REGIONAL INTEGRATION: WHITHER ARAB FREE TRADE AREA?

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ABSTRACT

The economic integration sought by Arab countries has been a merely aspirational one. Arab countries have not risen to the challenges posed to it by their unique circumstances. Instead, Arab countries have failed to develop the strength that would be conferred by economic integration.

My inquiry will assess why, many decades after first attempts of economic integration, Arab countries have not been more successful in emulating the success of the European Union, a paradigm of successful economic integration. Specifically, I will explore obstacles to Arab economic integration and address the political and economic factors that play a role to achieve this goal. The central hypothesis of this paper is that there must be fundamental structural changes in Arab economic integration agreements.

Effective dispute resolution mechanism and few opt-out provisions speak to a greater will to commit to integration. Arab countries must confront internal dissension and lack of implementation.

I. INTRODUCTION

The current era is characterized by the proliferation of regional trade agreements around the world.[1] In the wake of the suspension of the Doha Round in late July 2006, an avalanche of bilateral and regional free trade agreements will fill in the vacuum. The legacy of the failure of multilateralism is a renewed global push toward bilateralism.

Arab countries initiated one of the first attempts at an economic and political integration.[2] However, these attempts have not been successful. On the other hand, many other regions in North America and Europe have enjoyed far more success despite their later integration attempts.[3]

Several steps toward a free trade area were taken under the auspices of the Arab League, which was established in 1945. The Charter of the League provides that one of

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[1] Looking at regional integration, one can immediately see the upward pattern of the trend. Between 1978 and 1991, the number of regional trade agreements (RTAs) remained nearly static. Since the beginning of the 1990s, the trend was reversed and one could observe a constant dramatic increase in the number of RTAs that are being formed. From 42 RTAs notified to the General Agreement on Tariffs and Trade (GATT) according to Article 7(a) of the GATT in 1991, the number increased by 107% to 87 Agreements in 1998. See Matthew W. Barrier, Regionalization: The Choice of a New Millennium, 9 Currents: International Trade Law Journal 25, 27 (2000). According to the World Trade Organization (WTO), there are currently 170 RTAs in force. The WTO expects the total number of RTAs to rise to nearly 300 by the end of 2006.

[2] Arab Countries are: Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestinian Autonomous Territories, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen.

[3] See Mario Patrono, The Unity of Europe: A Dream, or a Reality in the Making? 35 Victoria University of Wellington Law Review 329 (2004). See also Patricia Isela Hansen, Judicialization and Globalization in the North American Free Trade Agreement, 38 Texas International Law Journal 489, 495 (2003) (NAFTA was ratified by the United States, Canada, and Mexico in 1993, in order to promote trade and investment between these three countries).

the League's purposes is to promote economic and financial cooperation between Arab countries including commercial relations.[4] Promoting trade served as the primary means for economic integration. Several treaties were signed to accomplish this purpose: (1) the Joint Defense and Economic Cooperation Treaty among Member States of the League of Arab States in 1950, (2) the Convention for Facilitating Trade and Regulating Trade Transit in 1953, and (3) the Arab Economic Unity Agreement in 1957. In addition, some attempts for Arab Common Market took place in 1964.

In the 1980s, Arab countries entered into many sub-regional agreements. These agreements included the Gulf Cooperation Council (GCC) and the Arab Maghreb Union.[5] In 1981, some members of the League entered into the Agreement to Facilitate and Develop Inter-Arab Trade Area (AFDATA), which focuses its concern on trade in goods.[6] AFDATA does not include provisions for trade in services or investment.

No progress was made in implementing the AFDATA until 1998, when it was revived again and an Executive Program, known as the Greater Arab Free Trade Area (GAFTA), for implementation was created.[7] Welfare gains may occur for producers and consumers if GAFTA were completed. For example, tariff reductions would expand intra-trade and increase intra-industry trade and cooperation by permitting Arab

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[4] See Charter of the League of Arab States, art. II(1) (1945).

[5] The GCC emerged as the only viable subregional free trade area in the Arab region. The GCC consists of six member states: (1) The United Arab Emirates; (2) Bahrain; (3) Saudi Arabia; (4) Oman; (5) Kuwait; and (6) Qatar. See Amr Daoud Marar, The Cooperation Council for the Arab States of the Gulf, 10 Law & Business Review of the Americas 475, 491 (2004). Member states of the Arab Maghreb Union are: (1) Algeria; (2) Libya; (3) Morocco; (4) Mauritania; and (5) Tunisia. See Information on the Arab Maghreb Union, available at http://www.maghrebarabe.org/ar/index.htm (last visited February 22, 2007).

[6] These members are: Jordan, UAE, Bahrain, Tunisia, Algeria, Djibouti, Saudi Arabia, Sudan, Syria, Somalia, Iraq, Oman, Palestine, Qatar, and Kuwait. See Agreement to Facilitate and Develop Inter-Arab Trade Area, available at http://www.arableagueonline.org/las/arabic/details_ar.jsp?art_id= 349&level _id=110&page_no=4 (last visited December 4, 2006).

[7] Members of the Executive Program are: the GCC members, Algeria, Egypt, Iraq, Jordan, Lebanon, Libya, Morocco, Palestinian Authority, Somalia, Sudan, Syria, Tunisia, and Yemen. See the Greater Arab Free Trade Area, available at http://www.arableagueonline.org/las/arabic/details_ar.jsp?art_id= 349&level _id=110&page_no=4 (last visited December 4, 2006).

producers to ship semi-finished products to another Arab country for further processing.[8] Moreover, with full elimination of tariffs and other trade barriers, Arab importers would experience some efficiency gains from the shift to trade with other Arab countries that are lower-cost producers.[9]

The paper is divided into two major sections. This paper first discusses provisions of the AFDATA and the Executive Program. The paper, then, focuses on the progress and the problems surrounding its implementation.

II. THE GENERAL FRAMEWORK OF AFDATA

The AFDATA aims to liberalize trade between Arab countries.[10] The liberalization of trade was to occur through two methods. The first method is recognized as the full liberalization method in which the AFDATA exempts certain categories of goods from all tariffs, similar taxes, and all other trade barriers.[11] The second method encompasses the progressive liberalization method in which Arab countries negotiate concessions to reduce tariffs on goods with the purpose of reaching a zero tariff on all goods and eliminating all other barriers to trade.[12] The AFDATA provides that parties facilitate the finance, credit, and payment for trade among them.[13] The Arab Monetary Fund serves to establish a system for settlement of payments that result from trade between the parties.

