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**The US–Jordan Free Trade Agreement: Benign or Malign for the Economic
Development of Jordan?**

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Declaration of Originality

I certify that this thesis does not incorporate without acknowledgement any material previously submitted for a degree or diploma in any university, and that to the best of my knowledge and belief it does not contain any material previously published or written by another person except where due reference is made in the text.

A handwritten signature in black ink, consisting of a large, stylized 'K' followed by a series of loops and a final 'K' at the end.

Khaled Khwaileh

Abstract

The United States (US) and Jordan Free Trade Agreement (FTA) has significantly affected the Jordanian economy and society in both positive and negative ways. It has been a new player in the Jordanian economic order against the backdrop of Jordan's economic crisis and high unemployment, but it has failed to yield the promised economic benefits. Indeed, the legality of unfair and ambiguous clauses of the FTA has raised significant debate, and many critics view the FTA as a tool to advance foreign policy and promote the geostrategic interests of the US in the Middle East.

This thesis analyses the effects of the US–Jordan FTA to identify economic changes in Jordan's economy. It examines the economic rationales of the parties for free trade, the economic effects of the FTA on Jordan and the extra-economic considerations that led the parties to sign the FTA.

Further, this study identifies clauses of the US–Jordan FTA for possible amendments with the aim of minimising adverse effects and maximising economy-wide benefits for Jordan. The proposed reforms will considerably improve economic gains and benefit Jordanian trade policy-makers, strategists and negotiators by enhancing their understanding of the pitfalls, challenges and opportunities presented by the FTA. For example, the reforms will reduce poverty, increase health services, improve education and create an overall positive effect on the economy. In a wider context, this research will provide insights to government and non-government agencies of other countries that want to pursue preferential bilateral FTAs as a vehicle for their economic development.

The words counted in this thesis is approximately (19500) excluding the Footnote, Appendix and the Bibliography.

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Keywords: US–Jordan FTA, Intellectual Property Right, TRIPS-Plus Rule, Labor Clause, WTO, GATT, Article (XXIV), Political Considerations.

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List of Abbreviations

ADB	Asian Development Bank
APEC	Asia-Pacific Economic Cooperation
BIT	Bilateral Investment Treaty
CET	Common External Tariff
CU	Customs Union
EU	European Union
FDI	Foreign Direct Investment
FTA	Free Trade Agreements
GAFTA	Greater Arab Free Trade Area
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GSP	Generalised System of Preferences
H–O	Heckscher–Ohlin
ILO	International Labor Organization
IPR	Intellectual Property Right
ITA	Information Technology Agreement
MEFTA	Middle East Free Trade Area
MENA	Middle East and North Africa
MFA	Multi-Fibre Arrangement

MFN	Most favoured nation
MOU	Memorandum of Understanding
NAFTA	North American Free Trade Agreement
NT	National Treatment
PTA	Preferential Trade Agreements
QIZ	Qualifying Industrial Zone
ROO	Rules of Origin
RTA	Regional Trade Agreements
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UAE	United Arab Emirates
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

Chapter 1: Introduction

1.1 Introduction

Free trade agreements (FTAs) play an important role in increasing globalisation, as they allow businesses to trade in markets that have similar levels of economic power without being discriminated against or restricted by governments. Free trade invokes the philosophy of the free market as the principal mechanism of economic development. FTAs provide significant benefits to businesses by giving them comparative advantages, reducing tariff barriers, increasing export levels, enhancing economies of scale, improving competitive performance and increasing efficiency in global trade. When there are no barriers to participating in global trade, trade activities tend to increase. This study focuses on the United States (US) and Jordan FTA¹ and examines the implications of trade liberalisation between countries that are at different levels of development.

Jordan's underdeveloped economy is a minor local market, as Jordan has a small population. Further, the country is surrounded by other developing countries, thereby limiting its potential for market development. Jordan's lack of access to export marketplaces in other parts of the world has resulted in restricted opportunities for economic development.² In contrast, the US is a large developed country and an original signatory of the General Agreement on Tariffs and Trade (GATT), as well as a member of the World Trade Organization (WTO). The US–Jordan FTA was expected to result in net welfare gains for Jordanian consumers and the US from phased-in, reciprocal tariff elimination.³ It is expected that Jordan's improved access to the large US market will attract investment in the export sectors, improve national productivity and attractiveness, and fuel economic growth.

¹ *Agreement Between the United States of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area* (hereafter referred to as the US–Jordan FTA).

² Even with an FTA in place, the long distance and high transportation costs between the US and Jordan influence the types of Jordanian goods that can compete in the US market. Grace Victoria Chomo, *Free Trade Agreements Between Developing and Industrialized Countries: Comparing the US–Jordan FTA with Mexico's Experience Under NAFTA* (DIANE Publishing, 2002) 3.

³ Ibid.

Jordan is predicted to achieve relatively more monetary advantage from tariff liberalisation under the FTA for several reasons. First, Jordan's economic distortions from import tariffs are higher than that of the US. Reductions in Jordanian import tariffs on US products, which currently account for 10% of Jordanian imports, will allow local resources to adjust to more optimal uses. Second, US international trade is overshadowed by US inter-regional trade, which accounts for most of the US' national income.⁴

This chapter will discuss the concept of free trade and its role in creating free market conditions in the international arena. It will analyse the fundamental contradiction between the principle of free trade and the possibility of two countries entering into bilateral trade agreements. This analysis will be conducted in the specific context of the US–Jordan FTA.

1.2 Free Trade and Globalisation

The economic concept of free trade invokes the philosophy of the free market as the prime mechanism of economic development.

International trade is important in fulfilling the basic needs of millions of people (e.g., clean water and food), as well as transportation, any natural resources that might be traded, fuel and items of intellectual property (IP).⁵

International trade also improves relationships between countries and various groups. This consideration initially appeared to be irrelevant to free trade reforms, but the effects of international trade on governments, as well as the opportunities it provides, have now been well documented. Ideas regarding free trade, even if widely accepted, require structure for their integrity and maintenance. Therefore, notions of free trade are included in legal instruments (also known as agreements or covenants), and they are both domestic and international in scope.

⁴ This study does not address the effects of the US–Jordan FTA on the US economy.

⁵ Thouqan Makableh, *The Hashemite Kingdom of Jordan's Legal, Economic and Fiscal Empowerment Through Commerce and Active Trade Agreements* (SJD Dissertation, Golden Gate University School of Law, 2013) 19 <<http://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1056&context=theses>>.

However, there is tension between the principle of free trade and the existence of bilateral FTAs. Article XXIV of the GATT prohibits discrimination by a country towards its trade partners.⁶ This Article is also known as the non-discrimination clause, and it states that a country must not discriminate between its own products and foreign products, and between its various trade partners. Thus, bilateral FTAs could be considered a violation of the prohibition.

However, Professor M Rafiqul Islam⁷ argued that regional and sub-regional preferential trading blocs, customs unions (CUs) or preferential bilateral FTAs established in compliance with the conditions of Article XXIV(5) of GATT are allowed to operate without sharing their internal concessions and advantages with non-members of the bloc, CUs or FTAs. Moreover, the WTO believes that trade liberalisation facilitated by FTAs is better than no trade liberalisation. Therefore, this thesis undertakes a close analysis of the US–Jordan FTA.

1.3 Primary Focus of This Thesis

The main purpose of this research is to analyse the US–Jordan FTA. As a preliminary step, this section presents a brief overview of the FTA.

The FTA stipulates that it will strengthen the multilateral trading system through the tenets of the WTO. It includes environmental and labour clauses so that economic development between the two countries will be coupled with sustainable development and environment preservation. Further, trade and economic activities aim to improve the living standards of the citizens of both countries. Particularly for Jordan, sustainable economic growth will rapidly affect its exports.⁸ The FTA also aims to foster the creativity, innovation and adoption of intellectual property rights (IPRs) in the trade practices of the US and Jordan. Both countries must adhere to IPR-related articles of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks adopted by the Assembly of the Paris Union for the Protection of Industrial

⁶ Article XXIV of the GATT.

⁷ M Rafiqul Islam, *International Trade Law of the WTO* (Oxford University Press, 2006) 12.

⁸ Kuwait News Agency, *Quick Impact of Free Trade Agreement with US—Jordan's Economy Minister* (1 August 2001) <<http://www.kuna.net.kw/ArticlePrintPage.aspx?id=1181450&language=en>> (Accessed on 11 November 2016).

Property and the General Assembly of the World Intellectual Property Organization (1999).⁹

This thesis claims that the US–Jordan FTA has not worked to the advantage of Jordan as anticipated, and it suggests reforms to specific clauses of the FTA to fulfil the promise of the agreement to provide benefits to Jordan’s economy.

1.4 Research Argument

This thesis argues that the US–Jordan FTA is politically motivated.¹⁰ The US has benefited from the FTA in economic and trade aspects, but these benefits are minor compared with the political interests of the US in the Middle East. This is not an unusual outcome, but the literature on FTAs does not sufficiently focus on the political aspects of free trade rhetoric.

It is commonly accepted that FTAs are entered for economic and political reasons. However, the legal literature in international and free trade areas views FTAs as primarily economic agreements. Therefore, it is necessary to address this understanding of FTAs, as it has significant implications for the rationales used to support FTAs.¹¹

1.5 Statement of the Research Problem

The research argument will be substantiated by formulating the research problem statement as follows.

This thesis will examine the US–Jordan FTA to identify clauses that may be preventing economic gains for the economy of Jordan, and it will propose suitable modifications to these clauses.

⁹ This recognition was also extended to patents and gave special privileges to citizens of the other country regarding the protection of all IPRs as long as legal compliance was ensured. Office of the United States Trade Representative, *Jordan Free Trade Agreement* (2016) <<https://ustr.gov/trade-agreements/free-trade-agreements/jordan-fta>> (Accessed on 24 December).

¹⁰ Howard Rosen, ‘Free Trade Agreements as Foreign Policy Tools: The US–Israel and US–Jordan FTAs’ in Jeffrey J Schott (ed), *Free Trade Agreements: US Strategies and Priorities* (Institute of International Economics, 2004) 51.

¹¹ In the context of the US–Jordan FTA, the literature suggests that changes in the US economy regarding the given effect were negligible, while the effects on Jordan’s economy were highly observable. US International Trade Commission, ‘Economic Impact on the United States of a US–Jordan Free Trade Agreement’ (ITC Investigation No 332-418, 2000) 2.

This research problem will be answered with the help of the following research aims.

1.6 Thesis Aims

1. To analyse the literature relating to free trade, FTAs and Article XXIV of WTO/GATT to determine whether FTAs are compatible with the concept of free trade.
2. To analyse the literature and ascertain how the effects of FTAs may be measured or assessed.
3. To analyse the findings of various studies of the US–Jordan FTA that claim that Jordan did not achieve the economic aspirations it set out for itself at the beginning of the agreement, and to explain the economic consequences of the FTA for Jordan.
4. To analyse the political considerations that led to the signing of the document and determine whether they have a bearing on the less favourable outcomes for Jordan compared with the US.
5. To offer recommendations to modify the FTA to minimise the adverse effects and maximise the economy-wide benefits of the agreement on Jordan's economy. More specifically, this thesis proposes modifications for two clauses of the FTA: the labour standards clause and the IPR clause.

1.7 Thesis Structure

The first chapter of this thesis provides a broad overview of the US–Jordan FTA. It articulates the primary focus of the thesis, the research argument, objectives, research questions, research methodology and a summary of the preliminary review of the existing literature. Chapter two discusses the theoretical arguments regarding free trade and FTAs, as well as the relative advantages that FTAs have for multilateral and bilateral trade relations. The chapter will provide the rationales and explanations for free trade and FTAs. Chapter three discusses how the effects of FTAs are measured in the literature. Chapter four analyses the effects of the US–Jordan FTA on Jordan's economy and establishes that Jordan has not benefited as much as it expected to. Chapter five analyses why the US signed the FTA with Jordan and the benefits the US has gained from the agreement. Chapter six concludes with recommendations for

improvement in the US–Jordan FTA. It also reviews the legal clauses on labour conditions and IPRs and their effect on Jordan’s economy.

1.8 Research Methodology

A research methodology is the process of approaching the research problem.¹² The method used in this thesis is doctrinal legal research. The purpose of legal research is to find solutions to legal issues. However, to understand legal matters, there should be a broader focus on the relevant political and social literature. Each research aim requires specific types of answers and analysis of the relevant literature.

Thus, the aim of this research is to assess whether Jordan’s economy received a boost from the FTA, given the political motivations of the US in signing the agreement. To establish the effect of the political turbulence of the time and the effect it had on the agreement, it is necessary to analyse the relevant secondary literature. This will include research that analyses the agreement and its consequences. Subsidiary sources will include news items published around the time of the agreement, with a focus on the political situation.

This study will also rely on doctrinal research to analyse the clauses of the US–Jordan FTA. The doctrinal method is relevant because the agreement took place between two countries as a fully binding text. It is a legal document that was drafted for the fulfilment of this agreement, and compliance by both countries is mandatory. Second, close analysis of the text will determine the soundness of the arguments in the secondary literature. Third, identifying the clauses that disadvantage Jordan will help the government to renegotiate with the US and make the agreement more efficient for Jordan’s economic interests.

Within the realm of the doctrinal research, expository research works to consolidate previously completed analysis on a project where information is available but needs to be explained more succinctly.¹³ It utilises secondary literature and brings together

¹² University of Southern California, *Research Guides: Organizing Your Social Sciences Research Paper: 6. The Methodology* (2017) <<http://libguides.usc.edu/writingguide/methodology>> (Accessed on 1 October 2016).

¹³ Luke Muehlhauser, *2013 in Review: Strategic and Expository Research* (8 February 2014) Machine Intelligence Research Institute <<https://intelligence.org/2014/02/08/2013-in-review-strategic-and-expository-research/>>.

various analyses to complete the big picture for more holistic analysis. In the case of the US–Jordan FTA, existing analyses will be studied in the context of the overall argument in this thesis.

1.9 Literature Review and Contemporary Opinions

This literature review corresponds to the research aims listed in Section 1.6. This section conducts a preliminary examination and will be further supplemented in each chapter. The relevance of various issues to the overall argument will also be integrated into this review.

The first aim of this thesis is to ascertain whether the US–Jordan FTA is compatible with Article XXIV of GATT. Moreover, it is important to ask how FTAs can benefit both partners—especially when the two economies are of different sizes. Relevant issues include international trade theory, the theory of comparative advantage and the issue of resource endowments.

A fact that requires attention is that FTAs are used by countries to enter preferential trade agreements (PTAs), and they may result in specific countries gaining the status of the most favoured nation.¹⁴ Thus, the issue is whether the exception in Article XXIV(5) of GATT undermines the trade liberalisation promoted by multilateral economic partnerships. The literature relating to the compatibility of Article XXIV of the GATT by the WTO and FTAs explains that, in certain circumstances, bilateral agreements or multinational agreements can be considered as not contravening the principle of free trade. As explained above, Professor M Rafiqul Islam argued that FTAs that comply with Article XXIV (5) of GATT can be permissible. However, he noted that nearly all existing free-trading blocs, unions and FTAs under Article XXIV are inward-looking, which is a departure from the free trade principle (i.e., most favoured nation [MFN]).¹⁵ The elimination of tariffs between blocs, union or FTA members cannot be generalised to, and invoked by, the WTO members.

¹⁴ Jeffrey J Schott, ‘Free Trade Agreements: Boon or Bane of the World Trading System?’ in Jeffrey J Schott (ed), *Free Trade Agreements: US Strategies and Priorities* (Institute for International Economics, 2003) 3; see also p 36.

¹⁵ M Rafiqul Islam, above n 7.

PTAs and Regional Trade Agreements should typically be arranged within the framework of Article XXIV of GATT. This Article is considered an exception to the MFN principle by treating mutual imports preferentially through the formalisation of a PTA. The WTO allows three kinds of PTAs: Customs Unions (CUs) and FTAs under Article XXIV; agreements between developing countries formed under the enabling clause, which allow partial preferential treatment; and agreements under the Generalised System of Preferences (GSP), which allow developed countries to award preferential treatment to developing countries.¹⁶

However, careful examination of Article XXIV reveals that it covers strict criteria for the formation of regional groupings that are recognised by GATT. GATT accepts free trade areas, CUs and provisional agreements for the formalisation of either free trade areas or CUs. It does not accept preferential trading arrangements because they permit selective tariff reduction without inquiring about the goal of complete tariff liberalisation and without increasing the benefits of a range of agreements with the other parties. These arrangements continually divert trade, as they lead to the movement of trade from countries with a comparative advantage in the production of merchandise in global markets to countries whose prices are lower because of PTAs. These arrangements also contradict MFN rules, as they permit preferences between parties that are not expanded to other parties of GATT directly and absolutely.¹⁷

The second issue relates to how FTAs are able to benefit both partners, especially when the two economies are of different sizes.

The US–Jordan FTA was expected to result in net welfare gains for people in the US and Jordan from the reciprocal tariff elimination. Jordan expected to gain relatively more from tariff liberalisation under the FTA for various reasons.¹⁸

¹⁶ Snorri Thomas Snorrason, 'The Theory of Trade Agreements, Economic Integration, Size of Economies, Trade Costs and Welfare' in Snorri Thomas Snorrason (ed), *Asymmetric Economic Integration* (Springer, 2012) 10.

¹⁷ Law Teacher, *Art. XXIVGATT Sets Out WTO Rules for Bilateral Agreements* (2017) <<https://www.lawteacher.net/free-law-essays/international-law/art-xxivgatt-sets-out-wto-rules.php>> (Accessed on 12 March 2017).

¹⁸ First, given that Jordan's economic deformation from import tariffs is higher than that of the US, reductions in Jordanian import tariffs on US products, which accounted for around 10% of Jordanian imports, were expected to allow national resources to adjust to more optimal uses. Second, US international trade is overshadowed by US inter-regional trade, which accounts for most of the US' national income.

Frankel and Romer¹⁹ proposed that trade—whether inter-regional or international—increases income. Larger countries tend to have more inter-regional trade, and thus higher incomes, than countries with small local markets. Their study supports the theory of exports as a potential engine of growth for small developing countries. By accessing the large international market, countries such as Jordan can take advantage of economies of scale, such as productivity gains from optimal plant size, which might not be attained with restricted local markets.

International trade theory advises that countries should specialise in the products of their comparative advantage in regard to their trading partners. According to the Heckscher–Ohlin (H–O) trade model, virtual factor endowments are a vital determinant of comparative advantage with a trading partner. A weakness of the H–O trade model is its limiting assumptions that trading partners have identical production technologies and tastes.²⁰ This may be realistic for countries at the same level of development, or for countries from the same region that have a similar language, religion or culture, but it is less relevant when the two partners have different-sized economies.

Chomo argued that, under the theory of comparative advantage, when a state decreases its barriers to a trading partner, national resources move from specialisation towards areas of comparative advantage in relation to the trading partner. Theoretically, Jordan attains an advanced level of welfare from specialising in its areas of comparative advantage with the US. Through increased specialisation and trade, Jordan can boost consumption and attain higher net welfare. Jordan's net welfare position will involve losses to factors in subdivisions that are declining—particularly returns to specialised labour and capital in industries on an upward trajectory.²¹

When investigating trade flows and trade liberalisation between two countries, it is important to examine resource endowments. The US' industrialised economy has a higher ratio of capital to labour than Jordan's economy. Labourers in Jordan have access to less capital than labourers in the US. Under the H–O trade model, exports are

¹⁹ Jeffrey A Frankel and David Romer, 'Does Trade Cause Growth?' (1999) 89(3) *American Economic Review* 380.

²⁰ Beth V Yarbrough and Robert M Yarbrough, 'Institutions for the Governance of Opportunism in International Trade' (1987) 3 *Journal of Law, Economics, and Organization* 129.

²¹ Chomo, above n 2, 5.

expected to be more intensive in the use of the abundant factor.²² Thus, the US would export capital-intensive goods to Jordan and import labour-intensive products.

In general, the literature on FTAs does not cover the political motivations of the partner countries for entering the given FTAs; thus, FTAs are treated purely as tools for economic collaboration.²³

Various studies on the US–Jordan FTA have claimed that Jordan has not achieved the economic aspirations it set out for itself at the beginning of the agreement. This thesis will analyse a few of these studies to identify the types of issues discussed in the literature. It will not undertake an exhaustive analysis, as the aim of this thesis is to develop an argument that there is a need to broaden the discourse and explain how disadvantages to Jordan’s economy can be conceptualised in non-conventional ways.

Malkawi discussed the US–Jordan FTA and the socio-political situation in Arabic countries and the world trading system, stating that joining the WTO and signing a bilateral trade agreement with the US was like choosing between ‘Scylla and Charybdis’, as serious trade liberalisation commitments ensue from such actions. He argued that the WTO arrangement was not ideal, and that there were deficiencies in the system. However, membership in the WTO provides better opportunities compared with bilateral trade agreements such as the US–Jordan FTA. Membership in the WTO can benefit Jordan in cooperation with other Arab countries and to preserve its rights. Malkawi also argued that economic hegemonies such as the US have dictated their rules to Jordan and weaved them to their advantage.²⁴

Harwood discussed the unusual clauses of environmental laws and labour protection laws,²⁵ concluding that environmental and labour standards cannot be afforded by a country such as Jordan, which lacks necessities and infrastructure. Further, the US

²² Yarbrough and Yarbrough, above n 20.

²³ Gene M Grossman and Elhanan Helpman, ‘The Politics of Free Trade Agreements’ (Working Paper No 4597, National Bureau of Economic Research, 1993).

²⁴ Bashar Hikmet Malkawi, *Jordan and the World Trading System: A Case Study for Arab Countries* (SJD Dissertation, American University Washington College of Law, 2006) 1 <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1007&context=stu_sjd_abstracts>; Adel Bino, Diana Abu Ghunmi and Ibrahim Qteishat, ‘Trade, Export Capacity, and World Trade Organization Membership: Evidence from Jordan’ (2014) 50(1) *Emerging Markets Finance and Trade* 51.

²⁵ Emily Harwood, ‘The Jordan Free Trade Agreement: Free Trade and the Environment’ (2002) 27 *William & Mary Environmental Law and Policy Review* 509 <<http://scholarship.law.wm.edu/wmelp/vol27/iss2/5>>.

should not be dealing with Jordan using the same environmental standards because Jordan has not yet had its industrial revolution. Instead, the US should provide incentives for its trade partners to strengthen their environmental regulations to achieve long-term improvements in their environmental protection efforts. It would be more desirable to help a country change its practices using positive reinforcement instead of negative reinforcement.

