
US Agreements: Building Blocks or Stumbling Blocks?

“We will start by working with Congress to add FTAs with Morocco and Bahrain to the existing U.S.-Jordan free trade agreement. Then we will seek to negotiate agreements with other countries. Eventually, these bilateral agreements will be expanded into subregional agreements by bringing in willing countries that demonstrate a commitment to openness and reform. Within a decade, we hope to meld these sub-regions into a historic regional Middle East Free Trade Area: a mutual commitment for openness among the United States and the nations of the Middle East and Mahgreb.”¹

As this statement by then US Trade Representative (USTR) Robert B. Zoellick indicates, the United States seeks to create a Middle East free trade agreement (MEFTA) with a building block strategy. In addition to joining the World Trade Organization (WTO), countries in the region first go through the preparatory stages of signing trade and investment framework agreements (TIFAs). Next they negotiate bilateral FTAs with the United States. These will in turn be combined into subregional agreements and ultimately into a single comprehensive agreement. Implicit in the vision is the notion that the parts will fit smoothly into a whole. The vision of the MEFTA conjures up a picture not only of free trade and investment with the United States, but also a region that is itself integrated. If, however, only the bilateral parts of the program can actually be completed, there is a danger that the result could be a hub-and-spoke arrangement in which each of the countries has links to the United States that are deeper than those it has with its neighbors.

1. Robert B. Zoellick, “A Return to the Cradle of Free Trade,” op-ed, *The Washington Post*, June 23, 2003.

This chapter reviews in some detail the experience with these policies to date. It starts with some comments on the bottom-up strategy that has been adopted and then describes the agreements that have been negotiated. In addition to considering the common features of these agreements it pays attention to their differences in order to assess their ultimate compatibility. In essence, the focus will be on a question that is often asked about preferential trading arrangements in general: When it comes to ultimately melding them into a single agreement, are the bilateral agreements building blocks or stumbling blocks?

It is important to recognize that three of the current agreements—US-Israel, US-West Bank and Gaza, and US-Jordan—were negotiated and implemented prior to President George W. Bush’s 2003 speech cited in chapter 1. It should be no surprise, therefore, that their content differs, both with each other and with the three agreements that have been signed since. By contrast, the three more recent agreements—US-Morocco, US-Bahrain, and US-Oman—are quite similar to each other. The differences in the earlier agreements are understandable, reflecting partly the fact that they are of different vintages, with the prototypical US FTA having evolved over time. They also differ because they were negotiated by different administrations. But the net result could well hinder future efforts toward further integration.

The Bottom-up Approach: Building a Coalition of the Willing and Able

Several features of the design of the MEFTA process merit comment. First, the United States did not immediately launch negotiations with all MEFTA countries. It recognized that the countries in the region are not starting from a common policy base and that (certainly initially), “one size does not fit all.” Some countries might currently only be ready for more generalized system of preferences (GSP) benefits, others for nonbinding TIFAs, and others for bilateral investment treaties (BITs). Several have not even assumed the obligations of the WTO, a requirement the United States has established for signing such FTAs.

Second, the approach to building the MEFTA is bottom up. While the ultimate goal is for universal regional membership, the United States will first negotiate bilateral FTAs, then meld them into subregional FTAs, and only finally into a single agreement with the region. This is very different from two other large regional initiatives to which the United States has been a party. In 1994, for example, the United States joined 33 nations in the Western Hemisphere in the program to negotiate a Free Trade Area of the Americas (FTAA) by 2005. The United States was also a signatory to the Bogor Declaration at the meeting of the Asia-Pacific Economic Cooperation (APEC) forum the same year, when participants committed them-

selves to achieve free trade in that region by 2010 for developed countries and 2020 for developing countries. These two initiatives involved top-down approaches in which the nations sought collectively to hammer out an agreement to which all of them could adhere.

It is fair to say that on the basis of these experiences, the top-down approach has been very problematic. The collective approach in which a diverse group of countries is expected to reach agreement by consensus runs the risk of either becoming a weak agreement set to the lowest common denominator, or of being unable to reach any meaningful agreement at all. While the participants in the FTAA have been able to conclude many bilateral FTAs among themselves—the United States, for example, has concluded agreements with Canada and Mexico (the North American Free Trade Agreement [NAFTA]), El Salvador, Chile, Costa Rica, Panama, Nicaragua, Honduras, Guatemala, Colombia, and Peru—the overall FTAA project has foundered and officially given up on the goal of an agreement in which all partners accept similar obligations. In particular, the inability to enforce a single undertaking reflected major differences between the United States and Brazil. As noted by Hufbauer and Stephenson (2003), the Ministerial Declaration of the FTAA summit held in November 2003 recognized that “countries may assume different levels of commitments” and that plurilateral negotiation may be conducted among those countries wishing to take on higher levels of commitments, or those willing to “agree to additional obligations and benefits.” Thus, instead of a single undertaking, the FTAA has evolved into an agreement with variable geometry. Likewise, while bilateral agreements have proliferated rapidly within the APEC region, efforts at achieving a full megaregional agreement have stalled.

Perhaps this is to be expected, because megaregional agreements seem to combine the basic weaknesses of both bilateral and multilateral trade agreements. The virtue of bilateral agreements is that they are politically feasible because they may require relatively limited adjustment, and can be tailored to meet specific national conditions. They also have the political virtue that the opportunity to gain preferential access may help provide political support. But their weakness is that they discriminate against outsiders. Multilateral agreements such as the WTO have the virtues of enforcing nondiscrimination and a greater likelihood of efficiency, but they are problematic because of the diversity of the participants and the large adjustments that opening up to the world could entail. Megaregionals, though they offer the hope of integration and a single set of rules at the regional level, are still discriminatory, have greater diversity, and offer preferences that are less valuable because they are more diluted. After all, how valuable is it to have duty-free access to the United States if the Chinese and the rest of Asia have it as well? Megaregionals also may require considerable adjustment. If an APEC country opens up to China and the United States, it may as well open up to the rest of the world.