The Economic and Social Council of the Arab League (ESCL), which consists of ministers of foreign and economic affairs of Arab countries, is assigned to supervise the

[8] The study cited the garment industry as an example of intra-industry cooperation. See Samiha Fawzy, Globalization and Firm Competitiveness in the Middle East and North Africa Region 189-191 (2002).
[9] See Ahmed Abdalla, Inter-Arab Trade and the Potential Success of Arab Free Trade Area 11 (1998).
[10] See Agreement to Facilitate and Develop Inter-Arab Trade Area, art. II (1)(a)-(c) (Feb. 27, 1981).
[11] *Id*. art. VI.
[12] *Id*. art. VII(1)-(2).
[13] *Id*. art. X(1),(3),(4).

implementation of the AFDATA.[14] The ESCL, acting by a two-thirds majority of member states present at the meeting, possesses several functions in relation to the AFDATA.[15] For example, the ESCL could draft and issue collective lists of goods that are exempted from tariffs.[16] Moreover, the ESCL could determine which Arab countries are less developed for purposes of the AFDATA.[17] However, the functions of the ESCL do not include the power to legislate.

The ESCL empowered to examine complaints of parties regarding trade discrimination inflicted upon them by others as a result of exporting their products.[18] The ESCL may assign the dispute to an *ad hoc* committee and delegate a portion of its powers to the committee. In every case, the ESCL could decide the method of adjudicating the dispute.[19] AFDATA lacks details on the binding character of the ESCL rulings in the complaints examined and what happens in case of non-compliance. Furthermore, it is difficult to evaluate the effectiveness of the dispute settlement under AFDATA since data is absent that would have indicated how many complaints were processed or withdrawn. The absence of data hints that the dispute system of AFDATA is non-or under-utilized. Therefore, the development of AFDATA jurisprudence is lacking and there are no precedents to which the parties in the future will observe.

An important setback of AFDATA has been that it was more or less a declaration on the part of the signatories. AFDATA was not comprehensive in coverage. Arab countries could pick and choose manufactured products for tariff exemptions. Tariff reduction was

[14] *Id*. art. XI(1).
[15] Every member state has one vote. Meetings of the ESCL, including the meetings where voting occurs, are non-public. See Internal Regulation of the Economics and Social Council of the Arab League, Resolution No. 675-23, art. V(2), IV (September 22, 1977).
[16] See Agreement to Facilitate and Develop Inter-Arab Trade Area, *supra* note 10, art. XI(1)(a)-(b).
[17] *Id*. art. XI (1)(e).
[18] *Id*. art. XI (1)(f).
[19] *Id*. art. XIII.

determined through negotiations following a product-by-product approach, which is extraordinarily cumbersome.[20] AFDATA did not lay out a time schedule for the elimination of tariffs and other trade barriers.

III. PROGRAM FOR IMPLEMENTING THE AFDATA AND ESTABLISHING THE GREATER ARAB FREE TRADE AREA

In 1997, the ESCL decided to implement an Executive Program (the Program) to effectuate the provisions of the AFDATA with the goal of establishing GAFTA by 2008.[21] As such, the Program acts as a framework for GAFTA which would be created under the same institutional set up as the AFDATA.[22] Any Arab country must satisfy two conditions to join the Program. First, the Arab country in question must ratify the AFDATA. Second, the Arab country must agree to the Program by depositing local regulations issued instructing its customs authority to apply the Program.

A. TRADE IN GOODS

The Program provides for the progressive and linear tariff reductions on goods over a period of ten years at an equal annual 10 percent.[23] The basis for calculating the reduction of tariffs on imported goods shall be those rates in effect on January 1, 1998.[24]

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[20] The product-by-product approach raises a technical problem of how to deal with thousands of specific products. Therefore, product-by-product approach makes progress in trade negotiations almost impossible. See John H. Jackson et. al., Legal Problems of International Economics Relations 380 (West Publishing Company, St. Paul, Minnesota 1995).

[21] See Economic and Social Council of the League, Resolution No. 1317-59, art. I(1) (February 19, 1997).

[22] The Program obliges Arab countries to follow the rules and institutions included in the AFDATA. *Id*. art. I(2), VI.

[23] The ESCL later opted for a shorter period ending in 2005. Accordingly, the annual reduction of the tariffs and similar taxes will be 20 percent in 2004 and 2005. See Economic and Social Council of the League, Res. No. 1431, Ordinary Meeting No. 69, art. I(1), (February 2002).

[24] See Economic and Social Council of the League, Resolution No. 1317-59, *supra* note 21, art. I(7).

Nonetheless, members of GAFTA may agree to accelerate the elimination of all tariffs for any imported goods.[25]

The tariff reduction formula adopted in GAFTA improves market access whereby tariff reduction applies across-the-board to all tariff lines. The linear approach offers the advantage of being transparent and ensures that high tariffs are reduced faster than lower tariffs.[26] Furthermore, progressive tariff reductions help countries which have tariff revenue dependency to find alternative sources of revenue. However, the tariff reduction scheme of GAFTA did not address tariff peaks and tariff escalation.

Additional taxes and tariff-like charges (known as para-tariffs) are treated like tariffs and thus according to the Program will be eliminated over a period of ten years. Examples of para-tariffs include stamp taxes and consular fees where they increase as the value of imports increase or do not reflect the actual service rendered. Arab countries use different forms of para-tariffs that have the equivalent effect of tariffs. Jordan, for example, imposes fees for customs overtime wage and traffic administration fee.[27]

Arab countries are allowed to exempt from GAFTA tariff cut program certain products for religious or health reasons. For example, Arab countries maintain prohibitive tariffs on alcohol, pork, and tobacco. Tariffs on alcohol, pork, and tobacco can be as high as 200 percent.

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[25] *Id*. art. I(9).
[26] See G. Gregory Letterman, Basics of the International System of Customs and Tariffs 249 (Transnational Publishers, Inc. New York 2001).
[27] Tunisia imposes a computer data word-processing fee on each page of the customs declaration. Egypt imposes statistical tax of 1 percent on all imports. See M. M Kostecki & M. J. Tymowski, Customs Duties Versus Other Import Charges in the Developing Countries, 19 Journal of World Trade Law 3, 269-281 (1985) (Some Arab countries such as Libya, Algeria, Egypt, and Mauritania impose taxes on foreign trade transactions in the form of compulsory foreign exchange levies and advanced import deposits. Such taxes are not reported in the financial statistics on import taxes).

The tariff scheme of GAFTA offers Arab countries ambitious cuts in tariffs while allowing them to protect certain sensitive sectors. For example, for a number of industrial products, the greater part of market opening will take place toward the end of the ten year phase-out period for tariff reduction. This is intended to enable the local industry to restructure so as to be able to face off competition when full liberalization occurs by 2008. For other industrial products, yet to be determined, the Program provides the possibility of exempting them from the tariff reductions all together subject to certain rules and conditions to be set by of the ESCL. The decision to allow exemptions without determining the type of industrial products and the guidelines to follow might lead member countries to take advantage of this loophole, thus reducing the chance of GAFTA realizing its full potential for trade expansion.

