Trade Defense Actions in Arab Countries Free Trade Agreements with the U.S: The Case of Safeguards

Bashar H Malkawi

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I. Introduction

The U.S. has concluded trade agreements with selected Arab countries. First, the U.S. concluded an FTA with Jordan in 2001.[1] Then, the U.S. has launched a 10-year effort to form a US-Middle East free trade area.[2] The U.S. will employ a "building-block" approach.[3] This approach requires, as a first step, a Middle East country to accede to the WTO or concluding Trade and Investment Framework Agreement(s) (TIFA). Then, the U.S. will negotiate FTA with individual countries. Finally, a critical mass of bilateral FTAs would come together to form the broader US-Middle East FTA. To achieve this end, the U.S. successfully negotiated and signed FTA's with Bahrain (2006), Morocco (2006), and Oman (2009).[4]

The purpose of all these FTAs with Arab countries is, among other things, to liberalize trade and increase market access.[5] Mindful that requiring trade liberalization could result in damaging consequences among the participating countries that are at

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[1] See United States (U.S.)-Jordan: Agreement Between The United States of America and the Hashemite Kingdom of Jordan on The Establishment of a Free Trade Area, Oct. 24, 2000, 41 I. L. M. 63 (entered into force Dec. 17, 2001).

[2] See Grary G. Yerkey, President Bush Lays Out Broad Plan for Regional FTA with Middle East by 2013, 20 Intl. Trade Rep. (BNA) 856 (May 15, 2003).

[3] See Mike Allen & Karen DeYoung, Bush Calls Trade Key to Mideast; President Launches Plan for U.S. Pact in Region, Wash. Post A01 (May 10, 2003).

[4] See United States-Morocco Free Trade Agreement (2006), available at < http://www.moroccousafta.com/ftafulltext.htm >; United States-Bahrain Free Trade Agreement (2006), available at < http://www.fta.gov.bh/categoryList.asp?cType=Texts >; and United States-Oman Free Trade Agreement (2009), available at < http://www.omanusfta.com/documents.html >.

[5] See United States-Jordan Free Trade Agreement, available at <http://www.jordanusfta.com/free_trade_agreement_text_en.asp>; United States-Morocco Free Trade Agreement, preamble, available at < http://www.moroccousafta.com/pdf/00-preamble.pdf>; United States-Bahrain Free Trade Agreement , available at <http://www.fta.gov.bh/images/UploadFiles/00-preamble.pdf>; and States-Oman Free Trade Agreement, available at < http://www.omanusfta.com/documents/Preamble.pdf >.

different levels of economic development, the U.S.-Arab FTAs include exceptions. These FTAs permits countries to depart "temporarily" from their obligations of liberalizing trade and apply safeguard measures.

In the U.S.-Jordan, U.S.-Bahrain, U.S.-Morocco, and U.S.-Oman FTAs (collectively referred to U.S-Arab countries FTAs), safeguard provisions are identical in terms of conditions and procedures. Safeguard measures are protective measures used whenever unexpected increases in imports cause, or threaten to cause, serious injury to the domestic industry.[6] Safeguard measures allow FTA parties to escape from their obligations in order to give affected industries temporary relief from competition. In effect, this process enables affected industries to adjust to heightened import levels.

The only import relief mechanisms available under the U.S.-Arab countries FTAs are safeguard measures. These FTAs do not include provisions on antidumping and countervailing duties.[7] In other words, the US-Arab countries FTAs leave domestic antidumping and countervailing duty determinations untouched. Several reasons can be offered to explain the exclusion of antidumping and countervailing duties from coverage under U.S.-Arab countries FTAs. First, the inclusion of a safeguard

[6] See United States-Jordan Free Trade Agreement, art. 10.1; United States-Morocco Free Trade Agreement, art. 8.1; United States-Bahrain Free Trade Agreement, art. 8.1; and States-Oman Free Trade Agreement, art. 8.1, *supra* note 5.

[7] Countervailing duty and anti-dumping laws are tools for nullifying distortions in international trade. Dumping occurs when a manufacturer sells its merchandise at a lower price in one national market than another. In comparison, countervailing law seeks to eliminate the competitive advantage in international trade that manufacturers gain from illegal subsidization. See Garrett E. Lynam, Using WTO Countervailing Duty law to Combat Illegally Subsidized Chinese Enterprises Operating in a Non-market Economy: Deciphering the Writing on the Wall, 42 Case W. Res. J. Int'l L. 739, 744 (2010). U.S.-Arab Countries FTAs are not the only trade agreements that do not address antidumping and countervailing duties. See also Ryan Farha, A Right Unexercised is a Right Lost? Abolishing Antidumping in Regional Trade Agreements, 44 Geo. J. Int'l L. 211, 219-220 (2012) (United States-Chile Free Trade Agreement permits imposition of a safeguard measure. In the Canada-Chile Free Trade Agreement there are no provision governing countervailing duties but prohibiting antidumping and allowing safeguards under certain conditions. Some have argued that the language in GATT Article XXIV requiring parties within free trade areas to "eliminate duties and other regulations restricting trade" implicitly encompasses trade remedies and thus acts as a prohibition on their use in RTAs).

measures under the U.S.-Arab countries FTAs reflects the U.S. requirement that all trade agreements must have, at minimum, a provision for safeguard measures.[8] Second, use of antidumping and countervailing measures between the U.S. and these Arab countries has rarely been invoked prior to signing the FTAs and may not occur afterward and thus seems unneeded.[9] Third, when these FTAs reduce or eliminate tariffs and other trade barriers, dumping would be less likely to occur as competition becomes more practical.[10]

The present article consists of an analysis of the safeguard measures incorporated in the U.S.-Arab countries FTAs. Specifically, the article will outline the standards- injury and causation- used to apply safeguard measures. Furthermore, the article illustrates remedies available for domestic industries and duration of these remedies. The article also presents the issue of global safeguard measures and the exclusion of imports of parties in the FTAs from global safeguard actions. Finally, the article will address special safeguard measures for selected sectors namely textile and agriculture. The article concludes by arguing that the presence of safeguard measures in any FTA is necessary to facilitate the transition to a liberalized trade regime and accommodate the needs of domestic industries in the face of increased competition from other industries in trading partners. However, survey of U.S.-Arab countries FTAs demonstrates the great influence the U.S. exerted in articulating the safeguard provisions with no or little consideration of the needs of Arab countries and their domestic industries. A flexible safeguard regime should be adopted.

