second, the absence of vibrant private sector is not only the failure of individual countries but also a regional failure. The Arab world's economic fragmentation into isolated geographic units further undermines the prospects for private sector development. Our region remains one of the most fragmented regions of the world in terms of production, trade, and economic linkages. Such fragmentation carries a heavy cost for the region's economy. For a private sector to survive and thrive, the size of the market matters. There is often a competitive threshold to industrialization. Fragmented markets prevent firms from realizing the benefits of producing for a bigger market and locating next to each other. These cost advantages, commonly termed as economies of scale and agglomeration, have fuelled trade and growth in emerging economies, but are simply absent in the Arab world. Any blueprint for private sector must, therefore, include as one of its central objectives the creation of regional economic commons in the Arab world.

The outcome is thus the notable failure of the Arab world to develop a private sector that is independent, competitive and integrated with global markets. With a public sector acting as the main avenue for job creation, the region suffers from a precarious employment and growth strategy and is left unprepared to deal with challenges such as globalization or demographic boom. This damning indictment has been recently reminded by the 2017 Index of Economic Freedom released by the US-based Heritage Foundation ranking in all three Arab states (UAE, Qatar, and Bahrain) in the top 50, with only Jordan and Morocco outside the Gulf region ranking in

the top 100 countries. Analyzing the economic policy development in 186 countries, the Index went as far as categorizing the majority of MENA economies as "mostly unfree."

In any event, the recent crisis in the region provides an apt reminder that the prevailing development model has reached its expiry date. This model built on oil and aid fortunes, and a leviathan state, is fast becoming a political and economic liability. While the private sector has recently witnessed an impressive growth, especially in the Gulf, many questions are raised as how genuinely private is the private sector. The boundaries between the public and the private are notoriously blurred, with the result that the private sector sometimes operates as a disguised public sector, or simply an extension of the state. Public investment still remains the central driver of private economic activity, especially when oil prices are high.

Such a model has been politically expedient, but this temporary political bargain is becoming unsustainable. To tackle global economic pressures and social revolts, the Arab world needs a fundamental rethinking of the social and economic contract. While the state-business relationship may vary tremendously across the region, policymakers need to imagine a new paradigm that is based on a more competitive, entrepreneurial and inclusive private sector.

Mindful of this reality, Arab government have launched, since a decade, economic reforms based on non-hydrocarbons export and economic diversification. Given that GCC countries are high-income countries, the private sector will need to create high-paying-productivity jobs in high-value-added sectors to attract nationals. In contrast, other Arab economies have followed the development trajectory of emerging markets that have diversified their economy by developing low-cost manufacturing sectors (IMF, 2014).

Whatever approach is taken in this regard, it appears that non-oil output has increased considerably in the Arab States since 2000, but progress toward genuine output diversification has been modest. Export diversification and quality upgrading could be better emphasized in the Arab States.

In the regional context described above, the introduction of a mechanism inspired by the MTB within domestic legislation may constitute a high added-value. While notable variations exist across the MENA region, Arab governments have launched comprehensive national development plans with the goal to firmly promote sustainable development, reduce dependence on hydrocarbons and aid revenues, and increase private sector competitiveness. Economic diversification is considered to be an important stepping stone to achieving all three objectives.

To boost their economic diversification strategy, earlier arguments have demonstrated that the MTB may be used as a short-range mechanism as part of an overall strategic vision. Such a contribution is made all the more necessary by the weak competitiveness of Arab firms. With access to raw material and other products not available or insufficiently available on local markets, Arab firms would produce at a lower price, enabling them to reinvest their savings on research and development programs, and, as a result, to propose more competitive products in terms of price and sophistication, either locally or internationally. The MTB's virtuous circle reaches its full scope through the preservation of local jobs and producers (GRISWOLD, 2010).

WTO litigations have recently put the spotlight back on the battle for access to certain raw materials needed to secure the competitiveness of local manufacturers. In October 2016, the EU and USA filed WTO panel requests against Chinese export restrictions on 12 raw materials, including antimony, chromium, cobalt, copper, graphite, indium, lead, magnesia, talc, tantalum, tin, and ferronickel. Such raw materials are key inputs into a wide range of high-value products in vital industrial sectors, including chemicals, oil & gas exploration, steel, water treatment, automotive, aerospace, telecoms networks, construction, and electronics. The EU and USA consider that China's export restrictions on raw materials undermine core principles of the multilateral trading system, as they discriminate against foreign users of these materials and provide substantial and unfair advantages to Chinese firms.