Arab countries such as Lebanon and Tunisia expressed concerns regarding the liberalization of agricultural trade. Therefore, the Program invented the concept of "Agricultural Calendar". Any member may decide not to reduce tariffs on agricultural products during peak harvest seasons by listing these products on the Agricultural Calendar.[28] For the application of the Agricultural Calendar, GAFTA provides for certain criteria. First, the maximum time allowed for a listed product to remain on the calendar cannot exceed seven months, with a maximum of forty-five months in total for all listed products.[29] Second, each GAFTA member is allowed to exclude ten products as maximum.[30]

[28] A list of these agriculture products and seasons must be communicated to the ESCL.
[29] See Economic and Social Council of the League, Resolution No. 1317-59, *supra* note 21, art. II(2)-(3).
[30] Ten Arab countries forwarded a list of agricultural products covering some thirty fresh vegetables and fruit products. See Bernard Hoekman & Jamal Zarrouk, Catching Up with the Competition: Trade Opportunities and Challenges for Arab Countries 290 (University of Michigan Press; Ann Arbor 2000).

It is to be noted that the Agricultural Calendar does not mean prohibitions. Products included in the Calendar are allowed to enter, however they do not benefit from the gradual reductions in tariff rates during specific time periods. In all other periods, the same listed products would be subjected to the lower tariff rates. Although the Agricultural Calendar was intended to help the transition to freer trade for certain Arab countries, those countries applied the Agricultural Calendar permanently thus effectively shutting their domestic markets in the face of imported agricultural products.

The Program prohibits non-tariff barriers (NTBs) on Arab goods traded within the framework of the Program.[31] NTBs may include product standards, certification and testing, and customs procedures. Using NTBs is a more serious problem for integration than any tariff measure taken to control imports. NTBs are less obvious, complex, and not easy to gauge.[32] GAFTA established a committee to sort out all NTBs for elimination. However, to date, GAFTA members have not entered into negotiations to remove NTBs that restrain intra-regional trade. Moreover, GAFTA lacks precise mechanism or criteria to determine which standards or customs procedures constitute barriers to trade. Thus, like other regional agreements, the GAFTA committee could use a reference to the WTO Agreement on Technical Barriers to Trade (TBT Agreement) and the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement).[33]

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[31] See Economic and Social Council of the League, Resolution No. 1317-59, *supra* note 21, art. III.

[32] For explanation on the reasons for the use of non-tariffs barriers see Edward John Ray, The Political Economy of International Trade Law and Policy: Changing Patterns of Protectionism: The Fall in Tariffs and the Rise in Non-Tariffs Barriers 8 Northwestern Journal of International law & Business 285, 294-298, 303-305 (1987).

[33] NAFTA, for example, was negotiated more or less concurrently with the negotiations that led to the WTO, and the proposals in each tended to filter through the other. Therefore, the provisions of the NAFTA relating to NTBs bear striking resemblance to those of the WTO TBT and SPS Agreements. Both the NAFTA chapters on technical barriers and on sanitary and phytosanitary measures incorporate by familiar WTO principles concerning measures to protect human, plant, or animal health from hazards relating to

B. RULES OF ORIGIN

The Program contains provisions relating to rules of origin.[34] These rules are designed to guarantee that tariff concessions are enjoyed only by products of the countries that are parties to GAFTA. The Program confers origin if the exported product meets a mathematical requirement, known as the value-added or percentage rule. A product originates from a member state if the value added in the member state is at least 40 percent of the final value of the finished product. To meet the 40 percent, the value-added rule requires adding the sum of the cost or value of materials produced in the member state plus labor and overhead costs.

The value-added test is designed to ensure that the process of transformation has resulted in the inclusion of a significant degree of exporting country content. Although the 40 percent value-added rule is not considered too restrictive for a regional trade agreement, low-wage countries can have problems in meeting the requirements of this rule. For example, if a Kuwaiti worker applies eight hours labor to an imported input, the valued-added test could be met easily. A Somali worker, on the other hand, may fail to sufficiently raise the value of the product when employing the same amount of hours because of a lower wage level.

Member states of GAFTA are supposed to launch negotiation to reach an agreement on detailed rules of origin. However, an agreement on detailed rules of origin has yet to

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agricultural products and all other product market regulations. See Alan O. Sykes, Regulatory Protectionism and the Law of International Trade, 66 University of Chicago Law Review 1, 35 (1999).

[34] See Economic and Social Council of the League, Resolution No. 1317-59, *supra* note 21, art. I(4).

be reached between Arab countries.[35] Lack of agreement on rules of origin has delayed full implementation of the Program.

Any future rules of origin agreement should include a cumulation rule in the Program, which states that the costs or values of materials produced or originated in one member state may be add up to certain percentage of the 40 percent. The cumulation rule may lessen the impact of 40 percent value added test. In addition, like North American Free Trade Agreement (NAFTA), any future Arab regional agreement could adopt a "change in tariff heading" rule, i.e. non-originating materials must change or shift from one tariff heading/subheading into another as a result of production that occurs in a member state.[36] Furthermore, the Program should incorporate a *de minimis* rule whereby rules of origin do not apply to non-originating materials if they account for no more than 7 percent of the transaction value of the goods. The Program should avoid using specific rules or origin for certain products such as textiles and apparels.[37]

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[35] See Arab Monetary Fund, Joint Arab Economic Report 2003, ch.12, at 2, available at <http://www.amf.org.ae/vEnglish/default.asp> (last visited September 21, 2006).

[36] The concept of change in tariff heading was used first in the US-Canada FTA and then NAFTA. Chapter Four (rules of origin) in NAFTA has a general rule which determines that a good is considered to originate in North America if 1) the good is wholly obtained or produced entirely in the territory of one or more of the parties to NAFTA 2) the non-originating materials used in the production of the good undergoes an applicable "change in tariff classification" as a result of production occurring entirely in the territory of one or more of the parties to NAFTA. For more on the change in tariff classification rule, the calculation of transaction-value and net cost methods for purposes of determining the change in tariff classification, and the difference between the two methods see Marie Kately St. Fort, A Comparison of the Rules of Origin in the United States under The U.S.-Canada Free Trade Agreement (CFTA), and Under the North American Free Trade Agreement (NAFTA), 13 Wisconsin International Law Journal 183 (1994).

[37] Some rules of origin for textiles and apparels are known as the "four operations" rule". Under the "four operations" rule, a textile product will be considered a product of country A if the fabric is dyed *and* printed in country A and the dyeing *and* printing is accompanied by two or more of the following operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing or moireing. See Franklin Dehousse et al., The EU-USA Dispute Concerning the New American Rules of Origin for Textile Products, 36 Journal of World Trade 1, 69 (2002).

The Program should provide an advance ruling for origin purposes, which may allow exporters or importers to know the origin of their products before trading.[38] One method to reduce the costs of rules of origin is to liberalize these rules for certain products that are subject to very low or zero tariff rates. Whether these products are exported from Jordan or Syria is irrelevant because these products will enter other countries at a low tariff rate. Alternatively, member states may conduct a study of different industries and use the results as a basis to potentially allow deviations from rules of origin. At any rate, member states of the Program should adopt a more enlightened, transparent, and fairer approach. Rules of origin should ensure effectiveness, uniformity, consistency, and administrability.