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[8] Following World War II, the U.S. president continued this policy by issuing an executive order requiring the presence of an escape clause in all future trade agreements. See Paul C. Rosenthal & Robin H. Gilbert, The 1988 Amendments to Section 201: It is not Just for Import Relief Anymore, 20 Law & Policy Intl. Bus. 403, 406 (1989).

[9] No Anti-dumping investigation or definitive anti-dumping measures were applied against Jordan, Morocco, or Oman. See P.K.M Tharakan, The Problem of Anti-Dumping Protection and Developing Country Exports, Working Paper No. 198, 35 (Sep. 2000).

[10] However, the existence of a free trade area or any type of regional trade arrangement does not imply that dumping has disappeared. See Terence P. Stewart & Timothy C. Brightbill, Trade Law and Competition Policy in Regional Trade Arrangements, 27 Law & Pol'y Int'l Bus. 937, 942 (1996).

Before indulging into the discussions, a point of order and style must be stated. Since the U.S.-Arab countries FTAs are treaties, the starting point for the analysis is to consult the relevant rules of the Vienna Convention on the Law of Treaties.[11] These FTAs should not be read in clinical isolation from other international sources such as WTO and its dispute settlement cases concerning the treatment of safeguard measures.[12] The terms of U.S.-Arab countries FTAs are interpreted in good faith and in accordance with the ordinary meaning given to such terms in light of their context, object, and purpose.[13] An interpreter of the U.S.-Arab countries FTAs should analyze the texts in honesty, fairness and reasonableness, adopting a literal or textual interpretation of the FTAs' words, and in light of the intentions of the FTAs' drafters.[14]

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[11] The terms "agreement" and "treaty" are used here in the manner defined and described in article 2 of the Vienna Convention on the Law of Treaties. See Vienna Convention on the Law of Treaties (May 23, 1969), 1155 U.N.T.S. 331.

[12] This approach is similar to that followed by the WTO panels and Appellate Body. The Appellate Body in the United States-Reformulated Gasoline case stated regarding article 3.2 of the DSU that "that direction reflects a measure of recognition that the General Agreement is not to be read in "clinical isolation" from public international law". See United States-Standards for Reformulated and Conventional Gasoline, Apr. 29, 1996, WTO Doc. No. WT/DS2/AB/R, at 17.

[13] The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
(a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;
(b) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context:
(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
(c) any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended. Moreover, article 32 is related to the supplementary means of interpretation. It states that recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:
(a) leaves the meaning ambiguous or obscure; or
(b) leads to a result which is manifestly absurd or unreasonable.
See Vienna Convention on the Law of Treaties, *supra* note 10, art. 31.

[14] An interpreter is not free to adopt a reading that would result in reducing whole clauses or paragraphs of a treaty to redundancy or inutility. See Appellate Body, Japan-Taxes on Alcoholic Beverages, WT/DS8/AB/R, at 12 (Oct. 4, 1996). The principle of effective interpretation will be followed, *effet utile*, by giving the terms their full meanings. Additionally, little attention will be paid to preparatory

II. Safeguard Measures in U.S.-Arab Countries FTAs

Three kinds of safeguard measures are incorporated in U.S.-Arab countries FTAs, including bilateral safeguards, global safeguards, and special safeguards.[15] Bilateral safeguards are implemented during the transition period, a period that provides parties of the FTAs certain time to remove or reduce the tariffs as they committed to in the agreements. However, once the transition period ends, bilateral safeguards have to be removed. Under global safeguard measures, FTA parties maintain their commitments regarding global safeguards under Article XIX of the GATT and the WTO Agreement on Safeguards.[16] However, each party can exclude the other party's exports from its proposed safeguard action if such imports do not cause serious injury or threat thereof.[17] Special safeguard measures shield politically sensitive products such as textile and agriculture from increase in imports or decline in price. Bilateral safeguards, global safeguards, and special safeguards will be analyzed consecutively.

A. Bilateral Safeguards

According to U.S.- Arab countries FTAs, parties can apply safeguard measures based on a bilateral basis. A country can escape its obligations of an FTA under certain conditions. Safeguard actions can be imposed on originating goods from an

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work or negotiating history of the FTA because of lack of records and the possibility of conflicting negotiating statements by parties. Moreover, where necessary, reference will be made to decisions of the WTO panels and Appellate Body especially that some articles of the U.S.-Arab countries FTAs refer directly to WTO agreements or indirectly to WTO panel and Appellate Body decisions.

[15] See U.S-Jordan Free Trade Agreement, *supra* note 1; United States-Morocco Free Trade Agreement, *supra* note 5; United States-Bahrain Free Trade Agreement, *supra* note 5; and United States-Oman Free Trade Agreement, *supra* note 5.

[16] See U.S-Jordan Free Trade Agreement, *supra* note 1, art. 10.8; United States-Morocco Free Trade Agreement, *supra* note 5, art. 8.6; United States-Bahrain Free Trade Agreement, *supra* note 5, art. 8.4; and United States-Oman Free Trade Agreement, *supra* note 5, art. 8.4.

[17] David A. Gantz, *GATT/WTO Rules Governing the Use of Safeguard Measures*, in INTERNATIONAL TRADE LAW AND THE WTO 281-283 (Indira Carr, Shawkat Alam, and Md Jahid Hossain Bhuiyan eds. 2013) (FTA parties thus may be excluded from any global safeguard measures otherwise imposed. NAFTA, as well as other free trade agreements, such as the United States has with Israel and Jordan provided for special treatment among FTA partners in the event that one of the parties imposes global safeguards).

FTA party that are imported in such quantities that cause or threaten to cause serious injury.

1. Conditions: Injury and Causation

To invoke safeguard measures, FTAs parties need to prove that products are imported into the country's territory in such increased quantities "as a result of tariffs reduction" and under such conditions as to cause or threaten serious injury to domestic producers of like or directly competitive products. The first requisite is the connection between increased imports and the FTAs' obligations.[18] In other words, increasing imports must be an important factor in bringing about, producing, or inducing' serious injury to the domestic industry. To determine whether increased imports are caused by FTAs' obligations, parties could compare the actual level of imports to the level of imports that would have existed if there were no reductions in tariffs. Under U.S.- Arab countries FTAs , a party must prove that increased imports are attributed to lowering trade barriers.