The bottom-up approach, by contrast, has the advantage of allowing agreements that can be more closely tailored to meet individual circumstances. It also allows for the process to gain momentum as entry by some increases the pressures on others to join through a domino effect. This approach also denies foot-draggers the ability to slow progress. But the bottom-up approach also runs the risk that it could be more difficult in the end to integrate the agreements into a single framework. In particular, countries that sign early may have an interest in preventing the dilution of their preferences by the entry of latecomers. In addition, countries that win particularly favorable treatment initially may resist a more general agreement based on less favorable treatment. Latecomers may also find that the bar has been set too high by those who found it easier to be the first ones in, and that the differences between the agreements could simply be too large to reconcile without starting over.

From the US standpoint, with respect to MEFTA it is clear why the bottom-up approach has been chosen. It places the United States in the strongest bargaining position, able to choose the sequence with which it negotiates. This allows the United States to create pressures on latecomers and to use FTAs as a reward for countries that are willing to join. Above all, however, it allows the United States to avoid the weakening of the agreements that might be necessary if they were all negotiated together.

From the standpoint of Arab countries, the bottom-up approach is a mixed bag. The initiative creates tensions among Arab countries because it divides the region by separating countries according to their ability to integrate internationally and their political acceptability to the United States. This offers those most willing and able to negotiate the opportunity to differentiate themselves in both these respects. But for those who are less willing, this is a problem.

In addition, the bottom-up approach prevents the Arab countries from initially forming coalitions, compelling them to bargain individually with the United States. The consequence will be initial agreements that are less reflective of their collective interests. At later stages, however, as an overarching MEFTA begins to emerge they should find it easier to coordinate their positions. Nonetheless, while the approach that has been selected is possibly less likely to guarantee the eventual emergence of a single MEFTA, it is more likely to ensure that the agreements that do emerge retain their deep character.

Thus far, countries have had different responses to the US invitation. Some have eagerly sought an agreement. Others, however, remain resistant to both the policies and commitments required by the agreements, as well as to the fact that these commitments are being driven not by them, but by the United States. In particular, although the United States has couched this as a regional initiative, making it clear that in principle all countries will be allowed to join, the fact that it has proceeded bilaterally

means that some countries could well find themselves excluded from the process because the United States deems their reforms to be insufficiently advanced or disapproves of their noneconomic policies. Despite its willingness to join, Egypt, for example, has been forced by the United States to wait in the wings for a number of years, even though its reform process has actually accelerated since 2004.

Who would be included in a final regional agreement also presents significant problems. In particular, on the one hand, it is hard to see the United States concluding a megaregional arrangement that excludes Israel; on the other, although some Arab countries do have trade agreements of various sorts with Israel—Jordan has an FTA with Egypt the qualified industrial zones (QIZ), and the Palestinians have an agreement with Israel under the Paris Protocols—it is likely that several Arab countries would refuse to join such an arrangement if it did include Israel, absent significant progress in Israeli-Palestinian relations. Indeed, there has been considerable friction between the United States and Saudi Arabia over the latter's failure to suspend its participation in the Arab League boycott of Israel upon its accession to the WTO. It is hard to imagine the US Congress passing either a US-Saudi FTA or a comprehensive MEFTA absent a change in this stance.

Arab countries also have to think about how an agreement with the United States could affect their relations with other trading partners such as the European Union and other nations in the region. In particular, like the United States, the European Union has also advanced a major initiative that began with bilateral agreements and now seeks to link these in a MEFTA as well as integrate many of these countries into a broader European Neighborhood Policy. An important concern for the future, then, is whether the US and EU approaches are mutually compatible.

In addition, the US initiative has presented a major challenge to Gulf Cooperation Council (GCC) unity. In principle, the GCC as a customs union should have a common external tariff. The European Union, for example, negotiates as a bloc with the rest of the world. However, the GCC countries found themselves in quite different positions in 2003 with Saudi Arabia, at the time not yet a WTO member. Notwithstanding the customs union, Bahrain negotiated a separate agreement with the United States and has been emulated by the United Arab Emirates and Oman. From one vantage point this was an unfortunate breach of GCC unity. But the GCC has experienced considerable difficulties in its negotiations with the European Union that have been going on for almost 20 years. And the ability to negotiate independently allowed the smaller GCC states to escape this constraint and move forward. Paradoxically, while the United States has couched its initiative as the creation of a single MEFTA, the reality could be the creation of a divided region with deeper integration among reformers.

US-Israel: A GATT-Style Free Trade Agreement

While the initiative launched by US President George W. Bush was historic, it represented the continuation of a long-standing tradition of using economic measures to bolster US foreign policy in the region. Israel has long been a major beneficiary of US financial support. In the aftermath of the Camp David agreements signed in 1978, Egypt joined the ranks of the largest recipients of US foreign Aid. The United States has also provided trade preferences to less-developed countries in the Middle East through its GSP. Indeed, Israel was also a GSP beneficiary and most of its exports enjoyed duty-free entry into the United States.

By the mid-1980s, however, the United States sought to encourage more developed countries either to “graduate” or to provide reciprocal benefits, and Israel was an obvious candidate for this treatment.² This led to the US-Israel FTA in 1985, the first in a major new trend in US trade policy that used such agreements as a supplement to multilateral liberalization (Rosen 2004).