C. CONSULTATIONS AND DISPUTE SETTLEMENT MECHANISM

One of the important elements for the success of a free trade area continues to be an effective mechanism to settle disputes between parties. In the NAFTA integration example, panels played an important role in strengthening the free trade area.[39] The

[38] An advance ruling could start by a letter from the importer/exporter to district director of customs in certain state inquiring on the origin of certain products. The letter would contain brief or detailed description of the product and the manufacturing process that would be conducted on the product. It may provide also cost information, if necessary.

[39] Chapter 19 of NAFTA establishes binational panels to review final determinations of antidumping and countervailing duty measures imposed under NAFTA parties' national antidumping and countervailing duty law. Practically, this means that binational panels will replace domestic courts examining these determinations. Binational panels are also permitted to review amendments to the antidumping and countervailing duty laws of the NAFTA parties. Chapter 19 establishes an ambitious project to harmonize U.S., Canada, and Mexico's antidumping and countervailing duty laws. An extraordinary challenge procedure is available as the only means of effectively "appealing" a panel decision and may be employed only in limited circumstances. NAFTA panel rulings are binding on all parties. For more discussion of NAFTA's dispute resolution processes under chapter 19 procedure see David S. Huntington, Settling Disputes Under the North American Free Trade Agreement, 43 Harvard International Law Journal 407 (1993).

binding rulings of NAFTA panels helped clarify valid regulations and policies of member states, and they set aside those that did not conform to the obligation to liberalize trade.[40]

The AFDATA and the Program lack a binding dispute settlement mechanism. AFDATA lacks details on the binding character of the ESCL rulings in the complaints examined and what happens in case of non-compliance. Under the Program, every member state has established a point of contact for inquiries regarding the application of the AFDATA and the Program.[41] Until a dispute settlement system is established, these points of contact receive complaints from the private sector and member states, and attempt to resolve these complaints. Over the years, several industries submitted complaints regarding obstacles to trade between member states. Those complaints involved non-application of tariff reduction and non-recognition of certificates of origin.[42] The relevant points of contact dealt with a portion of those complaints.

A draft agreement for a dispute settlement mechanism, containing the steps to settle a dispute, has been prepared for adoption, yet to occur, by Arab countries. First, the dispute shall be referred to the appropriate points of contact for resolution.[43] Second, if the points of contact fail to reach a resolution, the dispute shall be resolved through conciliatory discussions. Finally, the dispute is referred to a trade panel, whose ultimate decision is final.[44] Importantly, the draft also provides a mandatory time limit for each step.

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[40] See NAFTA Panel Ruling, Tariffs Applied by Canada to Certain U.S.-Origin Agricultural Products, Dec. 2, 1996, CDA-95-2008-01, NAFTA Panel Ruling, U.S. Safeguard Action Taken on Broomcorn Brooms from Mexico, Jan. 30, 1998, USA-97-2008-01.

[41] See Arab Monetary Fund, Joint Arab Economic Report 2001, at 322-323, available at <http://www.amf.org.ae/vEnglish/default.asp> (last visited July 10, 2006).

[42] See Arab Monetary Fund, Joint Arab Economic Report 2003, *supra* note 35, at 4.

[43] *Id*. at 5.

[44] It is unfortunate setback that the draft does not require an interim report issued by the panel and submitted to the parties for comments before it issues a final report. It is important to issue an interim report because the panel would estoppel the parties from coming backing and accuse the panel of misstating their arguments, ignoring their point of view, or denying them the right to present their

The dispute settlement mechanism in the Program should require Arab countries to exert every effort to settle any contentious matter through cooperative consultations, which are intended to be cooperative and negotiated in nature, rather than adversarial and litigious. However, a formal dispute settlement mechanism shall be instituted if other methods fail to resolve the matter at issue. The dispute settlement mechanism should decide who has standing to bring complaints. In addition to Arab governments, the dispute settlement mechanism should allow private actors with a stake in the dispute and where they believe it violates the trade-related principles to petition. In sum, the dispute settlement mechanism in Arab regional agreement should afford some private rights of action to enjoin member countries from enforcing laws and regulations that violate core trade commitments.

Model Rules of Procedures should be developed so as to determine the numbers of panelists, their qualifications, expertise, nationality, and remuneration. Model rules of procedures may include policies, practices, and procedures for receiving initial and rebuttal written submissions, and how oral hearings will be conducted before a panel. The dispute settlement under the Program should call for increased transparency in proceedings, in particular the opening up of panel hearings to the public. In regards to the presentation of confidential business information in the panel proceedings, portions of any dispute hearing dealing with such confidential information would not be open to the public.

The Program should have an elaborate system of sanctions and measures in order to enforce trade norms. The most salient feature of dispute settlement under the Program

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argument. Therefore, the panel by issuing an interim report would give the parties once and for all the last chance to present their comments.

should be the possibility of authorizing a trade sanction such as the suspension of tariff reductions against a scofflaw member for non-compliance. Trade sanctions or threat thereof are to taken to ensure that the Arab country in breach brings its practices into conformity. There can be other alternatives for trade sanctions. For example, instead of trade sanctions, any Arab country guilty of illegal trade practices could pay a fine equal to the value of the damages assessed. Other alternative can be membership sanctions that limit or deny privileges of membership for any Arab country that fails to comply with the provisions of the AFDATA or the Program. Among the membership benefits that can be withdrawn are the right to vote and the ability to obtain financial or technical assistance. The goal of these sanctions and measures is to fortify the Program rules and promote respect for them.

D. SPECIAL AND PREFERENTIAL TREATMENT

The interests of least-developed countries should be taken into account considering the special needs and circumstances of these countries.[45] Therefore, the Program provides preferential treatment to least-developed member states as identified by the United Nations as such.[46] Least-developed member states can submit a request that includes the nature of the preferential treatment needed and duration.

Flexibilities were given in the Program to least-developed Arab countries to undertake less than agreed tariff cuts. For example, least-developed Arab countries have until 2010 to abolish fully all tariffs and other taxes on goods originating in other Arab

[45] International trade law does not exist outside of the realm of justice. There are inherent or natural inequalities between developed and least-developed countries such as the smallness of least-developed country economies and their unequal share in natural endowments. These inequalities require special and differential treatment in favor of least-developed countries. See Frank J. Garcia, Trade, Inequality, and Justice: Toward a Liberal Theory of Just Trade 31, 144 (New York: Transnational Publishers, 2003).

[46] The Program states that least-developed member states are those identified by the United Nations as such. Least-developed member states are: Palestinian Authority, Somalia, Sudan, and Yemen See Economic and Social Council of the League, Resolution No. 1317-59, *supra* note 21, art. VII.

countries.[47] Arab countries who give preferential treatment shall determine the particular conditions of any preferential treatment granted. However, these Arab countries should make trade preferences granted to least-developed Arab countries binding, unconditional, and inclusive of all goods.

E. Labor Market Integration

Labor movement between Arab countries has been the most active compared to capital and trade movements.[48] This result is based primarily on the existence of more restrictions on trade between Arab countries than for labor mobility. It can also be due to the common language, similar culture, and social traditions between citizens of different Arab countries.

