

# Regionalism as a Means to Stabilize the WTO Trading System

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## Abstract

International trade law should adapt itself to the dynamic changes in the global trading system. It is only when the laws are not refined to such changes some countries tend to take unilateral measures to either promote or protect their respective markets for example by means of imposing punitive tariffs. Such measures may inevitably lead to counter measures being adopted by the affected party. If more and more countries resort to adopting such unilateral disruptive trade measures and counter measures, it may seriously undermine and threaten the dynamics and stability of the multilateral trade system. A case study approach will be adopted in this paper examine the nature of trade tensions that exist among the world's three largest economies, United States, Peoples Republic of China and the European Union in order to highlight the current challenges facing the multilateral trading system.

The underlying objective of my paper is thus to examine and identify the shortcomings in the current legal regime regulating the international trading system. Apart from examining the extent to which the World Trade Organization rules could be amended or refined, the paper will also argue that the establishment of regional organizations such as the European Union and further strengthening of trade relations among the member countries such as the League of Arab States may be a useful prescription in order to eliminate or at least minimize the tension that regularly arises in the multilateral trading system.

**Key words:** European Union, World Trade Organization, Trade law, Regional integration, Financial and fiscal crisis.

### Introduction

The World Trade Organization (WTO) and the European Union (EU) was established after very long, arduous and difficult negotiations. It took many years for both these international and regional organizations to reach their current level of development as a unitary body and to bring about a high degree of bilateral and multilateral trust and respect amongst its member countries.

The current trade conflict between the world's two largest economies; the United States of America (USA) and Peoples Republic of China (PRC) have threatened the stability of the global trading system based on the WTO<sup>(1)</sup>. The uncertainties created by the Brexit where the United Kingdom seek to unilaterally withdraw from the EU have added fuel to the tension prevailing in the global markets. What is evident in the tensions within the WTO and EU is that there is a great risk of these organizations being weakened by the unilateral conduct of one of its member countries. The trade conflict between the US and PRC and the Brexit have already done much damage to the economies of the relevant parties but the worst affected may be the smaller economies which trade either directly or indirectly with these economic giants.

The objective of this paper is to explore how smaller economies by entering into bilateral or regional cooperation could protect their economies and to be less vulnerable to the ill effects produced by trade conflict between the large economies. To facilitate this objective, it is useful to provide a brief overview of the different forms of trade arrangements that exist across the globe, one of which could be a potential model for smaller economies. Since WTO and the EU are two international organizations that have huge impact on the trading system both globally and regionally, the current tension prevailing within these organizations will be briefly highlighted.

The paper in turn will examine whether regionalism is an effective prescription to prevent the derailing of the global trading system by any powerful economic power. The EU with some limitations will be presented as a model for other potential regional organizations. In this context, the paper will examine the extent to which the League of Arab States (LAS) and especially the Gulf Cooperation Council (GCC) could be further strengthened to act as a buffer against the adverse economic consequences flowing from external trade wars.

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(1) USA and the PRC are the world's superpowers today according to the size of their economies, which together covering about 40 per cent of the world gross domestic product.

### **Different forms of economic cooperation**

There are different forms of economic cooperation between sovereign states based on either bilateral or multilateral agreements. The bulk of the economic cooperation, which exists today, is largely based on bilateral trade agreements. The trade negotiations are relatively easy as there are just two sovereign entities to such agreements. They can easily negotiate to choose the kind of economic activities that should be covered by such agreements.

A Free Trade Area is another form of platform for economic cooperation where its member countries agree to remove all customs duties between them but unilaterally fix duty on imports from outside the free trade area. Unlike bilateral agreements, there are more than two parties to such a free trade agreement. There are no restrictions imposed on any of the signatory countries to initiate or maintain any kind of economic relations with a non-member country. Under this arrangement, member countries agree to remove the trade barriers within the group, but it does not extend to the establishment of any kind of common external tariffs to third countries.

A Customs Union is an extension of the free trade agreement. In addition to free trade within the group as found in a free trade area, a customs union also involves the establishment of a common commercial tariff towards third countries. The legal foundation of European Union's customs union is based on the Treaty of Rome 1958, which covered the free movement of goods between its member states. The Treaty requires the removal of customs duties and prohibits the imposition of quantitative restrictions on the import and export of goods<sup>(2)</sup>.

The EU model since its inception as a European Economic Community (EEC) was neither a bilateral trade agreement nor a free trade agreement. It is a kind of agreement at multilateral level and has progressed gradually from a mere customs union to a more integrated single market, which is a deeper form of integration and goes beyond the pure free movement of goods. Within the single market, the level and scope of integration is much higher than a customs union and includes free movement of persons, services and capital<sup>(3)</sup>. The Treaty also incorporated detailed rules on competition and consumer protection to ensure the smooth and harmonious development of the single market<sup>(4)</sup>.

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(2) Articles 28-37 TFEU.

(3) The relevant Treaty provisions are Articles 45-48; 56-62 TFEU and 63-76 TFEU respectively.

(4) The relevant Treaty provisions are Articles 101-113 TFEU and Article 169 TFEU respectively.

Some of the member states of the EU have gone even beyond the concept of the single market. They have created an economic and monetary union (EMU) with a common currency, the Euro<sup>(5)</sup>. Within the EMU, member states have transferred their monetary competence to a centralized supranational authority, the European Central Bank (ECB). If the EU decides to move towards further integration in the future, then it has to complement and deepen the EMU with a fiscal union, which in turn may pave the way towards a federal or a quasi-federal Europe. There is no other integrated regional organization similar to the EU that exists today.

### **An overview of international trade arrangements**

The WTO, successor to the 1948 General Agreement on Tariff and Trade (GATT) was established in 1995 and form the current basis of the international economic order. The membership of the WTO, which is open to sovereign states and customs territories such as the EU stands at 164 with the last accession of Afghanistan on 29 July 2016. In addition, there are 23 observer governments of the WTO. The WTO set the global rules on trade matters for its members. It has laid down a credible legal framework to facilitate and enhance trade relations between its member countries. The WTO laid down common rules and procedures for the global trading system to function smoothly. The functions of the WTO rules may be assimilated to what domestic commercial codes do for contracts and transactions between parties within a particular jurisdiction.

As a precautionary measure to prevent any dissension or conflict between the member countries, the WTO rules provides for all major decision making to be taken by way of consensus<sup>(6)</sup>. The aim of incorporating the consensus rule is to ensure that no decision shall be imposed on a member country against its will<sup>(7)</sup>. The WTO is thus an inter-governmental organization whose successes and its unity and stability is to some extent guaranteed largely due to the requirement of unanimity in decision making<sup>(8)</sup>.

There are different activities that are conferred on the WTO. Primarily it

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(5) Sideek Seyad, "A critical interpretation of the EMU Convergence Rules" (1997) 24 *Legal Issues of European Integration*, 1-16.

