

The WTO dispute settlement system as a legal impediment to Iran's accession on the WTO

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Conclusions, Suggestions and Summary

Introduction

The World Trade Organization was established on 1 January 1995. The main aim for which this organization was established is to remove trade barriers from international trade, including the elimination of discriminatory treatment in international trade relations.¹ There is no doubt that the WTO would be an effective forum for Iran, both for multilateral trade decision making and also hopefully for removing unilaterally imposed unfair and discriminatory economic restrictions. So far, 36 countries have acceded to the WTO. 19 applicants, including Iran, are still in the process of accession.²

Iran's WTO accession application was formally submitted to the WTO Director General in 1996. This request remained on the agenda of subsequent General Council meetings for several years. Finally, on 26 May 2005, a Working Party to examine Iran's application for accession was established and Iran was granted observer status in the WTO.³ In November 2009, Iran submitted its Memorandum on the Foreign Trade Regime to the WTO which was circulated among the WTO Members. The WTO Members' questions on Iran's Memorandum were sent to Iran in 2010. The WTO Working Party on the accession of Iran has not yet met and its Chairman has not yet been appointed by the WTO General Council.⁴ After the Working Party's Chairman is appointed, in parallel with the work undertaken by the Working Party, individual WTO Members will engage with the applicant country (Iran) in bilateral talks on tariff rates and specific market access commitments as well as other trade-related issues. When the bilateral negotiations and the multilateral talks are concluded, the Working Party will send its report and a draft protocol of accession (including lists of Iran's commitments) to the

¹ The Preamble of WTO Agreement.

² See the WTO website, https://www.wto.org/english/thewto_e/acc_e/acc_e.htm, last visited on 1-10-2016.

³ See: http://www.wto.org/english/thewto_e/acc_e/ar_iran_e.htm, last visited on 1-10-2016.

⁴ WTO Accessions 2015 Annual Report by the Director-General, WTO Document: WT/ACC/25, WT/GC/174, WT/MIN(15)/7, 16 November 2015.

General Council. The General Council can only adopt a decision on a country's accession if there is consensus on such accession.⁵

The lack of progress in the accession process of Iran has been due to some domestic and external factors. Difficulties in the liberalization and privatization process of trade and investment at the domestic level, as well as financial restrictions imposed on the basis of political reasons are among the most important elements resulting in Iran's prolonged process of accession. Therefore, there are a number of impediments, such as political, trade, economic, and also legal factors involved in delaying Iran's accession to the WTO. To join the WTO, Iran needs to overcome all existing impediments, including the legal ones. It can be asserted that most non-trade impediments, and in particular those of a political nature, can be resolved over time. Some others can be removed through amending Iran's trade system. However, there are a few legal barriers which cannot easily be removed. The main focus of this dissertation is on a very important legal impediment regarding the conflict between the WTO dispute settlement system and Iran's Constitution, and how this legal impediment, can be removed.

Research Questions and Conclusions

Three research questions were examined in this dissertation. The first research question was whether there is a legal conflict between the WTO DSU and Iran's constitutional system that can impede Iran's accession to the WTO. To answer to this question, the WTO accession process and the WTO's general obligations as well as the difficulties encountered by Iran in this respect have been discussed. Pursuant to Article XVI:4 of the WTO Agreement, to join the WTO, Iran must ensure the conformity of all its laws, regulations and administrative procedures with the WTO multilateral agreements. However, as noted, there is a possible inconsistency in Iran's constitutional system with WTO law. Iran's Constitution includes some restrictions on the referral of disputes to international dispute settlement systems. Principle 139 of Iran's Constitution states:

⁵ For further information see the World Trade Organization internet site at: http://www.wto.org/english/thewto_e/whatis_e/tif_e/org3_e.htm, last visited on 1-10-2016.

