

Trends in Free Trade: Legal and Policy Perspectives on Jordan's Regional Trade Arrangements

Mohammad F.A. Nsour, Abdullah Dmour*

Introduction

Since the establishment of the World Trade Organization (WTO) in 1995, the number of Regional Trade Arrangements (RTAs) has grown dramatically.¹ At present, more than half of the world's trade takes place within RTAs.² According to the WTO, as of January 15, 2012, the GATT/WTO had received some 511 notifications of RTAs (counting goods and services separately),³ as compared with 40 such notifications in 1990.⁴ Corresponding to this increase in volume, the coverage of RTAs has also expanded over time to include services, trade and investment, competition, government procurement, electronic commerce, labor and environmental standards, in addition to preferential liberalization of tariffs and other measures governing merchandise trade.

This "new regionalism," which increasingly involves webs of agreements covering a range of issues at varying depths, is the reality of the international trading system today. Excluding Mongolia, every WTO Member is party to one or more RTAs. As such, most developing countries are actively pursuing regionalism as a route to integrate their economies into the global system and promote sustainable economic development. Jordan is no exception.

*Practicing lawyers and Assistant law professors at the University of Jordan Faculty of Law.

This research was conducted under the support of the WTO-Chair Programme at the University of Jordan. The authors acknowledge with appreciation the support and encouragement they received from the WTO Chair at the University of Jordan, Professor Talib Awad Warrad.

¹ The term Regional Trade Arrangements as used here refers to free trade agreements, customs unions, or common markets consisting of two or more countries or partners. *DICTIONARY OF TRADE POLICY TERMS* p. # (5th ed. 2010).

² Jo-Ann Crawford & Roberto V. Fiorentino, *The Changing Landscape of Regional Trade Agreements* 1-2 (WTO Discussion Paper No. 8, 2005), available at http://www.wto.org/english/res_e/booksp_e/discussion_papers8_e.pdf. See also World Trade Report, WTO and Preferential Trade Agreements: from co-existence to coherence http://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report11_e.pdf (last visited July 7, 2013) at 67.

³ WTO Regional Trade Agreements, http://www.wto.org/english/tratop_e/region_e/region_e.htm (last visited Dec. 29, 2012).

⁴ Jo-Ann Crawford & Sam Laird, *Regional Trade Agreements and the WTO*, 12 N. AM. J. ECON. FIN. 193, 194 (2001).

Jordan has followed a liberalization policy in an attempt to increase foreign investment and create more job opportunities. Currently, Jordan is ranked as one of the most open economies in the world.⁵ Jordan acceded to the WTO in 2000, and became party to trade liberalization arrangements with various countries including the United States, the European Union, and, most recently, Canada.

This article is both part of and funded by the WTO Chair Program at the University of Jordan. It presents an overview of the legal and factual status quo of Jordan's regional trade arrangements, touching upon their development and coverage, as well as surveying/examining Jordan's existing foreign trade policy. This article is not meant to be an extensive analysis of Jordan's free trade arrangements; rather, it is designed to tackle legal and policy concerns regarding some essential aspects of Jordan's regional trade policies. While the article does not analyze the economic consequences of these RTAs, it does use several points of economic data in the arguments presented herein.

Regional and preferential trade is part of the multilateral trade regime. Part I defines the WTO's legal framework with respect to regional and preferential trade and also outlines the theoretical foundation of regional and preferential trade. Part II sheds light on Jordan's trade policy and underlines historical milestones achieved during its progression. Part III is connected with Part II and it considers Jordan's regional and preferential trade agreements in order to pave the road for the discussion in the ensuing parts. Part IV proceeds to define each trade agreement to which Jordan is a party and offers certain remarks on each of these agreements. Finally, Part V reflects upon Jordan's trade policy and agreements and provides observations thereon. This article concludes that Jordan's agreements were largely politically driven, and that in the course of crafting its trade agreements, Jordan often gave up some of the flexibility that it would have been afforded under the multilateral trading system. Accordingly, after more than a decade of active regionalization, Jordan's trade and economic balances remain, unsurprisingly, negative.

Part I. The WTO Legal Framework

Provided certain conditions are met, WTO Members are allowed to enter into preferential arrangements that depart from the most-favored-nation (MFN) treatment provided certain conditions are met. In the 1940s, the original General Agreement on Tariffs and Trade (GATT) rules for RTAs were introduced. At that time, little attention was given to non-tariff measures and, more importantly, it was not expected that the exception embodied in GATT Article XXIV would be heavily invoked. That understanding

⁵ See Jay Squalli and Kenneth Wilson "How Open Are Arab Economies?" EPRU (2007)

was valid, since the number of existing RTAs at that time was insignificant.⁶ Though the creation of GATT in 1948 did not rescind previous bilateral agreements, it did introduce a new reality: agreements had to be brought into accordance with the rules of the GATT or any exceptions thereunder. This grandfathering process materialized most notably in preferential treatment between trading partners. Accordingly, many colonial powers, including the United States, the United Kingdom, Belgium, and the Netherlands, maintained their preferential trade agreements with their respective colonies.⁷

The RTA tsunami occurred in the 1990s, particularly after the collapse of the Berlin Wall and the creation of the WTO in 1995. Not only did the number of RTAs skyrocket,⁸ but the coverage of RTAs also became more extensive, expanding to include non-tariff barriers with respect to trade-in goods,⁹ as well as services, intellectual property, and investment. These agreements have also substantively expanded to encompass items on competition policy, government procurement, labor and environmental standards, electronic commerce, and human rights.¹⁰

The essence of the rules of the global trading system reflects the principles of non-discrimination. The preamble of the Marrakesh Agreement Establishing the World Trade Organization clearly states that one of the main objectives of the Organization is to promote “entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations”.¹¹ The principles of non-discrimination are substantive legal obligations placed on all WTO Members and are reflected in numerous provisions of the WTO Agreement.

In the WTO law, there are two main concepts of non-discrimination, the most-favored-nation (MFN) treatment obligation and the national treatment obligation (NT). In the General Agreement on Tariffs and Trade (GATT), the principle of MFN is set out in Article

⁶ See generally Andrew Stoler, *The WTO Dispute Settlement Process: Did We Get What the Negotiators Wanted?*, 3 WORLD TRADE REVIEW 99 (2004).

⁷ Joanne Gowa and Soo Yeon Kim, *An Exclusive Country Club: The Effects of the GATT on Trade, 1950-94*, 57 WORLD POL. 453, 459, available at <http://www.yale.edu/irspeakers/Gowa2006>.

⁸ *WTO Regional Trade Agreements*, *supra* note 3.

⁹ See generally Natalie Shimmel, *Welcome to Europe, but Please Stay Out: Freedom of Movement and the May 2004 Expansion of the European Union*, 24 BERKELEY J. INT'L L. 760 (2006) (outlining different aspects and consequences of the EU 2004 expansion).

¹⁰ Crawford & Fiorentino, *supra* note 2, at 1.

¹¹ Under the Uruguay Round package 1992-1993, negotiations finally produced agreement on text of the TRIPS thereby extending the multilateral trading system to cover intellectual property (IPs). Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, Legal Instruments—Results of the Uruguay Round, 33 I.L.M. 1197 (1994).

I and also appears in various forms in Articles II.1, V.5, IX.1, and XIII.1, while the principle of NT appears in Article III. In the General Agreement on Trade in Services (GATS), Article II sets out the principle of MFN and Article XVII sets out that of NT. In the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the principles of MFN and NT are found in Articles 3 and 4, respectively. These two key principles are also found in other WTO agreements.¹² However, WTO Members are permitted to depart from the non-discrimination rules under specific conditions, which vary depending on the level of integration sought, mainly according to Article XXIV of the GATT, Article V of the GATS for MFN and the Tokyo Round's Decision on Differential and More Favorable Treatment, Reciprocity, and Fuller Participation of Developing Countries (the Enabling Clause).¹³

Regionalism stems from the idea of preferential trade. Preferential trade is the use of bilateral or plurilateral trade arrangements that offer reciprocal trade benefits to the parties thereto, while inevitably excluding third parties from those benefits.¹⁴ Preferential treatment and economic integration are directly related: higher economic integration exists when preferential treatment is substantial, whether quantitatively or qualitatively. In this context, it should be noted that the term "regionalism" does not necessitate that trade arrangements take place between neighboring countries, as geographic proximity is not required. Indeed, "enormous technological advancements, especially in communications, have made it easier for distant countries to form RTAs."¹⁵

It was initially hoped that GATT Article XXIV and GATS Article V would be the system's instruments for both managing RTAs and encouraging their transformation into multilateral GATT trade agreements.¹⁶ However, many view RTAs' proliferation, which

¹² Article I of the GATT to the principle of non-discrimination stating that members "shall unconditionally offer to all other contracting parties (members) any advantage, favour, privilege or immunity affecting customs duties, charges, rules and procedures that they give to products originating in or destined for any other country." General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194.

¹³ Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, November 28, 1979, para. 1, GATT B.I.S.D. (26th Supp.) (1980) [hereinafter Enabling Clause].

¹⁴ Sydney M. Cone, III, *The Promotion of Free Trade Areas Viewed in Terms of Most-Favored-Nation Treatment and Imperial Preference*, 26 MICH. J. INT'L L. 563 (2005).

¹⁵ MOHAMMAD F. A. NSOUR, *RETHINKING THE WORLD TRADE ORDER* (Sidestone Press) (2009).

¹⁶ See generally Donald A. Calvert, *How the Multilateral Trade System under the World Trade Organization is Attempting to Reconcile the Contradictions and Hurdles Posed by Regional Trade Agreements: An Analysis of Article XXIV of the General Agreement on Tariffs and Trade 4*, (Dec. 6 2002) (unpublished Master's Capstone Thesis, George Mason University), available at, <http://www.cid.harvard.edu/cidtrade/Papers/calvert.pdf>

has resulted in RTAs constituting an essential portion of the world trade, as a threat to the multilateral system itself.¹⁷

RTAs are recognized as reciprocal trade agreements between two or more partners and include FTAs, CUs, and common markets.¹⁸ PTAs in the WTO “are unilateral trade preferences,” that include the Generalized System of Preferences (GSP) schemes, as well as other non-reciprocal preferential schemes granted a waiver by the WTO General Council¹⁹ pursuant to Article IX (*Decision Making*) of the WTO Agreement.²⁰

Free Trade Agreements (FTAs) are the most popular mode of regionalism. FTAs encompass an arrangement that allows for the unimpeded flow of trade in goods between members at either a very low, or a zero tariff rate, subject to the conditions of the specified rules of origin.²¹ FTAs have proliferated mainly because they offer flexibility to their members. These agreements do not entail the mandatory adoption of similar trade policies; they simply require economic compatibility and probably political compatibility as well.²² While the conventional form of FTAs simply liberalizes trade in goods, these agreements have taken many forms that vary from this basic model, such as FTAs that contain provisions on investment, as in the NAFTA, or FTAs that encompass non-trade issues related to human rights and democracy, as in several EU agreements.²³

¹⁷ The recent proliferation of RTAs in the form of free trade agreements(?) demonstrates countries' favoritism of these over customs unions. This suggests that if the GATT framers had been aware of the potential use of Article XXIV, they would have included a customs union-only requisite, something that might have deterred many of current RTAs from forming. See Kerry A. Chase, *Multilateralism Compromised: The Mysterious Origins of GATT Article XXIV*, 5 *WORLD TRADE REVIEW* 1 (2006).

¹⁸ WTO Regional Trade Agreements and Preferential Trade Agreements, http://www.wto.org/english/tratop_e/region_e/rta_pta_e.htm (last visited Dec. 28, 2012).