(6) For example, Article XXX GATT calls for the unanimous decision of the Contracting Parties to change Part I dealing with most favored nation (MFN) clause.

(7) Mary E. Footer, *The Role of Consensus in GATT/WTO Decision making* 17 (North-western Journal of International Law & Business, Winter 1997) 653.

(8) Christina L. Davis, 'Do WTO Rules Create a Level Playing Field? Lessons from the Experience of Peru and Vietnam?' in John S. Odell, 'Negotiating Trade Developing Countries in the WTO and NAFTA' (Cambridge University Press, 2006) 219.

acts as the forum for multilateral trade negotiations for its members. Another important feature of the WTO is that any trade disputes between the member countries are resolved within its legal framework. The WTO also set out the legal rules for trade in the form of agreements and finally it is given the task to monitor trade policy of its member countries.

### **Tension within the WTO system**

A criticism of the WTO system is the slow and time-consuming process in multilateral negotiations over trade liberalization. Another drawback or criticism is the requirement for consensus mandated by WTO rules. Both these factors to some extent limit the nature and the desired scope of international trade agreements as they are a product of compromise<sup>(9)</sup>. As a former director-general of the WTO rightly put it, ‘WTO is like a car with one accelerator and 140 hand brakes’<sup>(10)</sup>. Due to this drawback, some countries have turned away from the multilateral process toward bilateral or regional trade agreements.

On the positive side, an innovative feature of the WTO is its modern dispute settlement mechanism which was introduced in 1995<sup>(11)</sup>. The WTO provides for the establishment of a Dispute Settlement Body (DSB) giving members with a clear legal framework for solving their disputes, which may arise in the course of implementing WTO agreements<sup>(12)</sup>. Under the DSB, the members can ask for panels and even appeal procedures may interpret the rules and solve any trade disputes. The WTO cannot impose new obligations, but it has the power to enforce those already agreed.

If the WTO finds that one of its members failed to comply with the agreements it has signed, such a member is obliged to change its policy and bring it into conformity with the WTO rules. If the member finds it politically impossible to change its policy, it can offer compensation to other countries in the form of lower trade barriers on other goods. If a member does not comply with WTO recommendations on bringing its practice in line with WTO rules, then

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(9) After several years of negotiations, in 2013 the Ministers of Trade from 159 member countries met in Bali, Indonesia and agreed on WTO’s first-ever global deal at boosting international commerce.

(10) Former Director-General of the WTO, Mr. Mike Moore.  
The European Free Trade Association (EFTA) is an example of a free trade area.

(11) Sideek Seyad, ‘Current developments in the enforcement of WTO rulings under European Union Law’, [2015] International Trade Law and Regulation 102-115.

(12) Settling disputes is the responsibility of the Dispute Settlement Body, which consists of all WTO members. It has the sole authority to establish panels of experts to consider the case, and to accept or reject the panels’ findings or the results of an appeal. It monitors the implementation of the rulings and recommendations and has the power to authorize retaliation when a country does not comply with a ruling.

trade compensation or sanctions, for example in the form of duty increases or suspension of WTO obligations may follow. A member of the WTO that has secured such authorization could retaliate on goods coming from the offending member for failure to comply. Most of the member countries are content with the WTO dispute settlement mechanism but this traditional trust on the system have been brought into question by the US deciding to invoke national laws against other WTO countries to resolve trade disputes.

### **Trade tension between the US and PRC**

The current crisis in the global trading system was ignited by the US when it decided to impose unilateral trade measures targeting largely its traditional trading partners. It is useful in this context to briefly highlight some of the issues surrounding the trade conflict between the US and its trading partner, PRC. The most significant threat to the WTO framework is that the US invoked the national security provision to justify its discriminatory tariffs on imported steel and aluminium. There is no evidence to suggest that the US is facing a genuine national security threat from its traditional trading allies. There are also trade tensions between the US and other countries such as Japan, Canada and the EU<sup>(13)</sup>.

The trade conflict between the US and PRC may be even described as a trade war between the economic super powers due to the enormous volume of tariffs imposed on goods by both parties<sup>(14)</sup>. The conflict between these countries have to some extent destabilised the proper functioning of the global trading system<sup>(15)</sup>. The countries especially with a small economy are normally hard hit when the economic giants confront each other. Hence, the paper prescribes the need for greater regionalism especially among the smaller economies to counter the ill effects of such trade conflicts.

Since the current US administration came to office in 2016, it had been complaining especially about PRC's trading practices. The following year in 2017 the US launched an investigation into Chinese trade policies. Based

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(13) The US imposed tariffs not only on China. It also started charging levies on the imports of steel and aluminum from the EU, Mexico, and Canada and these countries have retaliated.

(14) As at end of March 2019, the US had imposed three rounds of tariffs on Chinese goods, totaling more than \$250 billion. The duties range from 10% to 25% and cover a wide range of industrial and consumer items from handbags to railway equipment. Furthermore, the US has threatened tariffs on another \$267 billion worth of goods, which in practice would mean all Chinese imports could be subject to tariffs. The US has also put tariffs on worldwide imports of goods like steel and washing machines, which will further affect products from China.

(15) According to the International Monetary Fund, an escalation of the tit-for-tat tariffs between the US and PRC could wipe out 0.5% of global growth by 2020. Morgan Stanley estimates that a full-blown escalation of the trade dispute could shrink 0.81 % of global gross domestic product.

on the findings of this investigation, the US imposed tariffs on billions of dollars' worth of Chinese products in 2018. As a tit-for-tat measure, the PRC too retaliated imposing its own tariffs on the US products, thereby triggering the trade war<sup>(16)</sup>.

However, a diplomatic breakthrough seems to have emerged in December 2018 whereby both parties agreed to halt the imposition of new trade tariffs for a period of 90 days and to engage in constructive trade negotiations. In March 2019, PRC decided to pass a new foreign investment law as a step forward to defuse the trade tension especially with the US. The relevant law is due to come into effect on 1 January 2020. It is premature to predict whether the trade conflict will be resolved or not by the current negotiations but if the talks collapse, it may prove to be calamitous on the already fragile inter-dependent global economy.

### **Legal basis for US unilateral action**

The national law, which empowers the US to invoke unilateral trade measures against its trading partners, is the US Trade Act of 1974<sup>(17)</sup>. This Act was enacted during the period when the GATT was in force. Under the GATT, there was no effective dispute settlement mechanism and member countries such as the US had to develop their own tools to counter any trade dispute with another member country. However, as highlighted the WTO have introduced a modern dispute settlement mechanism and if any country have a disagreement with a trading partner, they now have an effective, independent and reliable avenue to resolve their dispute. Ironically, it was largely due to US intervention such a modern dispute settlement was introduced to the WTO system.