During increase in the oil revenues, labor mobility can be an effective tool in serving the goals of Arab economic integration. For example, the 1970s and 1980s witnessed a rapid acceleration of Arab workers movement to Arab oil-exporting countries.[49] However, unstable oil revenues coupled with ongoing efforts of Arab oil-exporting countries to nationalize their labor force can have negative effects on Arab labor mobility.[50] As a result, the future contribution of labor market to Arab economic integration is likely to decline.

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[47] Sudan chose to start a 20 percent annual reduction beginning in 2005. See Joint Arab Economic Report 2003, *supra* note 35, at 1.

[48] There is a debate over the speed or sequence of labor movement. For example, some regional integration models suggest that labor movement could come at a later stage of integration. In some other cases, labor movement could occur as at the same time trade and investment happen. See Noemi Gal-Or, Labor Mobility under NAFTA: Regulatory Policy Spearheading the Social Supplement to the International Trade Regime, 15 Arizona Journal of International & Comparative Law 365, 373 (1998). See also Michael J. Trebilcock, The Law and Economics of Immigration Policy, 5 American Law & Economics Review 271, 272, 284 (2003).

[49] See D. Salehi-Esfahani, Labor and Human Capital in the Middle East 42 (2001).

[50] In the UAE, the "Emiratization" drive has led to increasing the number of nationals in the financial sector by 189% between 1997 and 2002. See H. Handoussa & Z. Tzannatos, Employment Creation and Social Protection in the Middle East and North Africa 257 (2002).

The present discourse in Arab regional trade agreements is no different from global patterns of trade agreement which emphasizes trade and investments flows and less the politically sensitive issues of labor mobility.[51] As stands today, GAFTA has no provision on labor mobility. Thus, GAFTA should be amended so as to deal with labor mobility which is considered an important engine of Arab economic cooperation. There must be a comprehensive approach to Arab regional integration which combines: trade, investment, and labor mobility. Successful trade can support income and employment growth in poorer Arab countries thus reducing the income gap with rich Arab countries. Therefore, the success of GAFTA can compensate for the reduction in labor mobility.

F. The Relationship between GAFTA and the WTO

GAFTA does not exist in legal vacuum. Rather, GAFTA is part of the wider corpus of GATT/WTO law.[52] However, it was not until recently that GAFTA was notified to the WTO. In November 2006, Saudi Arabia notified GAFTA to the WTO.[53] GAFTA was notified as GATT article XXIV free trade agreement.[54] Since GAFTA was lately notified, there are no reviews yet on the agreement, submissions or comments from other WTO members.

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[51] Labor mobility today is both restricted and facilitated by several international agreements. The WTO's General Agreement on Trade in Services (GATS) has no provision for facilitating the entry of service providers into member countries. Although the EU, under its own provisions, requires no visa or work permits for Europeans to access employment in EU countries, EU workers enjoy limited rights to bring their families. Under NAFTA, members must allow the temporary entry of NAFTA members' citizens, but this provision is limited to high-skilled workers. See Ryan Walters, Managing Global Mobility Free Trade in Services in the Age of Terror, 6 University of California Davis Business Law Journal 92, 103-106 (2006).

[52] The WTO Appellate Body in the United States-Reformulated Gasoline case stated regarding article 3.2 of the Dispute Settlement Understanding that "direction reflects a measure of recognition that the General Agreement on Tariff and Trade is not to be read in "clinical isolation" from public international law." See Appellate Body Report, United States-Standards for Reformulated and Conventional Gasoline, April 29, 1996, WTO Doc. No. WT/DS2/AB/R, at 17.

[53] See Committee on Regional Trade Agreements, Pan-Arab Free Trade Area Agreement - Notification from Saudi Arabia, November 20, 2006, WTO Doc. No. WT/REG223/N/1.

[54] *Id*.

Arab Countries, however, did not agree to the Saudi notification of GAFTA under article XXIV. Other Arab countries, led by Jordan, stated that such agreement should be notified under the Enabling Clause.[55] Now, Arab countries are working with Saudi Arabia to change the notification to have GAFTA reviewed under the Enabling Clause.

There are different scenarios that would result if GAFTA is notified under article XXIV of GATT or under the Enabling Clause because of the differences between these two systems. GATT article XXIV condoned the establishment of free trade areas subject to several stringent conditions. For example, any agreement must include a plan and schedule for the formation of a free trade area and the formation should be achieved within a "reasonable length of time."[56] The issue of "reasonable time" was directly addressed during the Uruguay Round negotiations, where it was decided that ten years was a reasonable length of time.[57] GAFTA would lead to the establishment of free trade area among its members at a fixed date by 2008.

Article XXIV of GATT requires any contracting party deciding to enter into a free trade area, or an interim agreement leading to the formation of such an area, to promptly notify the GATT/WTO. This procedural requirement is intended to ensure the transparency of the proposed agreements to other WTO members and provide any necessary information for the examination of the agreements under article XXIV by the Committee on Regional Trade Agreements. The practice in terms of the timing of

[55] E-mail from Fakhry Hazimeh, Counselor, Jordan Mission to the WTO (February 19, 2007) (on file with author).
[56] The word "reasonable," has caused much confusion in its interpretation. There was no agreement on just how much time was reasonable. For instance, the Greece-EEC Associations Agreement provided for an interim period of twenty-two years before final formation. See Association of Greece with the European Economic Community, Nov. 15, 1962, GATT B.I.S.D (11th Supp.) at 149-50 (1963).
[57] See Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994.

notification has varied.[58] With regard to GAFTA, it should have been notified to the WTO long time ago. GAFTA, however, was only notified to the WTO in November 2006 despite the fact that it entered into force in 1998.

According to the drafters of GATT article XXIV, the objective of trade regionalism lies in complementing the global trading system. That is, regional free trade agreements are to increase trade, not raise barriers to trade with third countries. Moreover, GATT article XXIV requires the free trade area to eliminate trade barriers on "substantially all" trade among members.[59] Because GAFTA was notified under article XXIV, the WTO Committee on Regional Trade Agreements will examine and scrutinize this agreement more extensively to ensure that GAFTA does not adversely affect the interests of non-members and to determine how much trade diversion it created, if any.[60]

As a general rule, article XXIV applies only to members of the WTO. For example, the notification requirements of article XXIV apply to the WTO members of GAFTA, but not to non-WTO members.[61] Preferential agreements with non-members are treated under article XXIV.10 of GATT. Even if article XXIV is considered to be applicable with

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[58] The Treaty of Rome was signed on March 25, 1957 and notified to the Contracting Parties immediately thereafter, with the Treaty entering into force on January 1, 1958. See WTO Secretariat, Regionalism and the World Trading System 12-13 (1995).

[59] Discussions in GATT Working Parties have centered on whether the concept of "substantial' should be understood in qualitative terms (no exclusion of major sectors) or in quantitative terms (percentage of trade of the members covered). See World Trade Organization, Analytical Index: Guide to GATT law and Practice, Vol. 2, 824-27 (1995).