The increase in imports can be either absolute or relative to domestic production.[19] U.S.-Arab countries FTAs do not provide a definition for "absolute or relative" increase in imports. Relative increase in imports occurs when the import relative to domestic production has increased, even when there has been an overall decrease in volume of the import.[20] In addition, WTO panel decisions can help shed light on the meanings of "increase". According to panel decisions, increase in imports must be recent enough, sharp enough, and significant enough.[21] Thus, an FTA party

[18] See U.S-Jordan Free Trade Agreement, *supra* note 1, art. 10.1; United States-Morocco Free Trade Agreement, *supra* note 5, art. 8.1; United States-Bahrain Free Trade Agreement, *supra* note 5, art. 8.1; and United States-Oman Free Trade Agreement, *supra* note 5, art. 8.1.
[19] *Id*.
[20] See Bhagirath Lal Das, The World Trade Organisation: A Guide to the Framework for International Trade 74 (1999).
[21] See WTO Appellate Body Report, Argentina-Safeguard Measures on Imports of Footwear WT/DS121/AB/R (Dec. 14, 1999), para. 131. See also James Clifford Anderson, WTO Appellate Body Upholds U.S. Safeguard Measures on Imported Tires from China: Legal Implications and

cannot impose safeguard measures unless the increase in imports is recent and sufficient. An FTA party cannot depend on a sporadic increase in imports without regard to the overall level of increase. Indeed, temporary fluctuation of imports does not necessarily mean increase in imports.

According to U.S.-Arab countries FTAs, a safeguard measure can be imposed if "an originating product is being imported… in such increased quantities… and under such conditions that the imports … constitute a substantial cause…".[22] The phrase "and under such conditions" refers generally to the obligation imposed on the importing country to perform an adequate assessment of the conditions of competition between the imported products and like or directly competitive products in the importing country's market.[23] These conditions of competition can determine if increased imports cause or threaten to cause serious injury to the domestic industry.

The requisite of connection between tariff concession and increased imports is not the only condition to impose safeguard measures. Increased imports must constitute a "substantial cause" of serious injury or threat to a domestic industry.[24] The term "substantial cause" is defined as a cause that is important and not less than any other cause, a definition directly derived from U.S. trade remedy law.[25] Other factors that could cause injury include for example changes in technology or

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Ramifications to Subsequent Trade Disputes and to Other Trade Industries, 26 Pac. McGeorge Global Bus. & Dev. L.J. 187, 199 (2013) (The AB subsequently held that the term "increasing" required investigating authorities to evaluate import trends over a "sufficiently recent period," and to determine whether imports are significantly increasing within a short period of time).

[22] See U.S-Jordan Free Trade Agreement, *supra* note 1, art. 10.1; United States-Morocco Free Trade Agreement, *supra* note 5, art. 8.1; United States-Bahrain Free Trade Agreement, *supra* note 5, art. 8.1; and United States-Oman Free Trade Agreement, *supra* note 5, art. 8.1.

[23] WTO Appellate Body Report, Argentina-Safeguard Measures on Imports of Footwear, *supra* note 21, at para.8.250

[24] See U.S-Jordan Free Trade Agreement, *supra* note 1, art. 10.1; United States-Morocco Free Trade Agreement, *supra* note 5, art. 8.1; United States-Bahrain Free Trade Agreement, *supra* note 5, art. 8.1; and United States-Oman Free Trade Agreement, *supra* note 5, art. 8.1.

[25] Section 201 of the U.S. trade act of 1974 permits imports to be restricted, for a limited time, and on a non-discriminatory basis, if they are substantial cause of serious injury to U.S. firms or workers. See Peter Bernardi, The Great Escape, 7 D.C.L. J. Intl. L. & Prac. 69, 80 (1998).

consumer taste, domestic competition from substitute products, or unsound management.[26]

The U.S.-Arab countries FTAs do not set out precise rules or quantitative methodologies to determine when imports are substantial cause of injury. However, WTO jurisprudence provides some guidance by requiring in this case that all sources of injury be ranked and distinguished to gauge the effects caused by the different sources.[27] Then, a determination will be made whether increased imports constitute an important cause of serious injury and a cause that is greater than all other causes. For example, if imports cause seventy-five percent of injury to XYZ industry and twenty-five percent of injury is due to some other factors. Then imports are a substantial cause or the most important cause of injury.

In contrast, article 2 of the WTO Agreement on Safeguards allows a member to apply a safeguard measure to a product only if that member has determined that such product is being imported into its territory in such increased quantities as to "cause" or threaten to cause serious injury to domestic industry.[28] It is obvious the absence of "substantial cause" language from the text of the WTO Agreement on Safeguards. The WTO Agreement on Safeguards does not require that imports be the most important cause of injury. For example, under the WTO Agreement on Safeguards, if imports cause twenty percent of injury to XYZ industry and another factor-say change in consumer taste- cause eighty percent of injury. Then, imports-though they form only twenty percent of injury- constitutes a cause of injury and thus satisfies the

[26] See Taiju Kitano and Hiroshi Ohashi, Did US Safeguards Resuscitate Harley-Davidson in the 1980s? 79 Journal of International Economics 186, 193 (2009). See also Fabio Spadi, Discriminatory Safeguards in the Light of the Admission of the People's Republic of China to the World Trade Organization, 5 Journal of International Economic Law 421, 427-432 (2002).
[27] See Appellate Body Report, United States-Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities, WTO Doc. WT/DS166/AB/R, para.68 (Jan. 19, 2001).
[28] See Jorge Miranda, Causal Link and Non-attribution as Interpreted in WTO Trade Remedy Disputes, 44 Journal of World Trade 729, 734-736 (2010).

threshold set by the WTO Agreement on Safeguards. By adopting the substantial causation test, the U.S.-Arab countries FTAs provide a higher burden of proof than that contained in the WTO Agreement on Safeguards.