In terms of the US Trade Act, when the US believes that its trading partners are practicing unfair trade, it can initiate investigation, make final decisions by itself bypassing the international community. In terms of Section 301 and 232 of this Act, US may modify the multilateral trading system through unilateralism. The latter legal provision authorizes the President of the US to impose import restrictions on other countries on grounds of national security<sup>(18)</sup>.

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(16) China retaliated with its own tariffs on \$110bn of US goods, accusing the US of starting “the largest trade war in economic history”. China has targeted products including chemicals, coal and medical equipment with levies that range from 5% to 25%.

(17) Public Law No. 96-39. See for an interesting exposition of the nature and scope of application of this Act, Shirley A Coffield, “Using Section 301 of the Trade Act of 1974 as a Response to Foreign Government Trade Actions: When, Why and How”, volume 6, number 3, North Carolina Journal of International Law and Commercial Regulation, (1981) 381- 405.

(18) When the US threatened to activate Section 232 of the US Trade Act against Japan the latter was, pleading its car exports is not a threat to US national security.



Section 301 of the Act enforces US rights to address unfair foreign barriers to US exports and to retaliate unilaterally. This rule authorizes the President of the US to take action against unfair trade practices of other governments, which adversely affect US commerce in either goods or services. It also enables the US government to deny trade benefits or impose import duties in response to foreign trade barriers.

The barriers may take different forms such as violations of trade agreements, discriminatory actions that can harm US exporters, service providers or infringement of intellectual property rights. Furthermore, the relevant rule allows the President to deny or modify the benefits of trade agreement concessions or to impose duties or other import restrictions on the products and services of any country that is found to be unjustifiably or unreasonably burdening or restricting US commerce. The President may take action on his own or in response to a petition filed by any interested party. Evidently, the scope of application of the US law to derogate from its obligations to the WTO system is far and wide.

### **Brexit-UK unilateral departure from the European Union**

At the regional level the unilateral decision of the UK to leave the EU have also contributed to destabilize the global economy. It is the first time since the inception of the EU that a member state have decided to withdraw its membership. The absence of such a precedence of unilateral withdrawal from the Union combined with the legal and economic uncertainties created by Brexit have not only destabilized the economy of the UK and the EU but even the global economy at large.

### **Background to the Brexit**

There is no dictionary or any national, international or European legal instrument that defines the meaning of Brexit. The origin of this word can only be traced back to the expression “Grexit” which emerged at the height of the 2011 European debt crisis. Because of the debt crisis, the Greek government was almost insolvent and there was speculation that Greece either might leave or be expelled from the euro-area, a currency area comprising nineteen Member States of the EU, which use the euro as the single currency<sup>(19)</sup>. When the UK took a unilateral decision at a referendum to leave the EU, the follow-up political process thus came to be labelled or coined as the Brexit!

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(19) Sideek Seyad, “The impact of the financial and fiscal crisis on regional integration within and outside EU” (2015) *Chinese Journal of International Law* 35-50.



## Entry and exit of the EU

In order to give a background picture to the Brexit saga, it is useful to briefly highlight the relevant EU rules and procedures on accession and withdrawal from the EU. There was no clear and specific rules in the original Treaty of Rome 1958, the original founding Treaty of the EU, on the terms and conditions a country should fulfil to secure membership in the EEC. Likewise, there was also no legal provision in the founding treaty, which recognizes the right of a Member State to withdraw its membership. With the rapid enlargement of the EU from mere six member states to the current twenty-eight, it was felt necessary to lay down certain criteria's to secure membership.

At the summit meeting of the Heads of States and Government of the Member States of the EU held in Denmark, a set of entry requirements, known as the Copenhagen criteria was adopted<sup>(20)</sup>. These are a long list of political, economic and financial values that a country should fulfil as a precondition to join the EU. The Copenhagen criteria was for the first time constitutionalized in the Maastricht Treaty on the European Union effective from 1 November 1993 and since then forms part and parcel of EU Law.

However in case a Member State is not happy with its membership of the EU, the Copenhagen criteria nor the Maastricht Treaty failed to lay down any rules nor set out any guidelines for it to leave the EU. This legal vacuum created a politically unpleasant situation whereby a Member State dissatisfied with its membership of the EU was condemned to an indefinite life imprisonment in the Union. For good or bad, this legal deficiency was rectified by the Lisbon Treaty 2009, which not only expressly recognize the right of a Member State to leave the EU but also clearly sets out a procedural framework to do so. This so-called Article 50 TEU drama is currently enacted for the first time in both London and Brussels!

## Reflections on the nature of future international order

The emergence of unilateralism such as the invocation of national law as a means to by-pass the WTO trade rules have given rise to the debate on what kind of a future international trade order that is desirable to prevent or reduce

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(20) The key criteria for accession to the EU was precisely defined at the European Council in Copenhagen in 1993, referred to as "Copenhagen criteria". Any country wishing to join the EU need to have stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; a functioning market economy and the capacity to cope with competition and market forces in the EU; the ability to take on and implement effectively the obligations of membership, including adherence to the aims of political, economic and monetary union and after Lisbon treaty the applicant country should also fulfil the geographical condition that it is a European state.

cross border trade frictions. One school of thought is that the current tension in the international trade system regulated by the WTO may set the pace for the profusion of bilateral trade agreements and emergence of regional or sub-regional communities. The establishment of a regional bloc for example in the Middle East could act as a counterpart to other regional organizations like the EU and thereby protect the interests of its member countries.

An incentive for the establishment of regional and sub-regional bodies is that such entities can easily share common interests and ideas prevalent within a defined geographical area. Such regional entities with common interests and identities may also be in a better position to play a greater and constructive role in regional governance. The trade arrangements that are regulated at the regional level may also contribute to reduce the tension in the global trading system. Such trade arrangements can more effectively and collectively withstand the risk of unilateral trade measures being applied by the powerful economies. Any powerful or large economy may also be less reluctant to unilaterally impose any form of economic burdens to countries, which are part of a larger family of member states.

### **Bilateral agreements as reaction to unilateral trade protectionism**

The policy decisions pursued in recent time by the US administration on international trade issues suggest it is more or less on the verge of departing from multilateral trade system. There is some kind of credibility to this line of thinking as evidenced by the policy decisions of the current administration such as to withdraw from the Trans-Pacific Partnership (TPP)<sup>(21)</sup>. The TPP was a free trade agreement between the United States and 11 other countries that border the Pacific Ocean<sup>(22)</sup>. The unilateral policy of the US have scared away its traditional trading allies and to enter into different forms of partnership agreements.

A positive outcome of the US unilateralism was that it expedited the conclusion of various bilateral trade agreements that had been pending for many years. For example, the EU and Japan signed Economic Partnership Agreement, which entered into force on 1 February 2019<sup>(23)</sup>. Before this agreement was

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(21) The Trans-Pacific Partnership was a landmark trade agreement signed by 12 Pacific Rim countries including the US on 4 February 2016.