Marwa et al discussed the economic effects eight years after signing the US–Jordan agreement in view of the political climate that affected the FTA. They concluded that fewer economic gains had been made compared with the experts’ expectations. Further, they questioned the sustainability of the country’s export growth, as the textile and garment industry appeared to be moving to countries that offered cheaper labour, such as Egypt. They also found little indication that Jordan received advantages from liberalising its economy using the FTA. Thus, they concluded that the US–Jordan FTA did not meaningfully contribute to Jordan’s growth.²⁶

Krugman concluded that trade follows the natural line of proximity between countries, and it is therefore natural to conduct business with neighbouring countries. In contrast, unnatural trading blocs, or trading agreements between individual countries beyond continents, is an unnatural way to trade; therefore, it does not improve trade welfare for the given countries. Krugman’s theory has quoted in a research paper by Frankel, Stein and Wei.²⁷ Thus, the fact that the US pursued an FTA with Jordan indicates that the usual considerations were not the deciding factors.

Baier and Bergstrand²⁸ provided a systemic empirical analysis of the economic determinants responsible for bilateral FTAs. It took market competitiveness into consideration, as well as transportation costs between multiple countries and continents. According to this model, those countries (similarity in the size of economy and close in the distance) will be more likely to form FTAs. The agreement between Jordan and the US does not follow the conventional logic of forming a bilateral

²⁶ Marwa Al Nasa’a et al, ‘The Jordan–US Free Trade Agreement: Eight Years Later’ (Working Paper, University of Michigan Gerald R Ford School of Public Policy, 2008).

²⁷ Jeffrey Frankel, Ernesto Stein and Shang-Jin Wei, ‘Trading Blocs and the Americas: The Natural, the Unnatural, and the Super-natural’ (1995) 47(1) *Journal of Development Economics* 61.

²⁸ Scott L Baier and Jeffrey H Bergstrand, ‘Estimating the Effects of Free Trade Agreements on International Trade Flows Using Matching Econometrics’ (2009) 77(1) *Journal of International Economics* 63.

economic relationship between countries.²⁹ However, these studies fail to find any critical correlations between the economic and political explanations discussed in various studies.

Studies on the US–Jordan FTA have explained the background in which the agreement took place.³⁰ Articles have also discussed the special clauses of environmental laws, labour protection laws and clauses about IPRs.³¹ Some of the main issues that have come up after signing the agreement are: exploitative work conditions; skewed investments—primarily in the sector of apparel manufacturing; and investments brought in not only from the US, but also other countries, which eventually take out the capital at will.³² These studies will assist this thesis in developing explanations and forming links between the political and economic rationales for the FTA.

The third issue is to explain the economic consequences of the FTA for Jordan by analysing the existing literature and specific clauses of the FTA.

Two types of literature measure the economic consequences of FTAs. For example, quantitative studies include an econometric study by Nobel laureate Jan Tinbergen, who used the gravity equation to evaluate the effect of FTA dummy variables on trade.³³ The results showed the insignificant effect of FTAs on trade flows. Subsequent studies have shown mixed results, and some have found statistically significant effects. While some pacts have succeeded (e.g., European Community), others have not (e.g., Andean Pact). However, Frankel concluded that other natural factors contributed to the success of the European Community until the 1980s, rather than the pact itself.³⁴

Baier and Bergstrand concluded that studies on FTAs using the gravity equation method are, at best, biased.³⁵ Thus, this study will not use the econometric measures because they have a set of limitations and they measure the effect of FTAs in purely numerical

²⁹ Ibid.

³⁰ Bashar H Malkawi, 'The Intellectual Property Provisions of the United States–Jordan Free Trade Agreement: Template or Not Template' (2006) 9(2) *Journal of World Intellectual Property* 213–226.

³¹ Harwood, above n 25.

³² John J Sweeney, 'Justice for All: The Struggle for Worker Rights' December (2005) *Solidarity Center* 28, 30.

³³ Scott L Baier and Jeffrey H Bergstrand, 'Endogenous Free Trade Agreements and the Gravity Equation' (Working Paper, University of Notre Dame, 2003) 1.

³⁴ Scott L Baier and Jeffrey H Bergstrand, 'Do Free Trade Agreements Actually Increase Members' International Trade?' (2007) 71(1) *Journal of International Economics* 72.

³⁵ Ibid.

terms. This thesis argues that the effects of FTAs include political and social implications, which should be considered.

Therefore, this study examines the clauses of the FTA. For example, regarding IPRs, the FTA has clauses noting the protection of IPRs within the framework of the agreement. The demand for IPR protection primarily came from developed countries, as they feared imitation and counterfeiting of their products and ideas in developing countries. This could, in turn, cost developed countries billions of dollars in profits. Therefore, Western industrial countries wanted to introduce stringent laws on IPRs internationally; however, developing countries resisted this, as it led to higher costs for them. Thus, the Trade-Related Aspects of IPRs (TRIPS) agreement universalised these IPR-related laws in the global economy against the interests of developing countries such as Jordan.³⁶

Under the IP provision of the above agreement, Jordan is required to follow the TRIPS-plus rules imposed by the US. Adherence to these rules increases the price of certain products, including medicines in Jordan. The sophisticated intellectual provisions of the agreement coupled with the TRIPS-plus rules enhance the price of the generic drugs in the country. The rise in the price of the medicines has resulted in a costly healthcare system in Jordan.³⁷ Jordan did not benefit from the Doha Declaration on the TRIPS Agreement and Public Health in its agreement with the US. Paragraph IV of the Doha Declaration stated that the TRIPS Agreement should be interpreted and implemented in a manner that is supportive of the rights of WTO members to protect public health and, in particular, to encourage access to medicines for various categories of citizens.³⁸

Novaes and Werlang³⁹ suggested that an economic bloc formed by such an FTA should not act like a state-controlled financial institution. For such action, leads to it giving way to an economic inflation rate hindering the economic growth aimed at by the

³⁶ Mohammed El Said, 'The Road from TRIPS-minus, to TRIPS to TRIPS-plus: Implications of IPRs for the Arab World' (2005) 8(1) *Journal of World Intellectual Property* 53, 65.

³⁷ Ruth Lopert and Deborah Gleeson, 'The High Price of "Free" Trade: US Trade Agreements and Access to Medicines' (2013) 41(1) *Journal of Law, Medicine & Ethics* 199.

³⁸ Frederick M Abbott, 'The Doha Declaration on the TRIPS Agreement and Public Health and the Contradictory Trend in Bilateral and Regional Free Trade Agreements' (Occasional Paper No 14, Quaker United Nations Office, 2004) 4.

³⁹ Walter Novaes and Sergio Werlang, 'Inflationary Bias and State-owned Financial Institutions' (1995) 47(1) *Journal of Development Economics* 135.

member countries.⁴⁰ The same concerns also apply to the US–Jordan FTA, where control is virtually in the hands of the US, in accordance with the clauses in the agreement. One problematic consequence is that it has led to little economic growth for Jordan.

The insertion of the clause on labour rights protection set a historical precedent in FTAs around the world.⁴¹ Instances of inhumane labour practices were quoted by the US, and the final text included strong recommendations protecting workers' rights, thereby forcing those falling under the agreement to comply with human rights.⁴² However, the insertion of these clauses resulted (even if unintentionally) in a string of such factories shutting down in Jordan.⁴³

There are also provisions in the agreement to protect the environment, and Jordan was made to adhere to higher environmental regulations, which in turn made it more difficult to achieve economic development because of a lack of infrastructure and basic facilities required to preserve the environment.⁴⁴ Thus, responsibility for environmental protection for developing and industrialised countries should be sensitive to their needs and context.

This thesis also argues that the US–Jordan FTA should be renegotiated concerning the TRIPS-plus rules to help limit some of the harmful effects of public health and generic competition.⁴⁵ The existing literature shows that officials from the US and Jordan have conducted discussions under a labour subcommittee to promote labour rights.⁴⁶ Hence, this research proposes that the US–Jordan FTA's clauses become examples for

⁴⁰ Ibid.

⁴¹ Al Nasa'a et al, above n 26, 4.

⁴² Alexander Betts and Emilie M Hafner-Burton, 'Forced to Be Good: Why Trade Agreements Boost Human Rights' (2011) 9(4) *Perspectives on Politics* 974.

⁴³ 'Jordan Shutting Abusive Factories', *The Washington Times* (online), 16 June 2006 <<http://www.washingtontimes.com/news/2006/jun/16/20060616-105349-6847r/>> (Accessed on 23 January 2017).

⁴⁴ Both governments agreed to an initiative to introduce better labour reforms; see Institute for Global Labour and Human Rights, *President Obama May Very Well Clean Up the US–Jordan Free Trade Agreement* (2013) <<http://www.globallabourrights.org/reports/president-obama-may-very-well-clean-up-the-u-s-jordan-free-trade-agreement/>> (Accessed on 22 September 2016).

⁴⁵ Rohit Malpani, 'All Costs, No Benefits: How the US–Jordan Free Trade Agreement Affects Access to Medicines' (2009) 6(3) *Journal of Generic Medicines* 206.

⁴⁶ US Trade Representative, *The United States and the Hashemite Kingdom of Jordan Hold a Labor Subcommittee Meeting Under the US–Jordan Free Trade Agreement* (2014) <<https://ustr.gov/about-us/policy-offices/press-office/press-releases/2014/July/US-Jordan-hold-Labor-Subcommittee-Meeting-Under-US-Jordan-FTA>>.

agreements entered into by countries after this FTA. In this way, a paradigm shift can be obtained in the way member countries treat FTAs. The US is embarking on such revisions with other countries as well.⁴⁷

Lastly, an analysis of the literature on the US–Jordan FTA from the perspective of its effects on the US will be undertaken to discuss the regional politics and its effects. The importance of Jordan as an ally of the US and its role in the US’ political position in the Middle East is relevant to understand the keenness of the US to enter into an FTA with Jordan. Thus, an analysis of the literature will establish that the US entered into the FTA for political purposes. In addition, the US made economic gains in the form of cheaper imports from Jordan.

Lobell studied the US–Jordan FTA as a measure of security for the US in the Middle East. He stressed that the US has used FTAs as a weapon in their war on terrorism, and that they can serve as a counter-strategy of answering terror with trade by fostering the economy of Middle East countries with job generation, education and poverty alleviation.⁴⁸

Chen and Joshi stated that the decision of participating nations to enter an FTA is also dependent on the third-party countries with which the participating countries already have an agreement.⁴⁹ Demirbas explained how bilateral agreements disadvantage weaker countries, as developed countries tend to eliminate the flexibilities offered to developing countries through the WTO in bilateral trade agreements.⁵⁰ However, these studies have primarily explained the political imperatives and do not make a sufficient connection between political and financial explanations. This thesis aims to develop such an analysis.

In conclusion, this thesis addresses two weaknesses of the current literature. First, overgeneralisations have been made regarding the pros and cons of free trade and FTAs,

⁴⁷ US International Trade Commission, *USITC Launches New Investigation on Possible Modifications to the United States–Morocco Free Trade Agreement Rules of Origin* (8 September 2016) <https://www.usitc.gov/press_room/news_release/2016/er090811653.htm> (Accessed on 9 October 2016)

⁴⁸ Steven E Lobell, ‘The Second Face of American Security: The US–Jordan Free Trade Agreement as Security Policy’ (2008) 27(1) *Comparative Strategy* 88.

⁴⁹ Maggie Xiaoyang Chen and Sumit Joshi, ‘Third-country Effects on the Formation of Free Trade Agreements’ (2010) 82(2) *Journal of International Economics* 238.

⁵⁰ Dilek Demirbas, ‘Bilateral Free Trade Agreements’ in Charles Wankel (ed) *Encyclopedia of Business in Today’s World* <<http://dx.doi.org.simsrad.net.ocs.mq.edu.au/10.4135/9781412964289.n88>> 146, 147.

with too much attention paid to rules and legal provisions at the expense of country-specific analysis. There is a significant amount of literature on the origins of FTAs and the integration of US–Jordan markets; however, there is a gap in the literature on the country-specific analysis of policy-making. A second gap in the literature, which arguably results from the first one, is insufficient contextualisation of local political and cultural frameworks and how they do or do not influence FTA policies. This thesis argues that there are good reasons to assume that specific local knowledge and information will lead to a different set of policies within countries.

1.10 Conclusion

This chapter has set out the argument of the thesis and explained how it will be substantiated. The identified aims of the research will be developed in subsequent chapters. The overall rationale for recommending that the US–Jordan FTA can and should be modified is based on the assumption that US–Jordan trade liberalisation will increase the development of Jordan’s economy by eliminating the tariff distortions that led to resource allocations in inefficient parts and opening access to the US markets. Enhanced competitiveness will benefit Jordan’s exports in the US market as well as other world markets, thereby multiplying the positive economic effects of the US–Jordan FTA. The key for Jordan is to attract investment resources. Foreign direct investment (FDI) in the Middle East is below the world average, and Jordan has not been a big receiver of the limited US foreign direct investment in the region. However, Jordan has taken significant steps to improve its investment environment, including a Bilateral Investment Treaty (1997) and a Trade and Investment Framework Agreement (1999) with the US. Over time, these steps should enhance Jordan’s attractiveness for FDI by the US.

Chapter 2: Free Trade, GATT and the Relative Advantages of Multilateral or Bilateral Free Trade Agreements

This chapter examines the concept of free trade and whether FTAs would be considered a violation of the principle of free trade. The main issue discussed is whether the idea of free trade can coexist with the possibility of countries entering into trade agreements that give preferential treatment to another country as the MFN or some countries enter into multilateral agreements. Analysis of arguments for and against the proposition that FTAs are compatible with principles of free trade will set the context for analysing the US–Jordan FTA.

This chapter is divided into three parts. In the first part, a brief discussion of the principle of free trade is presented, along with the theories of international trade and the role of the WTO. In the second part, a brief discussion of the concept of FTAs and Multilateral Trade Agreements is provided, followed by an analysis of the relationship between the non-discrimination clause of GATT (Article XXIV) and bilateral or multilateral FTAs. Part three examines the US–Jordan FTA in the context of the free trade discourse.

2.1 Part 1: The Concept of Free Trade and Economic Theory

Market capitalism is an economic system that supports private enterprise within a free market. Enterprises are owned by private individuals or businesses rather than by the government. There is limited government intervention in the economy, including in land, labour and capital.⁵¹

In theory, in a capitalist market economy, the best option is free trade with free competition and no trade barriers. Free trade refers to the economic policy whereby imports from and exports to foreign countries are not discriminated against, and buyers and sellers from different countries can trade without the local government levying tariffs, quotas or subsidies on their goods and services.

⁵¹ Investopedia, *Capitalism* (2017) <<http://www.investopedia.com/terms/c/capitalism.asp>> (Accessed on 19 January 2017).

However, this conception of free trade is an ideal. Instead, economic integration is considered the second best option for global commerce, as there are some barriers to fully free trade.⁵² Economic integration involves the combination or unification of economic policies between different countries through the abolition or reduction of tariff and non-tariff restrictions on trade. This is intended to lead to lower prices for suppliers and consumers, with the goal of increasing the level of welfare and economic productivity of the country. The trade stimulation effects that are intended using economic integration are part of the contemporary economic theory.⁵³

A non-economic rationale for free trade is that there is a correlation between free trade and political conflicts resulting in military actions. Liberal theorists argue that free trade results in increased economic interdependence, which in turn leads to nations wanting to avoid wars. Nations are more likely to sign an FTA with each other if they have a history of conflict but stand to make substantial gains from trade.⁵⁴ For instance, the primary objectives of the economic integration in Europe after World War II were to prevent the killing and destruction of the two World Wars from ever occurring again. Economists explain this as a valid reason for more economic integration.⁵⁵

2.1.1 Historical Developments in Ideas of Regulation of Free Trade

This section will briefly explain the concepts of free trade and trade barriers, and it will then draw out the historical developments regarding these concepts.⁵⁶

The regulation and management of trade has a long history. Several theories of international trade over the centuries have put forward an explanation of the economic theory in trade. The following overview relies on one source,⁵⁷ as the aim is not to engage in a theoretical assessment of these ideas. However, the theories are useful for setting the background context for the argument presented in the following chapters.

⁵² Enriko Ceko, 'South East Europe: Trade Liberalization, Economic Integration, Quality, Security and Guarantee of Products and Services' (2013) *Mediterranean Journal of Social Sciences* 496.

⁵³ Charles van Marrewijk, *International Economics, Theory, Application, and Policy* (Oxford University Press, 2nd ed, 2007) 13.

⁵⁴ Philippe Martin, Thierry Mayer and Mathias Thoenig, 'The Geography of Conflicts and Regional Trade Agreements' (2012) 4(4) *American Economic Journal: Macroeconomics* 1, 31.

⁵⁵ Ibid.

⁵⁶ For a brief overview of the issues, see also Dilek Demirbas, above n 50.

⁵⁷ The overview primarily relies on Gilbert R Winham, 'The Evolution of the World Trading System—The Economic and Policy Context' in Daniel Bethlehem et al (eds), *The Oxford Handbook of International Trade Law* (Oxford University Press, 2009) 2.

For reasons of space, a few of these theories (e.g., mercantilism⁵⁸ and the theory of comparative advantage⁵⁹) are mentioned but not discussed in detail. Ricardo defined comparative advantage in his 1817 book *On the Principles of Political Economy and Taxation*.⁶⁰

Winham explained that in Plato's time, it was recognised that the division of labour had benefits.⁶¹ In pre-modern societies, the idea of economics was not applied to trade between associations, although trade itself was familiar between societies. The point is that trade invoked the foreign and the doubtful, and the arguments used to clarify economic behaviour among people were only gradually applied to foreign trade.

The primary argument for free trade came from Smith's 1776 theory in the book *Wealth of Nations*.⁶² Smith responded to popular mercantilist theories of the day and expounded the notion that a self-seeking individual was most fitted to allocate resources over which he or she had command, and that interference by authorities could only decrease the effectiveness of the individual. This analysis employed 'the key concept in assessing the economic policy of opportunity costs, or the trade-offs between alternative activities under resource constraints'.⁶³ Ricardo and Mill subsequently

⁵⁸ Mercantilism is one of the foundations of modern economics theories. It supports countries that acquire a trade surplus by maximising exports and minimising imports through tariffs and quotas. It is expected that countries will accumulate wealth by encouraging exports and discouraging imports, thus creating a trade surplus. 'What Was Mercantilism?' *The Economist* (online), 23 August 2013 <<http://www.economist.com/blogs/freeexchange/2013/08/economic-history>>.

⁵⁹ A comparative advantage occurs when a country can produce a good or service at a lower cost than another country as long as it has different comparative efficiencies. Thus, a country can produce a good or service relatively cheaper than another country depending on the effectiveness and capabilities of each party. Sunanda Sen, 'International Trade Theory and Policy: A Review of the Literature' (Working Paper No 635, Levy Economics Institute of Bard College, 2010) 2.

⁶⁰ Ricardo argued that regarding to the relation between the two countries Portugal can produce wine and cloth with lower labour costs than England, although England has a higher comparative improvement at producing cloth. Therefore, England should export cloth to, and import wine from, Portugal. Tejvan Pettinger, 'Definition of Comparative Advantage' (2016) *Economics Help* <<http://www.economicshelp.org/blog/glossary/comparative-advantage/>>. Other relevant theories include the New Trade Theory and Porter's Theory of National Competitive Advantage. According to Porter's theory, the determinants of a country's competitive advantage are based on four major attributes: factor endowments (the country's position in factors of production); demand conditions; related and supporting industries; and firm structure, strategy and rivalry. Porter's theory analyses the reasons for a country's success in a particular industry. According to this framework, countries should export products from industries where all four attributes of Porter's framework are favourable. Further, countries should import products where these four components are not favourable. Michael E Porter, 'The Competitive Advantage of Nations' (March–April 1990) 11 *Harvard Business Review* 73, 93.

⁶¹ Plato, *The Republic of Plato* (Francis MacDonald Cornford trans, Oxford University Press, 1945) 57, quoted by Winham. Above n 57, 8.

⁶² Adam Smith, *The Wealth of Nations* (Modern Library, 2000).

⁶³ Douglas A Irwin, *Against the Tide: An Intellectual History of Free Trade* (Princeton University Press, 1996), 78 quoted by Winham. Above n 57, 8.

developed the concept of comparative advantage. This theory has been widely worked upon and developed, and various arguments have been put forward as to how restrictions on trade are essential. For instance, writing in the context of nationalism and national growth, List disagreed that trade by comparative advantage is necessary for the economic wellbeing of people. Instead, he supported the idea of trade protectionism by developing countries.

Winham elaborated how, despite the economic arguments for free trade, countries have engaged in restrictive practices and interfered with free international trade. Thus, the theoretical explanations for free trade and actual policies do not always coincide. Historical developments since World War II—and, in particular, the existence of GATT—have resulted in a reduction of tariffs protectionism and an increase in world trade. This has in turn been one of the reasons for the states continuing to pursue FTAs.⁶⁴

Despite the theoretical arguments for free trade, governments continue to make agreements that create barriers. Trade barriers are restrictions on international trade imposed by federal governments—that is, tariffs, a tax or duty levied on imports or exports, licences (import permit or export licence) or quotas (e.g., import quota), subsidies, or embargo or trade restrictions. In economic terms, lowering trade barriers is considered good for trade because it facilitates access to new markets and enables traders to expand their reach to people to whom they can sell their products.⁶⁵

The liberalisation of trade policies has emphasised the removal of trade barriers. As a result, globalisation is a contemporary development, and for our present purposes, the issue is to understand whether the lessening of governmental restrictions has played a role in these developments. Fairbrother⁶⁶ explained the rise of globalisation as more than free market policy changes. He argued that it is simplistic to explain economic globalisation as an effect of the free market policy. Instead, he claimed that drivers of globalisation have been different in industrialised and developing countries. In

⁶⁴ Winham, above n 57, 35.

⁶⁵ *Barriers to Trade*, Library of Economics and Liberty (2010) <<http://www.econlib.org/library/Topics/HighSchool/BarrierstoTrade.html>> (Accessed on 11 November 2016)

⁶⁶ Malcolm Fairbrother, 'Economists, Capitalists, and the Making of Globalization: North American Free Trade in Comparative-Historical Perspective 1' (2014) 119(5) *American Journal of Sociology*, 1324, 1331.

industrialised economies, businesses are the prominent agents of change, but in developing countries, technocrats play a more significant role; however, such developments are made possible by the availability (and sometimes the constraints) of international finance. However, in both cases, developments leading to liberalisation of trade are legitimised by the availability of the technical authority of the economists, even though economists' ideas may not have been widely diffused and put into practice.