[60] On February 6, 1996, the WTO General Council decided to establish the Committee on Regional Trade Agreements. Under its terms of reference, the Committee on Regional Trade Agreements is mandated to examine regional trade agreements referred to it by the Council for Trade in Goods. See Committee on Regional Trade Agreements - Decision of 6 February 1996, WTO Document No. WT/L/127, paragraph 1.a (February 7, 1996).

[61] Saudi Arabia was latest Arab country to join the WTO. See Gary G. Yerkey, USTR Announces Bilateral Agreement Clearing Way for Saudi Arabia to Join WTO, 22 International Trade Reporter 1481 (September 15, 2005). Members of ADFATA who are also members of the WTO are: Bahrain, Djibouti, Jordan, Kuwait, Oman, Qatar, Saudi Arabia, Tunisia, and UAE. On the other hand, members of ADFATA who are not members of the WTO are: Algeria, Iraq, Palestinian Territories, Sudan, and Syria. See WTO, Members and Observers, available at <http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm> (last visited January 3, 2007).

regard to GAFTA, there is also the possibility of a waiver under article XXIV.10 of GATT. Paragraph 10 states that proposals for free trade areas not meeting the criteria described in paragraphs 5 to 9 of article XXIV may be approved by a two-thirds majority of the contracting parties, provided that such proposals eventually lead to the formation of a free trade area. The drafting history indicates that paragraph 10 of article XXIV was intended to provide for the supervision free trade areas in which not all participants were GATT contracting parties.[62] Moreover, it had been shown in practice that the concept "territories of contracting parties" included in article XXIV.5 of GATT had not been interpreted as restricting the ability of establishing free trade areas which include non-GATT members.[63] In most respects, a free trade agreement that complies with article XXIV for WTO members would likely comply for the other free trade agreement members as well since it may be difficult to envision free trade agreement provisions that are different for WTO members from the other non-WTO members.

Article XXIV.12 of GATT secures the observance of its trade rules by regional and local government authorities. The WTO members of GAFTA must ensure that GATT principles are observed by regional and local governments within the territories of those Arab members who are also WTO members. No WTO member is responsible under article XXIV.12 for regional and local governments that are not within that WTO member's territory.

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[62] See WTO Secretariat, *supra* note 58, at 10.

[63] For example, France obtained a waiver in March 1948 for its proposed customs union with Italy, which was not a contracting party to the GATT at that time. In another example, the Working Party on EEC-Agreements of Association with Tunisia and Morocco approved the established the free trade area although Morocco had no relation yet to the GATT at the time. See World Trade Organization, *supra* note 59, Vol. 2 at 798-799, 829.

Article XXIV is not the only GATT rule that permits the formation of regional trade agreements.[64] The Enabling Clause, agreed to during the Tokyo Round, provides more lenient criteria for the formation of regional trade agreements among developing countries. For example, unlike article XXIV of GATT, the Enabling Clause drops the conditions on the substantial coverage of trade and allows developing countries to reduce tariffs on mutual trade in any way they wish. Since all members of GAFTA are developing countries, it would be covered by Enabling Clause, paragraph 2(c) which permits a regional agreement that do not meet the requirements of GATT article XXIV. If GAFTA was notified under the Enabling Clause, the agreement would fall within the jurisdiction of the Committee on Trade and Development. Moreover, GAFTA would not go through extensive examination.

The relationship between GAFTA and the WTO is further emphasized by the use of some references in GAFTA to the latter. For instance, GAFTA's preamble refers to WTO agreements, albeit implicitly. Member states of GAFTA shall give due regard to international rules concerning: (1) safeguard measures;[65] (2) antidumping measures;[66] (3) measures to safeguard the balance of payments; and (4) subsidizing measures.[67]

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[64] See Zakir Hafez, Weak Discipline: GATT Article XXIV and the Emerging WTO Jurisprudence on RTAs, 79 North Dakota Law Review 879, 886, 900-902 (2003).

[65] The program allowed any member state to impose, on a temporary basis, tariffs or similar taxes or quantitative or administrative restrictions, to protect certain domestic production from increased competition. Any such safeguard measure was limited in duration. Six Arab member states (Egypt, Jordan, Lebanon, Morocco, Syria, and Tunisia) applied safeguard measures which run until September 16, 2002. See Arab Monetary Fund, Joint Arab Economic Report 2002, at 191, available at http://www.amf.org.ae/vEnglish/default.asp (last visited June 30, 2006).

[66] Dumping refers to the unfair trade practice of selling in a foreign market at below cost of production or home market price. Antidumping ensures a level playing field by addressing market distortions caused by foreign governments, specifically price discrimination and below cost sales reflecting protectionism, cartelization, and subsidization. See Charles M. Gastle & James Leach, The Need for an Antidumping Market Structure Test in the Context of Free Trade Agreements, 11 Indiana International & Comparative Law Review 37, 47 (2000).

[67] See Economic and Social Council of the League, Resolution No. 1317-59, *supra* note 21, art. I(5)-(6).

IV. SLOW PROGRESS IN ARAB COUNTRIES INTEGRATION

There are several factors that can unify Arab countries. For example, the Arabic language, especially in its written form which is understood all across the Arab region, can act as a natural unifying factor that should facilitate integration.[68] However, the Arab region is among one of the least integrated regions in the world with respect to trade, capital, and investment flows. While the total exports between Arab states have increased from 5.3 to 7 percent during 1970 to 1998, this is less than other free trade areas.[69] Even capital flows between Arab countries are low. This may be a result of underdeveloped capital markets.[70] Poor trade conditions could also be traced to the political instability and ever-changing policies and regulations in the economic arena in Arab countries. The reasons for the slow progress of integration in the Arab region can be mainly attributed to economic and political reasons.

A. Economic Reasons

Some prerequisites for an economic integration are identified in the standard customs union theory and the regional integration theory.[71] Certain elements must be

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[68] Leja, i.e. dialect or the spoken language, is not a unifying factor. The dialects differ too much. For example, yatikalafia is an expression of "praise" in Jordan and a "curse" in Egypt. Mabsut means "happy" in Jordan and "beaten up" in Iraq. Now, fusha, i.e. Modern Standard Arabic or the written language, would have a greater chance of unifying. Fusha is quite complex linguistically, having cases and verbal measures not used in leja. E-mail from Dr. Betty-Lou Leaver, Vice Chancellor for Continuing Education, the Defense Language Institute (February 26, 2007) (on file with author).

[69] See Gary G. Yerkey, Protectionism Curbs Development in the Middle East, 14 International Trade Reporter 2004 (November 19, 1997) (Interregional trade was about 7 percent of all trade in the Middle East, compared with about 20 percent in the Americas, 30 percent in Asia, and 60 percent in Europe).

[70] See Daniel Pruzin, Financial Experts Urge Governments in Middle East to Reform Capital Market, 18 International Trade Reporter 794 (May 17, 2001) (Arab countries maintain restrictions on capital flows and there is lack of consolidation in the banking sector. The Gulf region is overbanked with more than 200 banks serving a population of only 30 million).