The key objective of the US-Israel agreement was to eliminate all tariffs and quotas on industrial products. Nontariff measures (such as quotas and even outright bans) were still permitted in agriculture, however. The agreement did not cover services or liberalize investment, although it did deal with trade-related investment issues by outlawing performance requirements such as exporting or the use of domestic goods. The agreement did not implement a binational mechanism for settling disputes. Although Israel was required to sign the General Agreement on Tariffs and Trade (GATT) subsidies code, the agreement did not contain new provisions for subsidies or antidumping remedies. All in all, the US-Israel agreement was one that did not go beyond GATT by implementing measures that would have achieved significantly deeper economic integration. It was clearly a product of its time. One of the virtues of that simpler era, however, was that the rules of origin in the agreement were straightforward, and indeed more liberal than any FTA that has since been signed by the United States. In particular, there were no special rules for textiles and apparel.³

The US-Israel agreement is clearly not an adequate building block for the MEFTA. In particular, both its coverage and provisions are too limited. Services, investment, and intellectual property are just some of the ele-

2. In addition, frustrated with the slow progress in launching the negotiations that became known as the Uruguay Round, the United States turned to bilateral FTAs in an effort to pressure its major trading partners to be more forthcoming.

3. To be considered originating, goods simply had to meet one of three criteria: (1) Be wholly grown, produced or manufactured in Israel; (2) be “substantially transformed” in Israel into a new and different article or material from which it is made; or (3) contain 35 percent Israeli value added, for which up to 15 percent could be US materials.

ments that would have to be incorporated. In addition, however, there is the important issue of rules of origin. In this respect, since it is so liberal, it could be a model for an integrated agreement, but it would not be one that the textile interest groups in the United States would be eager to accept.

West Bank and Gaza: Along for the Ride

In 1993, the Oslo Agreement and the Paris Accords established a new relationship between Israel and the Palestine Liberation Organization (PLO). In the aftermath of the accords, the United States sought to bolster peace between Israel and its neighbors by fostering their economic integration and development. Goods produced in the West Bank and Gaza were granted the same FTA treatment as those produced in Israel. In 1996, the carrot of US market access was also used to promote trade between Israel, Jordan, and the West Bank and Gaza by establishing QIZs that granted duty-free access to products that contained value-added from both Jordan and Israel (or the West Bank and Gaza).

The US-Israel FTA had allowed goods produced by Israel duty-free access to the United States, but Gaza and the West Bank were not included as part of Israel. However, goods produced in those areas were in practice treated as if they were Israeli, until the PLO signed the Paris Protocol with Israel. In the protocol agreement, a customs union-type arrangement was concluded between Israel and the Palestinian Authority. With a few exceptions, external tariffs on almost all goods purchased by Palestinians were set at Israeli rates. Within Israel, the West Bank, and Gaza there was duty-free passage of goods. Thus, while goods were free to circulate duty free between the West Bank, Gaza and Israel, and between Israel and the United States, there was an issue with respect to access to the US market for goods produced in the West Bank and Gaza.

In early 1995, to prevent Palestinians from being penalized for their participation in the peace initiative, the United States extended GSP benefits to Palestinian products (Singer 2003). However, the GSP excluded major Palestinian exports such as textiles and agriculture and it was not renewed in 1996. Although the United States contemplated negotiating a separate FTA with the PLO, it rejected this option and instead invoked a provision of the US-Israel agreement that had been amended to allow the president to unilaterally extend duty-free privileges to products produced in the West Bank and Gaza.⁴ In his proclamation, President Bill Clinton stated, "I have decided that articles may be treated as though they were articles directly shipped from Israel for the purposes of the Agreement

4. White House Proclamation by the President of the United States, no. 6955, "To Provide Duty-Free Treatment to Products of the West Bank and the Gaza Strip and Qualifying Industrial Zones," November 14, 1996.

even if shipped to the United States from the West Bank, the Gaza Strip, or a qualifying industrial zone, if the articles otherwise meet the requirements of the Agreement.”

As noted in the proclamation, value added in the West Bank and Gaza is treated in the same way as value added in Israel.⁵ Thus, Palestinian goods today can enter the United States duty free as long as they meet rules of origin that are similar to those required for Israel. As indicated below, certain areas of Jordan also were given QIZ status. Ironically, therefore, what was originally meant as a major initiative to assist Palestinians actually provided an important boost to their regional competitors.⁶

By treating products from the West Bank and Gaza as part of the US-Israel agreement and by not having a completely separate agreement with the Palestinians, the United States avoided the knotty problem of how to treat products produced in Israeli settlements in occupied territories. However, the United States avoided this problem at the cost of not negotiating a separate US-Palestinian FTA, and the current arrangement between the West Bank and Gaza and the United States is not an adequate foundation for the Palestinian economy. By contrast, the European Union concluded separate trade agreements with the Palestinian Authority and with Israel, an approach that did lead to disputes over exports to the European Union from Israeli settlements.⁷

The economic conditions under which Palestinians currently live contribute to the instability in the region.⁸ The United States has now signed on to the notion of a two-state solution to the conflict, and a crucial requirement for this solution is that the Palestinians have a viable economy. The unilateral Israeli disengagement from Gaza and the construction of a barrier highlights the likelihood that the links between the Palestinian and Israeli economies will be significantly weakened. This means that international economic engagement is crucial to the economic survival of the Palestinians.

Gaza is a poor and desperate place. It can barely survive and certainly cannot thrive under conditions of autarky. If the movement of goods in

5. The proclamation states that, “The cost or value of materials produced in the West Bank, the Gaza Strip, or a qualifying industrial zone may be included in the cost or value of materials produced in Israel under section 1(c)(i) of Annex 3 of the Agreement” (op. cit, footnote 4).

6. To be sure, Palestinian production has an advantage in terms of rules of origin, since goods produced in the Jordan QIZ are required to have value added from Israel and/or the West Bank and Gaza, whereas goods produced in Gaza need not have any Israeli value added, but given security and other concerns, the responses in Jordan have been much greater.

7. The EU approach has engendered considerable controversy as to whether goods produced in the settlements are entitled to the trade benefits under the 1995 EU-Israel agreement (see Hirsch 2003).