¹⁹ *Id.*

²⁰ On June 15, 1999, the WTO General Council adopted a decision (WT/L/304) that grants a General Agreement on Tariffs and Trade (GATT) waiver to the preferential tariff treatment by developing countries for exports from the least developed countries. The waiver would effectively provide a legal cover to those initiatives pledged and engaged in by several developing countries to facilitate market access for the least developed countries. The waiver authorizes derogation from the most-favored-nation (MFN) principle until July 30, 2009 by developing country WTO members that grant unilateral preferential tariff treatment to products imported from the least developed countries members. See also, Request for Extension of Waiver, *European Communities—Autonomous Preferential Treatment to the Countries of the Western Balkans*, G/C/W/552; G/C/W/556 (May 5, 2006). Examples of preferential trade agreement include the Lomé IV Agreement, preferential arrangements for the Caribbean by the United States and Canada, or a recently agreed waiver permitting more advanced developing countries to extend duty-free preferences on a non-reciprocal basis to LDCs.

²⁰ Nsour, *supra* note 15, at 147

²¹ *Id.* I thank the WTO external reviewer who noted that tariff peaks often remain.

²² Martin Richardson, *Why a Free Trade Area? The Tariff Also Rises*, 6 *ECON. & POL.* 79, 88 (1994).

²³ Nsour, *supra* note 15, at 155.

When members of FTAs wish to achieve deeper economic integration, they can adopt common external tariff rates, commonly termed customs unions.²⁴ But customs unions offer only a free circulation of products and are relatively limited in scope. If members of a customs union allow the unimpeded movement of products, capital, and people, then the customs union becomes a common market.²⁵ Monetary union is another deeper integration model which entails that common markets fix exchange rates and agree on common monetary policies.²⁶ Of course, deeper models of integration require higher cooperation, the European Union being the best example of such a model.

The legal framework of RTAs is constrained and shaped by WTO obligations anchored on the principle of non-discrimination, as WTO members can only enter into these discriminatory trade arrangements under certain conditions, and may only develop their own rules for areas in which no international legal framework presently exists.

In Tokyo Round in 1979, GATT members agreed on a legal framework for preferential trade concerning developing countries. Under the Enabling Clause,²⁷ developing countries can exchange virtually any trade preference.²⁸ The Generalized System for Tariff Preferences among Developing Countries (GSTP)²⁹ enables developed countries to give developing countries one-way trade preferences. For example, under the CARIBCAN agreement, Canada accords duty-free non-reciprocal access to most Caribbean countries. By the same token, the Enabling Clause permits developing countries to exchange trade preference without offering the same preference to

²⁴ Harry Johnson, *The Economic Theory of Customs Union*, in *TRADING BLOCS: ALTERNATIVE APPROACHES TO ANALYZING PREFERENTIAL TRADE AGREEMENTS*, 127, 133 (Jaquish N. Bhaqwati et al., eds., 1999).

²⁵ The difference between a Customs Union and a FTA is the authority to change tariffs on imports from non-member countries. Countries within a Customs Union introduce common tariff rates against all non-member countries, and they cannot change tariff rates voluntarily without prior consultation with other member countries. However, countries in a FTA can set their own tariff rates independently; if a country is a WTO Member, then the tariff rates set under the FTA must not be higher than its WTO-bound rates. See e.g., Case C- 221/89, *The Queen v. Sec'y of State for Transp. ex parte Factortame Ltd.*, 1999 E.C.R. 3905, at para. 20 (the EU Court of Justice confirmed this in *Factortame II* with regard to the freedom of establishment by emphasizing that "the concept of establishment within the meaning of article 52 of the Treaty involves the actual pursuit of an economic activity through a fixed establishment in another Member State for an indefinite period.").

²⁶ See Joshua M. Wepman, *Article 104(c) of the Maastricht Treaty and European Monetary Union: Does Ireland Hold the Key to Success?*, 19 B.C. INT'L & COMP. L. REV. 247 (1996) (defining Monetary Unions).

²⁷ See Enabling Clause, *infra* note 201.

²⁸ Robert Howse, *India's WTO Challenge to Drug Enforcement Conditions in the European Community Generalized System of Preferences: A Little Known Case with Major Repercussions for "Political" Conditionality in US Trade Policy*, 4 CHI. J. INT'L L. 385, 387 (2003) See also Article 2c of the Enabling Clause which allows developing countries to agree on reciprocal agreements among themselves, without giving the same preferences to developed countries.

²⁹ See generally *id.*

developed countries. Hence, the Association of Southeast Asian Nations (ASEAN), and the Southern Common Market (MERCOSUR) were established under this Clause. Jordan receives trade preferences under the GSP from Belarus, Canada, the EU, Japan, New Zealand, the Russian Federation, Switzerland, Turkey, and the United States.³⁰

In 1996, the WTO created the Committee on Regional Trade Agreements (CRTA) to oversee all RTAs and to consider the implications of such agreements on the multilateral trading system. However, the CRTA proved unable to effectively carry out its duties of examining the consistency of RTAs with the rules and overseeing their implementation.³¹ In this light, WTO Members agreed in July 2006 on a new mechanism for transparency that drew specific guidelines for reporting RTAs and outlined clear timetables for that purpose.³² This Transparency Mechanism enables the WTO Secretariat to assume the guiding role in addressing the factual aspects of the notified agreements.

Part II. Overview of Jordan's Foreign Trade Policy

Jordan's preferential trade initiatives began to evolve in the late 1950s. In 1958, Jordan entered into an economic cooperation agreement with Saudi Arabia to exempt specific products from duties according to each country's ability.³³ Jordan also signed agreements with India in 1964, Iraq in 1967, and a cooperation agreement with the European Communities that entered into force in 1977. The latter specifically allowed Jordan to export some agricultural products with reduced tariffs.³⁴ The foregoing agreements were all exclusive to goods.³⁵ Other regional agreements took place under the Umbrella of the Council of Arab Economic Unity but with limited success.

In the early 1970s, Jordan strengthened its Import Substitution Industrialization Strategy, originally implemented in the mid-1950s, which aimed at diversifying the

³⁰ Here, it may also be noted that, under the subsidies Agreement, Jordan also obtained a WTO Waiver covering an income tax exemptions on net profits generated from most export revenue (goods and services) until 2015.

³¹ See WORLD BANK, *GLOBAL ECONOMIC PROSPECTS 2005: TRADE, REGIONALISM AND DEVELOPMENT*, 141 (2004).

³² See Draft Decision—*Transparency Mechanism for Regional Trade Agreements*, WT/L/671 (June 29 2006) (WTO).

³³ The Agreement was ratified under the Law No. 15/1958.

³⁴ Working Party on the Accession of Jordan, *Report of the Working Party on the Accession of The Hashemite Kingdom of Jordan to the World Trade Organization*, WT/ACC/JOR/33 (Dec. 3, 1999).

³⁵ As Jordan has a limited industrial base, semi-arid land covering over 90% of its territory, as well as water shortages, the real economic return of these agreements was minimal.

industrial base of the economy.³⁶ Hence, Jordan introduced several tariff and non-tariff barriers including financial subsidies to local producers, particularly the smaller ones. However, due to the expansionary policies and the nearly unlimited external borrowing the government followed at the time, the total public debt had grown significantly and the government became unable to respond to its debt obligations.³⁷

To deal with the struggling economy, Jordan had to defer to the IMF and the World Bank which required Jordan to adopt comprehensive measures, including reducing import restrictions and eliminating domestic subsidies.³⁸ By 1999, the import weighted average tariff rate had declined to 25 %, down from 35% in 1987.³⁹ The maximum tariff rate was also reduced from 70% in 1993 to 35% in 1999, to reach on average 8.98% by 2010.⁴⁰ From 2000, the Government announced that it accelerated economic “reforms” through further privatization and trade liberalization measures including the introduction of a 10% sales tax for the first time.⁴¹ The sales tax rate increased to 16% in 2004, and the weighted average tariff rate fell from 35% in 1987 to 13.5% in 2000, with the maximum tariff rate declining to 30%.⁴²

By the end of 2000, Jordan had joined the WTO in record time, and by 2001, Jordan had signed a Free Trade Agreement (FTA) with the United States, having signed an Association Agreement (AA) with the European Community in 1997. At this point/by this time, Jordan had already become a member of various international organizations including the Multilateral Investment Guarantee Agency, the World Intellectual Property Organization (WIPO) and the International Labor Organization (ILO). Regionally, Jordan was a member of various agreements that promoted economic cooperation between Arab states, such as the Agreement for Facilitating and Developing Trade Exchange among Arab States that was later replaced with the Greater Arab Free Trade Agreement (GAFTA).

In several areas, Jordan introduced legislation that was compatible with its liberalization policy, including, inter alia, legislation addressing the areas of intellectual property rights,⁴³ competition,⁴⁴ and trade remedies,⁴⁵ as well as legislation establishing free and

³⁶ Jane Harrigan et al., *The IMF and the World Bank in Jordan: A Case of Over Optimism and Elusive Growth*, 1 REV. INT. ORG. 263, 265 (2006).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* See also Index Mundi: <http://www.indexmundi.com/facts/jordan/tariff-rate> (last visited July 7, 2013)

⁴¹ *Id.*

⁴² Harrigan, *supra* note 36.

⁴³ For list of laws please visit: <http://www.wipo.int/wipolex/en/profile.jsp?code=JO>

⁴⁴ Competition Law No. 33/2004.

development zones.⁴⁶ Jordan also adopted other policies to facilitate trade and transport. For instance, Jordan Customs adopted the World Customs Organization (WCO) Framework of Standards to Secure and Facilitate Global Trade through the "Golden List" program, established in 2005. In July 2008, Jordan Customs signed a Mutual Recognition Agreement with the United States Customs and Border Protection, which recognized the compatibility of the Golden List program with the US C-TPAT.⁴⁷ Similarly, Jordan has expedited clearance times by using the current ASYCUDA World in most of its customs houses.

Jordan is a member of the Organization of Islamic Conference (OIC) and is a party to the Framework Agreement for Exchange of Customs Preferences," which aims to provide market access at preferential tariff rates to OIC members. Jordan also has an MOU with the Common Market for Eastern and Southern Africa (COMESA), as "a preliminary step towards full membership."⁴⁸

At the multilateral level, and in line with accession commitments,⁴⁹ Jordan has signed the WTO Information Technology Agreement and is currently in an advanced stage of negotiations for its accession to the Government Procurement Agreement (GPA).⁵⁰ Jordan supported the unsuccessful Doha agenda, which aimed to remove export subsidies and allowed developing countries to designate special and sensitive products, in addition to creating a new regime for safeguards to phase out export subsidies by 2015.⁵¹

In 2005, Jordan developed its 10-year National Agenda (2006-2015), a long-term development plan that primarily aims to improve the quality of life for Jordanians through the creation of both income-generating opportunities and increased standards

⁴⁵ National Production Protection Law No. 21/2004.

⁴⁶ Free and Development Zones Law No. 2/2008.

⁴⁷ *Id.*

⁴⁸ See Jordan, *COMESA Sign Agreement*, COMESA TRADEHUB, March 21, 2007, http://lasco.comesatradehub.com/NewsDetail.asp?news_id=344.

⁴⁹ WTO Information Technology Agreement, http://www.wto.org/english/tratop_e/inftec_e/inftec_e.htm (last visited Dec. 28, 2012).

⁵⁰ European Commission Government Procurement Agreement/WTO, http://ec.europa.eu/internal_market/publicprocurement/rules/gpa-wto/index_en.htm (last visited Dec. 28, 2012) ("Negotiations with China, Jordan, and the Republic of Moldova and Armenia are ongoing.").

⁵¹ The Doha Agenda collapsed: *World Trade Talks End in Collapse*, BBC NEWS, July 29, 2008, <http://news.bbc.co.uk/2/hi/business/7531099.stm>.

of living and guarantees of social welfare.⁵² The National Agenda aspires to implement comprehensive strategies and initiatives designed to realize social, economic, and political development goals, as well as striving to create an institutional framework to evaluate and monitor progress of its implementation. These initiatives are to be undertaken over three consecutive phases and developed along three main dimensions: Government and Policies, Basic Rights and Freedoms, and Services, Infrastructure and Economic Sectors.⁵³ Under the latter dimension, the Jordanian Ministry of Industry and Trade developed a National Foreign Trade Strategy (2010-2014), which, along with the Industrial Support Programme, was approved by the Council of Ministers in May of 2010.⁵⁴ The National Foreign Trade Strategy aims to increase consistency and harmony with other policies and sectoral strategies, those both in place and under preparation, as well as ensuring that these strategies are in accordance with the goals and objectives of the National Agenda (2006-2015).⁵⁵ These strategies include the Agriculture Strategy, the National Transportation Strategy, the National Tourism Strategy, the E-commerce Strategy, the strategy of the Ministry of Environment (“approach towards the green economy”) and the National Industrial Policy. Since, the aforementioned strategies advocate and support trade liberalization and export, and accordingly the purpose of the National Foreign Trade Strategy, on the whole, reflects the same.