Further, Fairbrother stated that, according to Fourcade-Gourinchas and others, economists have the intellectual capacity to promote a pro-globalisation and neoliberal outlook towards free trade. Economists operating in governments as 'technocrats' or 'technopolis' are in an even more powerful position to promote free trade—both inside and outside their countries—because they are directly operative in the policy-making process of governments. However, economists seldom have an overpowering edge over people in business. Economists tend to have a view that their general opinions can hardly affect the political inclinations of governments; thus, against all favourable arguments for free trade, capitalism finds its way to the forefront as far as FTAs are concerned.⁶⁷ A contrasting view is that policy-makers are not pursuing ideas as such; rather, their primary concern is to pursue their policy agendas, and they take into account ideas supporting their policy agendas. It is rather uncommon that the policy agendas are set by reference to ideas, including the ideas of economists.⁶⁸

Fairbrother developed his argument that a combination of factors explains the rise of globalisation; however, for this study, a brief review of the various theories is significant because it will help to assess how the US–Jordan FTA can be understood. However, before doing so, a short review will be undertaken of the international mechanisms of facilitating free trade.

2.1.2 Institutional Mechanisms for Facilitating Free Trade

The WTO is the international body that deals with the global rules of trade between countries. It was established in 1995 under the Uruguay round of trade negotiations. Its

⁶⁷ Ibid 1330, 1331; Fairbrother discussed the literature in detail and cited (among others) Marion Fourcade-Gourinchas and Sarah Babb, 'The Rebirth of the Liberal Creed: Paths to Neoliberalism in Four Countries' (2002) 108(3) *American Journal of Sociology* 533.

⁶⁸ Ibid, 1331. Fairbrother cited Monica Prasad, *The Politics of Free Markets: The Rise of Neoliberal Economic Policies in Britain, France, Germany, and the United States* (University of Chicago Press, 2006).

main goal is to ensure that trade transactions flow smoothly, predictably and freely between countries.⁶⁹ The present-day WTO (and its predecessor GATT, which was created after World War II) is the legal instrument for tariff negotiations and rules that would discourage the reinstatement of protectionism by countries relying on non-tariff means. Jackson detailed the origins of GATT and its metamorphoses into the WTO.⁷⁰

In the contemporary world, free trade is almost the norm, and it is conducted through multilateral, bilateral and regional FTAs. However, according to Chuan, all benefits come with disadvantages, as did free trade and trade agreements.⁷¹ The WTO now provides the procedure of bilateral and multilateral trade within its context. McRae described it as a combination of a treaty and an international organisation.⁷² He considered the WTO an appropriate option for promoting free and open international trade.

However, the bilateral and multilateral trade system face some challenges, such as difficulty satisfying the interests of all members in one treaty or organisation. There is a persistent view in some developing countries that industrialised countries are using the WTO to pursue their own interests.⁷³ For the present thesis, the significant issue is that of the relationship between free trade and FTAs, which may be considered problematic in that two countries entering into a bilateral agreement could be seen as restricting global free trade.⁷⁴ Therefore, the next section briefly defines an FTA and its status in the context of free trade and the relevance of Article XXIV of GATT.

⁶⁹ WTO, 'What Is the WTO? What We Do' (2016) <https://www.wto.org/english/thewto_e/whatis_e/what_we_do_e.htm> (Accessed on 24 December 2016)

⁷⁰ John H Jackson, 'The Evolution of the World Trading System—The Legal and Institutional Context' in Daniel Bethlehem et al (eds) *The Oxford Handbook of International Trade Law* (Oxford University Press, 2012). See also M Rafiqul Islam, above n 7, 2, 4.

⁷¹ Tan Song Chuan, 'Challenges to Multilateralism Free Trade Agreements' (2004) 2(1) *Asia Europe Journal* 121.

⁷² Donald McRae, 'The Place of the WTO in the International System' in Daniel Bethlehem et al (eds), *The Oxford Handbook of International Trade Law* (Oxford University Press, 2012).

⁷³ Chuan, above n 71.

⁷⁴ Chuan, above n 71; see also Craig Freedman, 'Old Wine in New Bottles: Are Free Trade Agreements the New Protectionism?' (2006) 6(2) *Asia-Pacific Social Sciences Review* 1.

2.2 Part 2: Free Trade Agreements and Free Trade

FTAs aim to reduce trade barriers, which are in place to help protect domestic markets and industries, between two or more nations.⁷⁵ In FTAs, tariffs on items covering substantial bilateral trade are eliminated between the partner countries.⁷⁶ FTAs also cover areas such as government procurement, IPRs and competition policy, and they aim to benefit the consumers eventually. In theory, increased competition means more goods on the shelves and lower prices. For example, Jordanian exporters would like to see US tariffs lowered on apparel and cosmetics products, and consumers will see prices lowered as a result.

FTAs signed between countries are supposed to increase the trade in goods, efficiency and equality of trade between partners. Each agreement has its clauses and information linked to relevant legislation. For example, these may be the rules of origin (ROO) or how to enter preferential rates of duty through the trade transaction between parties.⁷⁷ FTAs can be considered an essential stage in reaching economic integration between countries.⁷⁸ FTAs eliminate the tariffs imposed by one party on the other party's trade goods, which enhances economic integration and increases opportunities for citizens. FTAs also help increase the quality of production and contribute to higher gross domestic product growth by entering the low-cost inputs to domestic businesses, presenting new technologies and encouraging competition and innovation.⁷⁹

⁷⁵ 'Free Trade Agreements: What is an FTA and What Are the Benefits?', *ABC News* (online), 8 April 2014 <<http://www.abc.net.au/news/2014-04-07/free-trade-agreement-explained-bilateral-fta-tpp/5371314>>; (Accessed on 2 February 2017) Kazunobu Hayakawa and Fukunari Kimura, 'How Much Do Free Trade Agreements Reduce Impediments to Trade?' (2015) 26(4) *Open Economies Review* 711; C Findlay and S Urata, 'Overview' in C Findlay and S Urata (eds) *Free Trade Agreements in the Asia Pacific* (World Scientific Publishing Company, 2010). Findlay and Urata comment that an FTA in comparison to a customs union provides a shallow form of regional integration because it removes tariffs and non-tariff barriers only among the two members.

⁷⁶ See an overview in Dilek Demirbas, 'Bilateral Free Trade Agreements' in Charles Wankel (ed) *Encyclopedia of Business in Today's World*. <<http://dx.doi.org.simsrad.net.ocs.mq.edu.au/10.4135/9781412964289.n88>>.

⁷⁷ Department of Immigration and Border Protection, *Free Trade Agreements*, <<https://www.border.gov.au/Busi/Free>> (Accessed on 5 February 2017).

⁷⁸ José María Caballero, Maria Grazia Quietì and Materne Maetz, *International Trade: Some Basic Theories and Concepts*, Food and Agriculture Organization of the United Nations <<http://www.fao.org/docrep/003/x7352e/x7352e02.htm>>.

⁷⁹ Australian Government, Department of Foreign Affairs and Trade, *Benefits of Free Trade Agreements* <<http://dfat.gov.au/trade/agreements/Pages/benefits-of-ftas.aspx>> (Accessed on 6 December 2016).

PTAs generally give preferential access to some products from participating countries by reducing tariffs.⁸⁰ The main difference between FTAs and PTAs is that PTAs have a positive list of products on which duty is to be reduced, whereas FTAs have a negative list on which duty is not reduced or abolished. Thus, compared with PTAs, FTAs are broader in their coverage of products or tariff lines on which duty must be reduced. Whereas PTA objects to reducing tariffs, FTA aims to eliminate trade tariffs.⁸¹ PTAs are a preliminary stage to reaching economic integration; however, FTAs are the essential goal for participating countries in a trade bloc.

Studies comparing transportation costs, country sizes and comparative advantages consider that multilateral FTAs are more difficult to sustain than bilateral FTAs. The success of a multilateral FTA needs more than an individual government's trade policies; it usually involves considerations of and negotiations for mutual political welfare.⁸²

Bilateral FTAs provide a less threatening platform to smaller countries, enabling them to try out one open market at a time before engaging with WTO nations at once. As bilateral FTAs are based on the WTO framework, they provide the necessary training for governments and professionals so they can participate in the workings of the WTO. Moreover, countries entering into bilateral FTAs also gain the expertise to enter into multilateral trade agreements.⁸³

In the context of these ideas, it is not surprising that Jordan expected benefits from the US–Jordan FTA. However, these benefits did not eventuate; therefore, a more in-depth critique of this FTA is required.

There are economic benefits of trade liberalisation through the use of FTAs; however, they can also cause serious problems. Some of these issues relate to the effects of cheap labour, as well as domestic unrest due to the availability of cheap consumer goods. One

⁸⁰ *Difference between FTA and PTA* (2011) <<http://www.differencebetween.com/difference-between-fta-and-vs-pta/>> (Accessed on 17 February 2017).

⁸¹ *Ibid.*

⁸² Demet Yilmazkuday and Hakan Yilmazkuday, 'Bilateral Versus Multilateral Free Trade Agreements: A Welfare Analysis' (2014) 22(3) *Review of International Economics* 513, 535.

⁸³ Catherine A Novelli, 'Commentary: Bilateral Free Trade Agreements and Support for the Doha Round of Multilateral Trade Negotiations' (2005) 5(4) *Global Economy Journal* 1.

problem with FTAs is that the more powerful country can impose its terms or will over the smaller partner country.⁸⁴

For example, FTAs have helped strong partner companies and merchants to import cheap products from the other side because lower trade barriers allow them to have the benefit of cheap labour costs in comparison to other partners in manufacturing. However, the availability of cheap labour leads to a high human cost. For instance, the number of sweatshops in Jordan increased after the country signed the FTA with the US. The *New York Times* reported that, in 2006, most American retailers had imported millions of dollars' worth of apparel from Jordan. The manufacturers guaranteed to the retailers that they would provide them with low-priced clothes, but they could only do this by forcing employees to work to the maximum number of hours per day, and for less than the state-mandated minimum wages.⁸⁵

There are also problems relating to geographical proximity and the supposed political gains for the two countries. Baier and Bergstrand suggested that the closer the geographical distance between the two countries, the higher the probability of an FTA between that country pair.⁸⁶ Another contentious issue is whether FTAs and enhanced trade create a more peaceful or belligerent political situation.

Many FTAs reduce the price for consumer goods in developed countries such as the US, as well as the costs for some firms.⁸⁷ This results in excessive trade gains for the economically stronger partner. Hirschman noted that the disproportionate distribution of trade gains between states could affect domestic power relations, leading to belligerence.⁸⁸ Waltz indicated that the idea of interstate dependence-promoting peace is a myth and that it might, in fact, stimulate belligerence due to a rise in economic issues between trading states. He also claimed that increased trade-related contact could

⁸⁴ Craig Freedman, 'Free Trade or Free Trade Agreements?' (Research Paper, Centre for Japanese Economic Studies, 2006) 1, 78 <<http://hdl.handle.net/1959.14/9396>>.

⁸⁵ Nick Robinson, 'Disadvantages of Free Trade Agreements' (2016) *EHow* <http://www.ehow.com/list_6113059_disadvantages-trade-agreements.html>.

⁸⁶ Baier and Bergstrand, above n 34, 72, 95, cited in Laura Márquez-Ramos, Inmaculada Martínez-Zarzoso and Celestino Suárez-Burguet, 'Determinants of Deep Integration: Examining Socio-political Factors' (2011) 22(3) *Open Economies Review* 479, 480.

⁸⁷ Robert McMahon, 'The Rise in Bilateral Free Trade Agreements' (2006) *council on foreign relations* <<http://www.cfr.org/trade/rise-bilateral-free-trade-agreements/p10890>>.

⁸⁸ Edward D Mansfield and Brian M Pollins, 'Interdependence and Conflict: An Introduction' in Edward D Mansfield and Brian M Pollins (eds), *Economic Interdependence and International Conflict: New Perspectives on an Enduring Conflict* (University of Michigan Press, 2003) 3.

create opportunities for a dispute between countries.⁸⁹ Another school of thought proposes that there is no correlation between free trade and conflicts between countries. Scholars such as Barbieri, Gasiorowski and Polacheck tested these arguments by analysing post-World War II, Cold War and post-Cold War trade relations with varied results supporting both arguments.

Mansfield and Pevehouse⁹⁰ pointed out that the relationship between foreign trade and political conflict is not straightforward. Various efforts have been made to resolve longstanding debates about the effects of foreign trade on military disputes. These studies have focused primarily on the influence of trade flows. However, economic integration also tends to make conflicts more expensive for individual countries, as violence against a neighbouring country becomes equally detrimental to one's own economic interests.⁹¹ PTAs dampen military disputes, and trade groupings help to mute military tensions by generating the expectation of future economic gains by members. An extension of this idea is that the benefits of peace and lessening of war tensions are obvious reasons why the US wanted to enter into the FTA with Jordan. Thus, it is an application of the idea that FTAs are good for peace, but the relationship is not only between the parties to the agreement. The US stands to benefit by having a peaceful Middle East and an ally in the area.

Although FTAs are aimed at trade liberalisation between countries, the effect on a country's economy might not provide the expected results, owing to different economic standing among the nations signing the FTA. For instance, some authors argue that, in pursuing an FTA with Association of Southeast Asian Nations (ASEAN) countries, the economic interests of the US are led by an intent to further multilateral trade liberalisation on a non-discriminatory basis.⁹²

The next section discusses the arguments surrounding the possibility of both promoting free trade and entering into bilateral or multilateral FTAs. The issue is whether FTAs

⁸⁹ Katherine Barbieri, 'Theories of the Trade-conflict Relationship' in Katherine Barbieri (ed), *Does Trade Promote Peace?* (The Liberal Illusion, 2003) 35.

⁹⁰ Edward Mansfield and Jon Pevehouse, 'Trade Blocs, Trade Flows, and International Conflict' (2000) 54(4) *International Organization* 775.

⁹¹ Oli Brown et al, 'Regional Trade Agreements: Promoting Conflict or Building Peace?' (International Institute for Sustainable Development, 2005) 8.

⁹² Dean A Derosa, 'ASEAN-US Trade Relations: An Overview' (1986) 3 *ASEAN Economic Bulletin* 121, 122.

with another or multiple other countries can amount to discrimination against non-partners.

2.3 Non-discrimination Clause as Part of the WTO Principles and the Existence of FTAs

Non-discrimination is considered an essential principle of the world trade system.⁹³ It emphasises the need to remove discriminatory treatment in trade relations between countries as one of the principal purposes of the WTO, which renders the principle into legal obligations between WTO members. Among these provisions are the MFN and national treatment (NT) clauses. These clauses appear in the GATT, the General Agreement on Trade in Services (GATS) and TRIPS.⁹⁴

Article XXIV of GATT prevents discrimination by a country regarding its trade partners.⁹⁵ The Article is also known as the non-discrimination clause, and it states that a country must not discriminate between its products and foreign products, and between its various trade partners. The question is whether FTAs would be regarded as a violation of this clause. As explained above, countries enter into FTAs for pragmatic reasons, irrespective of whether they may be considered in violation of the non-discrimination clause. Even the WTO believes that some amount of trade liberalisation facilitated by FTAs is better than no trade liberalisation.

However, some scholars have argued that an increase in FTAs will lead to the creation of trade blocs, which is not a pro-free trade eventuality. FTAs can be more trade-diverting than CUs and can weaken the support of countries that favour open multilateral organisation of trade and create new interest groups working against multilateral liberalisation. From a welfare perspective, CUs are observed to be more

⁹³ See the Preamble of the Marrakesh Agreement Establishing the World Trade Organization (hereafter referred to as the *WTO Agreement*). See also M Rafiqul Islam, above n 7, 27.

⁹⁴ Julia Ya Qin, 'Defining Nondiscrimination Under the Law of the World Trade Organization' (2005) 23(2) *Boston University International Law Journal* 215.

⁹⁵ Nicolas F Diebold, 'Standards of Non-discrimination in International Economic Law' (2011) 60(4) *International and Comparative Law Quarterly* 831. See also Nicolas F Diebold, *Non-discrimination in International Trade in Services: 'Likeness' in WTO/GATS* (Cambridge University Press, 2010)

yielding than FTAs and have no additional costs; hence, they are deemed to be Pareto-superior⁹⁶ to FTAs.⁹⁷

Conversely, some scholars have argued that trade-creating CUs may be politically infeasible, and that FTAs can generate the same levels of trade and welfare gains as CUs or multilateral liberalisation. Economists have used an institutional integration criterion to classify regional trade agreements into profound and shallow, with the former comprising CUs and common markets, and the latter covering preferential and FTAs.⁹⁸ CUs are trade arrangements where two or more countries agree to remove all restrictions on mutual trade and to establish a joint system of tariffs and import quotas face-to-face with non-members.⁹⁹ In any event, each of these concepts requires deeper analysis, and the results and implementation may vary from case to case.¹⁰⁰

Upon analysis, FTAs between rich and poor countries can also prevent developing countries from reaching global economic integration. Developing countries have used FTAs to win concessions that they are unable to obtain from the WTO. Moreover, developing countries can receive benefits relating to resource reallocation in productive sectors, improved FDI in the export sector, increased productivity and regional product sharing, improved competitiveness and external economies of scale through the establishment of industrial estates. The positive effects that Jordan has experienced through the US–Jordan FTA include improved transportation and public services, and integration with regional and international markets.

With this background, we can now turn to an examination of the US–Jordan FTA.

⁹⁶ This denotes or involves the theories and methods of the Italian economist and sociologist Vilfredo Pareto (1848–1923)—especially a formula used to express the income distribution of a society. To some neoclassical economists, the Pareto criterion is the unchallengeable linchpin of welfare economics.

⁹⁷ Kimberly A Clausing, ‘Customs Unions and Free Trade Areas’ (2000) 15(3) *Journal of Economic Integration* 418, 420.

⁹⁸ Vincent Vicard, ‘Trade, Conflict, and Political Integration: Explaining the Heterogeneity of Regional Trade Agreements’ (2012) 56(1) *European Economic Review* 54.

⁹⁹ Rules of origin (ROO) are no longer necessary in the CU. When a common external tariff exists, imports into the CU area face the same tariff in each member nation of the CU. Hence, there is no incentive for the transshipment of imports among members. The CET effectively creates ‘destination-neutrality’ for imports into the CU. ROO aim to prevent trade deflection—that is, goods or services entering the member country with the lowest tariff for the purpose of transshipment. ROO must be agreed upon among members to determine which products can be transferred duty-free. Rolf Mirus and Nataliya Rylska, ‘Economic Integration: Free Trade Areas vs Customs Unions’ (2001) *Western Centre for Economic Research* 1, 3.

¹⁰⁰ Anne O Krueger, ‘Free Trade Agreements Versus Customs Unions’ (1997) 54(1) *Journal of Development Economics* 169.

2.4 Part 3: The US–Jordan FTA

This study aims to analyse the US–Jordan FTA with the acknowledged realities of political instability in the region. Domestic economic reforms are the key to success for developing countries that sign multilateral and bilateral trade agreements with developed industrial countries. Economic, regulatory and legal reforms by developing countries can attract FDI, capital, technology and high-quality labour that fuel effective performance in a free trade environment. However, several non-economic factors, such as the Palestinian, Iraqi and Syrian war and the uncertain state of refugees, will continue to affect FDI in Jordan. If the instability continues, even tariff liberalisation will have little effect on the country's trade development, and it will continue to be overshadowed by external regional factors.¹⁰¹

Rather than detail all clauses of the US–Jordan FTA, this study will rely on three examples of the distinctiveness of the US–Jordan FTA—that is, the clauses on environment protection, labour rights and IP rights. A more detailed analysis of the last two clauses will be undertaken in the next chapter. The US–Jordan FTA is the first FTA to include labour protection provisions in its text, with the aim of improving the standard of labour rights. However, the FTA excludes the right to strike and the right of non-discrimination in employment. There might be criticism in Jordan if gender equality was included in the FTA because of cultural or religious concerns.¹⁰²

Labour rights are recognised and protected by the domestic law through their obligations as members of the International Labor Organization (ILO). Jordan has ratified all ILO major conventions, but the US side has ratified only two of them.¹⁰³ Thus, the language of the FTA indicates inconsistency.¹⁰⁴

The issue regarding the intellectual provision clause of the US–Jordan FTA is that the US has pushed Jordan to accept and introduce a level of IP protection under the US–Jordan FTA that is higher than the WTO TRIPS requirement. Jordan's adherence to the

¹⁰¹ Grace Victoria Chomo, 'Free Trade Agreements Between Developing and Industrialized Countries: Comparing the US–Jordan FTA with Mexico's Experience Under NAFTA' (Working Paper No 2002-01-B, US International Trade Commission Office of Economics, 2002).

¹⁰² Malkawi, above n 24, 321.

¹⁰³ The convention concerning the abolition of forced labour and the convention eliminating the worst forms of child labour.

¹⁰⁴ Malkawi, above n 24, 321.

given rules increases the price of certain products, including medicines, which is outside the framework of the WTO rules. The US has compelled Jordan to accept TRIPS-plus rules using a variety of unilateral pressures, including trade sanctions, a decrease in foreign assistance, withdrawal of trade preferences, and the use of special support programs. Jordan was required to introduce TRIPS-plus provisions in its national patent law, while one-third of Jordanians live below the poverty line. The consequences of control and exclusivity on general and public health in Jordan have drastically inflated medicine prices beyond the affordability of ordinary Jordanians.¹⁰⁵

The FTA also contains a provision in Article 4 that prevents the local production or importation of generic medicines and their competition in the domestic market without a patent on the medicine sector. In comparison, the FTA with Egypt has not introduced the TRIPS-plus rules, and pharmaceutical companies have received only patent protection for medicines. Thus, most medicines currently sold on the Egyptian market have no form of monopoly protection, and it has multiple generic participants, leading to lower medication prices for all citizens.¹⁰⁶ The TRIPS-plus rule of the US–Jordan FTA is not only inconsistent with the WTO TRIPS protection requirement,¹⁰⁷ but it also deprives the citizens of Jordan their fundamental human rights to life and health recognised in international law.

Further, the agreement includes environment provisions in its text and makes them subject to the dispute settlement process of the FTA, which may hinder the basic aim of the FTA. In addition to the heavy responsibilities required by environmental sustainability, Jordan as a developing country has to balance its development aims and environmental protection.

The US–Jordan FTA is also the first FTA to contain specific provisions on e-commerce¹⁰⁸ as compared with the US–Israel FTA and NAFTA.¹⁰⁹ However, there are

¹⁰⁵ Malpani, above n 45, 4.

¹⁰⁶ Ibid.

¹⁰⁷ Malkawi, above n 30, 213.

¹⁰⁸ M Rafiqul Islam, *International Trade Law* (LBC Information Services 1999) 426. (International electronic commerce refers to conducting cross-border commercial transaction through electronic means instead of paper –based documentation).