(22) The TPP was between Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Vietnam. The countries involved produce 40% of the world's total gross domestic product of \$107.5 trillion. They supply 26% of global trade and 793 million of the world's consumers.

(23) The EU-Japan economic agreement will remove 97% of the tariffs that Japan applies to European goods and 99% of those applied by the EU. The EPA will create the world's largest free trade zone. The economies of the EU and Japan combined make up 30% of the world's total and they are both among the largest trading partners with the US.

signed, the firms on both sides faced numerous trade entry barriers. In terms of the trade agreement both parties will remove many trade barriers. As outsiders to the US/PRC trade conflict, by entering into this agreement, EU and Japan are impliedly sending a powerful message to these countries to reject protectionism. It was largely the US unilateral withdrawal from the TPP that expedited the EU and Japan to ratify these agreements<sup>(24)</sup>. Under normal circumstances large trade agreements take a long time to negotiate but these two agreements were concluded within a short space of time.

### **EU as a model for other regional organizations**

The right of establishment of a regional organization is an exception to the general principle of non-discrimination as enunciated in the international trade law<sup>(25)</sup>. There are several regional organizations established across the globe in terms of the exceptions to the general rule of non-discrimination enunciated in the WTO law<sup>(26)</sup>. Even within each continent, there is often more than one such regional entity. None of them has reached the level of integration attained by the EU. In view of their flexible and limited degree of integration, other regional organizations did not encounter any crisis as confronted by the EU such as its financial and fiscal crises.

The question as to whether other countries should emulate EU as a model eludes precise and concrete answer. When the EU operates harmoniously, it becomes a source of attraction especially to other regional entities. The 2008 financial and 2011 fiscal crisis had the opposite effect on such regional bodies<sup>(27)</sup>. There is however, some remarks that could be made in this context based on various developments within the EU since its inception, which may be of relevance to other regional organizations or countries, which would consider establishing a regional body.

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(24) Another example of a bilateral agreement, which too is claimed as a reaction towards the US unilateral approach towards free trade is the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada, which entered into force on 21 September 2017. This agreement cuts tariffs and makes it easier to export goods and services between the parties

(25) See for example paragraphs 4 to 10 of Article XXIV of GATT and Article V of General Agreement on Trade in Services (GATS).

(26) Some of the important international and regional organizations are for example in Europe (the European Union, Council of Europe, the Organization for Cooperation and Security in Europe, North Atlantic Treaty Organization, Commonwealth of Independent States) American continents (Organization of American States, North American Free Trade Agreement) Africa (African Union), Asia (Association for South East Asian Nations and South Asian Association for Regional Cooperation) and Middle East (Cooperation Gulf Council) etc.

(27) Sideek Seyad, "The impact of the financial and fiscal crisis on regional integration within and outside EU" (2015) Chinese Journal of International Law 35-50.

### Accession criteria

Initially there were no clear guidelines or rules to secure membership in the EU. Since 1993 the EU have laid down certain procedures to select its new members. The criteria for accession to the EU were clearly defined at the meeting of the European Council in Copenhagen in 1993 and now expressly incorporated into the Lisbon Treaty<sup>(28)</sup>.

There had been doubts about the geographical qualifications of a country to join the EU. This doubt has now been laid to rest by the Lisbon Treaty which states that any 'European country' may apply for membership if it respects not only the democratic values of the EU but also committed to further promote them. The applicant countries must show they have stable institutions guaranteeing democracy, the rule of law, human rights and protection of minorities' rights; a functioning market economy and the capacity to cope with competition and market forces in the EU; ability to take on and implement effectively the obligations of membership. At the time of negotiation of the Lisbon Treaty, some member states wished to refer to Christianity as the primary religion of EU but majority of the member states rejected this proposition. However, the Lisbon Treaty recognizes and gives equal protection to all regions without any distinction.

The overall accession requirements to the EU may be a useful guideline to other regional organizations when it comes to its enlargement. Even though the EU's membership requirements cannot be imported wholesale into other regional bodies, the provisions on economic and related provisions may be universally acceptable. Even though there may be no consensus on the economic model that should apply to a regional entity, it is a less contentious issue that may be negotiated without much political friction. Most of the countries around the world are members of the WTO and the EU's economic model is largely in harmony with this international body. As such, the EU model especially the legal framework governing its single market may be adaptable to many other regional bodies.

### Composition of the Union

If any European country fulfils the accession criteria, it may join the EU. The EU had its origin with a small group of six member states. Its membership had now reached twenty-eight and there are more countries, which seek membership in the Union<sup>(29)</sup>. Any decision for the enlargement of the EU has

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(28) Article 49 TEU.

(29) There are currently five candidate countries for EU accession: Iceland, the Former Yugoslav Republic of Macedonia, Montenegro, Serbia and Turkey.

to be done unanimously by its member states. In other words, every member state has the right to veto in this context.

The EU experience indicates it is better to limit the membership than to expand it to a stretching point. The philosophy behind the establishment of EU is to prevent another war in Europe and to this end to launch a peace project with its doors open to all neighboring countries without discrimination. If there are major political barriers to grant full membership to a neighboring country, it is remedied by entering into so-called European Partnership Agreements.

It may not be an easy task to follow the EU model by other regional bodies when it comes to the determination of its membership and composition. The EU's requirements on membership and its composition are largely a byproduct of its history. Apart from integrating the economies of this region, a harmonized political system based on democracy and rule of law together with respect for human rights was thought to be the best guarantee to prevent another bloodshed in Europe.

### **Desirable level of regional integration**

The Treaty of Rome establishing the EEC until its controversial and extensive amendment by the Maastricht Treaty in 1993 had been operating in a rather smooth and harmonious manner. The reason for the smooth functioning of the single market maybe it had a limited number of member states and its scope of integration was strictly confined to economic activities. Even though there had been some occasional political tensions in the operation of the single market, they were all resolved diplomatically without any disruptions to its smooth and proper functioning.

The Maastricht Treaty brought about radical changes to the nature and structure of the EU. The EU had been traditionally operating with consensus and the Maastricht Treaty shattered this harmonious environment. The Maastricht Treaty also created the precedent of a multi speed Europe where member states were given opt outs from certain policy areas. Since then every treaty amendment has a long list of opt outs to prevent a member state from derailing the ratification process. After the fiscal crisis, there was an acceleration of the multi speed Europe where some member states signed up to various treaties outside the framework of the Lisbon Treaty<sup>(30)</sup>.

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(30) The Treaty on European Stability Mechanism and the Treaty on Stability and Governance are two treaties ratified by some of the member states outside the legal framework of the Lisbon Treaty. On the nature and scope of the Treaty on ESM, see Sideek Seyad, "A Legal Analysis of the European Financial Stability Mechanism" (2011) 26 J.I.B.L.R. 421-433.