Empirically speaking, it is logical for a small economy and small market such as Jordan’s, whose population is growing, to identify exporting as the major means for growth. As such, the National Foreign Trade Strategy seeks an increase of GDP growth rate up to 8%, to decrease the trade balance deficit (\$1.7 billion) and to increase capital investments, especially foreign direct investments (35% of GDP).⁵⁶ The Strategy also includes internal and external policies, and an institutional framework of trade policy development. To these ends, it adopts three main pillars, with each containing specific objectives and strategies to be implemented during a short-term (three years) and a long-term period (five years), as follows: (a) enhancing the competitiveness of the national economy, (b) developing trade performance, and (c) improving the institutional performance.

⁵² The Ministry of Government Performance Within the Prime Ministry, *Jordan Nation Agenda (2006-2015) – The Jordan We Strive for 7 (2006)*, available at <http://www.nationalagenda.jo/Portals/0/EnglishBooklet.pdf>

⁵³ *Id.*

⁵⁴ See [http://www.mit.gov.jo/portals/0/NTS_Document%205_4_2010%203 .pdf](http://www.mit.gov.jo/portals/0/NTS_Document%205_4_2010%203.pdf)

⁵⁵ According to a conversation with officials at the Ministry of Trade, this work is still in the making.

⁵⁶ The Ministry of Government Performance Within the Prime Ministry, *supra* note 52, at 19.

Part III. Jordan's Trade Liberalization Arrangements

Regionally, Jordan has the highest number of free trade and preferential market access agreements when compared to other Arab countries. The table below lists Jordan's current FTAs:

| Agreement | Date of Signature | Date of Entry into Force |
|--|-------------------|--------------------------|
| 1. Greater Arab Free Trade Agreement (GAFTA) ⁵⁷ | Feb. 29, 1997 | Jan. 1, 1998 |
| 2. Jordan-EU Association Agreement | Nov. 24, 1997 | May 1, 2002 |
| 3. Jordan-US Free Trade Area Agreement | Oct. 24, 2000 | Dec. 17, 2001 |
| 4. Jordan-EFTA Free Trade Agreement | June 21, 2001 | Jan. 1, 2002 |
| 5. Agadir Agreement | Feb. 25, 2004 | July 6, 2006 |
| 6. Jordan-Singapore Free Trade Agreement | May 16, 2004 | Aug. 22, 2005 |
| 7. Jordan-Turkey Free Trade Agreement | Dec. 1, 2009 | Mar.1, 2011 |
| 8. Jordan Canada Free Trade Agreement | June 28, 2009 | Oct. 1, 2012 |

Source: <http://rtais.wto.org/>

All these agreements provide for a gradual reduction of import duties on products over a specified period of time. Most of them grant immediate tariff-free access for Jordanian products into the markets of these trading partners. Yet, Jordan has not yet fully benefited from all these preferential market access opportunities. In fact, there are arguments indicating that trade diversions have taken place.⁵⁸ Jordan's inability to benefit fully from trade has also been facilitated by the fact that Jordan's production capacity of any one product is limited, and by the fact that very little development has actually taken place over the last decade.

The Government of Jordan continues to spearhead plans for further bilateral packets with Iraq, Kazakhstan and Pakistan, while continuing to push for FTAs with MERCOSUR and Russia.⁵⁹ Moreover, in 2010, a Customs Union between Jordan and Egypt was first proposed, with the goal of establishing the Union by 2015. This proposed Customs Union was seen as the nucleus of the Arab Customs Union initially announced at the Arab League's 2009 Arab Economic and Social Development Summit in Kuwait, and it was thought that the Customs Union of 2015 would eventually lead to an Arab Common Market by 2020. While technical committees were established and bilateral meetings

⁵⁷ See <http://www.mit.gov.jo/Default.aspx?tabid=732>

⁵⁸ Ministry of Industry & Trade, www.mit.gov.jo.

⁵⁹ Bilaterals.org, <http://www.bilaterals.org/spip.php?rubrique120> (last visited Dec. 28, 2012).

were held between the two sides, the developments brought about by the Arab Spring, rendered the prospect of establishing a Customs Union, both bilaterally and at the Arab regional level, inevitably stalled. During this period, Jordan also took part in another failed attempt at economic integration, for the same latter reasons, together with Turkey, Syria, and Lebanon, in hopes of establishing a regional free trade zone among the countries of the Mashreq.

Following the unrest of the Arab Spring, Jordan's past efforts to strengthen formal economic relations with the Cooperation Council for the Arab States of the Gulf (GCC), were positively welcomed in early 2011 when Jordan's almost fifteen-year-old request to join the economic bloc was accepted by the six oil-rich Gulf states (Saudi Arabia, Kuwait, Qatar, United Arab Emirates, Oman, and Bahrain).⁶⁰ The potential expansion of the GCC also included Morocco, and was seen as a way to bring together like-minded governments at a time of regional unrest. However, the course changed, and members of the GCC no longer support full Jordanian membership in the GCC.. Instead, the proposal diverted to an aid support initiative – unsurprisingly for the already loose alliance.⁶¹ But in any event, in the authors' view, Jordan does not need full membership in the GCC. Jordan's core interests at this stage are the following: facilitated access to the GCC labor market, which may be treated within a separate labor movement agreement for skilled and highly skilled workers;⁶² financial and monetary aid packages for alleviating the pressures on the budget deficit; and preferential oil and gas prices.

Part IV. Jordan's Free Trade Agreements

⁶⁰ *Jordan, Morocco to Join GCC*, KHALEEJ TIMES, May 11, 2011, http://www.khaleejtimes.com/DisplayArticle09.asp?xfile=data/middleeast/2011/May/middleeast_May233.xml§ion=middleeast

⁶¹ The GCC countries are party to GAFTA, giving preferential access to Jordanian originating goods.

⁶² Labour Markets Integration Agreements provide that the GATS shall not prevent any of its Members from being a party to an agreement establishing full integration of the labour markets between or among the parties to such an agreement, provided that such an agreement: (a) exempts citizens of parties to the agreement from requirements concerning residency and work permits; (b) is notified to the Council for Trade in Services. General Agreement on Trade in Services, Dec. 15, 1993, 33 I.L.M. 1167, 1172 (1994) [hereinafter GATS] Footnote to the Article further states that "typically, such integration provides citizens of the parties concerned with a right of free entry to the employment markets of the parties and includes measures concerning conditions of pay, other conditions of employment and social benefits." *Id.* at n.2 Noting also here that GATS Annex on Movement of Natural Persons Supplying Services under the Agreement clearly provides that the GATS "not apply to measures affecting natural persons seeking access to the employment market of a Member, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis." *Id.* at 1187.

A. Jordan-EU Association Agreement (*towards the Euromed Free Trade Area*)

The European Union (EU) is a significant user of FTAs in the framework of region-to-region negotiations, which the EU utilizes in combination with other policies and agreements to promote certain goals and objectives that, in addition to commercial considerations, also encompass political and security concerns as well as development aims. In so doing, the EU is undoubtedly motivated by a desire to achieve, within the framework of FTAs, what it had failed to achieve in multilateral negotiations. In general, the EU's bilateral and regional arrangements not only cover a range of new issues at deeper depths than traditional FTAs, but they are distinctively European in that they promote the EU model of integration, using legal linkages and tie-ins to encourage regional integration among and between the partner countries, while simultaneously pushing for harmonization with the *acquis communautaire*.⁶³

With respect to the EU's "Southern Mediterranean Region," it includes Jordan, Morocco, Algeria, Tunisia, Egypt, Israel, Lebanon, Syria,⁶⁴ the Palestine Authority, and Turkey.⁶⁵ The trade relations between the EU and these countries are managed by the "Euromed Partnership,"⁶⁶ which was launched in 1995 as a platform for regional economic, political, and social cooperation. An essential feature of the Euromed Partnership is the Association Agreements (AA) entered into between the EU and its Mediterranean Partners. The table below lists the current AAs.

| Country | Signed on: | Entry into force on: |
|---------|------------|----------------------|
| Algeria | 4/22/2002 | 9/1/2005 |
| Egypt | 6/25/2001 | 6/1/2004 |
| Israel | 11/20/1995 | 6/1/2000 |
| Jordan | 11/24/1997 | 5/1/2002 |
| Lebanon | 6/17/2002 | 4/1/2006 |
| Morocco | 2/26/1996 | 3/1/2000 |

⁶³ *Acquis communautaire* is the body of EU law contained in all legislation adopted under the treaties establishing the European Union, including regulations, directives, decisions, recommendations and opinions.

⁶⁴ With respect to Syria, negotiations of the Association Agreement were concluded since 2004; however, due to the political situation and position on both sides, the Agreement was never signed. Libya has had observer status since 1999.

⁶⁵ Turkey and the European Community concluded a *first generation* AA with it in the 1960s, which resulted in a Customs Union that entered into force on January 1, 1996, and in 1999, Turkey was officially recognized as a candidate country for full membership of the EU.

⁶⁶ Also referred to as the Barcelona Process, and in 2008, the Partnership was relaunched as a Union for the Mediterranean (UfM) to infuse new vitality and raise the political level of the strategic relationship.

| | | |
|-------------------------------------|-----------|----------|
| Palestinian Authority ⁶⁷ | 2/24/1997 | 7/1/1997 |
| Tunisia | 7/17/1995 | 3/1/1998 |

Source: European Commission⁶⁸

AAs govern bilateral relations between the EU and each Mediterranean partner. While the provisions of the Euromed AAs vary from one Partner to the other, they inevitably have certain common characteristics⁶⁹ including the establishment of a Free Trade Area (also known as the Barcelona Process).⁷⁰

AAs are organized according to three pillars.⁷¹ The first is political, an essential element of which is the respect for human rights and democracy, an element which also provides for political dialogue. The second is the economic and financial pillar, pursuant to which free trade in goods (industrial and agricultural) is to be established between the EU and the Med Partner in accordance with WTO rules over a transitional period which may last up to 12 years. Trade in services is also to be gradually liberalized.⁷² Other economic provisions of the AA are aimed at the greatest possible harmonization between the EU and the Med Partners; they include maintenance of a high level of protection for intellectual property rights, gradual liberalization of public procurement, adjustment of provisions relating to competition, state aid and monopolies, provisions on the liberalization of capital movements, and economic cooperation in a wide range of sectors (e.g., industry, environment, energy, transport, and customs). Under the third pillar of social and cultural cooperation, the AAs contain provisions on workers' rights and other social matters, as well as for the readmission of nationals and non-nationals illegally arriving on the territory of one party from that of another. The AAs also provide for EU financial assistance for the Med Partner(s), except Israel.⁷³ For the implementation of AAs, administrative provisions are included, whereby two common

⁶⁷ An Interim Association Agreement, awaiting a Euro-Mediterranean association agreement.

⁶⁸ European Commission Agreements, <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/agreements/> (last visited Dec. 28, 2012).

⁶⁹ For comparison of the text of the AAs see, Iñigo de Prada Leal & Joanna Dek, EURO-MED ASSOCIATION AGREEMENTS IMPLEMENTATION GUIDE (REFLEX F), July 30, 2004, http://www.eeas.europa.eu/euromed/docs/asso_agree_guide_en.pdf

⁷⁰ The Euro-Mediterranean Partnership focuses on three main objectives: (1) creation of an area of peace and stability based on the principle of human rights and democracy; (2) creation of an area of shared prosperity through the progressive establishment of free trade between the EU and its Mediterranean partners and amongst the partners themselves; and (3) improvement of mutual understanding among the peoples of the region and the development of a free and flourishing civil society.