¹⁰⁹ The WTO agreement does not contain specific articles about e-commerce; however, as a result of the General Agreement on Trade in Services (GATS) and the Information Technology Agreement (ITA), which contain articles favouring free trade in information technology goods and services, e-commerce has become part of most critical discussions on FTAs, although Internet trade has not yet reached its

still copious gaps and challenges in the US–Jordan FTA. Facing that would prevent Jordan from fully taking advantage of e-commerce because of differences among parties and technical possibilities. Although the US–Jordan FTA covers (e-commerce Article 7), there was no standard definition of e-commerce. A standard definition could have helped the parties to the FTA to define the expression of e-commerce.¹¹⁰

The main feature of e-commerce provisions in the US–Jordan FTA is the creation of a duty-free cyberspace, which is argued to deprive Jordan of its collections that would have resulted if some tariff barriers were imposed on e-commerce between the two countries. This provision may also result in trade diversions because of the preference of a particular mode of delivery over other modes. Nevertheless, the e-commerce provisions are not free of tariffs, as both countries can still levy domestic taxes on their respective native sellers that fall under the specified criteria.¹¹¹ However, because of space constraints, this study will not develop this aspect of the FTA.

After the US–Jordan FTA was entered into, the US eased such rigorous conditions in its FTAs with other developing countries, such as Colombia, Peru and Panama, in the interest of public health and enhanced international cooperation.¹¹² For example, under the FTA between the US and Colombia, there were widespread protests by Colombian farmers, and these agreements were described as FTAs, but not fair trade agreements, as they created or enhanced the power asymmetry between the two countries.¹¹³

2.5 Conclusion

Bilateral FTAs—in particular, with the US—are more demanding regarding: the total elimination of tariff and non-tariff barriers; the expansion of market access in the service sector; the obligations of IP that go beyond TRIPs; obligations and competitive market access for telecommunications, financial, banking and insurance sectors; and targeted technical assistance with FTA obligations. These have often led to positive

peak. The US–Jordan FTA is the first agreement to contain explicit provisions regarding e-commerce, as compared with the US–Israel FTA and NAFTA. See also Bashar H Malkawi in footnote 110.

¹¹⁰ Bashar H Malkawi, ‘E-commerce in Light of International Trade Agreements: The WTO and the United States–Jordan Free Trade Agreement’ (2007) 15(2) *International Journal of Law and Information Technology* 153.

¹¹¹ Ibid.

¹¹² Malpani, above n 45.

¹¹³ Erika George, ‘Trading in Peace and Conflict: Colombian Farmers and the US Free Trade Agreement’ (2013) *University of Utah S.J. Quinney College of Law*. <<https://www.law.utah.edu/trading-in-peace-and-conflict-colombian-farmers-and-the-u-s-free-trade-agreement/>>.

results, such as growth in exports and job creation. Even in the case of the US–Jordan FTA, records have shown a doubled growth of exports for Jordan and the creation of around 40,000 jobs in Jordan. Research shows that FTAs turn into powerful building blocs, and global free trade can be in equilibrium when countries are free to arrange bilateral FTAs.¹¹⁴

To summarise this chapter, despite the many arguments against FTAs and their effects, especially on developing countries, one cannot overstate the revolution that has been brought about by free trade in the world economy. Bilateral, multilateral, regional and preferential trade agreements are the glue that binds countries of the world in amity with each other—especially in times of crisis, such as in a recession, inflation and increasing terrorism. The next chapter discusses how we can measure the effects of FTAs.

¹¹⁴ Kamal Saggi, ‘Bilateral Trade Agreements and the Feasibility of Multilateral Free Trade’ (2011) 19(2) *Review of International Economics* 356.

Chapter 3: Qualitative Studies Measuring the Effects of FTAs

This chapter begins with a brief overview of the literature that discusses how the effects of FTAs may be measured or assessed. It distinguishes between econometric measures and studies that measure more sociological cum economic outcomes. However, given the limitations of econometric studies, in this thesis, the latter method of assessing the sociological and economic effects is used. The second part of this chapter argues that the effects of FTAs on developing countries require specific attention. Analysis of the relevant literature will be undertaken to establish that the needs of developing countries should be emphasised in FTAs between countries with different economic strengths. The third part of this chapter analyses the existing studies that relate to the US–Jordan FTA, as well as the specific clauses of the FTA.

3.1 Assessing the Effects of FTAs

The main objectives of FTAs are twofold: general and specific. FTAs aim to eliminate barriers to trade transactions and create different and more opportunities for investment and competition for the businesses of the countries involved in the FTAs.¹¹⁵ The effects of FTAs can be measured in different ways. For instance, Viner¹¹⁶ introduced the ‘trade volume effect’, in which he categorised the FTA into two categories depending on the trade-creation and trade-diversion effects. The two types of effects agree with the trade volume effect, which could result in vague outcomes on welfare.¹¹⁷ The trade-diversion effect decreases imports from non-FTA members, and the trade-creation effect increases imports from the FTA CU.¹¹⁸

Measures relating to direct sociological and economic effects on the country and its population are another way of determining the effect of FTAs—particularly agreements

¹¹⁵ Oltjana Zoto, ‘Free Trade Agreement’s Economic Aspects and Impacts with Special Reference to Albania’ (2011) 2(10) *International Journal of Scientific & Engineering Research* 3.

¹¹⁶ Jacob Viner, *The Customs Union Issue* (Carnegie Endowment for International Peace, 1950).

¹¹⁷ ABE Kazutomo, ‘Assessing the Economic Impacts of Free Trade Agreements: A Computable Equilibrium Model Approach’ (Discussion Paper No 07-E-053, Tokyo Denki University, 2007) 2.

¹¹⁸ Carsten Kowalczyk and Ronald J Wonnacott, ‘Hubs and Spokes, and Free Trade in the Americas’ (Working Paper No 1498, National Bureau of Economic Research, 1992).

where one country is a developing country. Therefore, this section will mainly discuss the literature that studies such effects.

Plummer, Cheong and Hamanaka presented a theoretical framework for the economic analysis of an FTA.¹¹⁹ They emphasised that an accurate realisation of the possible effects of the FTA before negotiation (ex-ante evaluation) is necessary for deciding the overall negotiation position of the country based on overall cost–benefit analysis and identification of what the country can and cannot provide to its FTA partner in the negotiations. Studies before the negotiations could also help to exploit the probable exporting profits of FTAs and draft the essential adjustment policies for various sectors that could be adversely affected by the FTAs. These pre-negotiation study results should reflect positively in the FTA when it is negotiated. Likewise, it is important to assess the actual effects of the FTA after its implementation (ex-post evaluation) to examine whether the effects are within the expected range to draw up further necessary adjustment policies for the affected sectors and exploit the benefits that are yet to fully materialise. This assessment is significant when there seems to be fewer positive effects than harmful effects of the FTA.¹²⁰

Moreover, FTAs provide several benefits that cannot be exactly quantified by economic models in developing countries such as Jordan. These critical benefits may include structural reforms, technology transfer, capacity building and macroeconomic and political stability.

Stevens et al assessed the effects of FTAs in various studies on economic development and referred to the issue of causality that comes with nations that take multiple measures to liberalise their policies. In this regard, one FTA might have a limited focus in that respect, making it difficult to attribute any effects to the FTA itself. This is an evolving issue that needs to be dealt with while evaluating the effect of FTAs.¹²¹

Viner's work has great importance in assessing the methodology for the debate over the benefits (or otherwise) of regional or PTAs like the European Union and NAFTA.

¹¹⁹ Michael G Plummer, David Cheong and Shintaro Hamanaka, 'Methodology for Impact Assessment of Free Trade Agreements' (2011) *Asian Development Bank* 8.

¹²⁰ Ibid, 12.

¹²¹ Christopher Stevens et al, *The Impact of Free Trade Agreements between Developed and Developing Countries on Economic Development in Developing Countries: A Rapid Evidence Assessment* (Overseas Development Institute, 2015) 12.

Viner's model viewed a regional trading agreement as beneficial if the magnitude of trade creation—a situation in which preferential tariffs substitute less efficient home production through efficient imports from the FTA partner country—is larger than the trade diversion, and vice versa.¹²² However, Viner's model has been critiqued,¹²³ and this method unfortunately does not apply to the US–Jordan FTA because of the differences and the lack of parity between the two countries' economies.

Cheong stated that the formation of an FTA requires an evaluation of the economic effects of an FTA as a significant part of the process.¹²⁴ He presented methods for assessing the trade and welfare effects of an FTA, including computing indicators for the use and value of preferences and qualitatively assessing trade creation and diversion. Therefore, this study will use some of these insights. Similarly, Okabe analysed FTAs in East Asia and contended that liberalisation measures such as a decrease of non-tariff methods, trade simplification and harmonisation of the ROO, and upgrading of FTA usage are significant to assist trade between members besides the tariff elimination.¹²⁵

These studies have demonstrated that there is no single method of assessment that is used to assess the effects of FTAs. Therefore, rather than insisting on exact measures, this study will proceed to assess the effects of the FTA in more general terms. The next section will review the literature that relates to measuring different aspects of FTAs—usually between a stronger and less strong economy.

3.2 Effect of FTAs and Needs of Developing Countries

The second issue in this chapter discusses that when FTAs or PTAs are signed between two countries of different economic strength, it is expected that the social and economic

¹²² Jacob Viner, *The Customs Union Issue* (Oxford University Press, 2014).

¹²³ For a review of the literature, see Paul Oslington, 'Contextual History, Practitioner History, and Classic Status: Reading Jacob Viner's The Customs Union Issue' (2013) 35(4) *Journal of the History of Economic Thought* 491.

¹²⁴ David Cheong, 'Methods for Ex Post Economic Evaluation of Free Trade Agreements' (Working Paper Series on Regional Economic Integration No 59, Asian Development Bank, 2010) 6.

¹²⁵ Misa Okabe, 'Impact of Free Trade Agreements on Trade in East Asia' (Discussion Paper No 2015-01, Economic Research Institute for ASEAN and East Asia, 2015) 11. Okabe found that the trade development of FTAs appears in industrial items and capital goods between member countries, and that trade in consumption articles is also supported. Regional FTAs are anticipated to favour the efficient division of labour. Hence, Okabe suggested that regional FTAs should set not only full tariff elimination, but also trade liberalisation in services and direct investment.

needs of the smaller partner nation—often a developing country—must be considered in the provisions of the FTAs and PTAs executed.¹²⁶

This claim is supported by the work of Bergstrand et al, who analysed the FTAs entered into by the European Union with six countries.¹²⁷ The report stated that the evidence of FTAs having a strong effect on trade was available, where the initial tariffs were high and were removed quickly and substantially across all sectors. In situations where the tariffs were removed over comparatively longer periods, the effect of FTAs was less evident. The authors acknowledged that the mere increase of trade between partners to a bilateral trade agreement is not necessarily a good indicator that the FTA is a success. This is because many other factors can affect the amount of trade between the countries.

For the purpose of this thesis, it is interesting to examine some of the details of the clauses in the FTAs between the EU and Tunisia or Jordan. For example, the EU agreement with Tunisia had provisions regarding tariffs on certain agricultural and food products to be halved in 12 years. In relation to other agricultural and food products, the mechanism to be applied to such products was to be re-examined by the council four years after the agreement's entry into force. This study suggests that these clauses are apt examples of how developing countries' interests are not always safeguarded in FTAs with stronger nations.

In the case of the EU agreement with Morocco, agricultural and food products were exempt from duty-removal services, and establishment negotiations were taken in local mode. In addition, the EU agreements gave Tunisia, Morocco and Jordan the possibility to hike or reinstate custom duties on a different type of product because of infant industries, or some of the sectors confronted certain problems—particularly those issues leading to major social challenges. The significance of these examples is that we can use similar provisions in assessing the US–Jordan FTA.

Chomo compared Mexico's experience with the North American FTA (NAFTA), and the results presented evidence that the liberalisation of trade flows and transactions with developed countries do not reduce economic progress in developing or economically

¹²⁶ Masahiro Kawai and Ganeshan Wignaraja, *Asia's Free Trade Agreements: How is Business Responding?* (Edward Elgar Publishing, 2011).

¹²⁷ Jeffrey Bergstrand et al, *Ex-post Assessment of Six EU Free Trade Agreements: An Econometric Assessment of Their Impact on Trade* (Copenhagen Economics, 2011) 32.

backwards nations. On this basis, Chomo argued that the US–Jordan FTA could be expected to have a positive effect on the economic development of Jordan by increasing its exports and FDI inflows.¹²⁸ Chomo believed that greater integration with global markets is the driver of economic development for nations such as Jordan. FTAs entered into by Jordan have significantly contributed to increasing its external trade, albeit to varying degrees. Therefore, in Chomo’s view, FTAs are of net benefit to Jordan.

Parra Robles et al analysed the effect of the FTAs signed between MENA¹²⁹ countries with EFTA partners, US or Turkey for the period 1990–2010.¹³⁰ With regard to the needs of developing countries and smaller partners, these FTAs contained provisions for rules on competition, the protection of IP, investment, services, government procurement and economic cooperation, in addition to those relating to the removal of other trade barriers. The results indicated that the Euro-Med¹³¹ FTA had a positive effect on exports to countries in the MENA region. Parra Robles et al also concluded that the US–Jordan FTA had an encouraging effect on exports from Jordan, such as items related to apparel business.¹³²

Research by Feraboli on the consequences of the EU Agreement with Jordan concentrated on the economic metrics of Jordan as a country in matters of consumption, government inflows and overall social indicators.¹³³ In the simulation undertaken by Feraboli, the EU Agreement was likely to enhance Jordan’s social and human development indicators. To cope with potential monetary losses relating to the FTA,

¹²⁸ Chomo, above n 101, 6.

¹²⁹ The Middle East and North Africa (MENA) is a region encompassing approximately 22 countries in the Middle East and North Africa. The MENA region accounts for approximately 6% of the world’s population, 60% of the world’s oil reserves and 45% of the world’s natural gas reserves.

¹³⁰ Parra Robles, María Dolores, Inmaculada Martínez-Zarzoso and Celestino Suárez Burguet, *The Impact of FTAs on MENA Trade* (Ibero-America Institute for Economic Research, 2012) 16.

¹³¹ The EU initiated a grid of mutual Association Agreements (AAs) with southern Mediterranean countries including Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine, Tunisia and Turkey, to assist in the creation of the Euro-Med Free Trade Area. To guarantee the formation of a complete free trade area, the Barcelona Process recognised two levels of economic integration in the region: an inter-regional or north–south economic integration process; and an intra-regional or south–south level of economic integration. The Barcelona Process aims to remove the barriers to trade and investment between the EU and southern Mediterranean countries, and between southern Mediterranean countries. The scope of these agreements is restricted to trade in goods, and some bilateral negotiations are ongoing or are being prepared to deepen the AAs. More information is available at <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Ar14104>>.

¹³² Parra Robles et al, above n 130.

¹³³ Omar Feraboli, ‘Preferential Trade Liberalisation, Fiscal Policy Responses and Welfare: A Dynamic CGE Model for Jordan’ (2007) 227(4) *Journal of Economics and Statistics* 335.

Feraboli indicated that the administration could revisit and fine-tune the local taxes, such as value-added tax, which would place more strain on Jordanian citizens.

In the context of the Jordan–Canada FTA, Warrad observed that research has shown that the trade liberalisation policy in Jordan—particularly using FTAs—has supported the development of trade flows. These predictions of various authors have not come true, as imports to Jordan have grown at a faster pace than that of exports because of factors relating to supply-side issues.¹³⁴ Overall, it has led to worsening the trade deficit position in Jordan.

While analysing the effects of the Australia–Thailand FTA, Athukorala and Kohpaiboon examined bilateral exchanges between the two countries.¹³⁵ They focused on the effects of the ROO and the utilisation of tariff preferences. The study found that trade had expanded faster following the FTA. More significantly, they found that a comparison of pre- and post-FTA trade performance is a weak basis for drawing conclusions about the effects of the FTA, as many other factors could have played a part. They also commented that other factors cannot discount the strong increase in imports.

López-Córdova evaluated the effect of the US–Mexico NAFTA on total factor productivity in Mexico’s manufacturing companies.¹³⁶ The research helped to develop a better appreciation of NAFTA’s economic effects on Mexico. For instance, as Mexico has taken steps to become more open to trade liberalisation, the country has revamped its legal statute that was regulating foreign investment. The revised foreign investment regulation introduced in 1993 removed most of the constraints on FDI.

In summary, the experts have recognised the different needs of developing economies vis-à-vis industrialised countries. However, it is difficult to compare various studies, as there is no single method of ascertaining which factors in the FTAs work in favour of

¹³⁴ Taleb Awad Warrad, ‘The Potential Economic Effects of FTA between Jordan and Canada’ (4th WTO Chairs Programme Annual Conference, World Trade Organization, 2013) 2.

¹³⁵ Prema-Chandra Athukorala and Archanun Kohpaiboon, ‘Australia–Thailand Trade: Has the FTA Made a Difference?’ (Working Paper No 2011/12, Australian National University, 2011) 11. However, the effect was highly localised in select product categories in Australia’s imports from Thailand. This was indicative of the effect of specific commodity and supply-side factors that influenced preference utilisation. Moreover, the authors accepted that trade expansion has occurred more on the import side for Australia.

¹³⁶ Ernesto López-Córdova, ‘NAFTA and Manufacturing Productivity in Mexico’ (2003) 4(1) *Economía* 55.

developing economies. The next chapter presents an overview of studies related to the US–Jordan FTA. The discussion will serve as the background context for the following chapters analysing the US–Jordan FTA.

Chapter 4: FTAs and the Economic Considerations for Jordan

In this chapter, the aim is to analyse the findings of various studies of the US–Jordan FTA, which claim that Jordan did not achieve the economic aspirations it set out for itself at the beginning of the agreement. Further, it will identify the economic clauses of the US–Jordan FTA to explain the economic consequences of the FTA for Jordan. The chapter will draw upon studies of not only the US–Jordan FTA, but also other FTAs that Jordan has entered into. The next section discusses the effects on Jordan’s economy and trade flows, as well as effects on Jordan’s employment, trade liberalisation, specific industries, the environment and labour standards.

4.1 Effects on Jordan’s Economy

Jordan signed FTAs with the US (2000) and the European Union (2002) and lowered trade barriers to entry post-accession to the WTO.¹³⁷ The decrease in tariff- and non-tariff-based trade barriers was anticipated to result in accelerating the trade flows for Jordan. Since the liberalisation process started, Jordan’s exports and imports have risen substantially. However, Busse and Gröning analysed Jordan’s significant trade liberalisation over past 20 years and concluded that there had been little lasting economic effect.¹³⁸

Conversely, experts such as Cassing and Salameh suggested that Jordan’s economy has responded well following the economic liberalisation events of the past decade.¹³⁹ To determine the contribution of the US–Jordan FTA to the growth in trade and investment, this study analysed fast-growing export industries and their trade flow data. However, before discussing the conclusions of this study, it should be mentioned that at the time of entering the FTA, it was estimated that Jordanian exports of clothes and apparel to the US would expand, and that exports of different commodities from the

¹³⁷ Jordan entered into three other FTAs with EFTA states (comprising countries such as Iceland, Norway, Switzerland and Liechtenstein) in 2001, Singapore in 2004 and Canada in 2009.

¹³⁸ Matthias Busse and Steffen Gröning, ‘Assessing the Impact of Trade Liberalization: The Case of Jordan’ (2012) 27(3) *Journal of Economic Integration* 466.

¹³⁹ James Cassing and Anna Maria, *Jordan–United States Free Trade Agreement Economic Impact Study: Searching for Effects of FTA on Exports, Imports and Trade Related Investments* (United States Agency for International Development Jordan, 2007) 9.

US that face moderately high Jordanian tariffs could increase under the FTA.¹⁴⁰ From the perspective of the US, while analysing the economic effects of the FTA with Jordan, the US International Trade Commission found that the effects of the FTA with Jordan will be *de minimis*, as it would have no quantifiable effects on US imports, exports, production or employment.¹⁴¹

Cassing and Salameh conducted field interviews with businesses, trade associations and government entities to understand the contribution made by FTA in increased trade and investment volumes. They concluded that the public and private sectors believed that Jordan has economically benefited from the US–Jordan FTA, with a remarkable rise in exports from Jordan to the US. Moreover, according to Lord, the effect of services liberalisation on Jordan is likely to be significant. He concluded that the FTA between Jordan and the US would create a new window for Jordan to increase its exports to the US.¹⁴² Second, US exports to Jordan were expected to increase substantially following the signing of the FTA. The elimination of barriers between Jordan and the US were claimed to favour the most efficient producers. Third, considering that Jordan’s sectors are more protected, the FTA would create new avenues for US business firms in Jordan rather than the other way around.

Al Nasa’a et al also analysed the economic implications of the US–Jordan FTA and argued that there are fewer economic gains to Jordan typically attributed to the US–Jordan FTA than what has been suggested by officials.¹⁴³ Al Nasa’a et al asserted that the benefit of an increase in the US imports of Jordan-produced apparel after foreign companies and workers mainly availed 2001, and not by Jordan’s companies.

Moreover, the benefits of the US–Jordan FTA did not prevent many Jordanian apparel companies from moving to Egypt, where Qualifying Industrial Zones (QIZs) have been opened upon the expiry of the multi-fibre arrangement.¹⁴⁴ Al Nasa’a et al also expressed

¹⁴⁰ Joshua Ruebner, ‘US–Jordan Free Trade Agreement’ (Report for Congress, Congressional Research Service, 2001) 12.

¹⁴¹ US Trade Representative, *Final Environmental Review of the Agreement on the Establishment of a Free Trade Area between US and Jordan* (Office of the United States Trade Representative, 2000) 6.

¹⁴² Montague J Lord, ‘Economic Impact and Implications for Jordan of the US–Jordan Free Trade Agreement’ (Munich Personal RePEc Archive, 2001) 5.

¹⁴³ Al Nasa’a et al, above n 26, 11.

¹⁴⁴ Multi-fibre arrangements expanded the global trade in relation to the garments industry since 1974 until 2004, it imposed the quotas on a number of developing countries can export to the developed countries in contrast intended to allow developed countries to adjust the textiles imports from the developing countries. It had an absolute advantage in textile production because it is labour-intensive

concerns regarding growth in specific industry sectors of Jordan, such as information technology, because of intellectual rights provisions. Under the intellectual provision clause of the US–Jordan FTA, Jordan is required to follow the TRIPS-plus rules imposed by the US. Adherence to the given rules increases the price of certain products, including medicines, which is outside the framework of the WTO rules.