8. See Noland and Pack (2006, chapter 9) for a more extensive analysis of the Palestinian economy.

and out of Gaza (to the West Bank, Israel, and the rest of the world) is seriously impeded, it will remain an economic backwater. Firms will not invest to produce in Gaza unless they can import key inputs and export to richer markets. The West Bank, as well, depends on external markets, and both it and Gaza are in great need of improved institutions. In this regard, a full-fledged Palestinian FTA could make an important contribution by securing markets for exports of goods and services, helping attract foreign investors, and stimulating internal market-oriented reforms. But the current agreement with Israel is not adequate to that task. The lack of coverage of investment and services, the weakness in dispute settlement, and the lack of a mechanism for Palestinian participation in the agreement's operation are all basic deficiencies. Given the recent electoral victory of Hamas, even maintaining the current arrangements has proven impossible. Nonetheless, an FTA between the United States and Palestine could make an important contribution in the event of a final settlement.

US-Jordan: From Qualified Industrial Zone to Free Trade Agreement

President Clinton had declared that goods produced in Jordan in special QIZs could also be eligible for similar treatment provided that the content had at least 35 percent qualifying value added. In terms of the protocol negotiated by the parties, products from these zones are required to meet minimum domestic content requirements and contain a minimum amount of Israeli value added (11.7 percent added in a Jordanian QIZ, 8 percent in Israel, and the remaining 15.3 percent can come from either a Jordanian QIZ, Israel, or the West Bank and Gaza).⁹

From the standpoint of the exports it has generated, this QIZ program has produced quite spectacular results. Since its inception in 1998, exports entering the United States have increased from \$15 million annually to over \$1 billion in 2006.

The program also served as to stimulate a more fully-fledged US-Jordan FTA. Negotiations for the agreement were launched and completed by the Clinton administration in 2000, its final year in office. From a US standpoint, the speed was possible because the agreement was not seen as

9. The Presidential Proclamation of 1996 (op. cit., footnote 4) gave authority to Israel and Jordan to devise the terms of the QIZ. Negotiations took place at the level of the Ministries of Industry and Trade. As long as the rules of origin of the Israel-US FTA were met, requiring 35 percent value added at the domestic level for duty-free access to the United States, the method of measurement as to splitting the portion of the 35 percent value added was left to the parties. In January 2006 amendments to the Jordan-Israel agreement were negotiated, in part based on the Egypt experience, amending the structure of the Jordan QIZ, whereby accounting for the Israeli input would be assessed on a quarterly rather than a per-product or per-truckload basis.

presenting significant economic challenges. A study undertaken by the US International Trade Commission, for example, concluded that the economic impact of the agreement would be minimal (USITC 2000). Jordanian exports to the United States in 1998—the year used as the basis for the study—totaled just \$16 million, while US exports to Jordan amounted to \$275 million. In addition, the Jordan agreement enjoyed considerable political support in the US Congress. This support was not only based on Jordan’s role as a US ally. It also reflected the fact that the Clinton administration used the agreement as a template for the treatment of labor and environmental provisions in a trade agreement. The Jordan agreement was also attractive to the administration because it offered the opportunity to show that the United States could in fact negotiate an agreement without fast-track authority—something that President Clinton had been unsuccessful in obtaining. In fact, the US-Jordan agreement was eventually passed by a “voice vote,” a procedure used only for issues that are so routine and uncontroversial that the votes do not even have to be recorded. This stood in dramatic contrast with the earlier fight over NAFTA. From a Jordanian viewpoint, speedy negotiation was possible because in April 2000, Jordan had just acceded to the WTO and the agreement did not require major additional liberalization, particularly with respect to services and investment.

On June 6, 2000, the two governments announced they would enter into negotiations. The agreement was concluded just six months later, on October 24, 2000. The text stands in striking contrast to NAFTA and agreements that were negotiated at the same time with Singapore and Chile. In particular, the Jordan agreement is remarkably brief and far less comprehensive and detailed. It is only about 20 pages long and has 19 articles. By contrast, the US-Singapore agreement has 21 articles and runs to 236 pages, and the US-Chile agreement has 24 articles and is even longer.

The US-Jordan agreement achieves free trade in goods within 10 years. Tariffs of less than 5 percent are eliminated after two years, Tariffs between 5 and 10 percent are removed over four years, between 10 and 20 percent over five years, and the highest tariffs are phased out over 10 years. There was some debate as to whether the rules of origin should be similar to those of Israel or the far more complex and comprehensive rules in NAFTA, and a compromise was reached. Unlike the US-Israel agreement, there are separate rules of origin for textiles and apparel that are extensive but by no means as restrictive as the yarn-forward rules in NAFTA and in subsequent Middle Eastern trade agreement such as US-Morocco, US-Bahrain, and US-Oman. The US-Jordan agreement allows for the use of unlimited third-country yarn and fabric in apparel eligible for duty-free treatment. In contrast, the Morocco and Bahrain agreements contain limited allowances for the use of yarn and fabric from a nonparty under a tariff preference level (TPL). But unlike NAFTA, this allowance is

gradually eliminated over a 10-year period.¹⁰ By 2010, the QIZ arrangement will be rendered obsolete by the full phase-in of the agreement.

Services liberalization is included in the agreement, but not with the negative list approach adopted in NAFTA (and the subsequent Middle Eastern agreements) in which all services are liberalized unless exceptions are noted. Instead, the parties each provide a schedule of services in which they will grant treatment no less favorable than they accord to their “own like services and service suppliers.” The text of the services section in the agreement is just a page in length and there are annexes in which countries basically detail their commitments to the General Agreement on Trade in Services (GATS). The agreement does not contain sections explicitly covering telecommunications and financial services as the later agreements do. The market access and national treatment commitments explicitly follow GATS rules.¹¹

The US-Jordan FTA also contains no investment provisions. Instead, the bilateral investment treaty that had been signed between the countries in 1997 and entered into force in 2003 was deemed as adequate.¹² This separate treatment meant that the dispute settlement procedures in the agreement could not be invoked to deal with investment.

Also conspicuous by their absence are provisions for government procurement (reference is simply made to Jordan’s application to the WTO Agreement on Government Procurement), binding commitments for aid and technical assistance, and provisions on technical barriers to trade, sanitary and phytosanitary standards, transparency, and competition policy.

