

Built Upon Shifting Sands – Warning Signs for the United States’ Middle East Free Trade Area Strategy

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Since 2003, the United States has been actively pursuing the creation of a Middle East Free Trade Area (MEFTA) as part of its post-9/11 broader strategy to use bilateral trade agreements and regional reform as weapons against global terrorism. While the strategy has had some early successes – notably with the completion installation of lesser bilateral trade and investment protection treaties with a number of Middle East countries, and free trade agreements (FTAs) with Jordan, Bahrain and Oman – it now threatens to stall on a number of counts. FTA negotiations between the United States and the UAE, which commenced at the same time as the Oman negotiations have now ground to a halt. Qatar and Kuwait, which had shown a willingness to commence discussions soon after the completion of the Oman FTA, have since indicated that they now are in no hurry to enter into FTAs. Domestically, the MEFTA strategy has encountered further problems as the balance of power in Congress shifts from the Republicans to the Democrats. The growing opposition in Congress to the President’s Middle East policies has caused the non-renewal of the Administration’s Trade Promotion Authority (TPA), which provided the framework for ‘fast-track’ Congressional approval process for the Administration’s bilateral trade agreements. The TPA expired on 1 July 2007, and even at this late stage there is uncertainty as to whether Congress will belatedly renew it at least until the end of the President’s final term. As the Bush Presidency enters the winter of its final term, the future of the MEFTA strategy and the consequent bilateral trade agreements in the Middle East are experiencing the stagnation that can mark the administration of an outgoing president.

Field Of Research: Economics/International Trade/Middle East

1. Background

As part of its Middle East Peace Initiative in the post-9/11 global war against terrorism, the Bush Administration has placed economic and political reform in the Middle East at the top of its international agenda. In March 2003, the US President announced the launch of the Middle East Free Trade Area (MEFTA) strategy, by which the United States planned to establish by 2013 a US-sponsored free trade area encompassing the greater Middle East and the Maghreb regions. The MEFTA strategy includes 20 countries - 16 in the Middle East (Bahrain, Cyprus, Egypt, Gaza and the West Bank, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Syria, the UAE and Yemen) and four in North Africa (Algeria, Libya, Morocco, and Tunisia). However, this article focuses only upon the Middle East region.

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The MEFTA strategy is a key part of the United States' broader initiative to achieve that reform in order to complement and extend its already significant geopolitical, economic and military involvement in the region (Katzman, 2005). Accordingly, US trade and investment relations with the countries of the Middle East have considerable potential importance and urgency in terms of both US political and economic interests. A crucial tool in the execution of the MEFTA strategy has been the US Trade Promotion Authority (TPA), enacted as part of the Trade Act (2002). The TPA provides a framework for a streamlined or "fast-track" mechanism for Congressional approval of trade agreements provided that their terms are within Congressional pre-approved parameters. The President has used the TPA to initiate his global, regional and bilateral trade strategies, including agreements which are part of the MEFTA initiative.

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2. The President's Trade Promotion Authority (TPA)

The TPA sets detailed notice and consultation requirements for the Bush Administration to follow in respect of Congress and the US private sector, before and during its trade agreement negotiations. More importantly, if the Administration has followed TPA notice and consultation procedures, Congress is required to approve or reject a concluded agreement in its entirety within a set period – without opportunity to remove, add or require amendment. Under the TPA procedures, the Administration must give Congress three months notice that it has completed a trade agreement. Since the current TPA expired on 30 June 2007, this meant in effect that any completed trade agreement that had not been notified to Congress by 31 March 2007 could not be dealt with under the TPA, and would therefore be subject to full clause by clause scrutiny in both houses of Congress, and possible rejection. The TPA came into force in August 2002, after earlier unsuccessful attempts by the Clinton Administration to renew fast-track legislation which had lapsed in 1994. The TPA was renewed in November 2005 for a further two year term, almost four months after its scheduled expiry date, but only after a vigorous debate and close in Congress. In late March 2007, the President formally requested Congress to renew the TPA, at least to the end of his term of office. To date, with less than 12 months of his term of office to run, Congress has declined to renew Presidential authority under the TPA.