Al Nasa'a et al further argued that the effect on pharmaceuticals is positive, but too small to make any difference to Jordan's economy. They also concluded that non-tariff barriers and limited human capital development issues are not addressed in the US–Jordan FTA, thereby creating a barrier to the development of sectors that might otherwise grow.¹⁴⁵

Al-Anis analysed data since 1992 (i.e., nine years before the US–Jordan FTA) and observed that exports to the US increased remarkably, which contrasted with the level witnessed before the FTA period, and it led to further economic momentum in Jordan.¹⁴⁶ Al-Anis cited Kardoosh in observing that Jordan also received capital and technology. However, Al-Anis was more guarded in drawing any definitive conclusions. He noted that general development from 2007 onwards indicates that Jordan has been witnessing a trade deficit with the US that is higher than any prior period, implying that wealth is moving towards the US. He argued that this trend could be because the US was affected more by the 2008 financial crisis, which led to a decrease in US imports and economic progress recorded by the overall economy of Jordan. This may be a plausible explanation, but on the basis of the available evidence, this study argues that it is possible to claim that the US–Jordan FTA has had minimal effects on Jordan's economy.

4.2 Effects on Jordan's Trade Flows

In a study on the effects of the FTA with the European Union on Jordan's economy, Hosoe revealed that production and trade flows were anticipated to grow because of the

and the poor social insurance systems enabled them to have low labour costs. Multi-fibre arrangements expired on 1 January 2005. Like this arrangement imposed quotas on the amount that Egypt could export in the form of yarn, fabric and clothing to the US. See also <<http://www.investopedia.com/terms/m/multi-fiber-arrangement.asp>>.

¹⁴⁵ Al Nasa'a et al, above n 26.

¹⁴⁶ Imad Al-Anis, 'A Review of Trade Liberalisation and Trade between Jordan and the United States' (2013) 4(6) *International Journal of Peace and Development Studies* 116.

agreement.¹⁴⁷ He predicted that vis-à-vis the European Union (EU), imports to Jordan were likely to increase by 12%, and exports from Jordan were likely to increase by 8%. However, the author believed that all sectors were not likely to benefit from trade liberalisation, and non-metal mineral-based industries were expected to deteriorate, whereas chemical and agricultural sectors were forecast to grow. However, the European Trade Commission's report¹⁴⁸ stated the total trade in goods between Jordan and the EU in 2015 amounted to €4.4 billion. The EU imported just €0.4 billion of goods from Jordan; thus, EU exports significantly exceeded imports from Jordan.

Awad analysed five FTAs involving Jordan (Jordan–EU, Jordan–US, GAFTA, Jordan–EFTA and Jordan–Singapore) for their imports, exports and balance in 2008.¹⁴⁹ Of these five FTAs, the data indicated that the value of imports exceeded the value of exports in four out of five FTAs, with US–Jordan running a trade surplus of JD187 million in 2008. The trade deficit was as high as JD2.3 billion in the case of the Jordan–EU FTA, followed by GAFTA with JD2.27 billion. Therefore, it could be argued that there have been fewer economic gains for Jordan than what was expected. It is plausible that such outcomes are a result of the fact that the Jordanian economy was not prepared for these trade agreements—especially the one with the US, which offered a slight advantage to the Jordanian economy.

4.3 Effects on the Employment of Jordanian Workers

The argument made by Al Nasa'a et al regarding limited human capital development problems in Jordan resonates with some other studies. Biedermann pointed out that QIZs have created few job opportunities for Jordanians, and they are predominantly employing foreign labour. It therefore raises questions regarding the real benefits produced by the US–Jordan FTA to the domestic economy and the local population.¹⁵⁰ In companies operating in QIZs in 2004, only 11,000 Jordanians were employed out of 32,000 employed in the workforce in more than 100 companies and the rest of the

¹⁴⁷ Nobuhiro Hosoe, 'A General Equilibrium Analysis of Jordan's Trade Liberalization' (2001) 23(6) *Journal of Policy Modeling* 595.

¹⁴⁸ European Commission, 'Jordan' (2011) <<http://ec.europa.eu/trade/policy/countries-and-regions/countries/jordan/>> (Accessed on 2 December 2016).

¹⁴⁹ Taleb Awad, 'Jordan's Strategy of Trade Liberalization: The Case of the Free Trade Agreement with Turkey' (Working Paper No 01/2011, HTW Berlin, 2011) 3.

¹⁵⁰ Ferry Biedermann, 'Industrial Zones Create Little Work for Jordanians', *Financial Times* 10 February 2009 <http://www.ft.com/cms/s/0/86b1b36c-f712-11dd-8a1f-0000779fd2ac.html?ft_site=falcon&desktop=true#axzz4Y3Slxxnu>.

employees were not Jordanian. This has been a controversial issue on the effectiveness of the US–Jordan FTA since it's signing.¹⁵¹

The QIZs in Jordan were established to help Jordan obtain advantages from its peace treaty with Israel by allowing its duty-free goods to be exported into the US if its products contained an 8% Israeli component. However, Jordan and others have questioned whether the unemployment rate has been reduced, and whether the FTA will perform better, especially in a country, where the unemployment rate is around 13%, or much higher according to unofficial statistics which is approximately 30%.¹⁵² If these factories import most of their workers and do not pay taxes, Jordan will not receive any benefits.

4.4 Effects on Trade Liberalisation

Feraboli argued that liberalisation in the shape of a PTA with the EU is likely to provide advantages to Jordan in areas of commerce and trade, with lower prices resulting in improved social wellbeing and greater competition.¹⁵³ He concluded that such liberalisation increases consumer welfare and has positive long-term effects on all macroeconomic variables, even though there may be a reduction in consumption in the short run. Francois suggested that investment demand plays a significant role in such a process.¹⁵⁴ Conversely, the negative effect of trade liberalisation includes a loss of revenue for the government because of foregone import tariff duties. Feraboli argued that it is worthwhile to sign an FTA in proportion to the size of the economy, with the expectation that progressive developments could occur in the future.

In contrast, Al-Swai'e discussed a negative effect of trade openness on economic growth in Jordan.¹⁵⁵ The economic provisions, which were hailed at the time of the

¹⁵¹ Ibid.

¹⁵² *The World Factbook* — Central Intelligence Agency (2017) Cia.gov <<https://www.cia.gov/library/publications/the-world-factbook/fields/2129.html>> (Accessed on 13 March 2017).

¹⁵³ Feraboli, above n 132, 335.

¹⁵⁴ Joseph F Francois and Kenneth A Reinert (eds), *Applied Methods for Trade Policy Analysis: A Handbook* (Cambridge University Press, 1997), cited in Feraboli, above n 132.

¹⁵⁵ Khaled M Al-Swai'e, 'The Impact of Trade Liberalization and Financial Development on Economic Growth: Jordan Case Study' (2014) 2(1) *Jordan Journal of Economic Sciences* 3. The study used data from 1992 to 2011 to analyse financial development (domestic credit, private credit and money supply) and economic growth in Jordan. The findings showed that trade liberalisation did not promote economic growth in the case of the US–Jordan FTA.

signing of the agreement and are still favourably looked upon today, did not meaningfully contribute to Jordan's growth.

4.5 Effects on Specific Industries

It is reasonable to suggest that, as a result of trade liberalisation, major export opportunities will exist for Jordan in products such as cosmetics, medical appliances and machines. Further, FDI would be associated with technological transfers in the Jordanian economy. However, IP regimes in FTAs have created formidable hurdles for developing economies such as that of Jordan. Malpani dwelt upon the effects of Jordan's IPR legislation on the pharmaceutical sector.¹⁵⁶ He believed that the regulation of data exclusivity is an outcome of the implications of the WTO and the fall-out of the US–Jordan FTA, and they have had an adverse effect on Jordan's manufacturing of pharmaceuticals.

In contrast, Kang found that Jordan's pharmaceuticals have shown steady export performance to FTA partners and might help the country to gain access to export markets—particularly against the backdrop of Jordan's standing as a leading supplier of medicines among the Arab nations.¹⁵⁷ Beattie, Jack and Kazmin reported that under the US–Jordan FTA, Jordan had seen a significant increase in the number of launches of innovative pharmaceutical products, and its generics sector has simultaneously flourished.¹⁵⁸ Therefore, it is difficult to assert that the FTA has been entirely negative for Jordan; however, some developments do not augur well for the country.

With the expiration of the Multi-Fibre Agreement (MFA) and the introduction of QIZs in Egypt, clothing companies have been leaving Jordan despite the guarantee of duty-free market access under the US–Jordan FTA. This is significant, as the FTA did not result in Jordan becoming a major centre for information technology. As explained by Al Nasa'a et al, this was partly because foreign companies mainly seized the export advantages of the apparel business line regarding business shareholding and non-local workers about employee profiles.

¹⁵⁶ Malpani, above n 45.

¹⁵⁷ Moonsung Kang, 'An Analysis of Economic Impacts of FTAs on Strategic Industries in Jordan' (2011) 14(4) *International Area Studies Review* 73.

¹⁵⁸ Alan Beattie, Andrew Jack and Amy Kazmin, 'Patent or Patient? How Washington Uses Trade Deals to Protect Drugs' (2006) 22 *Financial Times* 1.

Under the FTA between Jordan and Turkey,¹⁵⁹ the expansion of trade between Jordan and Turkey is expected to have a positive effect on the welfare of both countries.¹⁶⁰ However, the size of Jordan's trade with Turkey is small, and given the weak coefficient of trade liberalisation as determined in a study by Warrad, the net effect of real economic growth is anticipated to be of less importance. However, to take advantage of the trade industrial renaissance in Turkey, neighbouring Jordan could extend its trade partnerships for many reasons, including geographical proximity and the historical common denominators of the two countries.

The cumulative outcome of the research studies is that the US–Jordan FTA is not a cure for the various developmental issues that confront industry in Jordan. However, it is acknowledged that this is not a drawback of the FTA itself. Jordan needs to expand its manufacturing base to achieve the economies of scale required to compete in the global marketplace. Effects on the Environment and Labour Standards

In the US–Jordan FTA, a substantial departure from previous FTAs was the presence of labour and environmental clauses that are subject to the method of non-binding dispute settlement that permits participants to resort to proper measures when violations occur that would incur anti-dumping duties.¹⁶¹ Issues relating to non-availability of adequately trained workers and human capital development have been debated in the context of Jordanian industry over time. Overcoming such constraints is an important aspect in achieving economic growth. Thus, there is continuing debate regarding unfair labour practices, local unemployment, non-availability of adequately trained workers and the ownership pattern of companies.

4.6 Conclusion

For a small country such as Jordan, which has inadequate natural resources, FTAs in the form of bilateral and regional trade agreements can be an important means of enhancing competitiveness, accomplishing economies of scale and making up for the

¹⁵⁹ The Jordan–Turkey FTA was signed on 2 December 2009 to establish a free trade area between the two parties. The agreement came into force in 2011, thereby initiating a gradual reduction on tariffs for traded goods. The FTA aims to eliminate customs duties after 12 years in the areas of trade, investment, transportation and travel logistics.

¹⁶⁰ Awad, above n 149.

¹⁶¹ Roman Grynberg, 'The United States–Jordan Free Trade Agreement: A New Standard in North-South FTAs?' (2001) 2(1) *Journal of World Investment & Trade* vii–5; Further, the US–Jordan FTA contained noticeable provisions for dispute settlement and safeguarding of property rights.

shortage of skilled labour and the limited market size. The role of the Jordan government is mainly to facilitate trade policy, exercise oversight and correct any market failures (e.g., monopolistic structures or restrictive practices and the disruption of environmental damage or potential health hazards). Viewed from this angle, Jordan has used the policy tool of FTAs to spur trade liberalisation and economic development, to bolster economic and regional cooperation in addition to positioning the mechanism for Jordan's economic growth objectives.

While considerations of FTAs and similar agreements might have political undertones, one must admit that their small social and economic benefits have given a fillip to industrial competitiveness in Jordan. At the same time however, it is necessary to analyse the considerations from the perspective of USA.

Chapter 5: Exploring the Signing of the FTA from the Perspective of the US

This thesis argues that political motivations behind signing the US–Jordan FTA were important considerations. To substantiate this argument, this chapter analyses the research studies that explain the political reasons for the US signing the FTA with Jordan. A further question is whether they have a bearing on the less favourable outcomes for Jordan in comparison to the US.

This chapter is divided into three parts. The first part discusses the research studies that acknowledge the political motives for countries entering into FTAs. A brief discussion of possible political motives behind the US entering into various FTAs is included here. The second part explains the historical background and Jordan’s political context that paved the way for the US–Jordan FTA. Various studies have viewed the US–Jordan FTA as a tool of foreign policy used by the US, and the US–Jordan FTA as delivering a peace dividend for Jordan. The third part analyses these political considerations and some of the results of the US–Jordan FTA.

5.1 Part 1: Political Motives for Entering into FTAs

5.1.1 Political Considerations in FTAs as Foreign Policy Tools

The political considerations of FTAs are acknowledged in the literature for their importance for strategic relations between countries.¹⁶² Thus, the issue is not only that political considerations matter, but also that such considerations work against economic rationales. The relevance of this connection for this thesis is that when FTAs contain clauses that work against the interests of developing economies, an argument is often made that principles of free trade or trade liberalisation (in pursuance of economic theories) require them. At the very least, establishing that political considerations

¹⁶² Philip I Levy, ‘A Political-economic Analysis of Free-trade Agreements’ (1997) *American Economic Review* 506; for the view that threat that FTAs threaten world multilateral trading system since bilateral FTAs tend to weaken the advocacy and support for wider trade liberalisation. See also Jagdish Bhagwati and Arvind Panagariya, ‘Bilateral Trade Treaties are a Sham’ (2003) 13 *Financial Times* 2003 for a discussion of the threat that FTAs pose for the multilateral trading system due to their discrimination against non-participating countries.

inform the decisions of trade partners enables a critique of purely economics-driven rhetoric of FTAs.

Overall motivations of FTAs in the form of political and strategic considerations for regional integration have historically been the key factors in the evolution of FTAs. In the wider understanding of FTAs, the political and economic considerations do not substitute each other and are instead complementary in nature.¹⁶³ For instance, Maggi and Rodriguez-Clare¹⁶⁴ presented a model whereby governments might be motivated to execute a trade agreement because of regular terms-of-trade externalities and their imperatives about domestic industrial commitments and lobbies.

Economists have also explained that domestic political matters and constraints often govern the choice of partner countries and the manner in which the FTA terms are put together to balance the trade-off elements of such collaborations.¹⁶⁵ The Asia-Pacific Economic Cooperation (APEC) graphically produced political reasons for entering into regional trade agreements, dividing them into domestic policy reasons and international policy considerations aimed at gaining geopolitical influence in the region.¹⁶⁶ Similarly, according to Kim, Aggarwal and Urata, the rise of bilateral forms of FTA rather than multilateral arrangements could be due to policy and institutional factors rather than only economic motives.¹⁶⁷

5.1.2 FTAs of the USA—Motivated by Policy Considerations?

A brief historical overview of the motives of the US in some other FTAs shows that political considerations appear to be important factors for entering into trade agreements. For example, according to a Congressional study, the US–Mexico

¹⁶³ Philippe Martin et al, 'The Economics and Politics of Free Trade Agreements' (9 April 2010) *VOX CEPR's POLICY PORTAL*. <<http://voxeu.org/article/free-trade-agreements-do-they-help-keep-peace>>.

¹⁶⁴ Giovanni Maggi and Andres Rodriguez-Clare, 'A Political-economy Theory of Trade Agreements' (2007) 97(4) *American Economic Review* 1, 6.

¹⁶⁵ Saori N Katada, 'Political Economy of East Asian Regional Integration and Cooperation' (Working Paper No 170, Asian Development Bank Institute, 2009) <<http://www.adbi.org/working-paper/2009/12/01/3390.political.economy.east.asia/>>.

¹⁶⁶ Human Resources Development Working Group, 'The New International Architecture in Trade and Investment' (Publication No APEC#207-HR-01.2, Asia-Pacific Economic Cooperation, 2007) <http://publications.apec.org/publication-detail.php?pub_id=249>.

¹⁶⁷ Jemma Kim, 'Book Review Essay: Vinod K. Aggarwal and Shujiro Urata, eds., *Bilateral Trade Agreements in the Asia-Pacific: Origins, Evolution, and Implications*, New York: Routledge, 2006' (2010) *Asian Regional Integration Review* 120 <http://www.waseda-giari.jp/sysimg/imgs/20100326_giari_review_2.pdf>.

NAFTA, which has been in effect since 1994, provided a means to strengthen the rise of political pluralism and support democratic processes in Mexico, in addition to the obvious economic and trade benefits.¹⁶⁸ Similarly, Hoadley claimed that the motives of the US in executing FTAs—while mainly economic—are mixed with foreign policy, security and national–political objectives to a different extent.¹⁶⁹ Thus, the security interests were visible in the US–Singapore FTA, and Singapore’s interests in the US go beyond business and economics.

The US has used bilateral FTAs to pursue the mandate of its domestic lobbies and further agendas that are not associated with trade. Thus, some economists have argued that the US is using one-on-one agreements with smaller countries as an economic framework for other multilateral trade agreements.¹⁷⁰ Further, the US has utilised both incentives and punishments to safeguard its interests.

For instance the MENA¹⁷¹ countries are of highly strategic importance for the US and Europe as the source of most of the global oil reserves and as a result of geopolitical sensitivity due to many crises that affect Western security interests. The US has entered into a trade agenda with these countries to further its trade and political aims. In the context of Latin America and Caribbean nations, Gallagher¹⁷² indicated that domestic politics in the developing country are also a factor to be considered in the policy of trade, and that tends to favour the trade treaty.

Momani observed that the US government hoped that the objectives of peace and stability could be accomplished through the Middle East Free Trade Area (MEFTA)

¹⁶⁸ M Angeles Villareal and Ian F Fergusson, *The North American Free Trade Agreement (NAFTA)* (Congressional Research Service, 2015) <http://digitalcommons.ilr.cornell.edu/key_workplace/1411/>.

¹⁶⁹ Stephen Hoadley, ‘US Free Trade Agreements in East Asia: Politics, Economics, and Security Policy in the Bush Administration’ (2007) 26(1) *Journal of Current Southeast Asian Affairs* 51, 75 <<http://nbn-resolving.de/urn:nbn:de:0168-ssoar-336729>>; this study cited Ambassador Tommy Koh, who mentioned that Singapore aimed to establish the presence of the US in the region to reinforce the security of the entire Asia-Pacific Region. Further, Singapore considered the Singapore–US FTA a representation of the US’ continued commitment to the region.

¹⁷⁰ At the same time, some economists have expressed concern about the threat that FTAs pose for the multilateral trading system because of their discrimination against non-participating countries; see Bhagwati and Panagariya, above n 162.

¹⁷¹ The following countries are in the MENA region: Algeria, Bahrain, Egypt, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Qatar, Saudi Arabia, State of Palestine, Syrian Arab Republic, Tunisia, United Arab Emirates and Yemen.

¹⁷² Kevin Gallagher, ‘Trading Away Stability and Growth: United States Trade Agreements in Latin America’ (2008) 13 *Americas* 37.

using intra-regional economic cooperation.¹⁷³ Mansfield and Pollins argued that peace and economic interdependence have close interlinkages, as in the context of the Middle Eastern region.¹⁷⁴ One of the reasons that the US negotiated the trade agreement with Vietnam was to build trust between the two countries and normalise the political relations.¹⁷⁵ Bruce stated that the 1985 FTA between the US and Israel was valuable to the US almost entirely for reasons of foreign policy.¹⁷⁶

The above discussion lends itself to the conclusion that the use of trade pacts for complementing political ends is a popular tool of diplomacy. Since 2001, the US has pursued a trade policy that has been described as competitive liberalisation.¹⁷⁷ Foreign policy and security interest factors have affected trade policy formulation in this era. Regarding the signing of the Trade and Investment Framework Agreement with the United Arab Emirates (UAE) and the (MEFTA), Zoellick stated that cementing the relationship on the economic plane supplements the formidable partnership that the two nations share in the fight against terrorism.¹⁷⁸ The official statement from Washington also acknowledged this. For the present thesis, this is a significant acknowledgement of the wider functions of trade agreements.

This brief review of the reasons for entering into trade agreements shows that political considerations and security interest issues have weighed quite heavily with the US in negotiating and signing trade agreements with different partner countries—sometimes of much smaller size and lesser trade significance. It is therefore likely that the reasons

¹⁷³ Bessma Momani, 'A Middle East Free Trade Area: Economic Interdependence and Peace Considered' (2007) 30(11) *The World Economy* 1682. she also said that present obstacles to economic cooperation and the pursuit of these aims would turn MEFTA into a hub-and-spoke relationship between the US and countries in the Middle Eastern region.

¹⁷⁴ Edward D Mansfield and Brian M Pollins (eds), *Economic Interdependence and International Conflict: New Perspectives on an Enduring Debate* (University of Michigan Press, 2003).

¹⁷⁵ 'Obama News Conference with Vietnam President; Sanders Criticizes Democratic Party Leaders', *CNN* (online), 23 May 2016 <<http://edition.cnn.com/TRANSCRIPTS/1605/23/cnr.19.html>>.

¹⁷⁶ Bruce Gregory Arnold, 'The Pros and Cons of Pursuing Free-trade Agreements' (Economic and Budget Issue Brief, Congressional Budget Office, 2003) <<https://permanent.access.gpo.gov/lps36044/07-31TradeBrief.pdf>>. He further mentioned that FTAs or the prospect of such trade agreements with other countries in the Middle East region also have value for the US as a means for stabilisation and progress, and as a carrot in foreign policy negotiations. In addition to foreign policy interests, FTAs have importance for the US as an instrument for making progress in multilateral trade negotiations that have become difficult on some issues.

¹⁷⁷ Simon J Evenett and Michael Meier, 'An Interim Assessment of the US Trade Policy of Competitive Liberalization' (2008) 31(1) *The World Economy* 66.

¹⁷⁸ Mary J Bolle, 'Middle East Free Trade Area: Progress Report' (2005) *LIBRARY OF CONGRESS WASHINGTON DC CONGRESSIONAL RESEARCH SERVICE*. CRS 2.

for entering into the FTA with Jordan would also be complex. This is the topic of discussion in the next section.

5.2 Part 2: Historical Context and Political Process Preceding the US–Jordan FTA

A brief review of the historical background of the US–Jordan FTA will assist in identifying some of the plausible explanations for the US entering into this agreement. This in turn requires the identification of the socio-political context in Jordan and its need to engage with the US.

The US administration has recognised that peace and stability in the Middle East are required to achieve the US' long-term national interests and settle the political controversy in the Middle East.¹⁷⁹ Therefore, Jordan has been a critical element of the peace process in the Middle East, as it has made substantial contributions to the success of the peace process and in bringing to the discussion table the views of both Palestinians and Israelis.¹⁸⁰

5.1.3 Historical Context

The fall-out of the first Gulf War for Jordan was that pressure was placed on King Hussein by the US to extend his moral support to Iraq. Another issue was that many Jordanian persons, mainly of Palestine heritage, were expelled at that time from Kuwait and other Gulf nations.¹⁸¹ These people returned to Jordan, and the unemployment rate increased. Some estimates placed the number of returning Jordanians at 300,000.¹⁸²

This development, coupled with high population growth and a high fertility rate, changed the demographic pattern of the country, which had a deep effect on its social and economic fabric. Bloom argued that such a demographic shift had the potential to

¹⁷⁹ Momani, above n 173.