Almost a third of the agreement’s pages are devoted to intellectual property, labor, and the environment. The intellectual property provisions are extensive, in some cases giving protection beyond that required by WTO rules, but they are less extensive than in later agreements. “Well-known trademarks,” whether registered or not, are given protection. Copyright protection extends to performances, and producers are given the exclusive right to authorize or prohibit the broadcasting of their work. The provisions for pharmaceuticals require an extension of the patent to compensate the owner for unreasonable curtailment of the patent terms.

The FTA establishes trade obligations as well as the obligations of both countries to enforce their national laws on labor and the environment as

10. As stated in USTR (2004), “The Morocco agreement also contains a special allowance for the United States and Moroccan industry to use cotton fibers from the least-developed sub-Saharan African countries, where those fibers are normally required to originate in a Party.” See www.ustr.gov (accessed September 15, 2006).

11. Jordan had listed in its schedule annexed to the GATS exemptions for most favored nation status that were based on a reciprocity requirement. The US-Jordan agreement confirmed that the United States satisfies those reciprocity requirements.

12. Bahrain investment is protected by a BIT; Morocco investment is protected by the agreement itself. The provisions are quite similar and often have the same language.

they relate to trade. These are quite common in US agreements. However, the most innovative aspect of the agreement was the fact that its labor and environmental provisions were made part of the body of the agreement and not subject to different dispute settlement provisions. All violations are to be treated in the same way. In the event of a dispute, the agreement provides for the creation of three-member binational panels to investigate “whether either party has failed to carry out its obligations under the agreement or adopted other measures that severely distort the balance of trade benefits accorded by the agreement or substantially undermine the fundamental objectives of the agreement” (Article 17 (d)). However, in the event the dispute cannot be resolved, the affected party shall be entitled to take “any appropriate and commensurate measure.”

In most other US FTAs, by contrast, the implications of a failed dispute are far more explicitly laid out. For example, in the dispute settlement procedures with Morocco, in the event of noncompliance, parties have the explicit ability either to suspend trade concessions or to establish monetary assessments.

Given these vague provisions of the US-Jordan approach, it is quite ironic that the system has been so enthusiastically supported by proponents of including labor and environmental provisions in trade agreements and vehemently opposed by those taking the opposite view. Supporters liked the fact that labor and environmental infractions would be treated in precisely the same way as other provisions and not separately in side agreements as had been the approach with NAFTA. Indeed, 18 Democratic members of Congress, many of whom had opposed other agreements, wrote a letter to President Clinton to congratulate him on the agreement, calling it “an important new precedent for trade agreements.” Many Republicans were opposed, however, and before the agreement could be passed they obtained an exchange of letters in which both sides actually pledged not to use trade retaliation if disputes could not be resolved.¹³ This suggests that the enforcement mechanisms of the US-Jordan agreement are de facto weaker than those in other FTAs.

Overall, therefore, the United States concluded three agreements that were precursors to the MEFTA. To the degree that these are viewed as part of a subregional arrangement, they provide an opportunity for cumulation with a simple value-added rule of origin. In fact, the Jordanian QIZ experience is evidence of the potency of such an approach.

At the same time, the relatively shallow nature of the Jordan agreement suggests that its potential role in stimulating reforms or major liberaliza-

13. USTR Robert Zoellick wrote, “In light of the wide range of our bilateral ties and the spirit of collaboration that characterizes our relations, my Government considers that appropriate measures for resolving any differences that may arise regarding the Agreement would be bilateral consultations and other procedures, particularly alternative mechanisms that will help to secure compliance without recourse to traditional trade sanctions” (*Inside U.S. Trade*, July 27, 6).

tion in Jordan were limited. In particular, the agreement did not really break new ground in Jordan with respect to investment, services, government procurement, competition policy, or regulatory practices (besides intellectual property).

WTO-Plus? US-Morocco, US-Bahrain, and US-Oman

The terrorist attacks of September 11, 2001, ushered in a new era in US foreign policy, raising even further the priority of relationships with Middle Eastern countries. In its aftermath, the US Congress easily approved the Jordan FTA a month later. In 2002 the Bush administration received trade promotion authority from the Congress, and decided to use it not simply to pursue the Doha Round negotiations, but also to dramatically increase its bilateral free trade initiatives. The administration concluded agreements with Singapore and Chile that had been started by the Clinton administration and then launched negotiations with a new group of countries. Among this group was Morocco.¹⁴

Although the United States announced its intention to enter into an agreement with Morocco in October 2002, the negotiations for the agreement were completed after the president's speech outlining the US strategy for a MEFTA. The result was an agreement, signed in June 2004, which basically served as the template for the subsequent agreements with Bahrain and Oman. The latter were concluded with remarkable speed: four months for Bahrain and seven for Oman. As a result, these three agreements can be easily described together (table 3.1).

Under the agreements, tariffs are generally removed on a large percentage of trade as soon as the US agreements are implemented. More than 95 percent of the bilateral trade becomes duty free when the US-Morocco agreement enters into force, and almost all tariffs between the two countries will be eliminated within nine years with a small number of the remaining tariffs eliminated after 15 years (USTR 2004). The Bahrain and Oman agreements eliminate tariffs on 100 percent of those industrial products that are actually traded immediately, and the few remaining exceptions in the schedules are phased out over 10 years. The Moroccan agreement requires the United States to phase out all agricultural tariffs in 15 years, while Morocco for the most part does the same, although it can keep restrictions on some especially sensitive sectors for as long as 25 years.¹⁵

14. The launch of the US-Morocco FTA negotiations was notified to Congress in October 2002. For an analysis, see Galal and Lawrence (2004).

15. For two poultry products, the agreement sets up two Moroccan tariff rate quotas (TRQs) under which out-of-quota tariffs would be eliminated over 19 and 25 years, respectively. A 19-year TRQ was created for US exports of whole birds and a 25-year TRQ for US exports of leg quarters, which are the two most sensitive products for Morocco.