[71] The classic doctrine in matters of economic integration theory includes the following: B. Balassa, The Theory of Economic Integration (Allen & Unwin, 1962); C. Carraro et al. (eds), International Economic Policy Co-ordination (Basil Blackwell Ltd., 1991); G. Lipsey, The Theory of Customs Unions: a General Equilibrium Analysis (Weidenfeld & Nicholson, 1970); J. Viner, The Customs Union Issue (Carnegie, 1950).

present to ensure mutual gains from economic integration. The economies of the countries in question should serve to compliment one another, which offer an opportunity for more trade creation. The size of the market and the number of the countries involved may have an impact by offering more markets and hence more trade. Geographical proximity is also important because it reduces transportation costs. In addition, the openness of the market and the role of the private sector are important factors in the integration process.

With regard to how Arab countries compliment each other, the structure of imports and exports in different countries shows that there is a lack of complementarity in trade structures between most Arab countries compared to other regional blocs.[72] Arab countries have similar exports and export markets.[73] Thus, they compete with each other, which minimize the benefits of integration, as the comparative advantage arising from trading in different goods is relatively small.

The size of the Arab market is limited.[74] The Gross Domestic Productions (GDPs) of Arab countries are less than the GDP of Spain.[75] There is also a problem relating to the variations in the level of welfare between Arab countries because of large differences in the per-capita income. The differences in per-capita income in NAFTA and EU countries amount to ten fold and five fold respectively, while the difference between Arab

[72] See United Nations Economic and Social Commission for Western Asia, From GATT to the WTO, at 18, U.N. Doc. E/ESCWA/CAB/2001/1 (2001) (Arabic version) (The structure of exports and imports of the Arab countries, as itemized in table 2, clearly indicates that oil products amount to more than half of total Arab countries' exports. This followed by manufactured products, which amount to 15.8%. Machinery absorbs the lion share of imports, 34.2%, followed by manufactured products, 30.5%).
[73] Arab trade takes place in homogenous products (textiles and apparel) competing in the same markets (the U.S. and EC).
[74] See Arab trade: With whom? The Economist, October 10, 1998, at 49 (If Arab countries want to achieve economies of scale, they would do better to integrate with large markets such as North America, Japan or even the whole world, rather than just with each other).
[75] See Special Report: Self-doomed to Failure-Arab Development, The Economist, July 6, 2002, at 24 (the Arab region's total GDP stands at $ 531 billion yearly).

countries is more than twenty-one fold. This large disparity discourages economic integration. Rich countries do not have incentive to share their wealth and poor countries are afraid of the growing influence of the rich countries.[76]

Although Arab countries have geographic proximity, other obstacles diminish this benefit. These obstacles include high tariff duties, inadequate infrastructure, and different means of transportation, all which increase the cost of trade.[77] The high level of protection in Arab countries does not serve the integration plans. Despite many agreements to liberalize trade between Arab countries, tariffs are still higher than in non-Arab regions.

Non-tariff barriers and different administrative procedures in customs authorities create an obstacle for economic integration. Many Arab countries still require import licenses for importing goods from other Arab countries. Some Arab countries also possess complicated banking procedures for financing and opening documentary credit for importing goods.[78] Finally, the role of the private sector is marginal in Arab countries.[79] This is evidenced by the fact that there is no noticeable role for the private sector in negotiations of Arab integration agreements.

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[76] In the case of Southern Common Market (Mercosur), which comprises Brazil, Argentina, Paraguay, and Uruguay, Uruguay and Paraguay argue that Brazil and Argentina tend to ignore their needs, impose their agendas, and turn a blind eye on their abysmal economic asymmetries. Recently, however, the larger members (Brazil and Argentina) recognized the internal asymmetries of Mercosur and of the need to help their smaller partners Paraguay and Uruguay improve their lot. This recognition will help cement the integration process so that Paraguay and Uruguay can achieve more comprehensive development and a better balance with the bigger economies. See Mario Esteban Carranza, South American Free Trade Area or Free Trade Area of the Americas? Open Regionalism and the Future Regional Economic Integration in South America 158 (Burlington, USA: Ashgate 2000).

[77] See Bernard Hoekman & Patrick Mersserlin, Harnessing Trade for Development and Growth in the Middle East 11 (Council on Foreign Relations, Washington, D.C 2002).

[78] A survey of companies in Arab countries found that cost of trading in Arab countries is about 10.6 of value of trade. These costs include slow customs clearance, additional payments to customs officials, and large number of documents and signatures required for processing. *Id*. at 14, 53-56.

[79] See Ian Ayres & Jonathan R. Macey, Institutional and Evolutionary Failure and Economic Development in the Middle East, 30 Yale Journal of International Law 397, 406 (2005).

The absence of a system to compensate those negatively affected by the Arab integration may be another reason for the slow progress in the Arab Free Trade Area plans. In the EU, several methods have been employed to compensate those negatively affected. These solutions varied between exceptions to trade liberalization, aids to disadvantaged territories, and longer transition periods.

In the final analysis, the plethora of overlapping preferential trade agreements, both bilateral and regional, which criss-cross the Arab world is a complicating factor. For example, Morocco and Tunisia are members in the Agadir Agreement of 2004, the Arab Maghreb Union, as well as in GAFTA.[80] In addition, Egypt, Libya, and Sudan are members in GAFTA, Common Market for Eastern and Southern Africa (COMESA), and share bilateral trade accords built on special preferences. These multiple overlapping trade agreements may have trade-distorting effects as a result of differing rules of origin and, for agricultural products, inconsistent seasonality regulations.[81] Different rules of origin add to the cost of trade between Arab countries by adding further administrative complexity to the process. In sum, intra-Arab free trade agreements create loopholes and inconsistencies which are hard to study economically and would have complicating legal effects as well as obstructive effects on the implementation of GAFTA itself. It is uneasy to determine which and when these trade schemes are better for the importation of different goods.

B. Political Reasons

There must be political support for an economic integration. The political support will usually result from the integration's political benefits, which do not threaten existing

[80] See Paul Demaret, Jean-Francois Bellis & Gonzalo Garcia Jimenez, Regionalism and Multilateralism after the Uruguay Round: Convergence, Divergence, and Interaction 95-106 (1997).
[81] *Id*. 343-348, 354.

political powers. It can be assumed that the elite fear that they will lose their dominating role because of a political integration could follow an economic integration.[82] Accordingly, there has not been a political movement to integrate among Arab countries.