¹⁸⁰ Seth J Frantzman, 'King Hussein of Jordan: A Political Life: Nigel Ashton' (2009) 18(1) *Digest of Middle East Studies* 113; US Trade Representative Barshefsky outlined some of the US' goals in pursuing the US–Jordan FTA, including to encourage regional economic integration, support Jordan's economic reforms and develop a model for the next US FTA, Rosen, above n 10, 62.

¹⁸¹ Joseph Patrick Gaffney, *Jordan's Qualified Industrial Zones: A Qualified Success?* (MA Thesis, University of Pennsylvania, 2005) 7, 15 <http://lauder.wharton.upenn.edu/wp-content/uploads/2015/06/Gaffney_Thesis.pdf>.

¹⁸² Warwick Knowles, *Jordan Since 1989: A Study in Political Economy* (IB Tauris, 2005) 203.

become a dividend or disaster for the nation.¹⁸³ In the case of Jordan, the GDP growth temporarily boomed in 1992 because of increased consumption as a result of the sudden influx of people, but it fell to an average rate of 4.62% in 1993 and 4.98% in 1994.¹⁸⁴

In 1992, the level of unemployment in Jordan was alarmingly high, at 17.60%, and it increased to 19.60% by 1993.¹⁸⁵ The unofficial estimates were even higher. The proportion of workers to dependents also affected the productivity of the economy. Moreover, the high unemployment rate and population growth created a new set of social and economic problems. Against this historical backdrop, Jordan needed to benefit from the political willingness of the US to give economic inducements and incentives to partner countries and a peace treaty with Israel.¹⁸⁶ The US–Jordan FTA was preceded by the US setting up the QIZs program, discussed in the next section.

5.1.4 Origin of the Qualifying Industrial Zones (QIZs) Program

The US designed the QIZs program, and it was perceived as a means to reduce Jordan's unemployment problem through faster economic development and job growth in manufacturing industries. The political administration of Jordan supported this initiative, given the demographic developments explained above and the performance of the economy. The QIZ program was mooted at the Amman Economic Summit in 1995, where the Regional Business Council was created. The QIZ agreement primarily aimed to give some economic benefits to Jordan, which was facing the challenges of debt and deficits.¹⁸⁷ The US signed the QIZ agreements with Jordan in 1997. Carter contended that the underlying reason for signing the QIZ agreement was that it would be an incentive for Jordan to execute a peace treaty with Israel.

¹⁸³ David E Bloom et al, 'Demographic Transition and Economic Opportunity: The Case of Jordan' (2001) *Commissioned by United States Agency for International Development* 17 <http://www.phrplus.org/Pubs/Tech011_fin.pdf>.

¹⁸⁴ The World Bank, *GDP Growth* <<http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=JO>> (Accessed on 2 March 2016).

¹⁸⁵ *Econstats: Unemployment Rate | IMF World Economic Outlook* (2016) Econstats.com <<http://www.econstats.com/weo/V027.htm>>. (Accessed on 21 February 2016).

¹⁸⁶ David Schenker, 'Twenty Years of Israeli–Jordanian Peace: A Brief Assessment' (Policy Watch No 2328, The Washington Institute, 2014) <<http://www.washingtoninstitute.org/policy-analysis/view/twenty-years-of-israeli-jordanian-peace-a-brief-assessment>>.

¹⁸⁷ Austin Carter, Yun Gong and Jeffrey B Nugent, 'Measuring Trade Advantages of the Qualifying Industrial Zones Program of Jordan and Egypt Offered by the United States for Having Signed Peace Treaties with Israel' (2015) 17(2) *Topics in Middle Eastern and North African Economies* 192.

The QIZs were not separate treaties, but merely extensions of the existing US–Israel FTA that permitted tariff and quota exemptions on imports from identified zones in Jordan. The benefits availed by Israeli companies under the US–Israel FTA were proposed to be extended to the border areas.¹⁸⁸ After the amendment of the US–Israel Free Trade Area Implementation of 1985 was passed and the QIZ program came into being, Jordanian businesses had the opportunity to export from Jordan to the US without duty restriction and tariff barriers.

However, public opinion—particularly of business persons in Jordan regarding the QIZ arrangement—was negative. After the first QIZ had commenced, some sections of Jordanian business lobbies showed their resistance to the move, and an Anti-Normalization Committee blacklisted the first such company.¹⁸⁹ The protestors perceived these QIZ companies as a way of forcing Jordan’s people to purchase goods from Israel. Given these issues, the first businesses in QIZs felt the need to keep their business connection with Israel private.¹⁹⁰ Thus, political considerations had come to the fore. The first QIZ had been established in Irbid, Northern Jordan, and 14 QIZs were subsequently developed in different parts of Jordan. In each QIZ, many business entities were established, and Jordan saw a considerable amount of FDI.¹⁹¹

Moore argued that from the perspective of the US, by developing economic incentives for Israelis and Arabs to trade, the rewards of peace would grow and sustainable development could be pursued.¹⁹² He further explained that the US-designed QIZ

¹⁸⁸ Marwan A Kardoosh and Riad Al Khouri, ‘Qualifying Industrial Zones and Sustainable Development in Jordan’ (Paper presented at the Economic Research Forum, Selected Papers from the 11th Annual Conference, 2005).

¹⁸⁹ Katherine Blue Carroll, *Business as Usual? Economic Reform in Jordan* (Lexington Books, 2003) 99, 114.

¹⁹⁰ Ibid.

¹⁹¹ See also Thomas Hutcheson, ‘Assessing the Impact of Egypt’s Qualifying Industrial Zones’ (United States Agency for International Development, 2006) <http://pdf.usaid.gov/pdf_docs/Pnadj759.pdf> for an interesting comparison between Egypt and Jordan under their respective QIZs. Hutcheson noted that under the Jordan QIZ in 2005, the volume of exports was \$945 million compared with \$266 million from Egypt. However, the comparison of the first 17 months of the QIZs in the two countries showed that Egypt started benefiting more rapidly than Jordan.

¹⁹² Pete W Moore, ‘The Newest Jordan: Free Trade, Peace and an Ace in the Hole’ (Middle East Research and Information Project, 2003) <<http://www.merip.org/mero/mero062603>>. Moore explained that, as a result of the QIZ, Jordan’s exports to the US increased from less than US\$20 million in 1999 to more than US\$200 million in 2002. Further, more than 20,000 jobs were created in the QIZs, mostly for women.

program was also the stepping-stone to a more elaborate US–Jordan FTA in subsequent years that was much broader in its scope and intent.

The US expected that the US–Jordan FTA would create an economic connection that would help to normalise the relationships between Israel and Arab Middle East countries. Thus, the US–Jordan FTA was entered into more for its geopolitical importance.¹⁹³ Malkawi observed that the FTA has provided job opportunities for poor Palestinians who live in Jordan and operate in QIZs. For those who live in poverty and have little chance to improve their lives, this may also change the equation of hostility and thus offer real hope for long-term peace. Significantly, it could also provide a real alternative to violence. Malkawi also cited President Kennedy, who proclaimed ‘trade, not aid’,¹⁹⁴ and he argued that the FTA reflected the appreciation of the US for the role of Jordan in international counter-terrorism activities and peace initiatives. Some of these political considerations are discussed in the next section.

5.2 Part 3: The US–Jordan FTA: Political Considerations and Their Effects

As explained in the previous section, a few strategic and policy interests are discussed, but they are an eclectic choice for reasons of space. The discussion includes a brief explanation of the international interests of the US, the peace dividend, strategic gains and economic gains.

5.2.1 Political Gains

Lobell explained that more powerful countries, such as the US, make use of economic diplomacy, and more specifically FTAs, to consolidate the political power of societal and economic players with interest in international relations.¹⁹⁵ He further contended that the US utilised the FTA with Jordan in pursuing its international relations and security policy to support the intended international realignment in the region and move Jordan towards political democratisation, with the aim of normalising its ties with Israel.

¹⁹³ Malkawi, above n 24, 239.

¹⁹⁴ Ibid.

¹⁹⁵ Lobell, above n 48.

Similarly, Aggarwal's view of the bilateral FTA between the US and Jordan was that it was mainly motivated by political-strategic aspects instead of any economic reasons.¹⁹⁶ In analysing some PTAs and FTAs in his paper, the author characterised the US–Jordan FTA under the category of multi-product bilateral trans-regionalism. Similarly, in a Congressional Research Service impact report on FTAs and implications for US trade policy, Cooper suggested that political considerations played a role in the run-up to negotiating and signing the US–Jordan FTA given the balance of power in the region.¹⁹⁷

The official statement in the US for House passage of the Jordan Free Trade Implementation Act stated that the significant benefit of the US–Jordan FTA regarded strategic interests of the US in Middle East peace, as well as stability and support for the development of free market economies in Jordan.¹⁹⁸ This official statement also noted that a significant benefit of the US–Jordan FTA was in regard to strategic interests of the US in Middle East peace and stability and support for the development of free market economies in Jordan.¹⁹⁹ These studies therefore, make it amply clear that political reasons were running hand-in-hand with economic imperatives right from the negotiation, conception and early implementation stages of the US–Jordan FTA.

5.2.2 The FTA—A Peace Dividend?

In a report for US Congress,²⁰⁰ Bolle and Williams mentioned that, given the concerns of the US regarding Jordan's refusal to join the US-led coalition against Iraq during the Gulf War of 1990–1991, the US provided less foreign assistance to Jordan at that time. However, after Israel and Jordan signed the Washington Declaration on 25 July 1994 and entered into a peace treaty on 26 October 1994, the conditions of belligerency between Jordan and Israel ended and the US initiated steps aimed at benefiting Jordan's economy. These initiatives included enhancing the economic and military assistance

¹⁹⁶ Vinod K Aggarwal, *An APEC Trade Agenda? The Political Economy of a Free Trade Area of the Asia Pacific* (The Pacific Economic Cooperation Council & The APEC Business Advisory Council, 2007) 29 <http://www.apec.org.au/docs/061120_ftaap.pdf>.

¹⁹⁷ William H Cooper, 'Free Trade Agreements: Impact on US Trade and Implications for US Trade Policy' (26 February 2014) *Congressional Research Service* 4.

¹⁹⁸ *H.R. 2603 - 107th Congress (2001-2002): United States-Jordan Free Trade Area Implementation Act* (2002) Congress.gov <<https://www.congress.gov/bill/107th-congress/house-bill/2603>> (Accessed on 17 March 2016).

¹⁹⁹ Mary Jane Bolle and Brock R Williams, *Crs Report for Congress: US Foreign-Trade Zones: Background and Issues for Congress* (Library of Congress, 2013).

²⁰⁰ *Ibid.*

given to Jordan, forgiving the debt owed by Jordan to the US and setting up QIZs in Jordan.²⁰¹

Bolle and Williams further stated that the basic motivation behind the US trying to help Jordan's economy was to offer Jordan a peace dividend. The economic reward was intended to show the advantages of peace to the people of Jordan, who had at times condemned and protested the Jordan government's efforts to normalise relations with Israel. The authors also stated that Jordan would be the fourth country in the world to sign an FTA with the US and the first independent Arab state to do so. This report is quite clear in its assessment of the proposed benefits associated with the US–Jordan FTA at the time of implementing the agreement.

So too a study by Al Nasa'a et al point out that the economic effects of the US–Jordan FTA for the US could be small, but the political effect is of much bigger magnitude. Al Nasa'a et al further argue that as many as four out of seven FTAs that the US executed bilaterally were with nations in the strategic Middle East and North Africa (MENA) region and included FTAs with Israel, Jordan, Morocco and Bahrain.²⁰² These clearly demonstrate that trade relations between the US and partner nations in the MENA region are governed by political considerations in equal measure as by economic factors.

So too a study by Dupont has called a FTA as much more than just about trade. The author calls FTA as a barometer of the political relationship between two countries.²⁰³ When the countries are of comparably similar economic strength and size, such trade agreements can be symbolic of growing economic interdependence. However, in the case of US–Jordan as the country pair, one cannot extend the argument of economic interdependence since trade volume is too little from the US standpoint. The enhanced trade appears to encourage, albeit indirectly, conditions that are conducive to peace and

²⁰¹ Ibid.

²⁰² Al Nasa'a et al, above n 26.

²⁰³ Although in the context of a different country pair; Alan Dupont, 'The political and strategic implications of a free trade agreement with China' (Paper presented at the Australia–China Free Trade Agreement Conference (Sydney: Australia APEC Study Centre, 12 August 2004).

development.²⁰⁴ The effects of very different-sized nations entering into PTAs or FTAs are nevertheless significant and are discussed next.

5.2.3 The FTA—Building or Stumbling Block on the Road to Free Trade?

In the book *Termites in the Trading System*²⁰⁵ the author demonstrates that small nations and small exporters have a severe disadvantage in dealing with the chaotic trading system generated by a proliferation of PTAs and FTAs. The author goes on to say that FTAs dwell on peripheral issues such as capital flows and inappropriate labour standards so that the small and weak nations negotiating with stronger nations accept harmful demands that are largely not related to the trade. Therefore, Bhagwati compares these PTAs with stumbling blocks rather than building blocks to trade.

One might not concur entirely with the conclusion drawn by Bhagwati about trade agreements, but in the signing of the US–Jordan FTA, we have the characteristics of a small and weaker nation negotiating with a strong world power. It is therefore, not surprising that the strategic gains and benefits have been pursued but the problem is that in the process the smaller nation has to comply with clauses that are promoted in the name of economics but overall the agreements benefit the non-economic aims of the stronger nation.

In the context of the US–Jordan FTA, an increase in trade flow between the two countries is very clear since the FTA was signed²⁰⁶ but the experts consider it more as an achievement of the foreign policy, and as explained below I agree with this assessment.

5.2.4 Political Benefits for the US—Strategic Gains

Several observers perceive FTA deals executed by the US with Jordan and other nations in the Middle Eastern region as a move towards strengthening the strategic position of

²⁰⁴ For researchers view the high level of economic growth as having the effect of mitigating the risk of conflict or civil war, see Ahmed F. Ghoneim and Taleb Awad, 'Impact of Qualifying Industrial Zones on Egypt and Jordan: A Critical Analysis' (2010) 4, 12.

²⁰⁵ Jagdish Bhagwati, *Termites in the Trading System: How Preferential Agreements Undermine Free Trade* (Oxford University Press, 2008) 15, 48; he describes the resultant trade arrangements as spaghetti bowl problem.

²⁰⁶ Imad El-Anis, 'A review of trade liberalisation and trade between Jordan and the United States' (2013) 4(6) *International Journal of Peace and Development Studies* 116, 124.

the US in the area and helping to boost its partner nations economically.²⁰⁷ Other experts think the same about the steps taken by the US to expand trade relations with some of the neighbours of China.²⁰⁸

5.2.5 Economic Benefits for the US

The FTAs safeguard business interests of US in various ways.²⁰⁹ It can be argued that in general FTAs have emerged as an effective means by which the exporting companies of the US can access foreign markets on attractive terms. For, these agreements reduce barriers to the exports by the US and especially with smaller countries the markets for US goods are enhanced. Moreover, if we consider the domestic factors (from the US perspective), a higher number of FTAs tend to reduce the price of goods in the US and also reduce the costs that businesses of the US have to incur for the imported stuff.²¹⁰

Matthias Matthijs labelled Jordan as the poster child of the free trade strategy of the US.²¹¹ According to him it is probably the only country with which the US has both FTA and QIZ arrangement. It is a matter of record that Jordan's exports to the US grew by a modest amount of \$72 million in the year 2000 to a much higher figure of \$1.27 billion by the end of 2005. Moreover, at the same time, the bilateral trade balance moved from a deficit of US\$239 million in the year 2000 to the surplus amount of US\$624 million by the year 2005 for Jordan. Robert Lawrence, in assessing the US FTAs with a number of Middle Eastern countries says that the interests of the Arab countries are primarily economic. However, 'in most Arab countries imports from the United States increase by more than exports to the United States'.²¹²

²⁰⁷ Robert McMahon, 'The Rise in Bilateral Free Trade Agreements' (2006) *Council on Foreign Relations*. Available at, <www.cfr.org/publication/10890>.

²⁰⁸ *China's Geography and Security Goals / Asia for Educators / Columbia University* (2009) Afe.easia.columbia.edu <http://afe.easia.columbia.edu/special/china_1950_china_geosec.htm>.

²⁰⁹ In this view China pursues the policy of making it difficult that others should be able to control the Asian region and in part China pursues this aim by expanding its cooperation with its neighbours. It thus explains the efforts of the US to wish to expand trade relations with China's neighbours; Free Trade Agreements, 'international trade administration' (2017) Trade.gov <<http://trade.gov/fta/>>.

²¹⁰ Office of the United States Trade Representative, above n 9.

²¹¹ Matthias Matthijs, 'US and EU Trade Policy towards the Middle East: A Comparative Assessment' (2005) 4. <<https://www.saisjhu.edu/sites/default/files/EU%20and%20US%20Trade%20Policy%20towards%20the%20Middle%20East%20-%20July%202007d2.pdf>>.

²¹² Robert Lawrence, 'Recent US Free Trade Initiatives in the Middle East: Opportunities but No Guarantees' (2006) *Harvard University and Peterson Institute for International Economics*, 21, at 26 <<http://www.belfercenter.org/sites/default/files/files/publication/AWCR%202.pdf>>. Admittedly the

5.3 Conclusion

In conclusion, it can be stated that the US–Jordan FTA was influenced by both economic and political considerations at the time of executing the agreement and continues to have an economic and political significance since then. The core strategic importance of Jordan regarding geopolitical interests and security considerations for the Western Powers further increased in the wake of 9/11 attacks in the US.²¹³

Given the effect of economic growth in ushering an era of greater peace and growth, there are mutual benefits of regional stability and socio-economic development. Despite the political motives of the US for entering into FTA, as a partner country, Jordan has benefited with the employment generation, an increase in foreign investment and higher exports. At the same time, however, it is undeniable that the US has been the greater beneficiary and Jordan has encountered various problems as discussed in chapter three above. Therefore, in the following chapter, a close analysis of selected provisions of the US–Jordan FTA is undertaken to examine whether specific provisions of this agreement can be modified to benefit Jordan.

overall assessment of the author in this article is that the overall benefits of MEFTAs for the Arab countries potentially are greater than for the US.

²¹³ Riad al Khouri, 'EU and US Free Trade Agreements in the Middle East and North Africa' (2008) *Carnegie Middle East Center* 1, 5.

Chapter 6: Recommendations and Conclusion

This chapter aims to identify the clauses that may be preventing gains for the economy of Jordan and to propose suitable modifications of those specific clauses. Such modifications are plausible since the US has revised the FTAs negotiated with many developing countries to exclude the heaviest TRIPS-plus rules—particularly patent linkage and patent term supplement. It is therefore argued that the US–Jordan FTA can be renegotiated to revise certain specific rules that have turned out to be unfavourable and too onerous for the comparatively weaker party, Jordan. The provisions on labour standards and IPRs, in particular, warrant a reappraisal for reform.²¹⁴

6.1 Labour Provisions and Effect on Jordan's Economy

Labour provisions in the US–Jordan FTA are relatively direct and ensure that both members conform to their commitments of principles and rights at work under the ILO. These provisions are discussed widely in the literature, and some authors believe that these provisions impede free trade between the nations, and they might put Jordan on the back foot compared with the US.²¹⁵

In the text of the agreement, it is clearly mentioned that members cannot relax their labour laws to encourage trade exchange.²¹⁶ Therefore, it is important for both parties to not deviate from these laws to promote trade with other partners. The agreement also supports the right of each member to form its labour laws, standards and regulations, which comply with international labour rights.

Unfortunately, many of the garment factories that supply their products to the US markets do not follow these guarantees. Thus in Jordan the workers, including foreigners, have faced considerable abuses, such as excessive hours and lack of

²¹⁴ For reasons of word space constraints, a significant issue not discussed relates to clauses on environmental protection. The same argument can be made for environmental clauses in the trade agreements as the industrialised nations set the standards, but the developing economies are expected to abide by them.

²¹⁵ Sandra Polaski, 'Trade and Labor Standards strategy for developing countries' (2003) *Carnegie Endowment for International Peace* 9, 12.

²¹⁶ Article 6: Labor paragraph 2. The Parties recognize that it is inappropriate to encourage trade by relaxing domestic labor laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws as an encouragement for trade with the other Party.

overtime pay, poor housing conditions and non-compliance with health and safety regulations.²¹⁷

A 2006 report²¹⁸ enabled the Labor Minister in Jordan in 2017 to order the closure of a garment factory because of violations found against guest workers that could amount to the crime of human trafficking. The report noted that the violations had been against more than 100 migrant workers, including forced labour, physical and oral abuse, and unsuitable accommodation. They were also prohibited from having sick leave, their salaries were delayed and their pay was reduced for minor mistakes.²¹⁹

Many reports by the Institute for Global Labor and Human Rights have also exposed sexual harassment practices against women in garment factories.²²⁰ The government in Jordan is obliged under the Convention on the Elimination of All Forms of Discrimination Against Women²²¹ to end discrimination against women, and it should revise the labour provision of the US–Jordan FTA to reflect this. By introducing stricter laws against sexual harassment, Jordan can both uplift the status of women and encourage fair labour practices that are likely to increase the profitability of the QIZ.

Although the minimum wage law in 2006 increased the minimum wage to \$155 from \$127, acting in line with the provisions of the FTA,²²² a persistent problem is that the garment factories still abuse workers' rights.²²³ Rather than taking a negative stance

²¹⁷ Robert A Rogowsky and Eric Chyn, 'US Trade Law and FTAs: A Survey of Labour Requirements' (2007) *United States International Commission Journal of International Commerce and Economics* 15.

²¹⁸ This report discussed issues related to human rights and labour regarding the migrant workers in garment factories from whom the US apparel companies were sourcing garments from Jordan; see *Jordan: NGO Reports Poor Working Conditions and Degrading Treatment for Migrant Workers in Garment Factory in Al Hassan Industrial Zone* | Business & Human Rights Resource Centre (2017) Business-humanrights.org <<https://business-humanrights.org/en/jordan-ngo-reports-poor-working-conditions-and-degrading-treatment-for-migrant-workers-in-garment-factory-in-al-hassan-industrial-zone>>.

²¹⁹ *Jordan: Human Trafficking Investigation at Garment Factory in Al Hassan Industrial Estate* | Business & Human Rights Resource Centre (27 February 2017) Business-humanrights.org <<https://business-humanrights.org/en/jordan-human-trafficking-investigation-at-garment-factory-in-al-hassan-industrial-estate>> (Accessed on 17 March 2017).