In recent years, the passage of the Bush Administration's negotiated trade agreements through Congress has experienced an increasing degree of critical scrutiny and an ever-growing reluctance on the part of members of both houses to accept the agreements without demurrals. The pre 9/11 Jordan FTA of 2001 sailed through both houses of the Congress "on the voices – in essence, unanimously. The Bahrain FTA of 2004 passed through the House of Representatives with a substantial majority and through the Senate on the voices. By the time the Oman FTA came before Congress in 2006, the critical and dissentious environment had grown considerably, to the extent that the FTA was passed through the House of Representatives by the smallest of margins – 221 votes to 205 (although it passed through the Senate with a comfortable majority).

But the Democrat's return to power in the House of Representatives raises even greater concerns for the Bush Administration that its ongoing capacity to continue to dismantle global trade barriers through its use of the TPA, is in real trouble. With the Presidential authority under the TPA having already expired and with clear indication that the Democrat-controlled Congress will not agree to a further extension, there raises the spectre of a stagnation in the President's trade agenda – or as suggested by Daniel Griswold of the US' Cato Institute (Griswold, 2006) – "two years of stalemate in US trade policy" Trade policy has been identified by the Democrats as an area which requires sweeping changes. Not only is there concern over access rights by foreign business to key and sensitive areas of US business and industry – such as US ports – there is significant push for incorporation of labour market reforms and minimum labour standards into trade agreements. Hence there currently exists a stand-off between the Bush Administration and Congress, posing a critical test of the two sides' ability to find common ground on trade. The Democrats insist that tough new rules on compliance with international conventions on workers rights must be incorporated into pending trade agreements with Colombia, Peru and Panama if these agreements are to have any chance of being approved. The Bush Administration proposal in response would only require countries to pass laws that were either "equivalent" to US federal labour law or complied with International Labour Organisation conventions. Failure of the Bush Administration to accede to the Democrats' requirements in respect of these particular agreements has not only jeopardised their approval, but reinforced Congress' determination not to extend the TPA.

3. The US bilateral trade strategy in the Middle East

Since the MEFTA launch, the Bush Administration through its Office of the United States Trade Representative (USTR) has accelerated its negotiations on bilateral investment treaties (BITs) and trade and investment framework agreements (TIFAs) - major steps toward generating FTA talks – with countries in the region. The United States has completed BIT and TIFA treaties with most of the Middle

East countries, and signed FTAs with Morocco, Bahrain, and Oman. However, FTA negotiations with the UAE and Qatar have both badly stalled, with little expectation of agreement emerging within the remaining term of the present US Administration.

The United States has insisted on individual agreements with each Middle East state, repeatedly declining to negotiate collectively with the states as regional or Gulf Cooperation Council (GCC) blocs (namely Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the UAE). It justifies this state-by-state approach on the grounds that it recognises the differing levels of state development across the region and thereby allows a step-by-step approach tailored to individual states' particular needs (Zoellick, 2004). However, this argument is difficult to sustain in view of the fact that the US bilateral agreements and FTAs are all based on model agreements whose objective is to achieve standardisation with minimal deviation. Change is permitted to the extent that it constitutes refinement of the model. Hence some provisions of the Oman FTA, such as the intellectual property chapter, are almost identical with those of the Bahrain FTA, which in turned are closely aligned with those of the Jordanian, Moroccan, and even the Australian, agreements. Similarly, the TIFAs of all Middle East states are identical in substance and virtually identical in text. The "step-by-step" approach enables the United States to implement a divide and conquer strategy, and prevent the creation of powerful opposition alliances of the kind that it has encountered in the multilateral forum of the WTO (Choudry, 2004). It also allows the United States to maximise its immense political and economic bargaining power to extract the most favourable trading terms from its agreement partners – a tactic being used in its MEFTA implementation strategy.