An effective supra-national institution is needed to serve as a forum for the meeting of the Arab region's leaders and to establish the integration rules and policies. Although the ESCL may seem at the outset as a supranational institution if it can direct the Arab integration program on the basis of a 2/3 vote, there are several drawbacks.[83] First, the ESCL institution does not possess the power to establish effective independent policies. The members of the ESCL and their staffs are representatives of the governments of Arab countries and are subject to their governments' direction. Second, the ESCL decisions are not incorporated into the domestic legal systems of Arab countries. Arab countries could adopt the direct effect and supremacy of measures intended to cause economic integration. Third, the ESCL has a limited role in enforcing Arab countries compliance with the AFDATA and GAFTA norms. Although the ESCL can investigate complaints against any Arab country which does not conform to its obligations, ignoring the decisions of the ESCL does not impose higher costs in terms of trade sanctions for non-compliance. In contrast, in the EU, the existence of the European Commission as an executive institution plays a critical role in the European integration. The European

[82] Though regional integration made economic sense, it would have taken political power away from the elites. For example, states were unwilling to cede any significant power to regional secretariats, which resulted in heads of states of member nations acting as supreme decision-making authorities. For this reason, the disintegration of virtually all integration initiatives in developing countries may largely be blamed on rigid adherence to the state sovereignty doctrine. See Karen E. Bravo, CARICOM, the Myth of Sovereignty, and Aspirational Economic Integration, 31 North Carolina Journal of International Law & Commercial Regulation 145, 160 (2005).

[83] There are many Arab organizations that are ineffective. These organizations lack the autonomous power to issue mandatory rules and policies for the region and to supervise their implementation. This problem affects the Arab League as well. The Charter fails to provide the Arab League with the ability to impose obligations on Arab countries without their consent. For description of the Arab League institutional structure, competence, and voting see Majid Khadduri, The Arab League as a Regional Arrangement, 40 American Journal of International Law 756, 763 (1946).

Commission retains the right to initiate legal proceedings to ensure compliance with EU policy and legislation.[84] As such, GAFTA should follow the pattern of the EU by creating a body with wide power to police and discipline.

V. Recent Developments

The EC and U.S have put an increased emphasis on creating free trade areas with Arab countries. The EC concluded association agreements, as part of the Euro-Mediterranean Partnership, with Jordan (2002), Lebanon (2002), Syria (2002), and Egypt (2004).[85] The U.S. Administration also proposed the establishment of a U.S.-Middle East free trade area by 2013.[86] Thus far, the U.S. has signed bilateral trade agreements with Jordan (2000), Bahrain (2004), Morocco (2004) and Oman (2006).[87] There can be several benefits accruing through such trade agreements which include: enhancing goods and services trade; stimulating investment flows; extending standards on intellectual property rights, labor, and the environment; and addressing geopolitical concerns.

The association and trade agreements with Arab countries are expected to have important implications on the GAFTA project. These agreements may create bilateral trade pattern (trade diversion) which discourages intra-Arab regional economic ties.[88] If

[84] For more on the institutions of the European Union see Duncan E. Alford, European Union Legal Materials: A Guide for Infrequent Users, 97 Law Library Journal 49, 53-54 (2005).
[85] Jacqueline Klosek, The Euro-Mediterranean Partnership, 8 International Legal Perspectives 173, 176 (1996).
[86] See Grary G. Yerkey, President Bush Lays Out Broad Plan for Regional FTA with Middle East by 2013, 20 Int'l. Trade Rep. (BNA) 856 (May 15, 2003) (stating that the U.S. will employ a "building-block" approach. This approach requires, as a first step, a Middle East country to accede to the WTO or concluding Trade and Investment Framework Agreement(s) ("TIFA"). Afterward, the U.S. will negotiate FTA with individual countries. Finally, preferably before 2013, a critical mass of bilateral FTAs would come together to form the broader US-Middle East FTA).
[87] See Paul G. Johnson, Shoring U.S. National Security and Encouraging Economic Reform in the Middle East: Advocating Free Trade with Egypt, 15 Minnesota Journal of International Law 457, 483 (2006).
[88] Economists analyze trade liberalization by considering both trade creation and trade diversion. Trade creation occurs when lower-cost imports from one trading partner replace domestic production from the other. Trade diversion occurs when lower-cost imports from a third party are prevented from entering a

all Arab countries do not have comparable free trade agreements with each other, i.e. if they do not conclude a single free trade area, then the common denominator will be the EC or the U.S. For example, foreign investors could choose to invest in the EC being the hub, because of the access it offers to all Arab countries as spokes, if the latter maintain high intra-regional trade barriers. In a system of hub-and-spokes, trade between each spoke and the hub will be more than trade among the spokes themselves. Therefore, the hub-and-spokes issue has the potential to dramatically reinforce and expand EC and U.S. influence.

To minimize the hub-and-spokes issue, Arab countries should actively pursue GAFTA by offering market access to each other and in equal footing with EC and U.S. investors. Such a policy is likely to diminish trade and investment diversions. Furthermore, the EC association agreements and U.S. bilateral trade agreements could support GAFTA through cumulation for purposes of rules of origin for products manufactured in any Arab country member of GAFTA. The cumulation rule may contribute to creating forward and backward linkages between Arab countries and usher in expansion of Arab intra-industry trade.

GAFTA should keep close eye on bilateral deals between Arab countries and outsiders. To achieve this goal, GAFTA could be modified so as not to allow its members to conclude free trade deals with outsiders without their partners' consent or consultations. Therefore, any Arab country desiring to conclude trade agreements with outsiders would have to seek the backing of its partners in GAFTA.

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signatory country because of tariffs or non-tariff barriers. See Michael J. Trebilcock & Robert Howse, The Regulation of International Trade 130 (London: Routledge 1999).

VI. CONCLUSIONS

Arab countries have important affinities on political and cultural issues, as well as on values and on models of society, and all that should help them achieve economic integration. Some positive steps have been taken towards an economic integration. The implementation of the AFDATA and the Program is progress toward this goal. However, some issues are yet to be agreed upon between member states, such as rules of origin, an effective dispute settlement mechanism, provisions for services and labor mobility, protection of intellectual property, and non-tariff barriers to trade. The Program scheme is replete with exceptions whether for certain industrial products or for farm goods through the use of the Agricultural Calendar. Moreover, the lack of quality political and economic pre-requirements for integration is decreasing the benefits of the integration and delaying the realization of the Arab economic integration.

Beautiful speeches, hollow in content and deprived of practical consequences, have been familiar to Arab economic integration for decades, with small modifications in form and nothing new in terms of content. It remains to be seen whether Arab countries can build something that is useful and lasting in terms of economic integration, whether they are really prepared and willing to follow such a path, and whether they can lead themselves towards an efficient economic market.

I would like to conclude by sounding an optimistic note about what can be accomplished, despite the disconnect between the rhetoric of Arab economic integration and the reality of practice. Arab economic integration process is and remains valid. On paper, Arab economic integration is not so weak. However, the issue remains detailed rules and the will to implement. Therefore, minimum requirements of realistic Arab

economic integration must be achieved which include: (1) limited opt-out opportunities on the part of Arab countries; as well as limited time and enforcement periods for implementation; (2) an independent supranational body that drives polices and enforces economic integration; (3) removal of barriers to the mobile factors of production, such as capital and labor; (4) a legitimate dispute settlement mechanism with enforcement and compliance-monitoring powers; and (6) a strategic planning/decision-making mechanism that defies deadlock.

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