Under U.S.-Arab countries FTAs, safeguard measures can be applied if increased imports cause "serious injury" or "threat thereof" to the domestic industry. "Serious injury" is defined as a significant overall impairment in the position of a domestic industry.[29] Threat of serious injury is defined as serious injury that is clearly imminent.[30] Since the language of U.S.-Arab countries FTAs mirror U.S. trade remedy laws and these FTAs do not provide a list of the factors that must be evaluated to determine serious injury, referring to the U.S. Trade Act of 1974 is helpful. The U.S. Trade Act of 1974 sets forth several economic factors that FTA parties must consider in determining whether serious injury or threat thereof exists. In case of serious injury, factors include significant idling of productive facilities in the domestic industry, inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit, and significant unemployment or underemployment within the domestic industry.[31] In case of threat of serious injury, the factors include a decline in sales or market share, a higher and growing inventory and the extent to which firms in the domestic industry are unable to generate adequate capital to finance the modernization of their domestic plants.[32]

The overall position of the domestic industry can be evaluated in light of the economic factors mentioned above. Such an evaluation will be carried on a case-by-case basis which will differ from one industry to another. It is not necessary that the

[29] See U.S-Jordan Free Trade Agreement, *supra* note 1, art. 10.7; United States-Morocco Free Trade Agreement, *supra* note 5, art. 8.7; United States-Bahrain Free Trade Agreement, *supra* note 5, art. 8.5; and United States-Oman Free Trade Agreement, *supra* note 5, art. 8.5.
[30] *Id*.
[31] See U.S. Trade Act of 1974, Pub.L. 93-618, 88 Stat. 1978, 19 U.S.C, section 202.C(1) (Jan. 3, 1975).
[32] *Id*.

outcome of evaluation for each factor must be in the negative.[33] In other words, some factors may not be declining but nevertheless the overall status shows that there is a significant impairment.

A threat of serious injury must be based on facts and not on allegation, conjecture, or remote possibility.[34] Thus, to determine that there is a threat any evaluation must be based on data and facts not on allegation or conjecture or remote possibility. Threat of serious injury must be imminent.[35] In other words, an injury is about to happen in the near future.

The standard of "serious injury" is very high. Indeed, the standard of "serious injury" in safeguard actions is higher than the standard of "material injury" in anti-dumping or countervailing duty actions.[36] The word "serious" connotes a much higher standard of injury than the word "material". Moreover, based on the purpose and objective of safeguard actions the injury standard should be higher because a safeguard action does not depend on unfair practice as the case of dumping or subsidies.[37] Thus, Arab countries who contemplate using safeguard measures provided in their FTAs with the U.S. should be mindful of the high standard for injury determination in these FTAs.

A safeguard measure can be imposed on an imported product if that product has an effect on the domestic industry that produces "like or directly competitive

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[33] *Id*. section 202.c(3).
[34] See U.S-Jordan Free Trade Agreement, *supra* note 1, art. 10.1; United States-Morocco Free Trade Agreement, *supra* note 5, art. 8.1; United States-Bahrain Free Trade Agreement, *supra* note 5, art. 8.1; and United States-Oman Free Trade Agreement, *supra* note 5, art. 8.1.
[35] *Id*.
[36] See Appellate Body Report, United States-Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia, WTO Doc. WT/DS177/AB/R, para. 124 (May 16, 2001).
[37] *Id*.

products".[38] Again the FTAs do not provide a definition of "like or directly competitive products". The words "like" and "directly competitive" should not be regarded as the same but rather to differentiate between "like" articles and articles which, although not "like" are nevertheless "directly competitive".[39] Decisions on what constitutes like product are made on a case-by-case basis after applying a variety of criteria that GATT/WTO panels have found to be relevant, including product characteristics, consumer tastes and habits, and product end-uses in a particular market.[40] Directly competitive products are those which-although not substantially identical in their inherent or intrinsic characteristics- are substantially equivalent for commercial purposes i.e. are adapted to the same uses and are essentially exchangeable.

In general, "like product" has a broader interpretation when it is used in WTO basic obligations, such as the Most-Favored-Nation treatment (MFN), and a narrower interpretation in WTO exceptions, such as anti-dumping and countervailing duties.[41] The same goes for safeguard measures under U.S.-Arab countries FTAs. In other words, "like product" would be interpreted narrowly in these FTAs. However, the use of "directly competitive products" expands the range of products that can be included. The use of "directly competitive products" allows certain physically dissimilar products to be included provided that there is sufficient market competition between them. For example, raw orange and orange juice can be directly competitive products despite physical dissimilarities between them. There is an overlap between the end

[38] See U.S-Jordan Free Trade Agreement, *supra* note 1, art. 10.1; United States-Morocco Free Trade Agreement, *supra* note 5, art. 8.1; United States-Bahrain Free Trade Agreement, *supra* note 5, art. 8.1; and United States-Oman Free Trade Agreement, *supra* note 5, art. 8.1.
[39] See Appellate Body Report on Japan-Taxes on Alcoholic Beverages, WTO Doc. WT/DS8/AB/R, para. 21 (Nov. 1, 1996).
[40] See Rex J. Zedalis, A Theory of the GATT "Like Product" Common Language Cases, 27 Vand. J. Transnatl. L. 33, 45-51 (1994) (The GATT includes seventeen provisions using the words like product, like commodity, and like merchandise).
[41] *Id*. at 78-83.

use of raw orange and orange juice that may justify their treatment as directly competitive products.

2. Procedural Issues

U.S.-Arab countries FTAs provide for steps to be taken prior to imposing safeguard measures. An FTA party must deliver a notice to the other party upon initiating an investigatory process relating to serious injury or threat, making a finding of serious injury, and making a decision to apply such a measure.[42] Adequate opportunity for prior consultations should be provided.[43] Notification and consultations with the FTA partner may facilitate an amicable solution thereby de facto reducing the application of trade remedies.[44]

Also, an FTA party can apply safeguard measures only after an investigation has been carried out by the competent authorities of that party in accordance with the same procedures as those provided for in article 3 and article 4.c of the WTO Safeguard Agreement.[45] In applying safeguard measures, the competent authority in a FTA party must consider all the relevant factors in an objective and quantifiable manner relating to imports and the domestic industry.[46]

Obviously, U.S.-Arab countries FTAs do not contain comprehensive provisions on domestic investigations and procedures for applying safeguard measures. Rather, these FTAs refer to several articles of the WTO Agreement on Safeguard where the