Resolving the litigation related to public and state property or referring it to arbitration is contingent, in each case, upon the approval of the Council of Ministers, and must be communicated to the Assembly. In cases where the party to the dispute is a foreigner and in important internal cases, it must also be approved by the Assembly. The law determines the important cases.

Under this constitutional requirement, to refer a public and state property dispute to international dispute settlement systems, an authorization from the Government⁶ and the Parliament⁷ shall be obtained. This requirement is to protect public and state property. This protection can be applied by the Parliament in the form of a supervisory mechanism, to avoid any corruption in resolving state and public disputes, for instance through a mutually agreed solution. Therefore, first it was examined in this dissertation whether this constitutional requirement is inconsistent with the WTO and then how this inconsistency can impede Iran's accession to the WTO.

One of the important characteristics of the WTO dispute settlement system (DSS) is its compulsory jurisdiction, which means that the parties to a dispute do not need to agree on the jurisdiction of the DSS. Therefore, if a WTO Member brings a complaint regarding a WTO covered agreement to the DSS, the respondent must agree to enter into consultations. If it refuses to do so, then the complainant can immediately request the establishment of a panel – which the respondent will not be able to block. In other words, if there is a dispute taken to the WTO DSS against Iran, under the compulsory jurisdiction of the WTO DSS, Iran as a responding party cannot escape this jurisdiction. However, under Principle 139 of Iran's Constitution, to participate in a dispute concerning public or state property, Iran needs an

⁶ For further information on the tasks and powers of Iran's Government see chapter 3, section 3.5.3. (Executive). For the Government's role in international agreements adoption process see chapter 4, section 4.3.2. (Negotiation and Signature by the Government).

⁷ For further information on the powers and tasks of Iran's Parliament see chapter 3, section 3.5.4.1. (Parliament). For the Parliament's role in adoption process of international agreements see chapter 4, section 4.3.3. (Parliament's Approval in the Accession Process).

authorization from its Parliament.⁸ Therefore, Iran cannot participate in a WTO dispute if its Parliament does not authorize this participation. This is in conflict with the WTO DSS compulsory jurisdiction.

Therefore, there is a legal conflict between WTO DSU and Iran's constitutional system resulting from the inconsistency between Iran's Principle 139 requirement on dispute settlement and the compulsory jurisdiction of the WTO DSS. How this inconsistency can impede Iran's accession has also been examined in this dissertation. It bears considering that if Iran can opt out of the WTO DSU because of being inconsistent with its Constitution, there would not be such a legal impediment to its accession.

Regarding how this legal inconsistency can impede Iran's accession, it should be taken into consideration that the 'single-undertaking principle' stated in Article II:2 of the WTO Agreement does not let Iran opt out of any WTO multilateral agreement, including the DSU. Under Article II:2 of the WTO Agreement, Iran must accept all WTO multilateral agreements. It bears mentioning that, after Iran's protocol of accession is adopted by the WTO General Council, there is also an international agreement adoption process in Iran to be followed. Under this process, the protocol shall be adopted by the Parliament after it is adopted by the Government. If an international agreement is inconsistent with the Constitution, either the Government or the Parliament can formulate a reservation to avoid unconstitutionality. However, as no reservation to the DSU is possible, according to Iran's Guardian Council's⁹ view,¹⁰ a reservation to the DSU would also not be authorized under Iran's legal system. Therefore, due to the inconsistency between Principle 139 of Iran's Constitution and the WTO Dispute Settlement Understanding (DSU),¹¹ if the Parliament adopts Iran's accession

⁸ It bears mentioning that, under Principle 139 of Iran's Constitution, the authorization of the Government is also required but this will not be problematic.

⁹ The Guardian Council checks the constitutionality of the Parliament's approvals. For further information on this Council see chapter 3, section 3.5.4.2. (Guardian Council). For the Council's role in international agreements adoption process see chapter 4, section 4.3.4. (Who Checks the Constitutionality in Accession Process?).