The creation of the EMU by Maastricht Treaty seriously undermined the unitary character of the Union. It contributed to three categories of membership of the EU with some countries fully participating in EMU, some countries like to join but unable to do so and finally a small group of countries, which wish to remain outside EMU indefinitely. It has also created legal uncertainty as to the obligations of a member state to join EMU. There are some member states such as Sweden, which does not have a specific treaty opt out on EMU like United Kingdom and Denmark but is not keen in joining the EMU due to overwhelming public resentment to the euro<sup>(31)</sup>.

The EU's economic integration may be described as a three-stage process. The successful establishment of the customs union was the initial stage in the construction of the EU. This is the model, which could be emulated by any other regional body with the least risk of any political and economic tensions. The extension of the customs union to a European single market involved much harmonization and approximation of the economic laws of the member states. With the streamlining of law making by the Single European Act 1985, the EU was successful in launching its single market in 1993. If tangible progress is made by any regional organization with a customs union and if there is sufficient political will, it can move to the next stage of creating a single market. If these conditions are favorable, there should not be any mounting barriers on a regional organization to develop their trade relations by harmonizing and setting free the movement of economic activities such as goods, services and capital.

Some regional bodies once entertained the idea of having a single currency based on the EU model such as the Association for South East Asian Nations (ASEAN) and the Eurasian Economic Community. The EMU of the EU is a half-baked project with a centralized monetary policy run by an independent EU institution whereas the economic policy competence was left intact with the member states. It was this dichotomy of the EMU project, which largely contributed to several rounds of monetary turbulence since it was launched. The several reform measures adopted by the member states of the Eurozone after the fiscal crisis are the result of the shortsightedness in the initial legal construction of EMU. With the conferment of monetary competence to ECB, if the EU had also restrained the national fiscal competence, the EMU may have operated more smoothly.

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(31) Sideek Seyad, «Sweden and European Economic and Monetary Union» (1995) 2 European Financial Services Law 288-295.

If a regional organization wish to have closer monetary cooperation, it is useful to prescribe the EU model, as it existed before the launching of the euro. The European Monetary System (EMS) was set up to prevent major currency fluctuations within the single market. The EMS was based on two pillars known as the European Currency Unit (ECU) and the exchange rate mechanism (ERM). The ECU was a composition of the national currencies and they were given different weights against each other. The member states voluntarily peg their national currencies to the ERM allowing them to limited fluctuation. If they exceed the set margin, the relevant national central banks should intervene to contain such fluctuation. This mechanism does not involve loss of national sovereignty nor the need to have supranational bodies to monitor the EMS. There are no legal barriers for a participating country to withdraw from the EMS as Sweden did for example during the global monetary turbulence in the early 1990's<sup>(32)</sup>.

### **Environment and energy policy and solidarity in the EU**

In addition to one of the primary economic objectives of the EU which is to raise the standard of living of all its citizens and leaving aside its controversial objectives such as the Area on Freedom, Security and Justice (AFSJ), Common Foreign and Security Policy ((CFSP) etc. there are other less known objectives which should be globally acceptable and emulated in any regional organizations. The EU Law emphasis on sustainable development based on a high level of protection and improvement of the quality of environment<sup>(33)</sup>. It requires the member states to preserve, protect and improve the quality of their environment. The EU promotes prudent and rational utilization of natural resources and commits itself to combat climate change on an international level. All these activities becomes a specific objective of EU new environmental policy, which is relevant not only to the EU but to every national or regional entity without exception.

Another interesting feature in the EU is its adherence to the principle of solidarity on which lies its foundation. The principle of mutual solidarity finds special treatment after the Lisbon treaty, which declares that member states shall assist if another member state is subject to a terrorist attack or victim of a natural or man-made disaster<sup>(34)</sup>. There are also similar provisions in matters relating to energy policy<sup>(35)</sup>.

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(32) See on the complexity of this crisis, Sideek Seyad, "Capital movements and the currency crisis in the European Union" (1996) 3 European Financial Services Law 193-200.

(33) Articles 191-193 TFEU.

(34) Art 222 TFEU and Declaration 37.

(35) Article 194 TFEU.



### International Agreements of the European Union

The Lisbon Treaty confers on the EU a legal personality<sup>(36)</sup>. Because of this legal status, the EU can enter into contracts with any persons and international organizations. Before the Lisbon Treaty, such legal personality was limited to the European Community and not the European Union, a complex distinction created by the Maastricht Treaty 1993. The Lisbon Treaty abolishes this distinction and refers only to European Union as having the legal personality<sup>(37)</sup>. From a legal perspective, the notion of a European Community no longer exists. The Lisbon Treaty provides competence to the EU to enter into agreements with States and international organizations<sup>(38)</sup>. All such international agreements form an integral part of EU law.

### Legal status of international agreements under EU Law

The legal effects of international agreements within the EU depend on its formulation. According to the Court of Justice of the European Union (CJEU), the judicial arm of the EU, if the provisions of an international agreement are formulated in a clear and precise language requiring no further implementation by Member States or institutions of the EU, they shall have direct effect within the Union<sup>(39)</sup>. On the other hand, if such an agreement is vaguely phrased, the EU should adopt further implementation measures<sup>(40)</sup>.

The CJEU has the power to interpret international agreements<sup>(41)</sup>. When it interprets an international agreement, it does so in the light of its objectives and purposes. However, the CJEU do not adopt a similar judicial approach when it interprets a legal provision in the EU law and an international agreement. For example, *Polydor's case*<sup>(42)</sup> involved interpretation of EU's free trade agreement with Portugal before its accession to EU. The trade agreement contained a provision on the free movement of goods, which was identically worded as found in the Treaty of Rome 1958. The CJEU declared that it is not necessary to interpret the provisions in an international trade agreement and EU law the same way as the object of a free trade agreement is not to create a common market.

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(36) Article 47 Treaty on European Union (TEU).

(37) Title 1, Article 1 TEU.

(38) Article 218 TFEU

(39) Case 87/75 *Bresciani*

(40) Case 21/72 *International Fruit Company*

(41) Article 218(11) TFEU.

(42) Case 104/81.

### **Legal basis to enter into International Agreements**

One of the primary objectives of the EU is to remove customs duties and quantitative restrictions on the free movement of goods between the Member States of the EU and create a customs union<sup>(43)</sup>. Apart from creating a customs union, a related objective of the EU is to extend its trade policy to countries outside its territory. An important aspect of its trade policy is to contribute to internationalize and liberalize world trade. In order to achieve this objective, the Lisbon Treaty provides inter alia abolition of restrictions to international trade and foreign direct investment, lower customs duties and other similar barriers<sup>(44)</sup>.

The EU also expect its trading partners to reciprocate to its open trade policy. It have in place legal instruments to effectively react to any signatories to WTO, which fail to reciprocate in the event of dumping or providing subsidies to the detriment of EU's open trade policy. These objectives are achieved by way of adopting restrictive measures within the framework of its common commercial policy.