Table 3.1 Summary of US free trade agreements

Article	US-Morocco	US-Bahrain	US-Oman
Market access	Immediately eliminate tariffs on 95 percent of bilateral trade in consumer and industrial products; all remaining tariffs to be eliminated within nine years	Most freed immediately: 100 percent of bilateral trade in consumer and industrial products become duty-free immediately; remaining products within 10 years in 10 equal stages	Similar to Bahrain
Agriculture and phytosanitary measures	Morocco provides preferential market access on agricultural products according to schedules negotiated on a product-specific basis. Tariffs phased out over up to 25 years; US over 18 years.	Covered under market access; US quotas phased out over 10 years	Immediately: Oman frees duties on 87 percent tariff lines and US frees duties on all its imports from Oman. Over 10 years, all tariffs removed
Textiles and apparel	Requires qualifying apparel to contain either US or Moroccan yarn and fabric. Contains a temporary 30 million square meter allowance for apparel containing third-country content	Most apparel "must be formed from yarn and finished in the territory of a party;" special safeguards	Majority of products: Tariffs phased out in 5 years; yarn and fabric can be US or Omani; temporary exception for limited quantities
Customs administration	Publication, release of goods, automation, cooperation	Similar to US-Morocco	Similar
Technical Barriers to Trade (TBT)	Uses World Trade Organization (WTO) TBT agreement; accreditation of conformity assessment bodies in other party	Uses WTO TBT agreement	Similar
Sanitary and Phytosanitary (SPS)	Uses SPS agreement	SPS	SPS
Safeguards	Substantial cause of serious injury; suspend reductions or increase rates to most favored nation (MFN) status	Similar to US-Morocco	Similar
Government procurement	Central government procurement threshold: all projects over \$175,000; construction projects over \$ 6.7 million	Covers all contracts greater than \$175,000 and all construction contracts greater than \$7.6 million	Covers all contracts greater than \$193,000 and all construction contracts greater than \$8.4 million

Investment	National treatment; MFN; procedures for investor-state dispute settlement	Similar to US-Morocco	Similar to US-Morocco
Services	Negative list	Negative list	Negative list; cross-cutting disciplines; remove requirements that US firms hire Omanis
Financial services	National treatment; MFN; specific commitments	National treatment; MFN; specific commitments	Regulatory transparency; allow prior notice and comment (within three years)
E-commerce	Free trade	Free trade	Free trade; no customs duties on digital products
Telecommunications			All service suppliers have network access
Intellectual property rights	37 pages	24 pages	Test data protected for 5 years for pharmaceuticals; 10 years for agricultural chemicals; protection for new plant varieties; tough penalties
Labor	Strive to improve standards; effectively enforce national standards; not weaken to gain advantage in trade or investment cooperation	Similar	
Environment	High levels of protection; enforcement; not distort trade or investment	Similar	Similar
Transparency	Prompt publication, notification, judicial review, anticorruption	Similar	Similar
Administration	Joint committee	Similar	Similar
Dispute settlement	Nonimplementation results in suspension of benefits or monetary assessment	Nonimplementation results in suspension of benefits or monetary assessment	Nonimplementation results in suspension of benefits or monetary assessment

The agreement also contains special agricultural safeguards. In the case of Bahrain and Oman, the United States immediately removes tariffs of all the current agricultural exports of Bahrain and Oman; in return, Bahrain and Oman immediately liberalize 98 and 87 percent of their agricultural tariff lines, respectively, and both sides phase out their remaining agricultural tariffs over the years.

Textiles and Apparel

The agreements allow for immediate duty-free trade in textiles and apparel for products meeting the agreement's rule of origin for Moroccan and Bahraini exports. In the case of Oman, tariffs are reciprocally removed by the United States and Oman, with the majority removed immediately or over five years. The rules of origin for textiles in these agreements are far more restrictive than those under the US-Jordan agreement. They require qualifying apparel to contain either US or partner yarn and fabric, although they provide temporary allowances for apparel containing third-country content.

When the US-Morocco agreement was concluded, the USTR trumpeted the restrictive nature of these rules. In its summary issued in March 2004 the Office of the USTR proclaimed: "The free trade agreement returns to the industry-supported 'yarn forward' [sic] in a Middle-Eastern Trade Agreement" (USTR 2004). It underscored that these provisions differed from the agreements with Israel and Jordan that allowed for the use of unlimited third-country yarn and fabric in apparel eligible for duty-free treatment. It also stressed that "unlike NAFTA the TPL in the Morocco agreement is temporary." It noted as well that the special textile safeguard contained in the agreement allows longer periods of relief than the textile safeguards in any other US FTA. The agreements with Bahrain and Oman contain similar textiles provisions to that with Morocco.

Rules of Origin

While there are exceptions, particularly for textiles, the rules of origin generally require that a good be "a new or different article of commerce" and that the value of materials produced in one or both of the countries plus the direct costs of processing operations performed in one or both of the parties be not less than 35 percent of value of the good. All three agreements use exactly the same language (US-Morocco agreement, Article 5.1; US-Bahrain, Article 4.1; and US-Oman, Article 4.1). When it comes to the possibilities of cumulation with other trading partners, there are interesting differences. The agreements with Morocco and Bahrain use identical language that contains only a commitment for "a discussion on the issue

at some future date.” Article 4.13 of the Bahrain agreement states, “At a time to be determined by the parties, and in the light of their desire to promote regional integration, the parties shall enter into discussions with a view to deciding the extent to which materials that are products of the countries in the region may be counted for purposes of satisfying the origin requirement under this agreement as a step toward achieving regional integration.” By contrast, the US-Oman agreement actually contains a commitment to develop a regional cumulation regime within six months of that agreement going into effect.¹⁶ Thus, the US-Oman agreement is at least an indication that one of the key steps toward regional integration is being contemplated.