¹⁰ This view is mentioned below and also in chapter 4, section 4.4.2. (What is the Reasoning of the Guardian Council When There is a Conflict with Principle 139?).

¹¹ The WTO DSU: Understanding on Rules and Procedures Governing the Settlement of Disputes.

protocol, the Guardian Council will send it back to the Parliament (to remove the inconsistency) on the basis of the constitutionality review. This can block Iran's accession to the WTO.

To conclude, the answer to the first research question reached in this dissertation is: there is a legal impediment to Iran's accession to the WTO which results from the conflict between Principle 139 of Iran's Constitution and the WTO DSU.

The second research question addressed in this dissertation was whether this conflict can be removed through legal interpretations of the Constitution or current legal practice.

To answer this question, the literal, historical, authentic, systemic, teleological, and doctrinal interpretations of Principle 139 of Iran's Constitution were examined. However, a no conflict view¹² cannot sufficiently be supported by this examination.

Under the interpretation of Principle 139¹³ that was issued by the Guardian Council, the requirements of this Principle do not apply to judicial dispute settlement mechanisms. Therefore, if the WTO DSS is a judicial system, there would be no conflict. However, as it was discussed in chapter two,¹⁴ the WTO DSS contains several dispute settlement mechanisms including consultations, panel and Appellate Body proceedings (adjudication), arbitration, good offices, conciliation and mediation. The WTO DSS is an exceptional system which includes almost all advanced and traditional/political (diplomatic) and legal methods of dispute settlement. Unlike other dispute settlement systems, WTO Members can enjoy a mix of arbitration and adjudication methods during the proceedings of a dispute, which is unique and distinguishes it from other international dispute settlement systems. Therefore, the DSS has a quasi-judicial nature and can therefore be in conflict with the requirements embodied in Principle 139 of Iran's Constitution.

¹² The no conflict view is shortly mentioned below and also in chapter 5, section 5.4.2. (No Conflict View).

¹³ Interpretation No. 7484 dated 01-01-1987

¹⁴ See chapter 2, section 2.3.7. (Quasi-judicial).

It bears mentioning that, under the systemic interpretation, in joining international agreements, Iran's Government sometimes has used a different approach from the 'case-by-case approval approach' that is required by Principle 139. For instance, in the adoption process of the 'Single Article Act Concerning the Settlement of the Financial and Legal Disputes of the Government of Islamic Republic of Iran with the Government of the United States of America (1981)', Iran followed a '*blanco* approval approach'.¹⁵ This approach is different from the 'case-by-case approval approach' required by Principle 139.

As it was discussed in this dissertation,¹⁶ in the adoption process of the aforementioned 'Single Article Act', the Government convinced the Parliament (and the Guardian Council) that in the referral of disputes to Iran-United States Claims Tribunal, the 'case-by-case approval approach' will be followed. However, this never happened because, in two disputes,¹⁷ the Tribunal did not recognize Iran's domestic law restrictions (including Principle 139). This was, as it is stated by the Tribunal, because the restrictions had not been notified to the parties before consenting to the *Algiers Declarations*. In other words, the requirements of Principle 139 were not accepted on the basis of the 'good faith' principle. The Government's '*blanco* approval approach', as adopted with regard of the 'Single Article Act', has not been recognized by Iran's constitutional institutions, but has been considered by the Parliament as resulting in non-compliance with Principle 139 of the Constitution and has

¹⁵ Under the '*blanco* approval approach', as has been discussed in chapter 5, section 5.2.1.2. (Legal Issue (2): Case-by-Case Approval Approach or Blanco Approval Approach), the Government does not implement the case-by-case approval approach which is stated by Principle 139. In other words, if an agreement including dispute settlement mechanisms is adopted by the Parliament, the case-by-case authorization for the referral of disputes to a dispute settlement system will not be requested from the Parliament.

¹⁶ See chapter 6, section 6.3.2. (Iran-United States Claims Tribunal and Principle 139 Requirements).