⁷¹ See Europa EU and Centra; America Sign Association Agreement, http://europa.eu/rapid/press-release_IP-12-713_en.htm (last visited Dec. 28, 2012).

⁷² Euro-Med services and right of establishment negotiations were launched in 2006 and are underway.

⁷³ EU financial aid to the Med Partners to governed by a unilateral policy and instrument of the European Neighbourhood Policy (ENP) and the European Neighbourhood and Partnership Instrument (ENPI).

bodies are created: the Association Council and the Association Committee. Each body has certain powers, which include the agreed-upon procedure for the resolution of disputes relating to the application or interpretation of the Association Agreement.⁷⁴ Conclusion of the AAs is seen as the first step to the establishment of the free trade area, which is to be accompanied by Mediterranean integration arrangements that create a FTA matrix between the partners, ending in the formation of the envisaged single free trade area.

The Jordan-EU Association Agreement (AA) was signed in 1997, and it came into force on May 1, 2002 (prior to that Jordan's and the EU's (then the EC) relations were governed by the 1977 Cooperation Agreement).⁷⁵ The AA is a legally binding treaty and contains strong economic and trade provisions (a Free Trade Agreement). Under the AA, an Association Council (headed by Jordan's Minister of Foreign Affairs) is established, as the political arm for cooperation with the power to amend certain provisions or arrangements (such as progressive tariff dismantlement schemes and amendments to the rules of origin (ROO)).⁷⁶ An Association Committee (headed by Jordan's Secretary General of the Ministry of Planning and International Cooperation) is also established as the technical arm for cooperation in addition to an institutionalized Economic Dialogue.⁷⁷

The EU is also pursuing the establishment of a more efficient dispute settlement mechanism for the trade provisions of the Association Agreements.⁷⁸ In this context, regional negotiations were formally launched at the fifth Euro-Med Trade Ministerial Conference held in Marrakech on March 24, 2006. Up until 2008, a number of regional and bilateral meetings had taken place. Jordan signed a Dispute Settlement Protocol in Brussels in June 2011, which created a dispute settlement process inspired by the WTO Dispute Settlement Understanding, replacing the less reliable diplomatic approach

⁷⁴ Euro Med negotiations to establish a dispute settlement mechanism to resolve trade disputes were launched in 2006 and are underway.

⁷⁵ Europa Countries and regions: Jordan, <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/jordan/> (last visited Dec. 28, 2012).

⁷⁶ Euro-Mediterranean Agreement Establishing an Association Between the European Community and its Member States, of the One Part, and the Hashimite Kingdom of Jordan, of the Other Part, Nov. 11, 1997 <http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=245&back=1603>

⁷⁷ Euro-Mediterranean Agreement, *supra* note 76,

⁷⁸ Euro-Mediterranean Agreement, *supra* note 76,

contained in Article 101 of the Jordan-EU AA, though only as related to trade issues.⁷⁹

At the ninth Jordan–EU Association Council meeting held in Brussels on October 26, 2010, the EU agreed to grant Jordan the "Advanced Status," a designation that indicates closer ties in all areas; this includes deeper integration, which goes beyond removing tariffs to cover other issues of economic integration, investment, government procurement, and regulatory issues.⁸⁰ The new goal of...(?) was the establishment of "Deep and Comprehensive Free Trade Areas" (DCFTA), not just with Jordan, but likewise for other advanced or advancing Med partners which, to date, include Morocco (which has also been offered the "Advanced Status" by the EU), Tunisia, and Egypt. Negotiations for the further liberalization of trade in services pursuant to Article 40 of the AA will be embedded in the context of the proposed DCFTA. Additionally, these negotiations will pursue the Agreement on Conformity Assessment and Acceptance (ACAA), which is an agreement entailing regulatory convergence in line with EU standards on industrial products.⁸¹

Deeper integration, in the technical sense, involves combining the national policy frameworks of integrating countries/partners in matters such as competition policy, technical standards, subsidies, monetary and fiscal policies, regulation and supervision of financial institutions, environmental issues, and government procurement.⁸² These frameworks are traditionally the preserve of national governments of developed countries (?). Conversely, developing countries have resisted the expansion of these frameworks, at least in the context of the multilateral trading system.

On the sectoral level, Jordan and the EU have entered into a number of bilateral arrangements to enhance cooperation in energy, aviation, and air management.⁸³

⁷⁹ European Council TV Newsroom Signing Ceremony of the EU-Jordan Dispute Settlement Protocol, <http://tvnewsroom.consilium.europa.eu/video/signing-ceremony-of-the-eu-jordan-dispute-settlement-protocol> (last visited Dec. 28, 2012).

⁸⁰ Statement by the European Union, Ninth Meeting of the EU-Jordan Association Council (Oct. 26, 2010), http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/er/117414.pdf

⁸¹ European Commission European standards: Construction products, <http://ec.europa.eu/enterprise/policies/european-standards/harmonised-standards/construction-products/>.

⁸² See generally Daniel Muller-Jeutsch, *Deeper Integration and Trade in Services in the Euro-Mediterranean Region* (World Bank/European Commission Programme on Private Participation in Mediterranean Infrastructure no. 32530, 2005), http://trade.ec.europa.eu/doclib/docs/2005/july/tradoc_124235.pdf.

⁸³ These are the 2007 Joint Declarations on Energy Cooperation that provides a basis for enhancing energy relations and includes a possibility for cooperation on nuclear safety, the 2008 Horizontal Aviation Agreement as a first step to integrate Jordan further into the European air transport market, pursuant to

Furthermore, towards the achievement of the Euromed Free Trade Area, Jordan has entered into bilateral agreements with all the Euromed partners. These agreements have made Jordan the only country to have completed the necessary bilateral links with all its Euromed partners for the functioning of the Euromed 'goods' free trade area, namely the diagonal accumulation function offered by the Pan-Euro-Med preferential rules of origin. The agreements with the EU cover issues such as intellectual property, competition, state aid, government procurement and dispute settlement, and related institutional provisions at the political and technical levels that are central to the management and progression of the partnerships.⁸⁴ In this article we have elected to offer a snapshot of the rules of origin (ROOs) and services.

1. Rules of Origin

ROOs have an important role within FTAs; they are not simply tools to determine the economic nationality of a producer or a product in order to ascertain its eligibility to benefit from the tariff preference agreed upon under the FTA. This eligibility determination would prevent "Trade Deflection,"⁸⁵ a problem arising out of trans-shipment, in which a product is exported to a specific country, with the intention of taking advantage of the market preferences granted to that counter under an FTA, by re-exporting the products, after minimal processing or assembly in the preference-receiving country, to another country.

Rather, in the context of the Euromed partnership, ROOs are central to the establishment of the Euromed free trade area, and the AAs include agreed-upon ROOs in the form of Protocols attached to each agreement.⁸⁶ Initially, however, the AA ROO

which Jordan and the EU, on December 15, 2010 signed a Comprehensive Air Services Agreement, which will establish a "Euro Mediterranean Aviation Area" based on common rules and a liberalization of the air markets. Also the 2009 Science and Technology (S&T) Cooperation Agreement will help structure and enhance S&T cooperation in areas of common interest. See Europa EU and Jordan Sign Air Transport Agreement, http://europa.eu/rapid/press-release_IP-10-1723_en.htm (last visited Dec. 28, 2012).

⁸⁴ Jordan Ministry of Planning and International Cooperation Jordan-EU Association Agreement Overview, http://www.mop.gov.jo/pages.php?menu_id=228 (last visited Dec. 28, 2012).

⁸⁵ The creation of preferential trade areas normally leads to the expansion of trade between its members, but economic theory postulates that a share of the increased trade experienced by participants is merely due to a redirection of their trade, and not increased trade due to the arrangement. This effect can be demonstrated convincingly in models. In practice, trade diversion has always been very difficult to isolate because of other factors. These include technological innovation, global reduction in tariffs, changes in investment policies, and others. See Dictionary of Trade Policy Terms, *supra* note 1.

⁸⁶ Patricia Augier et al., The EU-Med Partnership and Rules of Origin 1 (October 2003), <http://www.cgdev.org/doc/event%20docs/10.23.03%20GDN%20Conf/Gasiorek%20-%20The%20EU->

protocols of the Med Partners were not harmonized. For example, the ROOs applicable to the AAs with Egypt and Jordan were virtually identical to the Pan-European rules, whereas the agreements with Morocco and Tunisia were slightly different for certain product categories.⁸⁷

The Pan-European ROOs model emerged in the 1990s as an effort to harmonize the origin rules embedded in EU's different/various FTAs.⁸⁸ In 1994, the European Commission (EC) submitted a report presenting a strategy for harmonizing the preferential ROOs to reduce the underutilization of trade preferences and to maximize the gains from trade in a European context.⁸⁹ At the Euro-Med Trade Ministerial Meeting held in Palermo on July 7, 2003, the decision was taken to replace the ROOs protocols contained in the previously adopted AAs, with the "Pan-Euro-Mediterranean protocol on rules of origin."⁹⁰

Since then, the Pan-Euro-Med Protocol has been available for the progressive adoption by the Med Partners. Jordan adopted the Protocol in 2006.⁹¹ The creation of the Pan-Euro-Med ROOs, through the extension of the Pan-Euro zone to the Med Partners (Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Syria, Tunisia, the Palestinian

[Med%20partnership%20and%20rules%20of%20origin.pdf](#) ("All preferential trading arrangements have detailed protocols on rules of origin.").

⁸⁷ *Id.*

⁸⁸ Teruo Ujiie, Rules of Origin: Conceptual Explorations and Lessons from the Generalized System of Preferences (ERD Working Paper No. 89, 2006), http://www.adb.org/Documents/ERD/Working_Papers/WP089.pdf.

The EU is the only regional bloc that also adopted a common set of non-preferential ROOs. Goods whose production involved more than one country shall be deemed to originate in the country where they underwent their last, substantial, economically justified processing or working in an undertaking equipped for that purpose, and resulting in the manufacture of a new product or representing an important stage of manufacture. This basic concept is interpreted into process criterion, percentage criterion, or combination of these two criteria in determining the country of origin. The importance of the EU non-preferential rules of origin is that they set out specific rules on a product-specific basis reflecting the EU's interest in items (?) such as radios, televisions, tape recorders, integrated circuits, photocopiers, and textiles and clothing. The EU now applies its MFN tariff to only nine trading partners. These include: Australia, Canada, Chinese Taipei, Hong Kong, China, Japan, Korea, New Zealand, Singapore, and the US.

⁸⁹ Communication from the Commission to the Council Concerning the Unification of Rules of Origin in Preferential Trade Between the Community, the Central and East European Countries and the EFTA Countries (Nov. 30, 1994), available at <http://aei.pitt.edu/3321/1/3321.pdf>. The European Council adopted the proposal in December 1994. By 1997, harmonized protocols replaced the preexisting ones, covering an area comprised of the EU, the European Economic Area (EEA), Switzerland and the associated Central and Eastern European Countries (CEEC). The EU's decision to harmonize its preferential ROOs extended to the FTAs with the Med Partner countries; this approach was endorsed in March 2002 at the EU-Mediterranean Trade Ministerial Conference held in Toledo where, in principle, it was agreed to extend the Pan-European system of cumulation of rules of origin to the Barcelona group of countries.

⁹⁰ Council Regulation (EC) No. 1617/2006, O.J. L 300/5 (2006).

⁹¹ For more details please visit, http://ec.europa.eu/taxation_customs/.

Authority, and the Faroe Islands), allows for diagonal cumulation between these territories. This means that goods consisting of components made in more than one participating country are treated in the same way as domestically produced goods. In other words, material can be sourced and manufactured in a number of countries within the Pan-Euro-Med cumulation area without the finished product losing the benefit of preferential customs tariffs when it enters the country of destination. However, the generalization of the system of diagonal cumulation requires the fulfillment of the following three conditions: (i) FTAs with identical ROOs should be in place between both the EU and the Southern Mediterranean countries; (ii) among these countries, all administrative procedures have to be harmonized; and (iii) all draw-back provisions should be withdrawn.