²²⁰ *Classic Fashion in Jordan—Sweatshop Abuse, Sexual Predators* (2011) www.globallabourrights.org <<http://www.globallabourrights.org/campaigns/classic-fashion-in-jordan-sweatshop-abuse-sexual-predators>>.

²²¹ The text of the convention is available at <<http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>>.

²²² Marry Jane Bolle, 'Jordan–US Free Trade Agreement: Labour Issues' (Congressional Research Service, 2002).

²²³ Robert A. Rogowsky and Eric Chyn, 'U.S. Trade Law and FTAs: A Survey of Labor Requirements' (2007) *United States International Commission Journal of International Commerce and Economics* 15.

such as sanctions in case of non-compliance with the labour standards, the FTA could explicitly specify that both countries will not engage in child labour, will improve working conditions for workers, will increase the proportion of Jordanian workers and will provide a reasonable minimum wage. It could also provide for a periodic review of conditions. The government in Jordan would undertake to implement these provisions strictly.

6.2 Intellectual Property Rights and the Effect on Jordan's Economy

The US–Jordan FTA obligates Jordan to enforce the clauses in the WIPO agreements. The provisions give protection to patents, copyrights and trademarks and pay special attention to software and pharmaceuticals, where there are maximum chances of violation of copyrights and patents. The FTA states that each country must ensure that there are large fines to deter infringement, without any monetary incentive for the infringer.²²⁴ Jordan is already committed to the high IP protection TRIPS rules required by WTO membership²²⁵ and now by the TRIPS-plus rules²²⁶ by the US–Jordan FTA.²²⁷

An analysis of the TRIPS-plus provisions of the US–Jordan FTA found that the claimed welfare from the FTA has been overstated and the costs underestimated.²²⁸ It has also noted that Jordan had a vibrant domestic pharmaceutical industry before the agreement, which was geared towards exports. There is no basis for the claims that the agreement has boosted the availability and accessibility of medicines in Jordan, encouraged foreign investment, improved the research development capability of domestic

²²⁴ Article 4: Intellectual Property Rights paragraph (25) Each party shall ensure that its statutory maximum fines are sufficiently high to deter future acts of infringement with a policy of removing the monetary incentive to the infringer, and shall provide its judicial and other competent authorities the authority to order the seizure of all suspected pirated copyright and counterfeit trademark goods and related implements the predominant use of which has been in the commission of the offense, and documentary evidence.

²²⁵ It is generally accepted that the TRIPS Agreement should not prevent members from taking measures to protect public health; Abbott, above n 38.

²²⁶ Mohammed El Said, 'The Morning After: TRIPS-plus, FTAs, and Wikileaks: Fresh Insights on the Implementation and Enforcement of IP Protection in Developing Countries' (2012) 28(1) *American University International Law Review* 71.

²²⁷ Ferris K. Nesheiwat, 'The Adoption of Intellectual Property Standards beyond TRIPS - Is It a Misguided Legal and Economic Obsession by Developing Countries' (2010) 32 (*Loyola Marymount University and Loyola Law School Digital Commons at Loyola Marymount University and Loyola a Law School* 361.

²²⁸ Abbott Ryan, 'Inside views: Access to Medicines and Intellectual Property in Jordan' (2012) *Intellectual Property Watch*. <<https://www.ip-watch.org/2012/07/23/access-to-medicines-and-intellectual-property-in-jordan/>>.

manufacturers or led to a greater association between national and multinational pharmaceutical corporations to further develop this important sector.²²⁹

The Doha Declaration on the TRIPS Agreement and Public Health says that the agreement should be interpreted and implemented in a manner supportive of WTO members' right to protect public health and, in particular, to enhance access to medicines. The latter is widely considered the human right to life of all citizens.²³⁰ In fact, TRIPS-plus²³¹ rules have led to an increase in medicine prices in Jordan. This has now called into question the financial sustainability of public health programs in the future. There have been no tangible benefits as were expected from the introduction of stricter IP protection.²³² Nor has there been any visible FDI by medicine companies since 2001 in Jordan in partnership with various generic companies. The only investment has been by some multinational corporations (MNCs), which are trying to push their expensive patented medicines aggressively to customers instead of the cheaper generic ones.²³³ The government is unable to implement various public health safeguards to reduce medicine prices due to TRIPS-plus. This has put a strain on the public healthcare system and increased out-of-pocket expenses for the poorest in the economy.

This thesis recommends that Jordan resist acceding to the Patent Cooperation Treaty (PCT). Moreover, it should introduce some exceptions to reduce the effect of the TRIPS-plus regime on the health care system and pharmaceuticals. The Doha Declaration paragraph IV supports this modification, as it states that the TRIPS Agreement should be understood and implemented in a manner supportive of WTO

²²⁹ Ibid.

²³⁰ Ibid. Moreover, the US-Jordan FTA has not changed the fact that the country still ranks low in World Economic Forum's report on the Network Readiness Index in Global Information Technology.

²³¹ TRIPS-Plus rule is not only inconsistent with the WTO TRIPS protection requirement. Nevertheless, it is also depriving the citizens of Jordan their fundamental human rights to life and health recognised in international law. Furthermore, it is a clear violation of the Doha Public Health Declaration Paragraph IV that emphasized the TRIPS Agreement should not prevent Members from taking measures to protect public health.

²³² Malpani, above n 45. Medicines for serious non-communicable diseases like asthma, diabetes, and hypertension are six times more expensive in Jordan than in the neighbouring Egypt where there are no TRIPS-plus barriers.

²³³ Ibid; Malpani says that a study by Oxfam found that medicine prices have increased in Jordan since the FTA, as a result of TRIPS-plus rules. It determines strict IP protections have produced minimal benefits to foreign direct investment, domestic research development, and the introduction of new medicines.

members' rights to protect public health and encourage access to medicines by all citizens.

The US should not coerce developing countries into adopting TRIPS-plus IP protections through bilateral and regional trade agreements through other forms of pressure and inducement.²³⁴ Other developing countries could also take responsibility to prevent and resist the introduction of TRIPS-plus rules in their national legislation and trade agreements, and to fully implement TRIPS protections to ensure the production of generic medicines for domestic consumption and export to other developing countries.

6.3 Conclusion

The US–Jordan FTA has enjoyed some success by expanding Jordan's exports to the US and creating more jobs and FDI in the economy, thus contributing towards the growth of Jordan's economy.²³⁵ However, apart from these small benefits, the US–Jordan FTA has failed to leave an overall positive mark on Jordan's economy, which has made researchers question whether this is a trade partnership or power politics by the US. The agreement, which was meant to develop Jordan's economy, reduce poverty and open various avenues for people in Jordan, has exacerbated poverty and lessened the capability of the government to enforce measures to stimulate development in the economy.

This is not to deny that there have been benefits for Jordan from the US–Jordan FTA, and this study acknowledges that Jordan effectively attained the modern regulatory environment, which proved to be immensely beneficial for its business and trade. Further, industrial development for Jordan has largely been dependent on the social and economic benefits that the country has obtained from the FTA. The relationship between the US and Jordan has become stronger with the implementation of the FTA. However, with the completion of the process of implementation, imports for Jordan started increasing and surpassing the level of its exports, along with its trade deficits

²³⁴ Rami M. Olwan, *Intellectual Property and Development: Theory and Practice* (PhD Thesis, Queensland University of Technology, Faculty of law, May 2011) 144. (The discussion of IP laws and development in Jordan).

²³⁵ Foreign Branch, *Foreign Trade—US Trade with Jordan* (2017) Census.gov <<https://www.census.gov/foreign-trade/balance/c5110.html>> (Accessed on 3 March 2017).

with the US continuing, thereby raising concerns about the economic effects on Jordan. Therefore, it is argued that changes are required at various levels.

In conclusion, this study suggests that if both sides make modifications to the agreement, it will be more beneficial for them both. The study leaves room for future work, where other FTAs can be analysed and compared with the US–Jordan FTA to determine any adverse effects of the clauses and formulate any improvements.

At a more general level, it can be argued that a significant revision of the theoretical arguments that explain the concept of free trade and its relative effects on large and small countries' economies is required. The historical development of FTAs should be revised using concepts from economics and international politics. If the significance of political motives is integrated into the analyses, the economic rationales for FTAs could become more nuanced. It could also allow developing countries to resist the imposition of onerous clauses of IPRs and labour standards in the name of economic rationalism.

The WTO framework could also be reviewed based on how effectively bilateral and multilateral trade is promoted in the name of free and open international business activities. The key role of FTAs in reducing trade barriers could be intertwined with their political significance. Such agreements are meant to target mutual benefits for the two or more countries agreeing to the policies. The relative size of the economies of the two or more partners should be formally acknowledged in future trade agreements. More specifically, the imposition of certain labour standards in less developed economies should be revisited. Similarly, IP provisions that are known to benefit economically stronger partners should be modified so that the accrued benefits are fairly and equitably shared between the parties. It is acknowledged that these issues invoke wider concerns in the fields of international politics and law than just matters of free trade. This thesis seeks to make a more modest contribution to how issues of free trade are conceptualised so that the political and economic implications can be discussed in tandem.

Appendix of the US-Jordan FTA

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE HASHEMITE KINGDOM OF JORDAN ON THE ESTABLISHMENT OF A FREE TRADE AREA

PREAMBLE

The Government of the United States of America (“United States”) and the Government of the Hashemite Kingdom of Jordan (“Jordan”),

Desiring to strengthen the bonds of friendship and economic relations and cooperation between them;

Wishing to establish clear and mutually advantageous rules governing their trade;

Aspiring to promote their mutual interest through liberalization and expansion of trade between their countries;

Reaffirming their willingness to strengthen and reinforce the multilateral trading system as reflected in the World Trade Organization, and to contribute to regional and international cooperation;

Recognizing that Jordan's economy is still in a state of development and faces special challenges;

Recognizing the objective of sustainable development, and seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development;

Recognizing that their relations in the field of trade and economic activity should be conducted with a view to raising living standards and promoting economic growth, investment opportunities, development, prosperity, employment and the optimal use of resources in their territories;

Desiring to foster creativity and innovation and promote trade in goods and services that are the subject of intellectual property rights;

Recognizing the need to raise public awareness of the challenges and opportunities offered by trade liberalization;

Wishing to raise the capacity and international competitiveness of their goods and services;

Desiring to promote higher labor standards by building on their respective international commitments and strengthening their cooperation on labor matters; and

Wishing to promote effective enforcement of their respective environmental and labor law;

HAVE AGREED AS FOLLOWS:

ARTICLE 1: ESTABLISHMENT OF A FREE TRADE AREA AND RELATIONSHIP TO OTHER AGREEMENTS

1. The Parties to this Agreement, consistent with Article XXIV of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") and Article V of the *General Agreement on Trade in Services* ("GATS"), hereby establish a free trade area in accordance with the provisions of this Agreement.
2. The Parties reaffirm their respective rights and obligations with respect to each other under existing bilateral and multilateral agreements to which both Parties are party, including the *Marrakesh Agreement Establishing the World Trade Organization* ("WTO Agreement").
3. This Agreement shall not be construed to derogate from any international legal obligation between the Parties that entitles a good or service, or the supplier of a good or service, to treatment more favorable than that accorded by this Agreement.
4. Nothing in Article 17 shall be construed to authorize a Party to apply a measure that is inconsistent with the Party's obligations under the WTO Agreement.

ARTICLE 2: TRADE IN GOODS

1. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods of the other Party in accordance with Annex 2.1 and its schedule¹ to Annex 2.1.
2. For purposes of this Agreement, **originating good** means an article described in Annex 2.2.
3. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994, including its interpretative notes. To this end, Article III of GATT 1994 and its interpretative notes are incorporated into and made a part of this Agreement, subject to Annex 2.3.
4. A Party may not introduce a new customs duty on imports or a new quantitative restriction on imports in the trade between the Parties, other than as permitted by this Agreement, subject to Annex 2.3.
5. In the event that this Agreement enters into force on a date other than January 1, "year one" for purposes of Annex 2.1 and each Party's schedule to Annex 2.1 shall mean the period from the date of entry into force of this Agreement through the end of the calendar year, and the duty reductions in each Party's schedule to Annex 2.1 shall take effect on such date of entry into force. In such event, the term "January 1 of year one" for purposes of Annex 2.1 and each Party's schedule to Annex 2.1 shall mean the date of entry into force of this Agreement.

ARTICLE 3: TRADE IN SERVICES

1. This Article applies to measures by a Party affecting trade in services between the Parties.

¹ For purposes of this Agreement, "schedule" shall include both the schedule and headnotes.

2. (a) With respect to market access through the modes of supply identified in Article I of the GATS, each Party shall accord services and service suppliers of the other Party treatment no less favorable than that provided for under the terms, limitations, and conditions agreed and specified in its Services Schedule to Annex 3.1 to this Agreement. In sectors where such market access commitments are undertaken, the measure which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Services Schedule to Annex 3.1, are those measures defined in Article XVI:2(a)-(f) of the GATS.
- (b) In the sectors inscribed in its Services Schedule to Annex 3.1, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favorable than that it accords to its own like services and service suppliers.
- (c) (i) Subject to subparagraph (c)(ii), any market access or national treatment commitment inscribed in a Party's Services Schedule to Annex 3.1 shall give rise to the same rights and obligations² between the Parties as if that commitment had been inscribed in that Party's schedule of specific commitments annexed to the GATS.³
- (ii) The provisions of GATS that shall be construed to give rise to rights and obligations under this Article are: Articles III *bis*; VI:1, 2, 3, 5, 6; VII:1 & 2; VIII:1, 2, 5; IX; XI; XII; XIII:1; XIV; XV:2; XVI; XVII; XVIII; XX:2; and XXVII; Annex on Movement of Natural Persons Supplying Services under the Agreement; Annex on Financial Services; Annex on Air Transport, paragraphs 1, 2, 3, 4, 6; and Annex on Telecommunications, paragraphs 1-5.
3. Jordan has listed, in its schedule annexed to the GATS, exemptions from most-favored-nation treatment that are based on a reciprocity requirement. Jordan confirms that the United States satisfies those reciprocity requirements specified in Annex 3.2.
4. (a) Unless they are specifically defined in this Article or in the Services Schedules to Annex 3.1, terms used in this Article and such Services Schedules that are also used in the GATS shall be construed in accordance with their meaning in the GATS, *mutatis mutandis*.
- (b) All references in this Article to the GATS are to the GATS in effect on the date of entry into force of this Agreement. If, after that date, a Party alters its schedule of specific commitments annexed to the GATS, the GATS is amended, or the results of the negotiations described in GATS Articles VI:4, X:1, XIII:2, or XV:1 enter into effect, this Article shall be amended, as appropriate, after consultations between the Parties.
- (c) Reference in this Article to a provision of the GATS includes any footnote to that provision.

² Nothing in this Article shall require a Party to take any action with regard to the WTO or a Council, Committee, Body, or the Ministerial Conference of the WTO.

³ The Parties acknowledge and accept that the commitments of the United States in financial services in subparagraphs 2(a) and 2(b) have been undertaken in accordance with the WTO Understanding on Commitments in Financial Services subject to the limitations and conditions set forth in the schedule of the United States.

ARTICLE 4: INTELLECTUAL PROPERTY RIGHTS

1. Each Party shall, at a minimum, give effect to this Article, including the following provisions:

(a) Articles 1 through 6 of the *Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks* (1999), adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the World Intellectual Property Organization (“WIPO”);

(b) Articles 1 through 22 of the *International Convention for the Protection of New Varieties of Plants* (1991) (“UPOV Convention”);

(c) Articles 1 through 14 of the *WIPO Copyright Treaty* (1996) (“WCT”)⁴; and

(d) Articles 1 through 23 of the *WIPO Performances and Phonograms Treaty* (1996) (“WPPT”).⁵

2. Each Party shall make best efforts to ratify or accede to the *Patent Cooperation Treaty* (1984) and the Protocol Relating to the *Madrid Agreement Concerning the International Registration of Marks* (1989).

3. Each Party shall accord to nationals of the other Party treatment no less favorable than it accords to its own nationals with regard to the protection⁶ and enjoyment of all intellectual property rights and any benefits derived therefrom, subject to the exceptions provided in this Article.

4. A Party may derogate from paragraph 3 in relation to its judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of the other Party, only where such derogations are necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement and where such practices are not applied in a manner that would constitute a disguised restriction on trade.

5. The obligations under paragraphs 3 and 4 do not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

⁴ Articles 1(4) and 6(2) of the WCT shall be excepted from this Agreement. Such exception shall be without prejudice to each Party’s respective rights and obligations under the WCT, the *Berne Convention for the Protection of Literary and Artistic Works* (1971) (“*Berne Convention*”) and the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (“TRIPS”).

⁵ Articles 5, 8(2), 12(2), and 15 of the WPPT shall be excepted from this Agreement. Such exception shall be without prejudice to each Party’s respective rights and obligations under the WPPT, the *Berne Convention* and TRIPS.

⁶ For purposes of paragraphs 3 and 4, “protection” shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as uses of intellectual property rights specifically covered by this Agreement.

Trademarks and Geographical Indications

6. Trademarks shall include service marks, collective marks and certification marks,⁷ and may include geographical indications.⁸

7. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs, including geographical indications, for goods or services which are related to those in respect of which the trademark is registered, where such use would result in a likelihood of confusion.

8. Article 6bis of the *Paris Convention for the Protection of Industrial Property* (1967) ("*Paris Convention*") shall apply, *mutatis mutandis*, to goods or services which are not similar to those identified by a well-known trademark, whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark and provided that the interests of the owner of the trademark are likely to be damaged by such use.

9. Neither Party shall require recordal of trademark licenses to establish the validity of the license or to assert any rights in a trademark.

Copyright and Related Rights

10. Each Party shall provide that all reproductions, whether temporary or permanent, shall be deemed reproductions and subject to the reproduction right as envisaged in the provisions embodied in *WCT* Article 1(4) and the *Agreed Statement* thereto, and *WPPT* Articles 7 and 11 and the *Agreed Statement* thereto.

11. Each Party shall provide to authors and their successors in interest, to performers and to producers of phonograms the exclusive right to authorize or prohibit the importation into each Party's territory of copies of works and phonograms, even where such copies were made with the authorization of the author, performer or producer of the phonogram or a successor in interest.

12. Each Party shall provide to performers and producers of phonograms the exclusive right to authorize or prohibit the broadcasting and communication to the public of their performances or phonograms, regardless of whether the broadcast or communication is effected by wired or wireless means, except that a Party may provide exemptions for analog transmissions and free over-the-air broadcasts, and may introduce statutory licenses for non-interactive services that, by virtue of their programming practices, including both the content of their transmissions and their use of technological measures to prevent unauthorized uses, are unlikely to conflict with a normal exploitation of phonograms or performances.

⁷ Neither Party is obligated to treat certification marks as a separate category in national law, provided that such marks are protected.

⁸ A geographical indication shall be considered a trademark to the extent that the geographical indication consists of any sign, or any combination of signs, capable of identifying a good or service as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good or service is essentially attributable to its geographical origin.

13. In applying the prohibition under Article 11 of the *WCT* and Article 18 of the *WPPT* on circumvention of effective technological measures that are used by authors, performers and producers of phonograms in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances and phonograms, each Party shall prohibit civilly and criminally the manufacture, importation or circulation of any technology, device, service or part thereof, that is designed, produced, performed or marketed for engaging in such prohibited conduct, or that has only a limited commercially significant purpose or use other than enabling or facilitating such conduct.⁹

14. Each Party shall provide that any natural person or legal entity acquiring or holding any economic rights by contract or otherwise, including contracts of employment involving protected subject matter, may freely and separately transfer such rights by contract and shall be able to exercise those rights in its own name and enjoy fully benefits of such rights.

15. Each Party shall issue appropriate laws, regulations, or other measures (“measures”) providing that all government agencies use only computer software authorized for intended use. Such measures shall actively regulate the acquisition and management of software for government use.

16. Each Party shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holders.

Patents

17. Subject to paragraph 18, patents shall be available for any invention, whether product or process, in all fields of technology, provided that it is new, involves an inventive step and is capable of industrial application.

18. Each Party may exclude from patentability:

(a) inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment provided that such exclusion is not made merely because the exploitation is prohibited by their law;

(b) diagnostic, therapeutic and surgical methods for the treatment of humans or animals.

19. If a Party permits the use by a third party of a subsisting patent to support an application for marketing approval of a product, the Party shall provide that any product produced under this authority shall not be made, used or sold in the territory of the Party other than for purposes related to meeting requirements for marketing approval, and if export is permitted, the product shall only be exported outside the territory of the Party for purposes of meeting requirements for marketing approval in the Party or in another country that permits the use by a third party of a subsisting patent to support an application for marketing approval of a product.

⁹ This provision does not require either Party to mandate that any consumer electronics, telecommunications or computing product not otherwise violating the prohibition be designed to affirmatively respond to any effective technological measure. Any violation of the prohibition shall be independent of any infringement of copyright or related rights.

20. Neither Party shall permit the use of the subject matter of a patent without the authorization of the right holder except in the following circumstances:

- (a) to remedy a practice determined after judicial or administrative process to be anti-competitive;
- (b) in cases of public non-commercial use or in the case of a national emergency or other circumstances of extreme urgency, provided that such use is limited to use by government entities or legal entities acting under the authority of a government; or
- (c) on the ground of failure to meet working requirements, provided that importation shall constitute working.

Where the law of a Party allows for such use pursuant to sub-paragraphs (a), (b) or (c), the Party shall respect the provisions of Article 31 of *TRIPS* and Article 5A(4) of the *Paris Convention*.

21. With regard to filing a patent application, when it is not possible to provide a sufficient written description of the invention to enable others skilled in the art to carry out the invention, each Party shall require a deposit with an “international depository authority,” as defined in the *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure* (1980).

Measures Related to Certain Regulated Products

22. Pursuant to Article 39.3 of *TRIPS*, each Party, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products that utilize new chemical entities,¹⁰ the submission of undisclosed test or other data, or evidence of approval in another country,¹¹ the origination of which involves a considerable effort, shall protect such information against unfair commercial use. In addition, each Party shall protect such information against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the information is protected against unfair commercial use.

23. With respect to pharmaceutical products that are subject to a patent:

- (a) each Party shall make available an extension of the patent term to compensate the patent owner for unreasonable curtailment of the patent term as a result of the marketing approval process.
- (b) the patent owner shall be notified of the identity of any third party requesting marketing approval effective during the term of the patent.

Enforcement of Intellectual Property Rights

¹⁰ It is understood that protection for “new chemical entities” shall also include protection for new uses for old chemical entities for a period of three years.