U.S. – Middle East Free Trade Efforts (as at July 2007)

Country	FTA	TIFA	BIT
Bahrain	completed 2004/ratified 2006	2002	1999
Israel	1985	√	√
Iraq	-	2005	-
Iran	-	-	-
Jordan	2001	-	1997
Kuwait	informal discussions ceased	2004	-
Lebanon	-	2006	-
Oman	completed 2004/ ratified 2006	2004	-
Qatar	negotiations stalled	2004	-
Saudi Arabia	-	2003	-
Syria	-	-	-
UAE	negotiations stalled	2003	-
Yemen	-	2004	-

Source: Office of the USTR, as updated by the author

4. The FTA Negotiations

The US – Jordan FTA

The Jordan FTA, signed in October 2002, was the first such agreement with an Arab state and was considered a template for future agreements. The treaty was held up for some years over dispute in the United States over the nature of labor and environmental provisions to be included in the FTA; the treaty, originally negotiated by the Clinton Administration, merely required Jordan to enforce its own labor and environmental laws, or to bring them into compliance with international agreements to which Jordan had already acceded. Nevertheless, the Jordan FTA passed through both houses of Congress by unanimous consent.

The US – Bahrain FTA

The Bahrain FTA, signed on 29 May 2004, was greeted with general positive enthusiasm on both sides. It was concluded in less than five months of negotiations, a remarkably short period of time in the context of free trade agreement negotiations. The Bahraini Prime Minister, Shaikh Khalifa bin Salman Al Khalifa, described the Agreement as “a reflection of the respect and appreciation the Kingdom had gained as a consequence of its constant development, which in turn has boosted the safety and success of the country’s political, economic and social policies.” (*Bahrain Tribune*, 2004). With somewhat different emphasis, USTR Robert Zoellick declared that the FTA “is a high quality, comprehensive agreement that will provide American workers, consumers and businesses unprecedented economic opportunity in Bahrain...” (USTR, 2004d)

The Bahrain FTA derives much from its Jordan predecessor, but greatly extends and enhances many of the latter’s characteristics and provisions. Being the first post-MEFTA FTA with a Middle East state, it is therefore the most crucial. The standards achieved and concessions gained in this agreement established a precedent and new enhanced benchmarks for future agreements in the Middle East region, just as the Morocco FTA did in North Africa. The fact that the Bahrain FTA negotiations were concluded in less than five months is clear indication of both US determination to adopt an aggressive bargaining stance and Bahraini keenness to reach an agreement. The rapid progression and conclusion of negotiations took even the USTR by surprise (USTR, 2004d). However, the Bahrain FTA generated protest amongst the GCC member states. Saudi Arabia in particular raised strong objection on the grounds that it violated the basic tenets of the GCC Unified Economic Agreement of 2001, which stipulates that “no member state may grant to a non-member state any preferential treatment exceeding that granted herein to member states, nor conclude any agreement that violates provisions of this agreement.” (Gulf Cooperation Council, 2001).

The US-Oman FTA

In November 2004, the USTR notified Congress that it intended to negotiate with Oman and the UAE on their respective FTAs, from 2005. It advised (USTR, 2005a) that:

“These FTAs will build on those that we already have with Jordan and Morocco, as well as the FTA that we have recently signed with Bahrain ... these FTAs [with Oman and the UAE] will directly benefit the United States ... will generate job opportunities for US companies, farmers and ranchers, help create jobs in the United States, and help American consumers save money while offering them more consumer choices.”

Because of the negative reaction amongst some GCC states to the Bahrain FTA, some reluctance initially existed in Oman and the UAE about entering into an agreement as willingly as did Bahrain. In December 2004, the Omani Minister for Economy was reported in the local press as saying that it was too soon to say whether it would seek an FTA with the United States, after these GCC differences emerged (*Arab News*, 2004a). The Oman FTA was finalized in October 2005, after seven months of negotiation. The Omani Minister of Commerce and Industry, Maqbool bin Ali Sultan, described the agreement as “a balanced and mutually advantageous agreement”, but also noted that the agreement “will consolidate, slowly define and further strengthen the existing economic and trade relations between our two countries” (*Financial Times (UK)*, 2005). His use of the qualifier “slowly” in respect of redefining the relationship between the two countries expresses, it is suggested, an Omani note of caution and reservation about the FTA and its overall benefits.