[42] See U.S-Jordan Free Trade Agreement, *supra* note 1, art. 10.2(c); United States-Morocco Free Trade Agreement, *supra* note 5, art. 8.2(1); United States-Bahrain Free Trade Agreement, *supra* note 5, art. 8.2(1); and United States-Oman Free Trade Agreement, *supra* note 5, art. 8.2(1).
[43] *Id*.
[44] See Jo-Ann Crawford, Jo McKeagg, and Julia Tolstova, Mapping of Safeguard Provisions in Regional Trade Agreements, WTO Staff Working Paper ERSD-2013-10, 24 (2013) (others disagrees, arguing that although these additional procedural hurdles may encourage RTA partners to reach a mutually agreed solution rather than imposing trade remedies, these are fairly soft obligations that do not assure that result).
[45] See U.S-Jordan Free Trade Agreement, *supra* note 1, art. 10.2(a); United States-Morocco Free Trade Agreement, *supra* note 5, art. 8.2(2); United States-Bahrain Free Trade Agreement, *supra* note 5, art. 8.2(2); and United States-Oman Free Trade Agreement, *supra* note 5, art. 8.2(2).
[46] *Id*.

latter include detailed language regarding initiation and application of safeguard measures.[47] Parties to the U.S.-Arab countries FTAs adopted this approach because they may be satisfied with the settled rules of the WTO Agreement on Safeguard thus eliminating the need of re-inventing new and untested procedures.

3. Remedies

As a remedy to affected domestic industries, FTAs parties can either suspend the tariff reduction or increase the tariff from the preferential rate to the previous MFN level.[48] While available remedies are limited to suspension of tariff reduction or increase in tariffs, the WTO Agreement on Safeguards remedies include the possibility of imposing quantitative restrictions i.e. quotas.[49] There is no obvious reason why the FTAs' parties excluded quantitative restrictions from the list of available remedies. One anticipates that the parties wished to promote free trade among the parties even if some industries are negatively affected by increasing tariffs or suspending further tariff reductions which would still allow market access for imports albeit at higher prices. If quantitative restrictions where to be employed as a remedy they would limit and reduce the quantity of imports. So, the FTAs' parties chose suspension of or increasing tariffs as the most suitable remedies in light of the objectives of these FTAs.

Similar to the WTO Agreement on Safeguards, U.S.-Arab countries FTAs mandates that safeguard measures can only be applied to the extent necessary to

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[47] For example, the WTO Agreement on Safeguards include provisions concerning reasonable public notice, public hearing, and publication of a report that sets forth the findings and reasoned conclusions reached on all pertinent issues of facts and laws. See Yong-Shik Lee, Safeguard Measures in World Trade: The Legal Analysis 83-92 (2nd ed. 2005). For more on the jurisprudence of WTO panels and Appellate Body regarding issues such as "adequate opportunity for prior consultation" and "notification" see WTO Analytical Index: Guide to WTO Law and Practice, Vol.2, 1068-1078 (2003).
[48] See U.S-Jordan Free Trade Agreement, *supra* note 1, art. 10.1(a)(b); United States-Morocco Free Trade Agreement, *supra* note 5, art. 8.1(a)(b); United States-Bahrain Free Trade Agreement, *supra* note 5, art. 8.1(a)(b); and United States-Oman Free Trade Agreement, *supra* note 5, art. 8.1(a)(b).
[49] See Yong-Shik Lee, The WTO Agreement on Safeguards: Improvement of the GATT Article XIX, 14 International Trade Journal 283, 291 (2000).

prevent or remedy serious injury and facilitate adjustment.[50] Thus, these FTAs impose an obligation on parties to ensure that the safeguard measure applied is commensurate with the goal of remedying serious injury and facilitating adjustment for the domestic industry. In accomplishing this goal, the domestic industry will have to submit an adjustment plan which will be examined and evaluated by the competent national authorities.

4. Duration

During the FTAs' transition periods, safeguard measures can be applied for period not exceeding three years in U.S.-Oman and U.S.-Bahrain FTAs or three years plus two in U.S.-Morocco FTA or four years in U.S.-Jordan FTA.[51] The transitional periods differ from one FTA to another. For example, the transition period in the U.S.-Jordan FTA ended in 2010 when the free trade area was accomplished. At present, no bilateral safeguards can be undertaken between the U.S. and Jordan. However, with the exception of U.S.-Morocco FTA, other U.S.-Arab countries FTAs allow safeguard measures after the expiry of the transition periods but only with the approval of the other party.[52] The contingency of applying safeguard measures on the consent of the other party is maintained for a reason. When safeguard measures are used beyond the transition period(s), the efficiencies achieved by these FTAs and the commitments for economic integration would be jeopardized. Therefore, consent of the other party becomes important to impose safeguard measures.

[50] See U.S-Jordan Free Trade Agreement, *supra* note 1, art. 10.2(d); United States-Morocco Free Trade Agreement, *supra* note 5, art. 8.2(4); United States-Bahrain Free Trade Agreement, *supra* note 5, art. 8.2(4); and United States-Oman Free Trade Agreement, *supra* note 5, art. 8.2(4).
[51] See U.S-Jordan Free Trade Agreement, *supra* note 1, art. 10.2(d); United States-Morocco Free Trade Agreement, *supra* note 5, art. 8.2(4); United States-Bahrain Free Trade Agreement, *supra* note 5, art. 8.2(4); and United States-Oman Free Trade Agreement, *supra* note 5, art. 8.2(4).
[52] *Id*.

When safeguard measures are imposed for a period over one year, there must be progressive phase-out of the imposed safeguard measures.[53] Regarding the repeated imposition of safeguard measures on the same products, U.S.-Arab countries FTAs make it mandatory not to impose a safeguard measure on the same product twice.[54]

While bilateral safeguard measures can be invoked for a limited period of time, global safeguard measures can be applied at any time, not only during the transition period, as long as the requirements for the application of the safeguard measures are met. The provisions for global safeguard measures do not contain a specific time limit in the same way as the provision for bilateral safeguards. Further, anti-dumping and countervailing duties can last for longer periods although they can be re-evaluated every five years. For this reason, in part, countries prefer to apply anti-dumping or countervailing duties and indeed using safeguard has fallen into disuse.[55]

The U.S.-Arab countries FTAs do not include provisions especially addressing the status of Arab countries as developing countries.[56] Developing country status brings certain rights.[57] For instance, the U.S. could have provided flexibility by allowing Arab countries to apply safeguard measures for longer periods. Arab countries can receive technical assistance. Moreover, the U.S. in its FTAs with

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[53] See U.S-Jordan Free Trade Agreement, *supra* note 1, art. 10.2(f); United States-Morocco Free Trade Agreement, *supra* note 5, art. 8.2(6); United States-Bahrain Free Trade Agreement, *supra* note 5, art. 8.2(6); and United States-Oman Free Trade Agreement, *supra* note 5, art. 8.2(6).