### **Procedure to adopt a common commercial policy**

The Lisbon Treaty provides a clear procedural framework for the EU to adopt a common commercial policy towards third countries<sup>(45)</sup>. It covers a wide area ranging from conclusion of tariff and trade agreements relating to trade in goods and services, commercial aspects of intellectual property, foreign direct investment to measures to protect trade such as those to be taken in the event of dumping or subsidies.

The Lisbon Treaty provides that a proposal to develop a common commercial policy shall be initiated by the European Commission, the executive arm of the Union. It shall submit a proposal to the European Parliament and the Council of the EU, the law making institutions of the EU, to adopt a Regulation by way of ordinary legislative procedure where decision are taken by simple majority in the European Parliament and qualified majority in the Council<sup>(46)</sup>. The Regulation shall only define the framework for implementing the common commercial policy. Once the Regulation is adopted, until the conclusion of an international trade agreement with a third country, the Council shall regularly give directions to the Commission by adopting various legal acts such as Directives and Decision<sup>(47)</sup>.

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(43) Part Three, Title 1, Articles30-32 TFEU.

(44) Article 207 TFEU

(45) Article 207 read together with Article 218 TFEU

(46) Article 207 TFEU.

(47) Article 218 TFEU.

After the adoption of the Regulation, the Commission shall make recommendations to the Council, which shall authorize to open negotiations with one or more third countries or international organizations. Once negotiations are concluded, the Council shall adopt a Decision concluding the agreement. There is some agreements such as those relating to association agreements, accession to the European Convention for Human Rights where the Council shall adopt a Decision after obtaining the consent of the European Parliament<sup>(48)</sup>. In all other trade agreements, the Council is merely required to consult the European Parliament.

There are different kinds of voting system in Council depending on the nature of the international trade agreement. If it involves conclusion of an agreement in the field of trade in services, intellectual property, foreign direct investment, the Council is required to act unanimously<sup>(49)</sup>. This voting system is prescribed only if such an international agreement includes provisions for which unanimity is required for the adoption of internal rules. Any international agreement in the field of common foreign and security policy such as those relating to weapons, armaments, etc. the Council shall always act unanimously.

Before the Council ratifies an international trade agreement, Council, Commission or Member State may obtain the Opinion of the CJEU on its legality with EU law<sup>(50)</sup>. If the CJEU think the agreement is not compatible with EU law, such an agreement can enter into force only in accordance with Art 48 TEU, which would require a Treaty amendment.

### **EU as single trading entity**

Article 47 TEU confer on the EU legal personality. As a result, the EU will have a defined status in international law. In other words, the EU will be able to negotiate and conclude international agreements in its name and represent itself in international forums and organizations. This will simplify the EU's representation in international organizations such as the International Monetary Fund, the World Bank and others.

The EU thus conduct its trade and investment relations with non-EU countries through its trade and investment policy. All trade outside the EU is now an exclusive responsibility of the EU. In other words, the national governments have lost their competence to enter into any such international trade agreements. The relevant EU institutions make laws on trade matters,

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(48) Article 218(6) TFEU.

(49) Article 218(8) TFEU.

(50) Article 218(11) TFEU.

negotiate and conclude international trade agreements. In international trade, the EU speaks with one voice on behalf of all its Member States.

By acting together as a united force, the EU countries benefit from increased negotiating power when making trade deals with other countries. The EU negotiates trade agreements to strengthen national economies and create jobs. The EU trade agreements help to achieve these objectives in two ways. The trade agreements allow the businesses based in the EU to have access more easily and at lower prices. Such trade agreements provides a conducive environment for EU firms to compete more effectively abroad and export more to countries and regions outside the EU.

### **Regional organizations in the Middle East**

There are different level and forms of regional cooperation in the Middle East<sup>(51)</sup>. It would however be sufficient to highlight two of them to ascertain the extent to which they could further integrate as a strong force to protect against unfair trade practices emanating from any large external economies.

#### **The League of Arab States (LAS)**

The Middle East is the home to the oldest regional organization that exist today<sup>(52)</sup>. The League of Arab States (LAS) has a long history with membership drawn from countries within the Middle East and the African continent. In comparison with other entities in this region, LAS is the only organization that may be described as “regional”. Besides there are also various other multilateral projects that have been developed by members of the LAS but only at a sub-regional level.

The brutality of the Second World War laid the foundation to move towards closer cooperation across Arab countries. In pursuance of this objective to have close neighborly relations, the first inter-Arab meeting was convened in September 1944 and the outcome of this meeting was the adoption of the so-called Alexandria Protocol. This protocol laid the foundation for the signing of the Charter of the LAS in Cairo, Egypt on 22 March 1945 by six countries<sup>(53)</sup>. Since then the membership of the LAS have increased

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(51) For example the Arab-Maghreb Union Treaty was signed between Morocco, Algeria, Mauritania, Tunisia and Libya as a means to coordinate the economic policies of these respective countries.

(52) The expression Middle East is largely understood to cover Turkey, Israel, Lebanon, Syria, Jordan, Egypt, the Gulf Countries, North Africa and Saudi Arabia.

(53) The founder members of LAS are Egypt, Iraq, Lebanon, Saudi Arabia, Syria, and Transjordan (Jordan from 1949). North Yemen (later becoming Yemen) joined on 5 May 1945.

enormously<sup>(54)</sup>. The Charter expressly declares that membership of the LAS shall be limited to Arab states<sup>(55)</sup>.

The objectives of the LAS are manifold. The primary objective of the Charter is to create a conducive environment to bring about unity between the Arab states. The secondary objectives that need to be achieved such as to have closer cooperation in economic and financial matters, customs, currency, etc. are not set out in a mandatory manner<sup>(56)</sup>. In all such activities, the Charter only provides for mere coordination of the relevant policy areas.

The Charter was however drafted in a cautious manner in order to preserve the sovereign interests of the signatories. This is evident from a reading of various provisions of the Charter, which makes it abundantly clear the reluctance of the signatories to transfer any substantial powers to an international organization such as the LAS. For example, Article V11 of the Charter declares that the decisions of the main executive body of the organization would be binding only on the members that accept them. The organization created by the Charter was thus purely an inter-governmental institution with a strong emphasis on unanimity.

The Charter provides for the establishment of a Council of the League. It is composed of representatives of the member's states of the League. The task of the Council is to facilitate the realization of the various objectives of the League. The Council conducts all matters relating to international relations of the League. There are special committees prescribed in the Charter to facilitate the realization of the objective of the Charter such as economic and financial matters. All matters relating to international affairs are strictly left to the competence of the Council and not delegated to any committees.

Since the 1960s, there had been the practice of summoning summits of the LAS at regular intervals. The Charter provides for the convening of the Council of the League in ordinary session twice a year. Such summit have been held in different member countries normally attended by Heads of State<sup>(57)</sup>. These summits now constitute the most visible events associated with the institutional activities of the League. At the 2001 Arab League summit, an Arab Parliament was established, which convened for the first time in 2004.