Services

In all three agreements, there are broad commitments to open services markets. A “negative list” list approach is used. This implies that sectors are liberalized unless specifically excluded. The agreements all provide benefits for businesses wishing to supply cross-border services (for example, by electronic means) as well as businesses wishing to establish a presence locally. Key services covered include audiovisual, express delivery, computer and related services, distribution, healthcare, construction, and engineering.

Whereas Article 24 of the GATT allows parties concluding an FTA in goods to violate the most favored nation (MFN) provision, the GATS requires members to extend all other members with MFN treatment unless exceptions are taken in their schedules.¹⁷ Indeed, Article V:7 of the GATS, which covers integration, makes clear that other members of the WTO shall be automatically entitled to treatment granted under an agreement liberalizing trade in services.

The agreements contain separate articles for financial services, telecommunications, and e-commerce. The Oman agreement removes requirements that US companies hire Omanis for managerial and professional positions (USTR 2006). There are specific market-opening measures for financial services such as banks, insurance, and securities, as well as provisions for open and competitive telecommunications markets.

16. The wording in the US-Oman agreement, Article 4.13, reads, “In light of their desire to promote regional integration the parties shall develop to the extent practicable, within six months of the date of entry into force of this Agreement a regional cumulation regime covering the United States and Middle Eastern countries that have free trade agreements with the United States.”

17. GATS Article II:2 states that a member may maintain a measure inconsistent with paragraph 1 (MFN) provided that such a measure is listed in, and meets, the conditions of, the Annex on Article II Exemptions.

Foreign Investment

All three agreements establish, in almost all circumstances, the right to establish, acquire, and operate investments on an equal footing with local investors and investors from other countries. Performance requirements such as requiring exports, the use of domestic content, earning foreign exchange, and transferring technology as a condition for establishment are not allowed. The agreements permit expropriation only for a public purpose, only in a nondiscriminatory manner, and only with prompt, adequate, and effective compensation.¹⁸ These rights are to be reinforced by transparent and impartial procedures for investor-state dispute settlement.

Government Procurement

The agreements all contain similar disciplines regarding most government purchases. These require national treatment and nondiscriminatory treatment for foreign firms with respect to purchases in excess of certain monetary thresholds by listed government agencies.¹⁹ In addition, there are strong and transparent disciplines on procurement procedures, such as requirements for advance public notice of purchases, a timely and effective bid review process, and rules for evaluating suppliers. There are anticorruption requirements for declaring suppliers guilty of fraud or illegal action ineligible (for example, US-Morocco, Article 9.11).

Customs Administration

All of the agreements require parties to publish customs laws and regulations on the Internet, and establish points of inquiries on these matters.²⁰ Goods should be released “to the extent possible” within 48 hours of arrival. There should be procedures to allow goods to be released prior to the final determination of customs duties, and parties should maintain risk management systems that concentrate inspections on high-risk goods and provisions of express shipments. There are also provisions for cooperation between customs officials.

18. For example, US-Morocco, Article 10.6.

19. In the case of Morocco, the thresholds are \$175,000 for goods and services and \$6.7 million for construction projects (US-Morocco, Annex 9, A-1). This is adjusted over time according to a formula stipulated in the agreement.

20. US-Oman, Article 5; US-Bahrain, Article 5.

Standards

The agreements all include very similar provisions that basically contain commitments to use the WTO agreements on technical barriers to trade (TBT) and sanitary and phytosanitary standards (SPS). There is also encouragement for mutual recognition of conformity assessment procedures,²¹ and commitments for “facilitating bilateral initiatives regarding standards, technical regulations and conformity assessment procedures.”²²

Transparency²³

The agreements also contain general disciplines that require regulatory transparency, including prompt publication of laws, regulations, and administrative rulings of general application respecting any matter covered by the agreements.²⁴ The disciplines require parties to notify each other of measures that could affect their interests under the agreements. They also require that opportunities be provided to “persons of the other party” to present facts and arguments in support of their positions prior to any final administrative action. There is also a requirement to provide judicial, quasi-judicial, or administrative tribunals to review and correct administrative actions regarding matters covered by the agreement. There are also provisions for anticorruption measures, including making it a criminal offense “in matters affecting international trade or investment” for officials to solicit or accept articles or benefits with monetary value to perform public functions. It is also illegal to offer bribes, and the parties are required to adopt measures to protect persons “who in good faith report acts of bribery.”²⁵ There are also cross-cutting disciplines on regulatory transparency and procedures in the services agreements. For example, the agreements state that “Parties should endeavor to ensure as appropriate that measures are based on objective and transparent criteria, not more burdensome than necessary.”

Intellectual Property

The agreements have extensive provisions for the protection of intellectual property. The chapter that covers intellectual property runs to 37 pages in US-Morocco (Chapter 15), 24 in US-Bahrain (Chapter 14), and 25

21. US-Bahrain, Article 7.5.

22. US-Bahrain, Article 7:4, Trade Facilitation.

23. US-Bahrain, Article 17.

24. US-Bahrain, Article 17.1.

25. US-Bahrain, Chapter 17; US Morocco, Chapter 18.

pages in US-Oman (Chapter 15). The agreements require protection for trademarks, copyrights, and patents, as well as strict enforcement of these provisions, including criminalizing end-user piracy and providing for both statutory and actual damages under law. Many of the provisions go further than the WTO obligations as reflected in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). With respect to patents, for example, the TRIPS agreement (Article 27, 3(b)) allows members to provide for the protection of plant varieties “*either* [italics added] by patents or by an effective sui generis system or by any combination therefore.” These agreements insist on patent protection: “Each party shall make patents available for plant invention” (US-Morocco, Article 14.8, 2). Under TRIPS, patent protection has to be granted for 20 years after the date of filing (Article 33), whereas under these agreements protection can be extended: “Each party, at the request of the patent holder shall adjust the patent to compensate for unreasonable delays that occur in granting the patent” (US-Morocco 14.8, 6(a)). TRIPS has weak provisions for the protection of test data. These agreements protect test data and trade secrets submitted to a government for the purpose of product approval for a period of five years for pharmaceuticals and 10 years for agricultural chemicals. Under TRIPS, copyrights must grant a minimum protection of 50 years to performers and producers of phonograms (TRIPS, Article 14.5). In these agreements, the term shall be not less than 70 years (US-Morocco, Article 14.3, 4 (b)).