[54] See U.S-Jordan Free Trade Agreement, *supra* note 1, art. 10.2(e); United States-Morocco Free Trade Agreement, *supra* note 5, art. 8.2(5); United States-Bahrain Free Trade Agreement, *supra* note 5, art. 8.2(5); and United States-Oman Free Trade Agreement, *supra* note 5, art. 8.2(5).

[55] See Chad P. Bown, Why Are Safeguard Measures under the WTO So Unpopular? 1 World Trade Review 47, 53-55 (2002). See also Christopher F. Corr, Trade Protection in the New Millennium: The Ascendancy of Antidumping Measures, 18 NW. J. INT'L L. & BUS. 49, 53-54 (1997).

[56] There are no WTO definitions of "developed" and "developing" countries. Members announce for themselves whether they are "developed" or "developing" countries. However, other members can challenge the decision of a member to make use of provisions available to developing countries. See World Trade Organization, Development: Definition, available at < http://www.wto.org/english/tratop_e/devel_e/d1who_e.htm> (last visited Jan. 2, 2014).

[57] The principle of equality of treatment among countries is inappropriate when countries are not economic equals. Within the multilateral trading system, the concept of special and differential (S&D) treatment found its way into the permanent legal structure of GATT. See Kevin C. Kennedy, The Generalized System of Preferences After Four Decades: Conditionality and the Shrinking Margin of Preferences, 20 Mich. St. J. Int'l L. 521, 533 (2012).

Morocco, Bahrain, and Oman could have followed the model of the U.S.-Jordan FTA by including infant industry provisions. The U.S.-Jordan FTA, after recognizing that an infant industry may face challenges that more mature industries do not encounter, requires each party to ensure that procedures for safeguard investigations do not create obstacles to infant industries that seek the imposition of safeguard measures.[58] An infant industry is defined, in the U.S.-Jordan FTA, as an industry that has recently begun to produce like or directly competitive product.[59] The infant industry provisions aim at giving such industry for example more time to respond for a request for a public hearing, present its evidence, or provide a counter-argument against an exporter or importer. Based on the infant industry provisions in the U.S.-Jordan FTA, the infant industry will not be guaranteed a positive determination by imposing a safeguard measure.

5. Compensation

All U.S. FTAs with Arab countries make provisions for compensation and retaliation. Any FTA party that might be affected by the safeguard measure is to be offered compensation in the form of substantially equivalent trade liberalization or equivalent to the value of the imposed safeguard measure.[60] If such compensation is not mutually agreed upon, the party against whose product the measure is taken may resort to compensatory action, which consists of suspension of concessions or tariff increase.[61] U.S-Arab countries FTAs do not require a waiting period before concessions can be suspended if no mutually agreed compensation is in place. The exception is U.S.-Jordan FTA which stipulates that the right of suspension may not be

[58] See United States.-Jordan FTA, *supra* note 1, art.10.5.
[59] *Id*.
[60] See U.S-Jordan Free Trade Agreement, *supra* note 1, art. 10.4; United States-Morocco Free Trade Agreement, *supra* note 5, art. 8.5; United States-Bahrain Free Trade Agreement, *supra* note 5, art. 8.3; and United States-Oman Free Trade Agreement, *supra* note 5, art. 8.3.
[61] *Id*.

exercised during the first 24 months, if the safeguard measure was taken as a result of an absolute increase in imports.

The issue of compensation and retaliatory action conforms to what is required under the WTO Agreement on Safeguards. In reality, requiring compensation when safeguard measures are applied makes it thorny issue. On the one hand, the importing country can impose safeguard measures but on the other hand it will have to provide compensation or concession.

B. Global Safeguard Measures

In terms of applying global safeguard measures, U.S.-Arab countries FTAs can be divided into two types. First, the U.S.-Morocco, U.S.-Bahrain, and U.S.-Oman FTAs allow members to invoke safeguard measures irrespective of bilateral trade or trade with non-FTA members.[62] Second, the U.S.-Jordan FTA is the only FTA that allows in principle the application of global safeguard measures irrespective of sources of injury but can exclude imports of parties in the FTA from global safeguard measures when certain conditions are met.[63] Imports from one party can be excluded if such imports do not constitute "a substantial cause" of serious injury or threat thereof.[64] In this case, safeguard measures cannot be applied to exports of the other FTA party. The U.S-Jordan FTA does not provide for a numerical definition of "substantial cause" of serious injury i.e. if party's imports account say for less than six percent of the total volume of imports of that good.

The MFN doctrine is one of the cornerstones of the WTO system. According to the MFN doctrine, any concession agreed between two parties will extend automatically and unconditionally to a third contracting party without the latter's

[62] See United States-Morocco Free Trade Agreement, *supra* note 5, art. 8.6; United States-Bahrain Free Trade Agreement, *supra* note 5, art. 8.4; and United States-Oman Free Trade Agreement, *supra* note 5, art. 8.4.
[63] See U.S-Jordan Free Trade Agreement, *supra* note 1, art. 10.8.
[64] *Id*.

adherence to any obligation.[65] In the context of safeguard law, the MFN doctrine means that safeguard measures would have to apply to all countries without exception(s). However, the U.S.-Jordan FTA excludes imports of parties in the FTA from global safeguard measures. Non-application of safeguard measures for bilateral trade between the U.S. and Jordan was brought to the attention of WTO dispute settlement panel. In that case, the WTO panel faulted the U.S. for unfairly including imports from free trade partners-such as Jordan- in its safeguard investigation while excluding their products from the final safeguard measure.[66] In other words, the WTO panel prohibits an asymmetry between the safeguard investigation and the application of its resulting safeguard measure.