¹⁷ Philips Petroleum Company v The Islamic Republic of Iran, The National Iranian Oil, Case no. 39 Chamber Two Award No. ITL 11-39-2 (30 December 1982); and the AMOCO Iran Oil Co v The Islamic Republic of Iran, the National Iranian Oil Company, The Iranian Offshore Oil and the Iranian Oil Company, Case No. 55, Chamber Two Award No. ITL 12-55-2 (30 December 1982). For further information, see chapter 6, section 6.3.2.1. (The Iran-United States Claims Tribunal and Principle 139).

been referred to the courts. The reaction of the Iran-United States Claims Tribunal to Iran's domestic restrictions has, in a few instances, been followed by other international tribunals, either on the basis of the 'good faith' principle or an emerged 'international public order'.¹⁸ This, however, cannot remove the discussed legal impediment to Iran's accession to the WTO. This is because, in adopting Iran's WTO accession protocol, only Iran's adoption process rules will be observed.

To conclude, the answer to the second research question reached in this dissertation is that the legal impediment resulting from the conflict between Iran's Constitution and the WTO DSU cannot be removed through legal interpretations of Principle 139 or current legal practice.

-The third research question addressed in this dissertation was how the legal impediment to WTO accession resulting from Principle 139 of Iran's Constitution can be removed.

To answer to this question it must be taken into consideration that, as there are two different problems (stated below),¹⁹ different solutions have also been examined. The focus of this dissertation is to recognize the legal impediment to Iran's WTO accession resulting from Principle 139 of Iran's Constitution and to remove it.²⁰ However, there is another issue involved in this question which was also discussed in this dissertation. The first issue regarding the legal impediment is the result of a conflict between Principle 139 and the WTO DSU. To remove this impediment, there are several solutions suggested in chapter seven. However, the second issue relates to Iran's post-accession phase. When dispute settlement proceedings are initiated against Iran under the WTO DSS and to comply with Principle 139 requirement, Iran will make its participation conditional on its authorization by the Parliament.

¹⁸ For instance see: the arbitration award no. 3896 of 1982 on the *Framatome v. Atomic Energy Organization of Iran*; and the arbitration award no. 4381 of 1986 on an Iranian State company and a French company. For further information, see chapter 6, section 6.3.1. (International Arbitrations).

¹⁹ The first problem is to remove the legal impediment to Iran's accession to the WTO. And the second problem regarding after accession is how the conflict between the DSS compulsory jurisdiction and Iran's Principle 139 requirement can be resolved.

²⁰ The title of this dissertation is: 'The WTO Dispute Settlement System as a Legal Impediment to Iran's Accession to the WTO.'

Although this issue is not the main focus of the topic of this dissertation, some suggestions have been made as to how this issue could be addressed.

Suggestions to remove the legal impediment to Iran's WTO accession (A. Solutions for the first issue) and also suggestions to resolve the conflict (post-accession) between Iran's Constitution and the WTO DSU (B. Solutions for the second issue) are presented below.

A. Solutions for the First Issue (the Legal Impediment to WTO Accession)

In responding to the third research question of this dissertation on removing the legal impediment for Iran's WTO accession, there are several suggestions discussed in this dissertation that are briefly mentioned below.

I. No Conflict View

Under the no conflict view,²¹ domestic law restrictions, such as Iran's Principle 139 requirements, do not influence Iran's accession to the WTO. This is due to a number of reasons. Some of which are presented below:

- changes of time;
- the development of mechanisms in international and multilateral dispute settlement systems;
- international public order and practice (domestic restrictions such as Principle 139 requirements are not accepted by international tribunals);
- achieved purposes of Principle 139 requirements stated by Iran's legal system (on avoiding corruption in dispute settlement).