Therefore, cumulation may only be applied provided a preferential trade agreement in accordance with GATT Article XXIV is applicable between the countries involved in the acquisition of the originating status and the country of destination. Additionally, materials and products must have acquired originating status by the application of rules of origin identical to those given in this Protocol.⁹² The conditions aim at ensuring that a set of harmonized preferential ROOs, i.e., the Pan-Euro-Med ROOs, is adopted by all partner countries, which will allow for the implementation of cumulation among several of these partners, thereby paving the way for the establishment of the Euro-Med Free Trade Area.⁹³

At the region-to-region level, the EU has introduced the Regional Convention on preferential Pan-Euro-Med rules of origin that was opened for signature as of June 15, 2011.⁹⁴ This Convention is to replace the network of bilateral protocols, whereby the bilateral FTAs, whether those of the EU and its different partners (which, according to the EU website, number about 60) or those between its partners, would no longer contain an annex on ROOs, but would instead incorporate by reference, the rules of the Regional Convention. To date, the Convention contains the Pan-Euro-Med cumulation of origin, and is intended to allow for better management of the system as well as facilitate its future amendments to the current market conditions and provide for the expansion

⁹² Article 3.5 of Protocol 3 of the Jordan-EU Association Agreement, *available at* http://www.mop.gov.jo/pages.php?menu_id=228

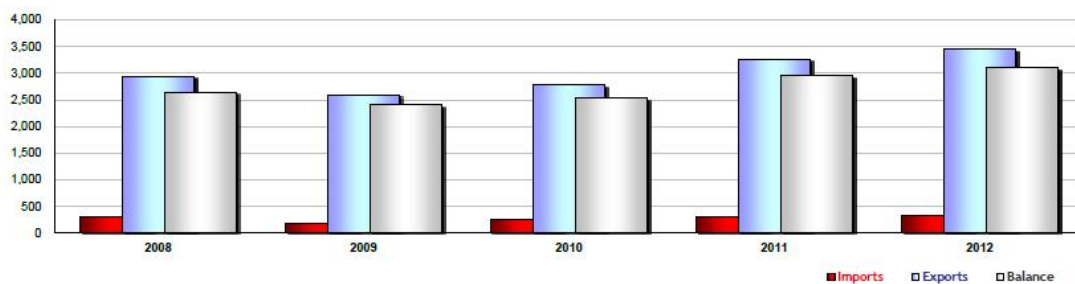
⁹³ Other significant FTAs that include the Pan-Euro-Med ROOs are: the Agadir Agreement (between Egypt, Jordan, Morocco and Tunisia), Egypt – Turkey, Israel – EFTA, Israel- Turkey; Jordan – Israel (Agreement of Trading and Economic Cooperation between the Hashemite Kingdom of Jordan and the Government of the State of Israel), Jordan – Turkey, Jordan-EFTA, Morocco -Turkey and Tunisia- Turkey.

⁹⁴ Europa System of Pan-Euro-Mediterranean Cumulation, http://ec.europa.eu/taxation_customs/customs/customs_duties/rules_origin/preferential/article_783_en.htm#new.

of the accumulation zone to include the Western Balkans. Indeed, many of the Med Partner countries, including Jordan, have long been calling for the simplification of the Pan-Euro-Med rules of origin system, which remains too complex. Thus far, no Med Partner country has signed the Regional Convention;⁹⁵ Jordan, at its various meetings with the EU, has expressed its intention to ratify the Regional Convention, albeit without any visible reaction from the parties concerned.

Jordan's utilization of the benefit afforded by the ROOs Protocol remains below expectation, due to a number of factors, such as the lack of the sufficient businesses that are girded to take advantage of the ROOs regime.⁹⁶ The challenge, therefore, is to develop the local capacities as well as the industrial linkages, whether at the national or regional level, to be able to effectively penetrate EU markets. This requires long-term planning and covering issues including TBTs to marketing. Simply put, Jordan's industries need to develop and modernize to be able to meet the demands of the sophisticated and complex EU markets.

The following tables offer a snapshot on the types of goods relieves limited value added that does not benefit from Jordan's preferential ROOs.



⁹⁵ See European Commission Taxation and Customs Union, www.ec.europa.eu/taxation_customs/

⁹⁶ It should be noted here that this paragraph only addresses the issue concerning the Pan-Euro-Med ROOs and does not touch upon the overall trade relations between Jordan and Israel, such as the 1997 agreement establishing the Qualified Industrial Zones (QIZ), in which 50 manufacturing plants created 45,000 new jobs and increased Jordan's exports to the US, while Israeli inputs into production exported to America through the QIZs totaled \$65 million.

| SITC Rev.3 (UN, WTO/ITS) & AMA/NAMA** (WTO) Product Groups | 2008 | | 2010 | | 2012 | | Share of Partner in EU Imports (2012) |
|--|---------------|--------|---------------|--------|---------------|--------|---------------------------------------|
| | Millions euro | % | Millions euro | % | Millions euro | % | |
| 0000 - Total | 298 | 100.0% | 249 | 100.0% | 342 | 100.0% | 0.0% |
| 1000 - Primary products | 95 | 31.9% | 81 | 32.7% | 147 | 43.0% | 0.0% |
| 1100 - Agricultural products (Food (incl. Fish) & Raw Materials) | 17 | 5.7% | 19 | 7.5% | 23 | 6.8% | 0.0% |
| 1200 - Fuels and mining products | 78 | 26.2% | 63 | 25.2% | 124 | 36.2% | 0.0% |
| 2000 - Manufactures | 189 | 63.4% | 139 | 55.7% | 164 | 48.1% | 0.0% |
| 2100 - Iron and steel | 0 | 0.0% | 0 | 0.0% | 0 | 0.1% | 0.0% |
| 2200 - Chemicals | 105 | 35.3% | 63 | 25.4% | 97 | 28.4% | 0.1% |
| 2300 - Other semi-manufactures | 14 | 4.6% | 10 | 3.9% | 8 | 2.3% | 0.0% |
| 2400 - Machinery and transport equipment | 45 | 15.0% | 38 | 15.1% | 32 | 9.3% | 0.0% |
| 2410 - Office and telecommunication equipment | 6 | 2.0% | 5 | 1.9% | 5 | 1.5% | 0.0% |
| 2420 - Transport equipment | 23 | 7.6% | 10 | 4.1% | 12 | 3.6% | 0.0% |
| 2430 - Other machinery | 16 | 5.4% | 23 | 9.1% | 14 | 4.2% | 0.0% |
| 2500 - Textiles | 1 | 0.5% | 3 | 1.0% | 1 | 0.2% | 0.0% |
| 2600 - Clothing | 10 | 3.5% | 10 | 3.8% | 10 | 3.0% | 0.0% |
| 2700 - Other manufactures | 14 | 4.5% | 16 | 6.5% | 16 | 4.7% | 0.0% |
| 3000 - Other products | 13 | 4.3% | 28 | 11.4% | 27 | 7.8% | 0.0% |
| Agricultural Products (AMA) | 17 | 5.7% | 18 | 7.4% | 22 | 6.5% | 0.0% |
| Non-Agricultural Products (NAMA) | 276 | 92.4% | 226 | 90.7% | 310 | 90.7% | 0.0% |
| Other Products | 6 | 1.9% | 5 | 1.9% | 10 | 2.8% | 0.1% |

Source: http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113404.pdf

2. Services

The primary remark raised concerning the EU agreements was that they contained rendezvous clauses for the liberalization of trade in services.⁹⁷ The Jordan-EU Association Agreement contains a more sophisticated chapter on “services and right of establishment” vis-a-vis other Med Partners' AAs, which are generally limited to the provision on simply pursuing services liberalization.⁹⁸ The Jordan-EU’s AA approach to services liberalization follows from the GATS, as it covers the four known modes of supply, but it also adds the "right of establishment".⁹⁹ This is an example of how the EU goes beyond the WTO four modes formula of economic integration. By using the "right of establishment" approach, the EU has effectively introduced different forms of investment, including acquisitions, mergers, and takeovers, to non-services activities (such as commerce or manufacturing).

Pursuant to the aforementioned rendezvous clause of the AAs (Article 40 of the Jordan-EU AA) at the Euromed Trade Ministerial Conferences in Palermo on July 7, 2003, Ministers agreed on establishing a Framework Protocol for the liberalization of trade in

⁹⁷ Europa Update: Interim Economic Partnership Agreements, Dec. 19, 2007, http://trade.ec.europa.eu/doclib/docs/2007/november/tradoc_136959.pdf.

⁹⁸ See European Council Agreements: Mediterranean, http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/agreements/#_mediterranean. (last visited Dec. 28, 2012).

⁹⁹ WTO The General Agreement on Trade in Services (GATS): Objectives, Coverage and Disciplines, http://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm (last visited Dec. 28, 2012).

services common to all Euromed Partners.¹⁰⁰ In Istanbul, on July 21, 2004, a Framework Protocol was adopted as a non-binding document, and in Marrakech, on March 24, 2006, regional negotiations were formally launched. Throughout 2006–2008, a number of negotiation rounds were held.¹⁰¹ Following the Ministers’ decision at the last Euromed Trade Ministerial Conference in Brussels on December 9, 2009,¹⁰² bilateral negotiations on the liberalization of trade in services and the right of establishment were launched in 2008 with Egypt, Morocco, and Tunisia, and with Israel in July. Jordan signalled its willingness to start bilateral negotiations at the 7th Euromed Trade Ministers Conference which took place in Marseilles on July 2, 2008. Since then, a number of informal consultations have taken place between Jordan and the EU, including the development of a “Scoping Paper” addressing the scope of issues to be covered by the future negotiation.¹⁰³

B. The Agadir Agreement

With EU support, Egypt, Jordan, Morocco, and Tunisia entered into the Arab Mediterranean Free Trade Agreement (the Agadir Agreement), a regional grouping. In February 2004, this FTA was signed in Rabat and entered into force in July 2006.¹⁰⁴ The Agreement creates an integrated market of over 100 million people with a combined domestic product of nearly €150 billion.¹⁰⁵ It aims at the total elimination of customs tariffs, the harmonization of laws in economic matters, invigoration of trade exchanges, promotion of industries,, stimulating economic activities and employment, and

¹⁰⁰ Europa, Conclusions of the Euro-Mediterranean Trade Ministerial Conference, July 7, 2003, http://trade.ec.europa.eu/doclib/docs/2003/september/tradoc_113840.pdf.

¹⁰¹ See Europa 8th Union for the Mediterranean Trade Ministerial Conference, http://europa.eu/rapid/press-release_MEMO-09-547_en.htm (last visited Dec. 28, 2012).

¹⁰² Source: MoIT- Jordan

¹⁰³ The EU in a MEMO dated May 15, 2012, entitled ENP Country Progress Report 2011 – Jordan, the EU reports that as of February 2012, the scope was agreed to with the EU. On October 30, 2012, the Jordan Times reported that a meeting between the two sides planned for November 2012 was postponed by the Jordanian government.

¹⁰⁴ See Workshop on Challenges and Opportunities for the Textiles and Clothing Sector in the Euro-Mediterranean Region, Milan March 2012 http://ec.europa.eu/enterprise/newsroom/cf/getdocument.cfm?doc_id=7337. It should also be noted that this agreement has not been notified to the WTO.