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(54) There are currently 22 member countries of LAS: Algeria, Bahrain, Comoros, Djibouti, Egypt, United Arab Emirates, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Palestine, Qatar, Syria (suspended), Oman, Saudi Arabia, Somalia, Sudan, Tunisia and Yemen. There are also five observer states: Armenia, Brazil, Eritrea, India, and Venezuela.

(55) Article 1 of the Charter.

(56) Article 11 of the Charter.

(57) Article XV of the Charter.

The organizational structure of LAS have grown gradually and various organs had been added to the basic institutional structure of the League. In 1950, the Joint Defense and Economic Cooperation Treaty endowed the League with two more Councils, a Joint Defense Council and an Economic Council. These bodies was later renamed as the Economic and Social Council, which report to the Council of the League.

Similar to the United Nations model, the Arab League has its own specialized agencies and regimes. In terms of the Economic Unity Agreement 1957 comprising of the States of the LAS, the foundation was laid for the establishment of the Council of Arab Economic Unity (CAEU). In addition, there are also free-trade agreements that was facilitated by the Economic and Social Council in 1981 and 1997. This in turn paved the way for the development of a Greater Arab Free Trade Area (GAFTA).<sup>(58)</sup>

### **Gulf Cooperation Council (GCC)**

There is no prohibition on the member countries of LAS to enter into any bilateral or multilateral agreements between themselves<sup>(59)</sup>. Nor the Charter prohibit a member country of LAS to enter into a Treaty or agreement with a country outside the League. The preamble to the Charter of the GCC itself declares that it is established “in conformity with the Charter of the League of Arab States which calls for the realization of closer relations and stronger bond.” The establishment of the GCC should therefore be viewed in this background.

The GCC was established in Riyadh, Saudi Arabia, in May 1981 by six Gulf States<sup>(60)</sup>, which may described as the most notable of a sub- regional initiative in the Middle East. It has a mixed objective covering both political and economic affairs.

The aim of the GCC according to its preamble is to effect “coordination, cooperation and integration” between its member states in all fields<sup>(61)</sup>. Article four of the Charter states that the alliance was formed to strengthen relations

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(58) In 1970, the Charter of Arab Cultural Unity established the Arab League Educational, Cultural and Scientific Organization (ALECSO). An Arab Charter on Human Rights was signed in 2004 and entered into force in 2008.

(59) Article IX of the Charter.

(60) Kuwait, Saudi Arabia, Bahrain, Qatar, United Arab Emirates, and Oman, respectively. There was speculation that Jordan and Morocco would join the GCC in 2011 but various factors prevented its further enlargement.

(61) For a comprehensive study of the GCC, see Alasfoor, Reyadh, *The Gulf Cooperation Council: Its Nature and Achievements*, Department of Political Sciences, A Political Analysis of Regional Integration of the GCC States 1979-2004, Lund University, Sweden (2007)

among its member countries and to promote cooperation among the countries citizens. Most of the objectives are mere reproduction of the objectives of the LAS such as to coordinate in the field of economic and financial affairs, commerce and customs, education, culture, etc.

The highest decision-making organ of the GCC is the Supreme Council. It meets on an annual basis in the composition of the Heads of States of the member countries. Similar to the LAS, unanimity is required for any substantive decision by the Supreme Council of the GCC. The GCC also includes a Ministerial Council, composed of the ministers of foreign affairs of the member states. It meets every three months to implement the decisions of the Supreme Council and to propose new policy. The administrative wing of the GCC is the office of the Secretariat-General led by a Secretary-General. In contrast to the LAS, the informal practice for the choice of a GCC Secretary-General allowed individuals from different member states to be elected on a rotating basis. This body monitors policy implementation as well as arrange meetings.

Within the framework of the GCC, Gulf countries have concluded various cooperation initiatives. There are different GCC agreements focus on either security or economic coordination. From an economic integrationist perspective, GCC countries have made some progress toward the establishment of a common market by signing in 1981 a Unified Economic Agreement (UEA).

### **Common market of the GCC**

A reading of the UEA indicates there are many similarities between the EU and GCC in relation to the cross border movement of goods and factors of production such as labor and capital. Besides being a useful forum for political and security purposes, the GCC is also geared towards closer economic cooperation and integration. These objectives are clearly reflected in the Charter of the GCC and in a number of GCC documents. Article 4 of the Charter explicitly declares as its objective to have closer cooperation among member countries in economic affairs including finance, trade customs, transportation, etc.

There are five official documents adopted by the Supreme Council of GCC, which deals with economic matters. They are the GCC Charter, Common Objectives and Policies for Development Plan, the Unified Industrial Strategy, Common Agricultural Policy and the Unified Economic Agreement, respectively.



It would be sufficient to highlight some of the essential features of the UEA, which is very similar to its EU counterpart. The aim of the UEA is to establish a Gulf Common Market, similar to the common market of the EU. A closer reading of UEA indicates that its formulation is largely influenced by the Treaty of Rome, the legal basis of the common market of the EU.

Like the EU, the primary aim of economic cooperation between the GCC countries is the establishment of a common market. The common market of the GCC is also based on the four economic freedoms, namely goods, labor, right of establishment and services and capital, respectively.

As far as the free movement of goods is concerned, the initial focus of GCC was the establishment of a customs union. For this purpose, the UEA provides the necessary legal framework such as the requirement for the abolition of customs duties<sup>(62)</sup>. The launching of a free trade area by the elimination of the excise duties and establishment of uniform custom tariff appears to be the first step in the process of economic integration of the GCC.

There are also other measures envisaged such as to realize the objective of the right of establishment and freedom to provide services within the GCC. In order to facilitate this objective, Article 8 of the UEA mandates the member countries to confer all GCC citizens the same treatment granted to their own citizens without any discrimination particularly in four specific fields: freedom of movement, work and residence; right of ownership, inheritance, and bequest; freedom to exercise economic activity and finally free movement of capital<sup>(63)</sup>. In 2009, a Monetary Council was established to launch a single regional currency similar to the euro but not much done to give effect to this objective. There are different degrees of liberalization achieved in different areas of economic activities but an exhaustive study of which is beyond the scope of this paper.

### **Relations between the GCC and the EU**

The EU over the years has forged constructive political dialogue with members of the GCC. The well-known legal document is the Cooperation Agreement, which was concluded in 1988 and it forms the basis for the current relationship between the EU and GCC<sup>(64)</sup>. This Agreement declares that it is concluded for

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(62) On 1 March 1983, GCC eliminated customs duties between member countries on all agricultural, animal, industrial and natural resource products of national origin. .

(63) As far as financial services are concerned, Dubai and Bahrain are two leading financial Centre's within the GCC.