Even though these reasons would be accepted by international tribunals, legally speaking, Iran's WTO accession protocol should be adopted by Iran's Parliament. This adoption process also requires a constitutionality review, which will result in a legal impediment to the accession (on the basis of the conflict between Principle 139 of Iran's Constitution and the WTO DSU). It bears considering that the constitutionality review by Iran's Guardian Council is performed on the basis of neither national interest, nor whether the requirements are still needed in international dispute settlement. To

²¹ This view is discussed in chapter 5, section 5.4.2. (No Conflict View).

remove this legal impediment, as long as the Constitution is not amended, anything inconsistent with the Principle 139 requirements will be recognized by the Guardian Council as unconstitutional. Therefore, the no conflict solution cannot remove the legal impediment to Iran's WTO accession resulting from Principle 139.

II. Amendment to the Constitution

To join the WTO, as discussed in chapter seven,²² some countries have amended their constitutions. However, the amendment process of Iran's Constitution is very complicated and troublesome. To amend the Constitution, there are a number of qualifications and requirements that have to be met.²³ In addition, there are still some national concerns requiring effective parliamentary supervision to avoid corruption in concluding international contracts/agreements and their dispute resolution process. Furthermore, to join each international agreement, Iran cannot amend its Constitution to remove the inconsistencies between each international agreement and its constitutional system. Therefore, amending Iran's Constitution as a solution to remove the legal impediment to Iran's WTO accession cannot easily be achieved.

III. Principle 112 Method²⁴

Under this method, after Iran's WTO accession protocol is adopted by the Parliament, it shall be checked by the Guardian Council for constitutionality. Due to being inconsistent with the Constitution (the conflict between Principle 139 requirements and the WTO DSS compulsory jurisdiction) the protocol will be sent back to the Parliament. However, as the inconsistency cannot be removed by the Parliament, this will result in a dispute between the Parliament and the Guardian Council and can block the adoption process.

To resolve this dispute, under Principle 112, Iran's protocol of accession to the WTO can be sent to the National Expediency Council (NEC)²⁵ to be adopted.

²² See section 7.5.3. (Similar Experience of Other Countries in Accession to the WTO).

²³ See *ibid.*

²⁴ This method is discussed in chapter 7, section 7.4.1. (Principle 112).

The NEC discusses the protocol of accession through its committees and sub-committees and then can adopt it by a majority vote. So far, there are a number of bilateral and multilateral agreements that have been adopted by the NEC despite an inconsistency with the Constitution. It bears mentioning that the NEC's decision on the adoption of bilateral and multilateral agreements is not temporal, which means that the decision on the adoption of international agreements is final and is not limited to a short period of time.²⁶

This method is the best practical solution to remove the legal impediment to Iran's accession to the WTO. If the NEC does not adopt Iran's WTO accession, there is also another method under Principle 110 presented below.

IV. Principle 110 (8) Method²⁷

Principle 110 (8) states that an issue that cannot be settled by ordinary means can be resolved by the Leader through the National Expediency Council. Therefore, this method requires the direct involvement of Iran's Leader.²⁸

If Iran's protocol of accession to the WTO cannot be adopted via the Principle 112 method, it can be requested from the Leader, for instance by the Head of the NEC, to refer the matter to the NEC. If the Leader agrees, the NEC can discuss and agree to Iran's accession. Then, if the result (WTO accession) is adopted by the Leader, Iran can join the WTO.

²⁵ For further information on the NEC see chapter 3, section 3.5.5. (National Expediency Council). For NEC's role in international agreements adoption process see chapter 4, section 4.3.5. (The Role of the National Expediency Council in the Accession Process).

²⁶ It bears mentioning that, according to the Guardian Council's view, the National Expediency Council's decision on resolving disputes under Principle 112 (except for adopting international agreements) is temporal and, after the necessity for taking that decision (on issues that are inconsistent with the Constitution) is removed, the Parliament can amend the NEC's decision. For further information, see chapter 3, section 3.6.4.2. (Important Questions on the National Expediency Council), and also chapter 5, section 5.4.3. (National Interest and the Parliament, Guardian Council and the NEC).