¹¹ It is understood that, in situations where there is reliance on evidence of approval in another country, Jordan shall at a minimum protect such information against unfair commercial use for the same period of time the other country is protecting such information against unfair commercial use.

24. Each Party shall provide that, at least in cases of knowing infringement of trademark, copyright and related rights, its judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered as a result of the infringement and any profits of the infringer that are attributable to the infringement that are not taken into account in computing such damages. Injury to the right holder shall be based upon the value of the infringed-upon item, according to the suggested retail price of the legitimate product, or other equivalent measures established by the right holder for valuing authorized goods.

25. Each Party shall ensure that its statutory maximum fines are sufficiently high to deter future acts of infringement with a policy of removing the monetary incentive to the infringer, and shall provide its judicial and other competent authorities the authority to order the seizure of all suspected pirated copyright and counterfeit trademark goods and related implements the predominant use of which has been in the commission of the offense, and documentary evidence.

26. Each Party shall provide, at least in cases of copyright piracy or trademark counterfeiting, that its authorities may initiate criminal actions and border measure actions *ex officio*, without the need for a formal complaint by a private party or right holder.

27. In civil cases involving copyright or related rights, each Party shall provide that the natural person or legal entity whose name is indicated as the author, producer, performer or publisher of the work, performance or phonogram in the usual manner shall, in the absence of proof to the contrary, be presumed to be the designated right holder in such work, performance or phonogram. It shall be presumed, in the absence of proof to the contrary, that the copyright or related right subsists in such subject matter. Such presumptions shall pertain in criminal cases until the defendant comes forward with credible evidence putting in issue the ownership or subsistence of the copyright or related right.

28. Each Party shall provide that copyright piracy involving significant willful infringements that have no direct or indirect motivation of financial gain shall be considered willful copyright piracy on a commercial scale.

Transition Periods

29. Each Party shall implement fully the obligations of this Article within the following time periods:

(a) With respect to all obligations in paragraphs 1(c), 1(d), and 10 through 16, two years from the date of entry into force of this Agreement. In addition, Jordan agrees to accede to and ratify the *WCT* and *WPPT* within two years from the date of entry into force of this Agreement.

(b) With respect to all obligations in paragraph 1(b), six months from the date of entry into force of this Agreement. In addition, Jordan agrees to ratify the *UPOV Convention* within one year from the date of entry into force of this Agreement.

(c) With respect to all obligations in paragraph 22, except the obligation in footnote 10, immediately from the date of entry into force of this Agreement.

(d) With respect to all obligations under this Article not referenced in subparagraphs (a), (b) and (c), three years from the date of entry into force of this Agreement.

ARTICLE 5: ENVIRONMENT

1. The Parties recognize that it is inappropriate to encourage trade by relaxing domestic environmental laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws as an encouragement for trade with the other Party.

2. Recognizing the right of each Party to establish its own levels of domestic environmental protection and environmental development policies and priorities, and to adopt or modify accordingly its environmental laws, each Party shall strive to ensure that its laws provide for high levels of environmental protection and shall strive to continue to improve those laws.

3. (a) A Party shall not fail to effectively enforce its environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.

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

4. For purposes of this Article, “environmental laws” mean any statutes or regulations of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human, animal, or plant life or health, through:

(a) the prevention, abatement or control of the release, discharge, or emission of pollutants or environmental contaminants;

(b) the control of environmentally hazardous or toxic chemicals, substances, materials and wastes, and the dissemination of information related thereto; or

(c) the protection or conservation of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas in the Party's territory,

but does not include any statutes or regulations, or provision thereof, directly related to worker safety or health.

ARTICLE 6: LABOR

1. The Parties reaffirm their obligations as members of the International Labor Organization (“ILO”) and their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. The Parties shall strive to ensure that such labor principles and the internationally recognized labor rights set forth in paragraph 6 are recognized and protected by domestic law.

2. The Parties recognize that it is inappropriate to encourage trade by relaxing domestic labor laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws as an encouragement for trade with the other Party.

3. Recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws and regulations, each Party shall strive to ensure that its laws provide for labor standards consistent with the internationally recognized labor rights set forth in paragraph 6 and shall strive to improve those standards in that light.
4.
 - (a) 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, after the date of entry into force of this Agreement.
 - (b) The Parties recognize that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor matters determined to have higher priorities. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a *bona fide* decision regarding the allocation of resources.
5. The Parties recognize that cooperation between them provides enhanced opportunities to improve labor standards. The Joint Committee established under Article 15 shall, during its regular sessions, consider any such opportunity identified by a Party.
6. For purposes of this Article, “labor laws” means statutes and regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights:
 - (a) the right of association;
 - (b) the right to organize and bargain collectively;
 - (c) a prohibition on the use of any form of forced or compulsory labor;
 - (d) a minimum age for the employment of children; and
 - (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

ARTICLE 7: ELECTRONIC COMMERCE

1. Recognizing the economic growth and opportunity provided by electronic commerce and the importance of avoiding barriers to its use and development, each Party shall seek to refrain from:
 - (a) deviating from its existing practice of not imposing customs duties on electronic transmissions;

(b) imposing unnecessary barriers on electronic transmissions, including digitized products; and

(c) impeding the supply through electronic means of services subject to a commitment under Article 3 of this Agreement, except as otherwise set forth in the Party's Services Schedule in Annex 3.1.

2. The Parties shall also make publicly available all relevant laws, regulations, and requirements affecting electronic commerce.
3. The Parties reaffirm the principles announced in the U.S.-Jordan Joint Statement on Electronic Commerce.

ARTICLE 8: VISA COMMITMENTS

1. Subject to its laws relating to the entry, sojourn and employment of aliens, each Party shall permit to enter and to remain in its territory nationals of the other Party solely to carry on substantial trade, including trade in services or trade in technology, principally between the Parties.
2. Subject to its laws relating to the entry, sojourn and employment of aliens, each Party shall permit to enter and to remain in its territory nationals of the other Party for the purpose of establishing, developing, administering or advising on the operation of an investment to which they, or a company of the other Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources.¹²

ARTICLE 9: GOVERNMENT PROCUREMENT

Pursuant to Jordan's July 12, 2000, application for accession to the WTO Agreement on Government Procurement, the Parties shall enter into negotiations with regard to Jordan's accession to that Agreement.

ARTICLE 10: SAFEGUARD MEASURES

1. If as a result of the reduction or elimination of a duty¹³ under this Agreement, an originating good of the other Party is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that the imports of such good from the other Party constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive product, such Party may:
 - (a) suspend the further reduction of any rate of duty provided for under this Agreement for the good; or

¹² Paragraphs 1 and 2 of this Article render nationals of Jordan eligible for treaty-trader (E-1) and treaty-investor (E-2) visas subject to the applicable provisions of U.S. laws and corresponding regulations governing entry, sojourn and employment of aliens. They also guarantee similar treatment for U.S. nationals seeking to enter Jordan's territory.

¹³ A determination that an originating good is being imported as a result of the reduction or elimination of a duty provided for in this Agreement shall be made only if such reduction or elimination is a cause which contributes significantly to the increase in imports, but need not be equal to or greater than any other cause. The passage of a period of time between the commencement or termination of such reduction or elimination and the increase in

imports shall not by itself preclude the determination referenced in this footnote. If the increase in imports is demonstrably unrelated to such reduction or elimination, the determination referenced in this footnote shall not be made

- (b) increase the rate of duty on the good to a level not to exceed the lesser of
 - (i) the most-favored-nation (MFN) applied rate of duty in effect at the time the measure is taken; and
 - (ii) the MFN applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement; or
- (c) in the case of a duty applied to a good on a seasonal basis, increase the rate of duty to a level not to exceed the lesser of the MFN applied rate of duty that was in effect on the good for the immediately preceding corresponding season or the date of entry into force of this Agreement.

2. The following conditions and limitations shall apply to a measure described in paragraph 1:

- (a) a Party shall take the measure only following an investigation by the competent authorities of such Party in accordance with Articles 3 and 4.2(c) of the WTO Agreement on Safeguards; and to this end, Articles 3 and 4.2(c) of the WTO Agreement on Safeguards are incorporated into and made a part of this Agreement, *mutatis mutandis*;
- (b) in the investigation described in subparagraph (a), a Party shall comply with the requirements of Article 4.2(a) of the WTO Agreement on Safeguards; and to this end, Article 4.2(a) is incorporated into and made a part of this Agreement, *mutatis mutandis*;
- (c) a Party shall notify the other Party upon initiation of an investigation described in subparagraph (a) and shall consult with the other Party prior to taking the measure; and, if a Party takes a provisional measure pursuant to paragraph 3, the Party shall also notify the other Party prior to taking such measure, and shall initiate consultations with the other Party immediately after such measure is taken;
- (d) no measure shall be maintained:
 - (i) except to the extent and for such time as may be necessary to prevent or remedy serious injury and to facilitate adjustment;
 - (ii) for a period exceeding four years; or
 - (iii) beyond the expiration of the transition period, except with the consent of the Party against whose originating good the measure is taken;
- (e) no measure may be applied against the same originating good on which a measure has previously been taken;
- (f) where the expected duration of the measure is over one year, the importing Party shall progressively liberalize it at regular intervals during the period of application; and
- (g) on termination of the measure, the rate of duty shall be the rate that, according to the Party's schedule in Annex 2.1 to this Agreement, would have been in effect one

year after initiation of the measure. Beginning on January 1 of the year following the termination of the action, the Party that has applied the measure shall:

- (i) apply the rate of duty set out in its schedule in Annex 2.1 to this Agreement as if the measure had never been applied; or
- (ii) eliminate the tariff in equal annual stages ending on the date corresponding to the staging category set out in its schedule in Annex 2.1 or its schedule to Annex 2.1.

3. In critical circumstances where delay would cause damage which it would be difficult to repair, a Party may take a measure described in paragraph 1(a), 1(b), or 1(c) on a provisional basis pursuant to a preliminary determination that there is clear evidence that imports from the other Party have increased as a result of the preferential treatment under this Agreement, and such imports constitute a substantial cause of serious injury, or threat thereof, to the domestic industry. The duration of such provisional measure shall not exceed 200 days, during which time the requirements of subparagraphs 2(a) and 2(b) shall be met. Any tariff increases shall be promptly refunded if the investigation described in subparagraph 2(a) does not result in a finding that the requirements of paragraph 1 are met. The duration of any provisional measure shall be counted as part of the period described in subparagraph 2(d).

4. The Party applying a measure described in paragraph 1 shall provide to the other Party mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the measure. If the Parties are unable to agree on compensation, the Party against whose originating good the measure is applied may take tariff action having trade effects substantially equivalent to the measure applied under this Article. The Party taking the tariff action shall apply the action only for the minimum period necessary to achieve the substantially equivalent effects. However, the right to take tariff action shall not be exercised for the first 24 months that the measure is in effect, provided that the measure has been applied as a result of an absolute increase in imports and that such a measure conforms to the provisions of this Article.

5. The Parties recognize that, because it has recently begun to produce a like or directly competitive product described in paragraph 1, an infant industry may face challenges that more mature industries do not encounter. Each Party shall ensure that the procedures described in paragraph 2 do not create obstacles to infant industries that seek the imposition of such measures.

6. At its regularly scheduled session for the year commencing 14 years after the date of entry into force of this Agreement, the Joint Committee shall conduct a review of the operation of this Article. Based on the results of this review and on the agreement of the Joint Committee, the transition period may be extended.

7. For purposes of this Article:

domestic industry means the producers as a whole of the like or directly competitive product operating in the territory of a Party, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products;

serious injury means a significant overall impairment of a domestic industry;

substantial cause means a cause which is important and not less than any other cause;

threat of serious injury means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent; and

transition period means the 15-year period beginning on January 1 of the year following entry into force of this Agreement, except if such period is extended in accordance with paragraph 6 of this Article.

8. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the WTO Agreement on Safeguards. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken pursuant to Article XIX and the Agreement on Safeguards, except that a Party taking a safeguard measure under Article XIX and the Agreement on Safeguards may exclude imports of an originating good from the other Party if such imports are not a substantial cause of serious injury or threat thereof.

ARTICLE 11: BALANCE OF PAYMENTS

Should either Party decide to impose measures for balance of payments purposes, it shall do so in accordance with the Party's obligations under the WTO Agreement. In adopting such measures, the Party shall strive not to impair the relative benefits accorded to the other Party under this Agreement.

ARTICLE 12: EXCEPTIONS

1. For purposes of Article 2 of this Agreement, Article XX of GATT 1994 and its interpretative notes are incorporated into and made a part of this Agreement. The Parties understand that the measures referred to in GATT 1994 Article XX(b) include environmental measures necessary to protect human, animal or plant life or health, and that GATT 1994 Article XX(g) applies to measures relating to conservation of living and non-living exhaustible natural resources.

2. Nothing in this Agreement shall be construed:

(a) to require any Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;

(b) to prevent any Party from taking any actions that it considers necessary for the protection of its essential security interests:

(i) relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment,

(ii) taken in time of war or other emergency in international relations, or

(iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or

(c) to prevent any Party from taking action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

3. Except as set out in this paragraph, nothing in this Agreement shall apply to taxation measures.

(a) Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

(b) Notwithstanding subparagraph (a), Article 2.3 and such other provisions of this Agreement as are necessary to give effect to Article 2.3 shall apply to taxation measures to the same extent as does Article III of the GATT 1994.

(c) Notwithstanding subparagraph (a), the national treatment commitment under Article 3.2 shall apply to taxation measures to the same extent as under the GATS, and the national treatment commitment under Article 3.2(b) shall apply to taxation measures to the same extent as if the Party had made an identical national treatment commitment under Article XVII of the GATS.

ARTICLE 13: ECONOMIC COOPERATION AND TECHNICAL ASSISTANCE

To realize the objectives of this Agreement and to contribute to the implementation of its provisions:

(a) the Parties declare their readiness to foster economic cooperation; and

(b) in view of Jordan's developing status, and the size of its economy and resources, the United States shall strive to furnish Jordan with economic technical assistance, as appropriate.

ARTICLE 14: RULES OF ORIGIN AND COOPERATION IN CUSTOMS ADMINISTRATION

1. The Parties recognize that the rules regarding eligibility for the preferential tariff treatment afforded by this Agreement, as set out in Article 2 and Annex 2.2, are crucial to the functioning of this Agreement, and each Party shall strive to administer such rules effectively, uniformly, and consistently with the object and purpose of this Agreement and the WTO Agreement.

2. The Parties shall consult as appropriate, through the Joint Committee or through the consultative mechanism established in Article 16:

- (a) to agree upon the means to cooperate and provide administrative assistance to achieve the commitments in paragraph 1; and
- (b) to address situations pertaining to claims of preferential treatment under this Agreement for imported goods that do not satisfy the requirements in Annex 2.2.

3. The Parties, within 180 days after the entry into force of this Agreement, shall enter into discussions with a view to developing interpretative and explanatory materials on the implementation of Annex 2.2.

ARTICLE 15: JOINT COMMITTEE

1. A Joint Committee is hereby established to supervise the proper implementation of this Agreement and to review the trade relationship between the Parties.

2. The functions of the Joint Committee shall include, *inter alia*:

- (a) reviewing the general functioning of this Agreement;
- (b) reviewing the results of this Agreement in light of the experience gained during its functioning and its objectives, and considering ways of improving trade relations between the Parties, and furthering the objectives of the Agreement, including through further cooperation and assistance;
- (c) facilitating the avoidance and settlement of disputes, including through consultations pursuant to Articles 17.1 (b) and 17.2 (a);
- (d) considering and adopting any amendment to this Agreement or modification to the commitments therein, provided that the adoption of such amendment or modification shall be subject to the domestic legal requirements of each Party;
- (e) developing guidelines, explanatory materials, and rules on the proper implementation of this Agreement, as necessary, and particularly: (i) guidelines and explanatory materials on the implementation of Annex 2.2, and (ii) rules for the selection and conduct of members of panels formed under Article 17, and model rules of procedure for such panels;
- (f) at its first meeting, discussing the review performed by each Party of the environmental effects of this Agreement.

3. Structure of the Joint Committee

- (a) The Joint Committee shall be composed of representatives of the Parties and shall be headed by (i) the United States Trade Representative and (ii) Jordan's Minister primarily responsible for international trade, or their designees.
- (b) The Joint Committee may establish and delegate responsibilities to ad hoc and standing committees or working groups, and seek the advice of non-governmental persons or groups.

4. The Joint Committee shall convene at least once a year in regular session in order to review the general functioning of the Agreement. Regular sessions of the Joint Committee shall be held alternately in each country. Special meetings of the Joint Committee shall also be convened within 30 days at the request of either Party and shall be held in the territory of the other Party, except as the Parties may otherwise agree. The Joint Committee shall establish its own rules of procedure. All decisions of the Joint Committee shall be taken by consensus.

5. Recognizing the importance of transparency and openness, the Parties reaffirm their respective practices of considering the views of interested members of the public in order to draw upon a broad range of perspectives in the implementation of this Agreement.

6. Each Party shall designate an office to serve as the contact point with regard to this Agreement. That office shall receive official correspondence related to this Agreement and provide administrative assistance to the Joint Committee and to dispute settlement panels established under Article 17.

ARTICLE 16: CONSULTATIONS

1. The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

2. Either Party may request consultations with the other Party with respect to any matter affecting the operation or interpretation of this Agreement. If a Party requests consultations with regard to a matter, the other Party shall afford adequate opportunity for consultations and shall reply promptly to the request for consultations and enter into consultations in good faith.

ARTICLE 17: DISPUTE SETTLEMENT

1. (a) The Parties shall make every attempt to arrive at a mutually agreeable resolution through consultations under Article 17, whenever

(i) a dispute arises concerning the interpretation of this Agreement;

(ii) a Party considers that the other Party has failed to carry out its obligations under this Agreement; or

(iii) a Party considers that measures taken by the other Party severely distort the balance of trade benefits accorded by this Agreement, or substantially undermine fundamental objectives of this Agreement.

(b) A Party seeking consultations pursuant to subparagraph (a) shall submit a request for consultations to the contact point provided for under Article 15.6. If the Parties fail to resolve a matter described in subparagraph (a) through consultations within 60 days of the submission of such request, either Party may refer the matter to the Joint Committee, which shall be convened and shall endeavor to resolve the dispute.

(c) If a matter referred to the Joint Committee has not been resolved within a period of 90 days after the dispute was referred to it, or within such other period as the Joint Committee has agreed, either Party may refer the matter to a dispute

settlement panel. Unless otherwise agreed by the Parties, the panel shall be composed of three members: each Party shall appoint one member, and the two appointees shall choose a third who will serve as the chairman.

(d) The panel shall, within 90 days after the third member is appointed, present to the Parties a report containing findings of fact and its determination as to whether either Party has failed to carry out its obligations under the Agreement or whether a

measure taken by either Party severely distorts the balance of trade benefits accorded by this Agreement or substantially undermines the fundamental objectives of this Agreement. Where the panel finds that a Party has failed to carry out its obligations under this Agreement, it may, at the request of the Parties, make recommendations for resolution of the dispute. The report of the panel shall be non-binding.

(e) (i) If the dispute settlement panel under this Agreement or any other applicable international dispute settlement mechanism under an agreement to which both Parties are Party has been invoked by either Party with respect to any matter, the mechanism invoked shall have exclusive jurisdiction over that matter.

(ii) If a mechanism described in subparagraph (e)(i) fails for procedural or jurisdictional reasons to make findings of law or fact, as necessary, on a claim included in a matter with respect to which a Party has invoked such mechanism, subparagraph (e)(i) shall not be construed to prevent the Party from invoking another mechanism with respect to such claim.

2. (a) After a dispute has been referred to a dispute settlement panel under this Agreement and the panel has presented its report, the Joint Committee shall endeavor to resolve the dispute, taking the report into account, as appropriate.

(b) If the Joint Committee does not resolve the dispute within a period of 30 days after the presentation of the panel report, the affected Party shall be entitled to take any appropriate and commensurate measure.

1. The Parties, within 180 days after the entry into force of this Agreement, shall enter into discussions with a view to developing rules for the selection and conduct of members of panels and Model Rules of Procedure for panels. The Joint Committee shall adopt such rules. Unless the Parties otherwise agree, a panel established under this Article shall conduct its proceedings in accordance with the Model Rules of Procedure.

4. (a) A Party may invoke a panel under paragraph 1(c) of this Article for claims arising under Article 3 only to the extent that a claim arises with regard to a commitment that is inscribed in the Party's Services Schedule to Annex 3.1 to this Agreement, but is not inscribed in the Party's schedule of specific commitments annexed to the GATS. Such commitment may include a market access or national treatment commitment in a sector, a horizontal commitment applicable to a sector, or additional commitment.

(b) Except as otherwise agreed by the Parties, a Party may invoke a panel under paragraph 1(c) of this Article for claims arising under Article 4 only to the extent that

the same claim would not be subject to resolution through the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes.

(c) If a dispute involves both a claim described in subparagraph (a) or (b) and another claim, subparagraph 1(e) shall not prevent a Party from invoking another international dispute settlement mechanism with regard to such other claim. Nothing in this subparagraph shall allow a Party to invoke the dispute settlement mechanism of both this Article and another international dispute settlement mechanism with regard to the same claim.

ARTICLE 18: MISCELLANEOUS PROVISIONS

1. Neither Party may provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.
2. For purposes of Articles 5 and 6, “statutes and regulations” means,
 - (a) with respect to Jordan, an act of the Jordanian Parliament, or by-law or regulation promulgated pursuant to an act of the Jordanian Parliament that is enforceable by action of the Government of Jordan; and
 - (b) with respect to the United States, an act of the United States Congress or regulation promulgated pursuant to an act of the U.S. Congress that is enforceable, in the first instance, by action of the federal government.
3. The Annexes and Schedules to this Agreement are an integral part thereof.
4. All references in this Agreement to GATT 1994 are to the GATT 1994 in effect on the date of entry into force of this Agreement.

ARTICLE 19: ENTRY INTO FORCE AND TERMINATION

1. The entry into force of this Agreement is subject to the completion of necessary domestic legal procedures by each Party.
2. This Agreement shall enter into force two months after the date on which the Parties exchange written notification that such procedures have been completed, or after such other period as the Parties may agree.
3. Either Party may terminate this Agreement by written notification to the other Party. This Agreement shall expire six months after the date of such notification.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done at Washington, in duplicate, in the English language, this twenty-fourth day of October, 2000, which corresponds to this twenty-sixty day of Rajab, 1421. An Arabic language text shall be prepared, which shall be considered equally authentic upon an exchange of diplomatic notes confirming its conformity with the English language text. In the event of a discrepancy, the English language text shall prevail.

FOR THE GOVERNMENT OF THE
THE UNITED STATES OF AMERICA:
OF JORDAN:

FOR THE GOVERNMENT OF
HASHEMITE KINGDOM

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