The issue of asymmetry between safeguard investigation and safeguard application has been litigated several times at the WTO panels in the Argentina-Footwear case, the U.S.-Wheat Gluten case, the U.S.-Lamb case, and the U.S. Line Pipe case.[67] In all those cases, it was concluded that non-application was inconsistent with the WTO rules.[68] The WTO Appellate Body decided that if a FTA partner relied on imports from all sources as the basis for the serious injury finding, then that FTA partner is obligated to apply the safeguard measures to imports from all sources.[69] However, WTO panels have avoided making any determination that directly affects the legality of the treatment of non-application of safeguard measure for bilateral trade among FTA parties.

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[65] See Edward A. Laing, Equal Access/Non-Discrimination and Legitimate Discrimination in International Economic Law, 14 Wis. Int'l L.J. 246 (1996). See also Julia Ya Qin, Defining Non-Discrimination under the Law of the World Trade Organization, 23 B.U. Int'l L.J. 215, 222 (2005).
[66] See Daniel Pruzin and Rossella Brevetti, WTO Panel Issues Final Ruling Condemning U.S. steel Safeguard, 20 Int'l Trade Rep. (BNA) 812 (May 8, 2003) (A World Trade Organization panel issued a final ruling May 2 striking down President Bush's March 2002 proclamation slapping additional tariffs on imports of 10 categories of steel products for a three-year period).
[67] See Joost Pauwelyn, The Puzzle of WTO Safeguards and Regional Trade Agreements, 7 Journal of International Economic Law 109, 119-121 (2004).
[68] *Id*.
[69] This line of argument has come to be known as "parallelism". See David A. Gantz, GATT/WTO Rules Governing the Use of Safeguard Measures, *supra* note 17, at 284-285.

Perhaps, as a result of WTO panel decisions, the U.S. opted not to incorporate in its FTAs with other Arab countries global safeguard provisions similar to those in its FTA with Jordan. Thus, global safeguards in the U.S. FTAs with Morocco, Bahrain and Oman apply on a MFN basis, i.e. both to the FTA parties and other WTO members without discrimination. In its FTAs, the U.S. reasoned that to include discriminatory global safeguards it would compromise its relations with the WTO and would be ultimately disputed before WTO panels.

C. Special Safeguard Actions

Special safeguard measures are designed to protect selected products-such as textile and agriculture- from an increase in imports or decline in price.[70] It is noted that special safeguard measures can be triggered based on volume or price. The U.S.-Jordan FTA is the only FTA that does not include special safeguard measures for either textile or agriculture. Thus, safeguard measures apply to "all products" without specification. On the other hand, U.S.-Bahrain and U.S.-Oman FTAs include safeguard measures for textile while the U.S.-Morocco FTA includes safeguard measures for both textile and agriculture.[71] In its FTAs with Arab countries, the U.S. decided to include or exclude special safeguard measures after assessing whether potential exports from these countries could threaten sensitive sectors in the U.S. or not.

[70] See Terence P. Stewart, Patrick J. McDonough, and Marta M. Prado, Opportunities in the WTO for Increased Liberalization of Goods: Making Sure the Rules Work for all and that Special Needs are Addressed, 24 Fordham Int'l L.J. 652, 704 (2000). See Sung Jake Kim, Kenneth A. Reinert, and G. Chris Rodrigo, The Agreement on Textiles and Clothing: Safeguard Actions from 1995–2001, 5 Journal of International Economic Law 445, 456 (2002). See also J. Michael Finger, A Special Safeguard Mechanism for Agricultural Imports: What Experience with Other GATT/WTO Safeguards Tells us about what Might Work, 9 World Trade Review, 289, 293-296 (2010).

[71] See United States-Morocco Free Trade Agreement, *supra* note 5, arts. 3.5 and 4.2; United States-Bahrain Free Trade Agreement, *supra* note 5, art. 3.1; and United States-Oman Free Trade Agreement, *supra* note 5, art. 3.1.

1. Textile Products

The texts of the U.S.-Morocco, U.S.-Bahrain, and U.S.-Oman FTAs are identical when referring to safeguard measures for textile products. Special safeguard measures are linked to volume. In other words, special safeguards can be imposed if there is an increase in imports.[72] If there is an increase in the volume of imports, the FTA party may increase the rate of tariffs applicable to the product through the application of the tariff for such product at the current MFN rate or the base rate whichever is lower.[73] These FTAs, similar to bilateral safeguards, require an investigation by the competent authority before a safeguard measure can be imposed.[74] Also, these FTAs mandate an advance written notice to the exporting country whenever a safeguard measure is taken with the possibility of entering into consultations at the request of one of the parties.[75] Any FTA party invoking special safeguard measures must compensate the other party in form of concessions.[76] If compensation is impossible, then the affected FTA party can retaliate.[77]

Special safeguard measures for textile products differ from bilateral safeguards in two aspects. First, the cause and injury requirements are lower than bilateral safeguards. For example, to invoke special safeguards, increased imports should

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[72] *Id*.
[73] See United States-Morocco Free Trade Agreement, *supra* note 5, art. 4.2(1); United States-Bahrain Free Trade Agreement, *supra* note 5, art. 3.1(1); and United States-Oman Free Trade Agreement, *supra* note 5, art. 3.1(1).
[74] See United States-Morocco Free Trade Agreement, *supra* note 5, art. 4.2(3); United States-Bahrain Free Trade Agreement, *supra* note 5, art. 3.1(3); and United States-Oman Free Trade Agreement, *supra* note 5, art. 3.1(3).
[75] See United States-Morocco Free Trade Agreement, *supra* note 5, art. 4.2(4); United States-Bahrain Free Trade Agreement, *supra* note 5, art. 3.1(4); and United States-Oman Free Trade Agreement, *supra* note 5, art. 3.1(4).
[76] Concessions must have substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the safeguard measure. Such concessions must be limited to textile and apparel goods, unless the FTA parties otherwise agree. See United States-Morocco Free Trade Agreement, *supra* note 5, art. 4.2(6); United States-Bahrain Free Trade Agreement, *supra* note 5, art. 3.1(6); and United States-Oman Free Trade Agreement, *supra* note 5, art. 3.1(6).
[77] *Id*.

cause-not substantial cause- serious injury to the domestic industry.[78] Second, regarding duration, U.S. FTAs with Morocco, Bahrain, and Oman allow special safeguard measures ten years after tariffs have been eliminated on the product(s) in question.[79] In contrast, bilateral safeguard measures are applied during the transition period only. Moreover, special safeguards for textile products differ from global safeguards. While the former apply to textile products from FTA parties only the latter apply to all countries whether FTA parties or not.