²⁷ This method is discussed in chapter 7, section 7.4.2. (Principle 110 (8)).

²⁸ For further information on the tasks and powers of Iran's Leader see chapter 3, section 3.5.1 (The Leader (Under Iran's Constitution)). For the Leader's role in international agreements adoption process (including the WTO accession protocol) see chapter 4, section 4.3.6. (The Leader's Role in the Accession Process).

There are some differences between this method and the Principle 112 method. First, under this method, the protocol of accession does not need to be referred to the NEC as a result of a dispute between the Parliament and the Guardian Council. If, from the beginning, the protocol is viewed by the Leader as an issue that cannot be adopted through the conventional methods (by the Parliament or even by the NEC under Principle 112) it can be referred to the NEC to be adopted under Principle 110 (8). Therefore, it is shorter than some other methods.

Another difference is that the adoption process under this method, in addition to the NEC's decision, requires that the protocol of accession is also adopted by the Leader.

The third difference is that, under the Principle 112 method, the NEC cannot adopt the protocol of accession if it is inconsistent with Islamic principles.²⁹ However, under Principle 110 (8), the Leader, as the *Valiye Faqih*,³⁰ can adopt the protocol if it is inconsistent with Islamic principles. This would be helpful if Iran's protocol of accession includes inconsistency with Islamic principles, for instance with regard to certain obligations under the TRIPS Agreement³¹ or the DSS non-Muslim judges.³²

It bears considering that so far no multilateral or bilateral agreement has been adopted under this method.

²⁹ This is due to the interpretation that has been issued by the Guardian Council: interpretation number 4575 dated 24 May 1993 which was issued on Principle 112 of Iran's Constitution. For detailed information see the Guardian Council's website on interpretations at: <http://www.shora-gc.ir>, last visited on 1-10-2016.

³⁰ For further information regarding the Valiye Faqih see chapter 3, section 3.4.1.1. (Islamic sovereignty) and section 3.5.1 (The Leader (Under Iran's Constitution)).

³¹ Iran is not a Member of Berne Convention due some difficulties of its domestic system for protection of copyright and related rights. Article 9 (1) of the TRIPS Agreement states: 'Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto'.

³² Regarding non-Muslim judges see chapter 3, section 3.6.5. (Non-Muslim Judges and Iran's Legal System).

B. Solutions for the Second Issue (the Post-Accession Legal Conflict)

The main focus of the research questions addressed in this dissertation is on the legal impediment to Iran's WTO accession resulting from Principle 139 of Iran's Constitution and how to overcome this impediment. However, there is also another issue resulting from the conflict between Principle 139 and the WTO DSU. This issue may arise in the post-accession phase. This issue is further clarified below.

As discussed, Iran's protocol of accession can be adopted if the legal impediment which is discussed in this dissertation is removed, for instance, through the adoption of National Expediency Council. Then it can be asserted that the problem of accession is temporarily removed.

However, in the post-accession, if dispute settlement proceedings are initiated by a WTO Member under the WTO DSS against Iran, due to the compulsory jurisdiction of the WTO DSS, Iran will have no choice but to participate in these proceedings. However, what if, to comply with the Principle 139 requirements, Iran's Government requests an authorization from the Parliament and the Parliament does not authorize Iran's participation. It bears noticing that under Iran's Constitution, the constitutional institutions, such as the Parliament and the Guardian Council even after the accession can still block Iran's participation in the DSS procedures. Therefore if the participation is not authorized, the Government will not have the required legal capacity to participate. And if the Government lacking the required capacity participates, under Iran's legal system, there would be considerable problems resulting from the non-recognition and lack of legal capacity consequences for the WTO DSS rulings. In other words, if Iran's legal system does not recognize the rulings, they cannot be enforced by Iran's constitutional institutions. For instance, Iran's Parliament cannot amend or change legislation which is considered by the WTO DSS as inconsistent with the WTO agreements. Therefore, legally speaking, the question is whether removing the legal impediment to Iran's WTO accession through the suggested solutions in this dissertation can resolve the conflict between Iran's Constitution and the compulsory jurisdiction of the WTO DSS. In other words, the question is whether this legal impediment can be really removed through solutions, such as the Principle 112 method? And whether in the post-accession, the problem of the above-mentioned legal conflict will remain and