However, notwithstanding the existence of, and the Bush Administration’s compliance with, TPA requirements, the Oman FTA suffered a difficult passage through Congress. Experiencing the after-effects of the controversy over the Dubai Ports World controversy (see below), the FTA was vigorously debated in both houses of Congress. Concern was expressed that the agreement’s liberalization of mutual investment provisions raised the spectre of Omani control of a US port, which many members of Congress perceived as a serious potential threat to US domestic security. The agreement was eventually passed by the smallest of margins in the House of Representatives - 221 votes to 205 against - and by 60 to 34 votes in the Senate. This vote was in stark contrast to the Bahrain FTA and Morocco FTAs which sailed through both houses with very large majorities. The troubled passage of the Oman FTA was a direct consequence of the Dubai Ports World furore. Its passage clearly demonstrates that any future FTA – including those anticipated with the UAE and Qatar – would have little or no chance of passing through Congress without major changes to ensure higher safeguards on national security and exclusions on foreign ownership and investment in key US industries.

The US – UAE FTA Negotiations

Negotiations on a UAE FTA commenced in March 2005 - around the same time as the Oman negotiations. However, significant differences were soon emerging between the two sides, with the UAE indicating that US insistence on a range of labour, intellectual property and human rights issues, at so early a stage in the negotiations, warranted a call for caution. A former UAE Cabinet Minister suggested that the UAE would not benefit from an FTA with the United States and that the UAE should resist US pressure to amend its domestic legislation as part of the conditions of signing the agreement (*Arab News*, 2004b). The former Minister criticised the United States for demanding changes to UAE law in a number of areas including investment and sponsorship laws. By early 2006, the negotiations had stalled. While neither side would admit as much, a significant factor in the stalled UAE negotiations was the furore over the acquisition by a UAE company, Dubai Ports World, of the British Company, P&O Ports, which brought with it infrastructure ownership of six US ports. The acquisition, which was consistent with Dubai Ports World's global development and acquisition activity, generated an intense degree of hysteria in some sectors of US government and business that the UAE's ownership of these US ports would constitute a grave risk to US security.

After almost three years and five major rounds of talks later, both sides have still been unable to reach agreement on an FTA. Prior to the latest round, the UAE declared in the local Arab press that it would resist pressure by the United States to immediately open its telecommunications sector to foreign investors. The UAE Minister for Public Sector Development, Sultan bin Said Al Mansuri, has been quoted in the Arab language daily, *Al Hayat*, as stating that "the entry of foreign companies to the sector is one of the main stumbling points in the negotiations" (*Gulf News*, 2006b). In remarks published in the Dubai-based Arab language paper *Emarat Al Yom*, the Minister has said in respect of the US telecommunications demand that "This is rejected, we will not give up one of our rights. We must give the current operators the chance to develop before we allow new ones in" (*Gulf News*, 2006b). The UAE FTA negotiations continue to be marred by other contentious issues, including US demands for UAE labour market reforms, the opening of the services sector, and provision for 100% foreign ownership across the whole of the UAE business sector. At present, no date has been set for the next round of talks, and the United States and the UAE have since announced that they are unable to complete FTA negotiations under the existing timeframe for the TPA. Nevertheless, in a display of diplomatic cordiality, the United States has announced that both sides agree that they remain committed to completing FTA negotiations at some later date (*Gulf News*, 2007).

The US – Qatar FTA Negotiations

In similar vein to the UAE refusal to concede to unacceptable US demands, Qatar has also taken a firm stance in respect of its negotiations. In April 2006, Qatari local press reported that Qatar had frozen FTA talks with the United States because Washington was imposing preconditions that were not in the Qatar's interests. The Qatari Ambassador to the United States, Nasser bin Hamad al Khalifa, has been quoted in the daily *Al Sharq* newspaper (*Associated Press*, 2006) as saying that:

“the talks were not proceeding in the right direction. They were going nowhere. It was like two deaf people talking to each other. There was no sense continuing with the dialogue ... Sometimes powerful countries put preconditions that are not in the best interests of smaller countries.”