Labor and the Environment

The agreements do not require adherence to specific environmental and labor standards.²⁶ Instead, the countries commit in general terms to promote workers’ rights and protect the environment, and the agreement emphasizes the enforcement of domestic environmental and labor laws and not weakening environmental laws or reducing domestic labor protections in order to encourage trade or investment.²⁷

Moreover, when it comes to enforcement, the agreements stress that “the parties retain the right to make decisions regarding the allocation of resources to enforcement with respect to labor (or environmental) matters determined to have higher priorities.”²⁸ To be sure, these obligations are

26. The Moroccan agreement, for example, states that the parties “shall strive to ensure” that its labor laws are enforced and consistent with the right of association, the right to organize and bargain collectively, the prohibition on forced labor, a minimum age of employment, and acceptable work conditions.

27. The agreements state, for example, “A Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the parties.”

28. US-Morocco Chapter 16, Article 16.2 1 (b).

backed by the agreements' dispute settlement procedures and cases can be brought where enforcement failures affect trade. However, if one party is found guilty of such infractions, and fails to come into compliance, the other side may not be entitled to retaliate using trade protection. If either country is found by a panel to be in violation of its enforcement obligations, it can be subject to a monetary assessment. Moreover, such an assessment cannot exceed \$15 million and the funds are not necessarily paid to other party but may instead be used to help improve compliance.

What is striking about these agreements is that in many respects they require changes that will not simply affect the Middle Eastern countries' trade and investment relationship with the United States, but rather bring about policy changes that could affect relationships with other trading partners. Some of the changes will apply to all trading partners, others will apply to trading partners that are signatories of other trade agreements. There are many examples of both of these types of policies in the agreements. For example, the articles on customs administration, transparency, standards, intellectual property, labor, and the environment will bring about changes in rules and procedures for all participants in both economies, including those from other nations. If Morocco responds to the agreement with speedier publication of its customs regulations, all who are interested in these will benefit. Similarly, the benefits from the implementation of procedures for judicial review, enforcement of intellectual property protection, and sanitary and phytosanitary standards based on science will not be confined to US and Moroccan exporters. To be sure, many of these could be undertaken unilaterally, but in the framework of the agreement, to the degree that there are effective dispute settlement procedures, there is a better chance that these measures will actually be implemented. There could also be benefits from the fact that several countries have all signed very similar agreements. This should enable them to extend similar benefits to one another relatively easily.

Egypt: The Exception

The United States has ongoing negotiations with the United Arab Emirates, but Egypt represents a conspicuous omission from the list of countries with which the United States has an FTA. In 1999, the United States and Egypt signed a trade and investment framework agreement that established a TIFA Council to facilitate the discussion of bilateral trade and investment issues. The council met in October 2002 and established working groups to review technical issues relating to agricultural trade, customs administration, and government procurement. The two countries appeared to be close to launching FTA negotiations in June 2003, only to have a falling out when Egypt withdrew its support for a WTO case launched by the United States against the European Union over genetically modi-

fied organisms. This was an example of a petulance the Bush administration has demonstrated in other instances, indicating a willingness to use trade negotiations to advance other interests. In 2003, for example, the Bush administration delayed the signing of the US-Chile FTA because Chile had failed to support the US policy on Iraq at the United Nations. Similarly, the United States has refused to sign an FTA with New Zealand because it has refused to allow nuclear-powered vessels into its territorial waters.

The falling out with Egypt was in part justified by the United States on the grounds that Egypt's reform process had stagnated. But in 2004 President Hosni Mubarak appointed a new cabinet that dramatically increased the pace of reforms. In particular, in the trade area, tariffs were cut and the number of tariff bands drastically reduced. In addition, there were major initiatives in tax reform, customs regulation, industrial policy, and the tax system. In response, the two countries again were on the verge of initiating negotiations when in early 2006 the United States again suspended plans to launch formal talks because of the imprisonment of a leading Egyptian dissident, Ayoun Nour, who had been a candidate for president in elections in the fall of 2005. Also mentioned was the detention of hundreds of Sudanese refugees, some of whom were killed in a Cairo Park. This delay could make it extremely difficult to conclude talks prior to the expiration of President Bush's trade promotion authority in June 2007.

Conclusions

While some of the building blocks for a MEFTA are in place, much more work clearly remains to be done if it is ever to become a reality. The significant differences between the existing agreements imply that for a single overarching MEFTA to be implemented, either several of those agreements will have to be radically changed or the MEFTA would have to have a variable geometry in which not all members would have the same rules. For a single MEFTA agreement acceptable to the United States, the outdated agreement with Israel would have to be made much deeper, as would the US-Jordan agreement and any agreement with a new Palestinian state. Nonetheless, the agreements that have been signed since US-Jordan demonstrate that at least a subset of Arab countries are ready and willing to engage in deeper international economic integration, and it should be possible for them to extend to each other at least the same market access opportunities that they are prepared to extend to the United States. In addition, many of the provisions of the agreement should help them transform their domestic institutions and policies in a manner that should improve the regulatory weaknesses evidenced in the previous chapter.

In the US-Oman agreement, there has been acknowledgement of the need for a single set of rules of origin that can allow for diagonal cumulation among MEFTA nations. Unless this is done, there is the risk of constructing a hub-and-spoke arrangement that limits the MEFTA's ability to encourage regional integration. But the issue of which rules will be used remains to be decided.

Finally, it could prove counterproductive if the MEFTA is used as a bargaining chip to gain short-term political leverage. Ironically, the best way to achieve long-run political goals would be to emphasize rational economic considerations.