2. Agricultural Products

The U.S.-Morocco FTA includes special safeguard measures for agricultural products deemed sensitive. The FTA contains a list of such sensitive products.[80] The FTA also includes procedural rules such as consultation, cooperation and evaluation of the operation the special safeguards for agricultural products.[81] The additional tariff and any other customs duty must not exceed the least of the prevailing MFN rate or the rate applied on the day preceding the entry date of the FTA.[82]

Detailed rules are provided for applying special safeguards for agricultural products. For the U.S., it can invoke safeguard measures on thirty-five agricultural products.[83] The U.S. can invoke special safeguard actions based on price. Additional tariffs can be imposed if the unit import price of the product in question is below the trigger price.[84] The additional tariffs are imposed based on the difference between the

[78] See United States-Morocco Free Trade Agreement, *supra* note 5, art. 4.2(1); United States-Bahrain Free Trade Agreement, *supra* note 5, art. 3.1(1); and United States-Oman Free Trade Agreement, *supra* note 5, art. 3.1(1).
[79] See United States-Morocco Free Trade Agreement, *supra* note 5, art. 4.2(5); United States-Bahrain Free Trade Agreement, *supra* note 5, art. 3.1(5); and United States-Oman Free Trade Agreement, *supra* note 5, art. 3.1(5).
[80] See United States-Morocco Free Trade Agreement, *supra* note 5, Annex 3-A.
[81] For example, the special safeguards must be applied in a transparent manner with written notification taking place within 60 days of implementation and consultations on request. *Id*. art. 3.5 (5) & (6).
[82] Id. art. 5.3(1).
[83] *Id*. Annex 3-A, Table A, U.S. Agricultural Safeguard List.
[84] *Id*. Annex 3-1(1), Schedule of the United States.

import price and trigger price.[85] The additional tariffs are then percentages between the MFN rate and the preferential rate as set out in the U.S. tariff schedule. The unit import price is assessed on the basis of Free on Board (FOB) import price of the product in U.S. dollars.[86]

For Morocco, it can impose safeguard measures based on quantity. If volume of imports exceeds the trigger levels then special safeguards can be applied.[87] Morocco can invoke special safeguards on six agricultural products.[88] The additional tariffs than can be applied are set out in Morocco's schedule per good per HS subheading in the FTA's annex and declines over the implementation period.

There are several differences between textile safeguards and agricultural safeguards. For instance, in imposing textile safeguards, the domestic industry must suffer "serious injury or threat thereof". There is not such "serious injury or threat thereof "criterion when applying agricultural safeguards. When agricultural imports exceed certain level then safeguard measures can be invoked. The agricultural safeguards allow for invoking these measures based on the price falling below certain level while textile safeguards are based on import volume. Additionally, in textile safeguards, the FTAs do not refer to "additional duty and any other custom duty" but rather to "the rate of duty". The U.S.-Morocco FTA refers to "additional duty and any other custom duty' when addressing agricultural safeguards."Other custom duty" includes import surcharges, variable import levies, and customs processing fees.[89] Further, the textile safeguards apply to all textile products while agricultural safeguards apply to selected products. Within agricultural safeguards, the U.S. covers more products than Morocco. Lastly, textile safeguards apply ten years after tariffs have been eliminated on the product(s) in question. Agricultural

[85] *Id*. Annex 3-1 (2).
[86] *Id*. Annex 3-A (1) (a).
[87] *Id*. Annex 3-A, Table B1-6, Safeguard Volume Triggers.
[88] *Id*.
[89] See World Trade Organization, Guide to GATT Law and Practice, Vol. 1, 28-29, 270 (1995).

safeguards can exceed the FTA implementation period up to twenty-five years for certain products.

Conclusion

Safeguard measures aim at protecting some industries that initially cannot offer competitive prices and quality as competing imports but nonetheless by giving them breathing room can develop over time into competitive price and quality industries. Safeguard measures are temporary in nature intended not to last forever.

The U.S.-Arab countries FTAs include three kinds of safeguard measures- bilateral, global, and special safeguards. These safeguards look alike in certain aspects while differ in other aspects. For example, bilateral, global and special safeguards are similar in terms of procedural rules such as written notice, consultation, and compensation. There are also important differences between these safeguards. Bilateral, global and special safeguards differ in injury analysis, duration, and available remedies. For example, bilateral safeguard measures permit as a remedy either tariff increase or a suspension of any further tariff reduction while under the global safeguard measures the importing country can impose quantitative limits.

In drafting the safeguards language, the FTAs merely reflect the views of the U.S. and indeed incorporate U.S. trade remedy laws by reference. For example, the term "substantial cause" of serious injury is directly derived from U.S. law. For Morocco, the scope of coverage for agricultural safeguards is limited. Moreover, the FTAs do not include special and differential treatment for Arab countries when applying safeguards. Apparently, the U.S.-Arab countries FTAs were negotiated with a major power that obviously had its own objectives, while Arab countries played the role of demandeur. Arab countries must be "rule-makers" rather than "rule-takers". Arab

countries should assert their interests as much as possible and influence even to certain degree the drafting of these FTAs.

To date, bilateral and special safeguards-compared with global safeguards, have not been used in U.S.-Arab countries FTAs as one would have hoped. Several reasons could help explain this state of affair. Lack of technical expertise in investigating and applying safeguard measures could be one reason. In addition, the "substantial cause" test could be so difficult to overcome in addressing injuries and threats from imports. Many of the safeguard rules in these FTAs are untested compared with global safeguards which are litigated numerous times under the WTO jurisdiction. Further, trade volume between FTAs' parties may have not risen to the level that necessitates invoking safeguard measures. Finally, if safeguard measures were to be imposed, they will have far-reaching impact on the wider trade relationships between the U.S. and Arab countries. At any rate, safeguards should play an important role in U.S.-Arab countries FTAs. An effective use of safeguard measures can assist domestic industries as a powerful weapon in fighting the sharp pain that FTAs temporarily bring and thereby protect the importing country to a certain degree.

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