¹⁰⁵ Ministry of Industry & Trade, The Agreement Establishing a Free Trade Area Amongst Arab Euro-Mediterranean Countries (Agadir Agreement), <http://www.mit.gov.jo/Default.aspx?tabid=733> (last visited Dec. 28, 2012).

improving productivity and living standards.¹⁰⁶ Moreover, the Agreement covers services.¹⁰⁷

The ROOs adopted by the Agadir Agreement are the Pan-Euro-Med ROOs, which allow for diagonal cumulation between the Agadir countries and the EU.¹⁰⁸ The Agadir ROOs protocol is identical to the Pan-Euro-Med protocols of the AAs, save in one aspect related to the government agency authorized to issue the proof of origin. Article (16) of Annex II to the Agadir Agreement provides that the Certificate of Origin (CO) may be issued by the “customs authority or the relevant authorized government authority,” while under the Pan-Euro-Med procedure, such proof of origin may only be issued by the customs authority (see article 17 of Protocol 3 to the Jordan-EC Association Agreement). This is due to the national procedure applied by the Agadir Members. For example, in Jordan, issuing of COs is done by the Ministry of Industry and Trade (but also by the customs authority in the case of EUR.1 and EUR-MED CO), and the same is true for Egypt, where the “General Organization for Export and Import Control” is an independent agency charged with issuing COs.

C. Jordan- EFTA FTA

The FTA between Jordan and the European Free Association (EFTA) (comprised of Iceland, Liechtenstein, Norway, and Switzerland) was signed in June 2001 and entered into force in September 2002.¹⁰⁹ This Agreement covers goods trade and contains a 12-year translational period. Hence, by 2014, all customs duties on trade in industrial goods and fish and other marine products will be eliminated, excluding some targeted products such as beverages and tobacco on which tariff protection levels are generally maintained. The Agreement contains bilateral agreement on agricultural products between Jordan and the individual EFTA states.

With respect to ROOs incorporated into the Jordan-EFTA FTA, they are the standardized European rules of the Pan-Euro-Med ROOs, granting diagonal cumulation in the same manner as the Agadir agreement. This arrangement/design/provision helps the Agadir member states by giving them preferential access to the EU market with fewer complications.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ EFTA, The EEA Agreement 20 Years on, www.efta.int (last visited Dec. 28, 2012).

Article 28 on services and investment provides that, in the context of the Euro-Med integration, the parties will cooperate, with the aim of services liberalization and promoting investment.¹¹⁰ However, services negotiations have gone nowhere thus far.¹¹¹

D. Jordan-Turkey FTA

The Jordan-Turkey FTA was signed in December 2009 and entered into force in March 2011.¹¹² This Agreement, also applying the Pan-Euro-Med ROOs, covers goods trade ,and initiates a gradual reduction of tariffs over 12 years. However, the FTA contains quotas and an extensive negative list of goods not benefiting immediately from the agreed preferential tariff. Article 36 of the Agreement envisions the possible future liberalization of trade in services, taking into account the GATS as well as ongoing negotiations within the WTO.¹¹³

Article 48 provides for a dispute settlement procedure that is political in nature but includes the establishment of a three-member tribunal and offers the complaining party the right to take measures. The Article also foresees the development of detailed rules for this arbitration tribunal procedure.¹¹⁴

E.

reater Arab Free Trade Agreement (GAFTA)

G

At the Arab regional level, Jordan is a member of the Greater Arab Free Trade Agreement (GAFTA), which covers full liberalization of trade in goods among the 17 Arab League member states (Algeria, Bahrain, Egypt, Iraq, Kuwait, Lebanon, Libya, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen). On January 1, 2005, the elimination of most tariffs among the GAFTA members was enforced, except in the case of Sudan and Yemen, for which LDCs customs duties and charges have reached to full exemption in 2010.

¹¹⁰ Ministry of Industry & Trade, Agreement Establishing a Mediterranean Free Trade Area, <http://www.mit.gov.jo/Portals/0/Agdir/Agadir.pdf>.

¹¹¹ Agreement on the European Economic Area, 37 I.L.M. 572 (1994), available at <http://www.efta.int/~media/Documents/legal-texts/eea/the-eea-agreement/Main%20Text%20of%20the%20Agreement/EEAagreement.pdf>.

¹¹² Ministry of Industry & Trade, The Association Agreement Establishing a Free Trade Area Between the Hashemite Kingdom of Jordan and the Republic of Turkey, <http://www.mit.gov.jo/portals/0/JO%20EN%20Agreement%20Text.pdf>.

¹¹³ *Id.*

¹¹⁴ *Id.*

With regard to the ROOs, GAFTA states decided to adopt more stringent origin rules stemming from the desire, as well as the need, to confront trade deflection, and these rules are envisioned to be part of the work plan for establishing the free trade area.¹¹⁵ The adoption of GAFTA ROOs Protocols is based on the Pan-Euro-Med Model.

With respect to services, GAFTA also envisions similar liberalization. In 2003, the Arab League Social and Economic Council approved a Draft General Provisions; since then, six negotiation rounds have been held for the exchange of schedules of commitments consistent with the WTO/GATS approach (Beirut 2004, Cairo 2006, Cairo February and July 2007, Beirut 2008 and Cairo 2010). However, except for Jordanian-Egyptian bilateral offers to liberalize three services sectors (computer, education, and telecommunications), little progress has been made.

Here, it should also be noted that Jordan has a number of bilateral free trade area agreement with Arab States: Lebanon (1992); Palestinian National Authority (1995 trade cooperation agreement); Algeria (1997), Morocco (1998); Tunisia (1998), Egypt (1999); United Arab Emirates (2000); Bahrain (2001), Syria (2001), Kuwait (2001); and, Sudan (2003). These agreements are no longer into force, but theoretically, they co-exist with the GAFTA. In other words, "GAFTA opened the door for members to opt out from full or substantial liberalization; a shortcoming that will eventually lead to voiding the agreement of its meaning and objective".¹¹⁶

Jordan-US FTA

The Jordan-US FTA was signed in October 2000 and entered into force in December 2001.¹¹⁷ The Agreement was the United States' fourth free trade agreement and its first ever with an Arab state.¹¹⁸ The FTA provides for significant and extensive liberalization across a wide spectrum of trade issues; it eliminates all tariff and non-tariff barriers to bilateral trade in virtually all industrial goods and agricultural products within ten years. Electronic Commerce is explicitly covered in the Joint Statement on Electronic Commerce, whereby both parties are committed to promoting a liberalized trade environment for electronic commerce that should encourage investment in new technologies and stimulate the innovative use of networks to deliver products and

¹¹⁵ For text of the GAFTA Declaration see, <http://www.arablaw.org/Download/Arab-FreeZoon.doc> (Economic and Social Council Decision No. 1317/59 dated 19/2/1997)

¹¹⁶ NSOUR, *supra* note 15, at 155. Some of those agreements are no longer into force.

¹¹⁷ Jordan signed a Bilateral Investment Treaty with the US on July 2, 1997 that entered into force on June 13, 2003.

¹¹⁸ Since then, the US has entered into an FTA with Morocco, Bahrain, and Oman.

services. Both countries agreed to avoid imposing customs duties on electronic transmissions, to avoid imposing unnecessary barriers to market access for digitized products, and to avoid impeding the ability to deliver services through electronic means.¹¹⁹ A separate Memorandum of Understanding on Transparency in Dispute Settlement was also established.¹²⁰ The Agreement also deals, inter alia, with intellectual property, trade in services, electronic commerce, government procurement and dispute settlement, as well as environmental and labor issues.¹²¹ In this article, the novel issue of labor and the issue of rules of origins will be highlighted.

1- Labor

Specific legal features of the Agreement include labor provisions within the body of the FTA, which not only reaffirm the parties' respect and enforcement of core labor standards, but also support this reaffirmation by a dispute settlement process. In May 2006, the National Labor Committee issued a report¹²² stating that foreign workers in the Qualifying Industrial Zones (QIZ) were forced to work long and arduous shifts in unhealthy conditions while being paid below-poverty wages.¹²³ At the same time, employers were withholding workers' paychecks and passports, in effect making them virtual prisoners and slave workers. Put differently, that report and others like it, accused Jordan of ignoring its responsibilities under the FTA and claim the United States has done little to nothing to enforce the labor provision of the Agreement.

The issue of trade and core labor standards has been the subject of intense debate both among and within certain WTO member governments. The proposal to bring labor standards within the WTO rules and disciplines is a controversial one, in which no clear consensus exists among the WTO Members.¹²⁴ In the alternative, proponents of the

¹¹⁹ Montague J. Lord, Economic Impact and Implications for Jordan of the U.S. – Jordan Free Trade Agreement (Report for AMIR Program, 2001), available at <http://mpa.ub.uni-muenchen.de/41168/>.

¹²⁰ Office of the United States Trade Representative, *Memorandum of Understanding on Transparency in Dispute Settlement Under the Agreement Between the United States and Jordan on the Establishment of a Free Trade Area*, available at http://www.ustr.gov/sites/default/files/uploads/agreements/fta/jordan/asset_upload_file293_8463.pdf.

¹²¹ Jordan also has an FTA with Singapore (2004) which contains agreed origin determination criteria (link, <http://www.worldtradelaw.net/fta/agreements/jorsingfta.pdf>).

¹²² See American Unions Movement, www.aflcio.org (last visited Dec. 28, 2012).

¹²³ Global LabourRights, *U.S. Jordan Free Trade Agreement Descends into Human Trafficking & Involuntary Servitude*, May 2006, <http://www.nlcnet.org/live/admin/media/document/jordan.pdf>.

¹²⁴ At the first WTO Ministerial Conference in Singapore in December 1996, the issue was taken up and addressed in the Ministerial Declaration. At Singapore, Ministers stated: "We renew our commitment to the observance of internationally recognized core labor standards. The International Labor Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work

WTO proposal to include core labor standards within the WTO's competences have moved to build labor provisions that aim to promote and protect workers' rights into the fabric of their trade agreements. Article 6 of the Jordan-US FTA is such a provision. The obligations placed on Jordan are two-fold: the first is to adopt or modify its domestic labor laws and regulations in line with Jordan's international obligations and internationally recognized core labor rights. The second is to enforce its labor laws and not to relax domestic legal enforcement in favor of encouraging trade with the other party.

The FTA allows all violations of the Agreement, including labor rights, to be remedied through "appropriate and commensurate measures."¹²⁵ The decision to proceed with an investigation, consultation, or arbitration; assess a penalty; or order the imposition of sanctions is made by the Agreement's state parties. Under the Agreement, state parties can submit allegations of labor rights violations either (i) in ministerial consultations leading to non-binding recommendations,¹²⁶ or (ii) applying dispute settlement procedures¹²⁷ which may ultimately result in the imposition of trade sanctions, such as placing or raising quotas and tariffs. The role of non-governmental parties is confined to the presentation of their views during governmental consultations on the Agreement and the submission of *amicus curiae* briefs to "dispute settlement panels" convened by the parties to address allegations of non-compliance. Article 6/4(b) of the Agreement states:

The Parties recognize that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor matters determined to have higher priorities. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable

in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labor standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration." Singapore Ministerial Declaration (Dec. 13, 1996), *available at* http://www.sice.oas.org/Trade/Gatt/Singap_e.asp.

¹²⁵ The JUSFTA establishes a Joint Committee to supervise the proper implementation of the agreement and to review the trade relationship between the parties

¹²⁶ See Article 16 Consultations of the JUSFTA. *available at* http://pdf.usaid.gov/pdf_docs/Pnada543.pdf.