it would result into complicated issues on recognition and enforcement of the WTO DSS rulings by Iran's legal system?

To answer this question, it bears mentioning that, if an international agreement providing for a dispute settlement system is approved by the NEC, Iran's Government usually does not request the Parliament for authorization on a case-by-case basis to use the dispute settlement system provided for in the approved agreement. More importantly, so far, to the knowledge of the author, Iran's Parliament has never rejected any request for the referral of state and public property disputes to dispute settlement systems regarding those international agreements which are adopted by the Parliament. However, if Iran's Government enforces the Principle 139 requirements and the Parliament does not authorize the participation, then the complainant can immediately request the establishment of a panel – which the respondent (Iran) will not be able to block. However, it is doubtful whether the result of this dispute, for instance to remove or amend a parliamentary legislation, can be legally recognized in Iran's legal system (and by Iran's constitutional institutions).

Another solution regarding this issue for Iran is to follow the 'example' set by the United States in the *US – Helms-Burton* dispute. On 3 March 1996, the European Communities requested consultations with the United States under the WTO DSS and, when it could not resolve the issue, requested the Dispute Settlement Body (DSB) to establish a Panel on 20 November 1996. The United States first blocked the establishment of a Panel requested by the European Communities, then, after the Panel was requested for the second time, the US refused to recognize the jurisdiction of the Panel. On 11 April 1997, the parties to the *US - Helms-Burton* dispute agreed to suspend the proceedings of the WTO Panel through a Memorandum of Understanding. This suspension continued until the Panel's jurisdiction lapsed on 22 April 1998. The reason given by the United States for refusing to recognize the jurisdiction of the Panel was that this dispute related to its national security.³³

³³ For further information see chapter 7, section 7.2.1.1. (*Helms-Burton Act*).

Therefore, non-participation in a WTO dispute on the basis of national security could be a suggestion if other WTO Members do not contest it.³⁴

Since refusing to recognize the DSS jurisdiction on the basis of national security would not be a practical solution for Iran, a suggestion on the basis of the other countries' WTO accession experience is also discussed. In the context of the accession of Saudi Arabia to the WTO, WTO Members agreed by consensus to a so-called 'Negative List', which was added to Annex C of Saudi Arabia's protocol of accession. This Negative List contains exceptions from WTO obligations granted to Saudi Arabia to allow for the 'preservation of religious values and principles and provision of national security'.³⁵ If WTO Members would agree by consensus to include in Iran's protocol of accession a provision allowing Iran to set aside the compulsory jurisdiction of the WTO DSS, there would obviously no longer be a post-accession conflict between Principle 139 of Iran's Constitution and the WTO DSU. However, it is most unlikely that WTO Members will agree on such exception from such a core provision of the WTO legal system, i.e. the compulsory jurisdiction of its DSS.

To conclude, Iran's legal impediment to WTO accession resulting from Principle 139 of Iran's Constitution can be removed and, therefore, Iran can join the WTO. To remove this legal impediment, there are several solutions discussed. The best practical solution would be to adopt Iran's protocol of accession through the National Expediency Council (the Principle 112 method). Then, there would not be such a legal impediment to the accession of Iran to the WTO.

³⁴ The position taken by the US in the *Helms-Burton* dispute was highly contested by other WTO Members.

³⁵ For further information see chapter 7, section 7.5.3. (Similar Experience of Other Countries in Accession to the WTO).