Questioning the need for an FTA in the first place, the Qatari Ambassador has suggested that the WTO agreements are sufficient for mutual trade and investment between any two member countries. Qatar was already a major destination of investment for US companies because of the country's very favourable investment laws and liberal trade regime. The Ambassador has also suggested that Qatar “does not need a free trade agreement with the US” (*Associated Press*, 2006). In particular, the Qatari negotiators have raised objection to US demands for full access for US investors to Qatar's services and energy industries and 100% foreign ownership of Qatari companies. The Qatari government's current stance is that, as one of the strongest global economies, it does not need either US financial support or preferential treatment for entry into US markets to enable its economy to continue to grow. It can therefore take a strong bargaining position in respect of US demands, to the extent of walking away from the negotiating table if it is not satisfied – a situation which the United States may well feel unused to in recent times.

5. Conclusion

The push by the United States to establish a system of regional trade blocs as part of a policy of global political controlled networks – which is its objective with the MEFTA – will not be without its eventual costs. There are few illusions in the minds of the senior members of the Middle East states that the United States, despite its rhetoric to the contrary, will continue to place its own interests to the fore, irrespective of whether those interests are contrary to international norms or in total disregard of the best interests of all protagonist states. The perceived “messianic fervour” with which the United States pursues its democracy US-style agenda while ignoring the local character of the societies it is aiming to reform is seen as particularly problematic (Gulf Research Centre, 2005). In particular, the United States has been accused of not listening to the needs of the countries in the region or understanding the realities of the situation on the ground.

Statements by US policy makers continue to reinforce a message of imposed change without consultation or consideration of local cultural values. When those statements include remarks critical of the states' efforts at modernisation and reform or are derogatory to the region's rulers, particularly when made while a guest in an Arab country, they are also unlikely to be forgotten or quickly forgiven. The following remarks made by then USTR Robert Zoellick, when launching the US' MEFTA strategy, is unlikely to have endeared the US Administration to Middle East state leaders (Zoellick, 2003):

“The U.S.-Middle East trade initiative complements and extends America's already significant economic engagement with this region. Yet our efforts have been limited by old hatreds, political instability, corruption, bureaucracies and the privileged few who resist the competition of economic reforms, a search for enemies to blame instead of partners to build with, and price uncertainties for oil-dependent economies.”

At an Arab Business Council Conference on the Bahrain FTA, participants reacted negatively to what they saw as the “Big Brother” attitude of the United States in respect of its bilateral trade agreements, perceiving the agreements to be political devices to serve US regional interests rather than tools to enhance the region's economic prosperity (*Arab New*, 2005). The claim by one US speaker that “if Arab countries can integrate with the US through FTAs, it will be easier for them to integrate with each other”, was both resented and ridiculed by subsequent speakers. The Jordanian Minister of Industry and Trade responded that he “fail[s] to see the logic that if you want to achieve Arab integration, you have to go to the United States” (*Arab News*, 2005).

The furore over the Dubai Ports World controversy and the consequent difficult passage through Congress of the Oman FTA, has further clearly demonstrated to Middle East states that the United States seeks to impose what those states view as double standards when it suits US interests. While the United States demands a veto over foreign investment in its domestic enterprises, it continues to demand full access, including 100% foreign ownership in their negotiating protagonists. The collapse of the Dubai Ports World US ports deal has been described in the local UAE press as a shattering episode that has damaged the US-UAE relationship. “The 9/11 paranoia, relentless Arab and UAE bashing, in addition to a weak president and a hysterical Congress have all pulled together to abort a sound business transaction by the DP World that would have been a key element in building a stronger US-UAE relationship” (*Gulf News*, 2006a). However, the hardening line by the UAE and Qatar in their respective stalled FTA negotiations should be a signal to the United States that there has been a diametric shift in the balance of negotiating power, dynamics and willingness to concur.

Failure by Congress to renew the fast-track approval process provided by the TPA has already led to a Congressional detailed dissection of prospective trade agreements with a consequential demand from both sides of politics for changes that are driven by a myriad of domestic political and economic imperatives from local interest groups. It increases the likelihood that any bilateral trade deals the President sends to Congress during the remainder of his term, will be defeated (*Financial Times (UK)*, 2007) or at least delayed beyond the end of his term. It has also further dented the President's already damaged credibility in the Middle East, and be a major blow to the ongoing promotion of the MEFTA strategy in its current guise.

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