¹²⁷ See *Id.* Art. 17, Dispute Settlement of the JUSFTA.

exercise of such discretion, or results from a bona fide decision regarding the allocation of resources.¹²⁸

This subparagraph asserts the right of each state party to make decisions as such party may find appropriate in its discretion, concerning, inter alia, the adoption of procedures or the allocation of resources. In response to the above-referenced report, the Jordanian Ministry of Labor took emergency administrative measures and put into place a strategic plan to ensure the enforcement of the labor laws and regulation in the Qualified Industrial Zones (QIZs) in Jordan.¹²⁹

2- Rules of Origin

The ROOs contained in the Jordan-US FTA, as set out in Annex 2.2, have three origin criteria.¹³⁰ First, is a wholly obtained/substantial transformation requirement, which means that goods imported to either Party must be made entirely in one of the FTA countries or, if any third-country materials are used, those materials must be “substantially transformed” into Jordan-US origin products as a result of a manufacturing or processing operation. For textile and apparel products, the FTA has a special set of “substantial transformation” rules.¹³¹ Second, is the 35% domestic content requirement which indicates that 35% of the customs value of the imported product must be attributable to Jordanian- or US-origin materials and/or to direct costs of processing carried out in the FTA partner.¹³² However, the cost or value of either Jordanian-origin materials or US-origin materials incorporated in the imported product can be counted in the other country, but only up to 15% of the customs value of the

¹²⁸ *Id.*

¹²⁹ The QIZ schemes a special free trade zone established pursuant to Section 9 of the United States-Israel Free Trade Area implementation Act of 1985, Proclamation No. 6955 of the President of the United States of America and approved by the US Congress. The first QIZ in Jordan was established in 1996 as a method to support the Middle East peace process through strengthen economic ties between Jordan and Israel and as such allows for tariff and quota free imports into the US market of goods. To qualify, goods produced in these zones must contain a small portion of Israeli input set at 8% and Jordanian input of at least 11.7 %. In addition, a minimum 35% value added to the finished product. The scheme has contributed significantly increasing Jordan’s exports to the US primarily however in apparel goods with mainly Asia investors. The QIZs offered a window of opportunity, the utility and sustainability of which is in question given the elimination since 2010 of tariffs under the Jordan–US FTA tariff dismantlement arrangement, the continued challenges facing the Middle East peace process, notwithstanding other factors such as the termination in 2005 of the WTO Agreement on Textiles and Clothing which had first encourage footloose investments into the QIZs.

¹³⁰ Brian J. O’Shea & Sheri Rosenow, U.S.-JORDAN Free Trade Agreement: Rules of Origin Manual (USAID AMIR Program, Aug. 2001).

¹³¹ Office of the United States Trade Representative, Final Text of Agreement- Rules of Origin, http://www.ustr.gov/sites/default/files/uploads/agreements/fta/jordan/asset_upload_file366_8456.pdf.

¹³² *Id.*

good. And third, is the direct transport requirement which is intended to ensure that qualifying goods are not mixed with non-qualifying goods while en route to Jordan or the US.¹³³

Compared to the EU approach, the origin criteria for gaining preferential treatment under the Jordan-US FTA are straightforward. While the US has embraced/adopted/utilized these ROOs in other FTAs, it does not adopt a unification approach in its use of preferential ROOs.¹³⁴ These ROOs are special and may be explained by political and developmental considerations. Moreover, those ROOs are substantially compatible with the application of the rules on the overall US economy.¹³⁵

Finally, it is to be noted that these simple ROOs are also used under the Agreement of Trading and Economic Cooperation between Jordan and Israel, signed in November 1995.¹³⁶ The Agreement aims at encouraging economic and commercial cooperation between the two countries, and includes the reduction of customs tariffs on products of both countries. In 2005, the Agreement was upgraded by including the Pan-Euro-Med ROOs, which allow for diagonal cumulation of origin, making this Agreement—to the knowledge of the authors—the only agreement to have two separate and co-existing systems of ROOs, leaving it to a trader’s discretion to selectively use the set of ROOs that best suits its export and import requirements.¹³⁷⁻

3- Intellectual Property

A central feature of the Jordan-US FTA is the WTO TRIPS-plus intellectually property rules. Data exclusivity was a requirement of Jordan’s accession to the WTO and was reflected in the Jordanian Unfair Competition Law and Trade Secrets,¹³⁸ which introduced a five-year data exclusivity period that commences on the medicine’s date of

¹³³ *Id.*

¹³⁴ *See also* ROOs in US-Bahrain FTA, http://www.ustr.gov/Trade_Agreements/Bilateral/Bahrain_FTA/final_texts/Section_Index.html; US-Morocco FTA, http://www.ustr.gov/Trade_Agreements/Bilateral/Morocco_FTA/Final_Text/Section_Index.html, and US-Oman FTA, http://www.ustr.gov/Trade_Agreements/Bilateral/Oman_FTA/Final_Text/Section_Index.html, all containing like origin rules.

¹³⁵ This regime of the ROO is being used by the US Customs Service to administer its various trade preference arrangements such as the its GSP scheme, the Caribbean Basin Initiative, the Andean Trade Preference program and the Qualified Industrial Zone (QIZ) program,

¹³⁶ Office of the United States Trade Representative, Final Text of Agreement- Rules of Origin, http://www.ustr.gov/sites/default/files/uploads/agreements/fta/jordan/asset_upload_file366_8456.pdf.

¹³⁷ *Id.*

¹³⁸ Law No. 15 for the Year 2000.

registration in Jordan. Under Article 22 of the Jordan-US FTA, this period was further extended an addition three years for new uses of already known chemical entities. According to several studies, these intellectual property obligations under the Jordan-US FTA have created obstacles to accessing new technologies in Jordan.¹³⁹ Given this result, the question is why Jordan has agreed to tie itself up in such harsh obligations. A likely explanation is that Jordan had both zero negotiating power with the US and lacked sufficient expertise in free trade dynamics at the time the Agreement was negotiated.

4- The Substantive Clause

Another intriguing legal feature is the "substantive clause" found Article 10 of the Jordan–US FTA, which provides that safeguards may be taken when increased quantities of imports are a substantial cause of serious injury, or present a threat of serious injury, to domestic industries. A substantial cause is defined as “important and not less than any other cause.”¹⁴⁰ This is not different from the standard contained in the WTO Safeguards Agreement, which permits the use of safeguard measures when increased imports cause or threaten to cause, serious injury to the domestic industry.

F. Jordan –Singapore FTA

The Jordan-Singapore FTA was concluded in May 2004 and came into force in August 2005. The FTA eliminates tariffs on all goods (excluding a 2.4% of Jordan tariff lines) within ten years from entry into force at an asymmetrical manner, over a five- to ten-year period. The Agreement also allows for the creation of new goods export opportunities to other markets by applying a diagonal cumulation of origin with countries that have an FTA with both Jordan and Singapore, namely the European Free Trade Agreement and the United States.¹⁴¹

Chapter 4: Trade-in Services ensure that service suppliers in Jordan and Singapore are guaranteed access to each other's markets: The key features of the agreement are:

¹³⁹ *All Costs, No Benefits: How TRIPS-plus Intellectual Property Rules in the US-Jordan FTA Affect Access to Medicines* (Oxfam Briefing Paper, March 2007), http://www.oxfam.org/en/policy/bp102_jordan_us_fta. This study shows that the prices of medical products have skyrocketed in Jordan since the FTA, partly as a result of TRIPS-plus rules. It concludes that the FTA measures have not benefited direct investment or research and development.

¹⁴⁰ See http://pdf.usaid.gov/pdf_docs/Pnada543.pdf.

¹⁴¹ Ministry of Industry & Trade, www.mit.gov.jo (last visited Dec. 28, 2012). See also Committee on Regional Trade Agreements - Factual Presentation - Free Trade Agreement between Jordan and Singapore (Goods and Services) - Report by the Secretariat – Revision, Dec. 12, 2008 WTO Doc. WT/REG215/2/Rev.1 at Table III.1A

- Market access: Both countries may not restrict access into their markets by imposing quantitative restrictions (e.g., numerical quotas on services suppliers that are allowed in the market);
- National treatment: The chapter ensures service suppliers from Singapore will be treated the same way as local service suppliers, i.e., no discrimination;
- Domestic regulation: The chapter ensures that regulations governing the provision of services are reasonable, impartial, and objective.

Some examples of service-related sectors benefitting from the Agreement are computer and related services, educational services, research and development services, and services incidental to manufacturing and convention services.¹⁴²

The Agreement provides for further liberalization in a number of services sectors by both parties exceeding current liberalization pace within the scope of the WTO. With the aim of attracting joint investments, Jordan offers extra liberalization for Singaporean services providers in research and development services in the fields of natural, social, and human sciences; in advertising services; and in services incidental to manufacturing, convention services, and water treatment services. Conversely, Singapore also offers extra liberalization for Jordanian services providers in a number of sectors. The most important of these are computer and related services and research and development services in the fields of natural, social, and human sciences; advertising services; management consultancy services; real estate services; renting and leasing without operators; technical testing and analysis; and building cleaning, photography, and packaging services. The Agreement also addresses cooperation in financial and transport services of all forms (sea, road, and air) between the two countries.¹⁴³

Chapter 5 of the FTA with Singapore also contains obligations relating to electronic commerce in which each party agrees to forego deviating from its existing practices of not imposing customs duties on electronic transmissions, imposing unnecessary barriers on electronic transmissions, including digitized products, and impeding the supply through electronic means of services subject to a commitment under Chapter 4. Jordan and Singapore have a Bilateral Investment Treaty that came into force on August 22, 2005.

G. Jordan – Canada FTA

¹⁴² *Id.*, The Agreement Establishing a Free Trade Area Between Jordan and Singapore, <http://www.mit.gov.jo/Default.aspx?tabid=710>).

¹⁴³ *Id.*

Jordan and Canada signed a Free Trade Agreement in June 2009 that came into force in October 2012, together with a Labour Cooperation and Environment Agreement that came into force at the same time. The FTA allows Jordan to export goods, tax-free, to Canada, and it allows Canadian firms to export to Jordan, thereby increasing competition. The ROOs set out in this Agreement are based on altering harmonized system codes that take into account the comparative advantage and competitive capabilities of local industries,¹⁴⁴ which is an easy method when compared with other preferential ROOs.

The Agreement establishes a free trade area in goods only, and as such does not cover services liberalization. In Chapter 3 on electronic commerce, parties agree not to apply customs duties to products delivered electronically. On June 28, 2009, Jordan and Canada also signed the Foreign Investment Protection and Promotion Agreement (FIPA),¹⁴⁵ which came into force on December 14, 2009.¹⁴⁶

The FIPA is a common feature in Canada's free trade deals. In the Jordanian case, specifically, the FIPA was strangely imbalanced and biased to offer Canadian investors in Jordan more rights and privileges than domestic investors, including the Jordanian government.¹⁴⁷ For instance, the Canada-Jordan FIPA's dispute settlement mechanism allows Canadian investors to forgo the domestic judicial system (whether courts or arbitration) and refer to international arbitration if there has been any alleged breach of treaty protection. Of course, international arbitrators might be bias in favor of international investors and influential states such as Canada. This has particular importance especially if the dispute concerns public policy matters such as public order, health and environment. Furthermore, the FIPA has clauses that protect against indirect expropriation. In other words, if a domestic law or a regulation undermines the value of a foreign investment, compensation could be ruled for. In such case, and because a country cannot be forced to amend laws, an international arbitration panel may impose exaggerated compensation.¹⁴⁸

¹⁴⁴ Ministry of Industry & Trade, www.mit.gov.jo (last visited Dec. 28, 2012). The Jordan-Canada FTA has not been notified to the WTO to date.

¹⁴⁵ Article 1-4: Investment of the Jordan-Canada FTA, full text available at <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/jordan-jordanie/agreement-toc-tdm-accord.aspx?lang=eng&view=d>.

¹⁴⁶ *Id.*

¹⁴⁷ Full text available at http://www.sice.oas.org/TPD/CAN_JOR/Text_CAN_JOR_e/Canada-JordanFIPA-eng.pdf.

¹⁴⁸ Full text of Canada-Jordan FIPA available at <http://www.treaty-accord.gc.ca/text-texte.aspx?id=105176&lang=eng>

Probably, this is a standard Canadian FIPA that applies to all its preferential partners. And likewise Jordan's FIPA with Canada is not on its face in favor to Canada; rather it is a de facto imbalance in favor of the developed and more capable partner in the equation. However, Jordan could have insisted on keeping local adjudication and option, and mitigated the language that provides for compensation on the so called "regulatory expropriation".