China's position as a leading global producer of these raw materials means its export restraint measures give it the ability to affect global supply and pricing. The export duties China imposes provide substantial competitive

advantages for Chinese manufacturers by making them more expensive for U.S. or European manufacturers that rely on these raw materials to produce their downstream goods. These measures also can create substantial pressure on foreign producers to move their operations, jobs, and technologies to China.

For memory, it is noteworthy that in two previous WTO disputes (China – Measures Related to the Exportation of Various Raw Materials and China – Measures Relating to the Exportation of Rare Earths, Tungsten, and Molybdenum) the WTO found that China's imposition of export duties and export quotas on two different sets of raw materials was inconsistent with China's WTO commitments. In both cases, the WTO also confirmed that China could not justify its imposition of export duties not listed in the specific annex under Article XX of the GATT 1994, and rejected China's attempts to justify its imposition of export quotas as legitimate conservation or environmental protection measures.

In any event, such disputes and issues surrounding them are not rare. In many countries, raw materials are considered crucial to the domestic economy and essential to maintaining a high quality of life. Non-energy raw materials are linked to all industries across all supply chain stages. Technological progress and quality of life are also reliant on access to a growing number of raw materials. For example, a smartphone might contain up to 50 different kinds of metals, all of which help to give it its light weight and user-friendly small size. Moreover, improving the environment is closely linked to raw materials. They are irreplaceable in solar panels, wind turbines, electric vehicles, and energy-efficient lighting.

One better understands, in this context, why securing reliable and unhindered access to certain raw materials is a growing concern within, for example, the EU. To address this challenge, the European Commission has defined the so-called "EU Raw Materials Strategy" resting on two pillars: the commitment to pursue a "Raw Materials Diplomacy" by reaching out to non-EU countries through strategic partnerships and policy dialogues; and the creation of a list of Critical Raw Materials (CRM). CRM combines high economic importance to the EU with a high risk associated with their supply (Report on Critical Raw Materials for the EU, 2013)

This situation calls for two observations. First, the EU policy and strategy for raw materials and industries related to raw material sharply contrasts with the absence of a long-range vision in most Arab States that do not make serious efforts to level playing field for Arab workers and manufacturers in order to grow their economy and support quality jobs. Second, Arab States are far from being amongst the main producers of raw materials across the world.

It was not surprising, in this respect, that some Arab States have submitted in the Doha multilateral negotiations a proposal eliminating tariffs and non-tariff barriers on raw materials from earth (such as primary aluminium) and from plant extraction, which are used and processed by manufacturing industries (for example, the United Arab Emirates, TN/MA/W/37, 2003 and TN/MA/W/37/Add.4, 2006). Meanwhile, there is clearly a need for comprehensive national strategies securing raw materials supply and facilitating access for domestic manufacturers to such products. For this purpose, the MTB may play a crucial role by cutting import tariffs, with a positive impact on the balance of payments and businesses input and competitiveness (GRISWOLD, 2010).

Section IV- Conclusion

The above discussion suggests, at least, three comments.

Ensuring secured and cheap supply of raw materials crucial for industrial development is still not a priority for Arab governments. This constitutes a major shortcoming of ongoing non-oil export and economic diversification strategies led by these countries.

In this context, the introduction of a tool inspired by the AMCA deserves immediate consideration. This may constitute a vital tool for MENA region competitiveness by lowering the cost of imported inputs and in some cases, finished goods, without harming domestic firms that produce competing products. Arab manufacturers, especially small and medium-sized companies, in industries ranging from agriculture and electronics to textiles, chemicals and beyond, see their costs go up for inputs not produced in the MENA Region, undermining Arab economies competitiveness and the ability of these companies to expand production, invest in new facilities and

retain manufacturing jobs. In short, few legislations would give Arab governments such a clear and fast opportunity to support local manufacturing industry.

At the same time, previous arguments have demonstrated that the adoption of a similar legal mechanism would constitute a strategic use of multilateral rules and consolidate the insertion of Arab States in the global economy. The MTB process unilaterally reduces trade barriers, without engaging protracted negotiations with other governments. The practice in the United States has indeed shown that Congress is able to cut tariffs to benefit American producers, and the economy at large, regardless of what other governments may choose to do.

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