Part V. Lessons Learned on Jordan's Regionalization

Developing countries face challenges arising from the increasing number of RTAs, as the WTO's in organizing global trade next to, or together with RTAs, remains largely undefined. This is particularly true for a small country like Jordan, strategically situated in an unstable region of the world, in which political consideration drives much of Jordan's national socio-economic measures and its international relations. This increased number of RTAs will possibly disturb Jordan's decision-making process with respect to its options in multilateral, regional, and preferential trade. Nevertheless, the basic economic premise of comparative advantage remains valid. As evidenced by Jordan's case, trade openness alone does not and cannot generate economic growth. However, the linkages between a country's external trade policy and its international obligations, namely how they properly reflect the national economic framework (legal and otherwise) and whether they are supported by national economic development projects, are key to benefitting from the possibilities that RTAs offer.

Jordan's choice of trade partners clearly shows a variety in both the levels of development (Jordan has both south-south and north-south RTAs) and geographic proximity (ranging from the Americas to Asia).¹⁴⁹ The reasons that might explain this mixed selection of Jordan's RTA partners are to a large extent rooted in political considerations. While the economic merits of these RTAs (current or planned) for a small and troubled economy such as Jordan's are essentially based on the traditional premise that such agreements provide trade advantages that allow for improved competitiveness and better insertion into the international economy.¹⁵⁰

¹⁴⁹ See World Bank list of economies (July 2012), available at [http://librarians.acm.org/sites/default/files/world%20bank%20List%20of%20Economies%20\(as%20of%20July%202012\).pdf](http://librarians.acm.org/sites/default/files/world%20bank%20List%20of%20Economies%20(as%20of%20July%202012).pdf).

¹⁵⁰ See Ministry of Industry & Trade, Jordan's Foreign Relations Policy, <http://www.mit.gov.jo/tabid/475/Jordan%20Foreign%20Trade%20Policy.aspx> (last visited Dec. 28, 2012).

An examination of the 19-page National Foreign Trade Strategy and its annexes reveals an overly simple text with limited analyses, a list of actions and/or goals more resembling a policy note, and provisions that can ultimately be described as containing procedural rather than targeted measures intended to stimulate growth. With respect to Jordan's regionalization, the strategy reaffirms the current course, and clearly provides for the "entering into bilateral trade agreements" (objective 4/1) and "the active involvement in the multilateral negotiations in the framework of the WTO, the Arab League and the Organization of the Islamic Conference" (objective 4/2).¹⁵¹

The tables below provide a statistical snapshot on Jordan's trade balance in goods, services, and overall trade balance.

| Jordan's goods imports and exports under its RTA for 2011 (in Million Jordanian Dinars) | | |
|--|----------------|----------------|
| Agreement | Exports | Imports |
| (1) GAFTA | 2,262.7 | 4,849.1 |
| (2) Jordan-EU AA | 223.5 | 2,675.9 |
| (3) Jordan-US FTA | 733.8 | 765.1 |
| (4) Jordan-EFTA | 13.8 | 123.4 |
| (5) Agadir | 105.6 | 556.7 |
| (6) Jordan-Singapore | 4.6 | 17.9 |
| (7) Jordan-Turkey | 62.6 | 389.8 |
| (8) Jordan-Canada | 9.1 | 60.7 |

Source: Department of Statistics / Jordan

| Balance of Payments(Standard Presentation) | | | | | |
|---|--------------|--------------|--------------|--------------|-------------|
| Year | 2011 | 2010 | 2009 | 2008 | 2007 |
| Services Account | 470.7 | 838.5 | 523.0 | 249.6 | 22.0 |
| Travel (Net)** | 1305.8 | 1429.5 | 1311.4 | 1376.2 | 1012.5 |
| Receipts | 2129.8 | 2545.3 | 2066.8 | 2088.5 | 1638.3 |
| Payments | 824.0 | 1115.8 | 755.4 | 712.3 | 625.8 |
| Transportation (Net)** | -931.6 | -714.9 | -817.5 | -996.6 | -817.7 |
| Receipts | 843.6 | 794.2 | 564.5 | 593.1 | 468.4 |
| Payments, o/w: | 1775.2 | 1509.1 | 1378.6 | 1589.7 | 1286.1 |
| Freight | 1208.0 | 992.5 | 907.7 | 1083.8 | 873.6 |
| Government Services (Net) | 201.6 | 193.5 | 150.7 | -53.6 | -34.7 |
| Receipts | 285.9 | 269.4 | 253.9 | 88.6 | 79.6 |

¹⁵¹ The text is translated from the Arabic as it appears in the Strategy, in which a differentiation is made between multilateral negotiations in the meaning of the WTO on the one hand, and, on the other hand, negotiations in the context of multilateral negotiation within the Arab League or the Organization of the Islamic Conference.

| | | | | | |
|-----------------------------|--------|-------|--------|-------|--------|
| Payments | 84.3 | 75.9 | 103.2 | 142.2 | 114.3 |
| Other Services (Net) | -105.1 | -69.6 | -121.6 | -76.4 | -138.1 |
| Receipts | 389.0 | 367.1 | 348.3 | 408.0 | 329.5 |
| Payments | 494.1 | 436.7 | 469.9 | 484.4 | 467.6 |
| Source: Jordan Central Bank | | | | | |

| Balance of Payments(Standard Presentation) | | |
|--|-------|------------------------------------|
| Year | Month | Trade Balance (Net) (Million JD) |
| 2005 | 12 | -3556.3 |
| 2006 | 12 | -3584.7 |
| 2007 | 12 | -4574.2 |
| 2008 | 12 | -5084.4 |
| 2009 | 12 | -4448.8 |
| 2010 | 12 | -4823.8 |
| 2011 | 12 | -6261.7 |
| Source: Jordan Central Bank | | |

The above suggest that Jordan's free trade, and more specifically, regional trade was not on the whole a success story as Jordan trade deficit is worsening. In other words, Jordan's regional and preferential trade arrangements did not fully and significantly improve Jordanian economic (and perhaps political) welfare. Arab inter-regional trade remains weak in areas where it is argued that many of the economies have competing sectors rather than complementary ones. In the context of the Euromed Free Trade Area, goods trade between the EU and Jordan continues hub-and-spoke rather than regional, even with cumulation offered by the Pan-Euro-Med preferential rules of origin found in the Agadir Agreement, as well as in Jordan's FTA with EFTA and Turkey. Additionally, Turkey, with its growing and dynamic economy, poses a real threat on the national industries' ability to meet local demand at competitive quality and pricing. Except for trade with the US, which is largely based on a short-term tariff advantage textile sector, the overall equilibrium of regional trade for Jordan is unsustainable in the long run.

The economic implications of induced trade liberalization on aggregate economic performance in Jordan, as well as its effects on welfare and income distribution of heterogeneous households, are continuously being investigated.¹⁵² Generally, trade liberalization has contributed to decreasing prices of imported goods. This causes the

¹⁵² This is done by introducing heterogeneous households into a standard neoclassical dynamic computable general equilibrium model (CGE). Therefore, individual households' tax rate, wage rate, initial endowment of assets, transfers from government and abroad, as well as individual preferences, are calibrated by data from a household survey.

prices of investment and consumption to decrease since investment goods are composites of foreign and domestically produced goods. Incentives for investment increase, which in turn spurred faster capital accumulation, i.e. a higher steady state value of aggregate capital. However, while the Jordanian government transfers have decreased due to foregone import duties, the loss in government revenue due to this import duty reduction is partially offset in the long run by the expansion in the tax base and the development of a more sophisticated sales tax structure (e.g., GST on mobile telecommunication services is currently 18%).¹⁵³ The fear exists, however, that a widening income gap follows from the resulting higher capital income. This means that it is not certain that trade liberalization benefits all segments of society; rather, it could result in the magnification of the wealth of the few at the expense of the majority.¹⁵⁴

The composition of the Jordanian GDP stands at 4.5% Agriculture, 30.8% manufacturing and 64.7% services, in which 98% of all private firms in Jordan are micro-and small enterprises that employ only 1 to 4 and 5 to 19 workers, respectively.¹⁵⁵ The services sector holds the biggest potential, and Jordan already possesses many of the capabilities (such as a young, educated workforce and technological openness) needed to move forward. While Jordan's industrial policy continues to develop, largely pushed by international and other donors, the Government continue to suffer, generally due to limited financial resources, high nepotism, and deep corruption. Additionally, other non-economic but equally vital elements such as limited capacities and expertise, shortage or lack of updated or accurate data, as well as short-term private interests weigh heavily on the overall economic planning process.

The idea of international trade as advocated by Ricardo and Viner was predicated on the comparative advantage theory. Both scholars found that free good exchange offers reciprocal economic benefits. When each party in trade specializes in producing the product at which it excels, each party will obtain the other's at a lower cost while still efficiently producing their own. But to apply this theory correctly, Jordan has to excel by specializing in producing certain goods and services. Jordan has to also be mindful of certain clauses under its FTA commitments, such as the investment clause in its agreement with Canada and the IP commitments under its agreement with the US. If Jordan cannot amend burdensome clauses in its FTAs, then remedying actions must

¹⁵³ See generally, International Finance Corporation, *Doing Business in Jordan* 2011, <http://www.doingbusiness.org/data/exploreeconomies/jordan/paying-taxes/>.

¹⁵⁴ See generally, Donald R. Davis, *Trade Liberalization and Income Distribution* (NBER Working Paper No. 5693, 1996), available at <http://www.nber.org/papers/w5693> (detailing the possible adverse effects of trade liberalization).

¹⁵⁵ www.dos.gov.jo

take place to rectify the negatives. For instance, if Jordan cannot revisit its agreement with the US with respect to IP clauses, it should allocate more resources and spending on public health and technology to “offset the impact of TRIPS-plus rules on consumers.”¹⁵⁶ Similarly, if Jordan cannot revisit its agreement with Canada regarding investment treatment, it must take measures to enhance the competitiveness of Jordanian investors, particularly in this phase of Jordan’s history which has witnessed unprecedented economic and political transformations:¹⁵⁷ a nearly impossible mission as the agreement has recently entered into force.

Conclusion

This article has attempted to shed light on some matters related to Jordan’s free trade policy and agreements after more than a decade from the signing of its first FTA with the US. The rationale behind trade liberalization remains the achievement of economic benefit, yet Jordan continues to pursue trade liberalization with a political mentality that does not necessarily coincide with its economic interests. Jordan has even limited its capacity to make use of the trade preferences offered under its FTAs, some of which deprive Jordan of the flexibility awarded to developing countries within the multilateral system (such as the FTA with the United States which introduced tougher intellectual property protection) .

In conclusion, Jordan is seeking regional trade deals without doing its due diligence. It is true that Jordan’s liberalization has increased its exports, but it also increased its imports in rapid and significant manners. This has led to a worse “chronic trade deficit”.¹⁵⁸ Jordan has too much believed in, and depended on, the “Washington Consensus.” The due diligence that Jordan should conduct involves a national strategy for trade that encompasses a national export strategy with a proactive action plan. This strategy must make a full use of the privileges given to developing countries. The strategy must outline Jordan’s comparative and competitive advantages and evaluate Jordan’s FTAs from all angles, both economic and legal. Trade in services must be given careful attention when engaging in regional and preferential trade agreements as Jordan does poses potential in providing services. All in all, Jordan needs to create a new philosophy

¹⁵⁶ Bilaterals.org, Access to Medicines and Intellectual Property in Jordan, <http://www.bilaterals.org/spip.php?article21839> (last visited Dec. 28, 2012).

¹⁵⁷ talk about the latest rise in fuel prices and the violence that besieged Jordan; see Musa Hattar, *Jordan Fuel Price Hike Protests Turn Violent*, MIDDLE EAST ONLINE, Nov. 15, 2011, <http://www.middle-east-online.com/english/?id=55510>

¹⁵⁸ Taleb Awad Warrad, *the Economic Trade Benefits of Jordan and Canada FTA* https://www.wto.org/english/tratop_e/devel_e/train_e/Jordan.pdf, WTO Chair Paper

for trade whose goals are welfare creation, not trade liberalization and random regionalization. This is not a call for protectionism. This is a call for a better use of the tools that developing countries have under WTO Law to enjoy the benefits of trade liberalization.