(64) Cooperation Agreement between the European Economic Community, of the one part, and the countries parties to the Charter of the Cooperation Council for the Arab States of the Gulf (the State of the United Arab Emirates, the State of Bahrain, the Kingdom of Saudi Arabia, the Sultanate of Oman, the State of Qatar and the State of Kuwait) of the other part.

an unlimited period of time, a similar language used in most of the EU Treaties. There is a wide range of activities set out in this agreement. Some of the objectives of the agreement clearly set out are to facilitate the political and economic relations, enhance economic and technical cooperation, broaden cooperation on energy, industry, trade and services, agriculture, fisheries, investment, science, technology and environment, etc.

There are also special provisions in the field of trade. In this context, the agreement seek to promote the development and diversification of the commercial exchanges between the parties. It is to be implemented by studying ways and means of overcoming trade barriers for the access of each party's products to the other party's market. An annual meeting of the EU foreign ministers with their GCC counterparts to discuss current issues is also prescribed in the agreement. In addition, there are also expert groups established to deal with sectoral matters such as macroeconomic questions and energy cooperation. The agreement also provides for various other forms of cooperation such as between universities, business and the media.

### **Issues facing closer economic cooperation in the Middle East**

As highlighted, the Arab League has a history even longer than for example the EU. However, the level of economic cooperation and integration in the Gulf region falls far short of what have been achieved in the EU context. There are various factors, which forms an obstacle to closer cooperation within both the LAS and the GCC but the discussion will be limited to trade obstacles to closer integration<sup>(65)</sup>.

The nature of the trading pattern may be identified as an obstacle for the formation of strong regional bodies in the Middle East. A bulk of the international trade is conducted with countries outside the geographical limits of the Middle East. As a result, the level of intra and regional economic exchange between the countries is extremely low, which is not conducive for closer economic integration between the countries. The lack or minimum economic exchanges is largely due to low degree of complementarity between the economies of the region. The main source of income in most of the countries comes from the exports such as oil, which are exported largely to countries outside the region<sup>(66)</sup>. On the other hand, these countries also import products such as

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(65) According to Riyadh, some of the obstacles identified are: Tribalism, Territorial disputes, Paternalism, Problem of succession and Immigration,

(66) According to some reliable statistics, more than 60 per cent of Saudi Arabia's exports go to industrial countries but only 6 per cent goes to Jordan and a similar export pattern could be detected even in the other GCC countries.

consumer goods and industrial machinery from outside the region because it cannot or are not produced within the region.

The existing export and import trend thus forms an obstacle for the development of a pan-Arab free trade area or common market. In the context of the EU, the inter dependence among the member states on cross border trade in goods paved the way for further integration in other fields such as in the services sector. The closer political, monetary and other forms of closer cooperation within the EU was a by-product of the successful completion of its customs union in 1970. It is the lack or minimum volume of cross-border trade, which had discouraged the states in the Middle East from developing strong forms of economic cooperation. Like in the context of the EU, if the Middle East countries had strengthened their economic inter dependence that could have been an incentive for further cooperation in other fields such as political, monetary, defense, security matters, etc.

### **General comments on the potential future direction of the GCC**

Some countries of the GCC have created a Sovereign Fund to which part of their oil revenues are credited. These Funds are professionally and prudently invested in different parts of the world. Such investments should be an invaluable insurance to compensate for the eventual and probable depletion of revenues currently generated by the export of oil and gas.

However, the financial resources of the Funds are largely invested outside the territory of the GCC such as in the stock markets in Europe and the US. Such investments will not necessarily contribute to facilitate cross border trade between the member countries of the GCC. The GCC countries should therefore focus more on developing bilateral trade within its territory if the region is to collectively move towards closer economic integration.

The GCC countries should also view the member states of the LAS with a sense of solidarity. Most of the member countries of the LAS are not as prosperous as the GCC countries. In this context, the GCC can follow the example of the EU. The EU began as a simple economic community of six member states with varying degrees of development. It was enlarged periodically bringing in mostly the less developed countries in Europe. Over a period, such countries largely through cross border trade began to develop their economies. The countries, which at the time of their membership of the EU were gross recipients of financial and other assistance became after lapse of time important contributors to the EU budget.

The foundation of the EU is based on the principle of solidarity and this could be a prospective model for the GCC to follow. Interesting even the GCC like the EU have started with six member countries and GCC can gradually extend the fruits of its prosperity to the less privileged countries within the LAS. It can follow the EU model and enlarge its membership or enter into bilateral agreements with such countries. In the end, it could be a win-win situation to both the LAS and the GCC. Evidently there is a large consumer base within the LAS as a whole and this could be potentially be a prosperous market for both import and exports between the GCC and LAS countries.

### Concluding remarks

There are different views expressed as to whether the WTO succeeded in achieving its objective to liberalize international trade. On the positive side, the WTO reduced the number of trade wars between the countries. Its member states are solving their trade disputes amicably or via WTO panels. The downside of the WTO system is that multilateral negotiations over trade liberalization had been moving very slowly such as for example the Doha round of trade negotiations. The requirement for consensus among member states limits how far agreements on trade reform can go. Many countries have turned away from the multilateral process toward bilateral or regional trade agreements<sup>(67)</sup>.

Over the past 70 years, WTO had been functioning properly and it is very likely to continue as an important multilateral trade system. Since the end of the Second World War, globalization and multilateralism had been a powerful trend, which formed an engine of growth and prosperity to many countries. The WTO rules dismantled many barriers to cross border trade, which in turn not only created a better playing field for both large and small economies but also contributed to improve the living standards of the people.

This positive trend was slowed down by the 2008 global financial crisis. It had a negative impact on free trade as some countries began to move towards protectionism. In recent times, the departure from multilateralism to unilateralism have further jeopardized the world trade system.

The US decision to impose tariffs on its trading partners is not entirely a new phenomenon. Such tariff measures had been imposed even before as a means to force other countries to respect the principle of reciprocity in trade matters.

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(67) As at 1 January 2013 there were 546 notifications of regional trade agreements and of these 354 are in force. In between 1948-1995 there were only 125 notifications but within 7 years from 1995-2002 there had been 125 notifications!

The difference with the latest US unilateral measures was that it has been done on “national security” grounds. Such measures cannot be challenged within the framework of the WTO rules. The WTO law allows its member countries to take necessary actions to guarantee their national security but expected to do so only at times of real crisis, like a real war. It is however regrettable that in peacetime, the US has cited national security as a reason for imposing tariffs on countries like PRC, EU, Japan etc. If other powerful member countries of WTO follow suit, the escalation of trade conflict could be impossible to stop or even to reverse, thereby seriously jeopardising the existing global trade system based on WTO.

The adoption of the US Trade Act in 1974 was a reaction to the inefficient and ineffective dispute settlement mechanism under the GATT. Even countries other than the US had resorted to national measures to counter trade disputes under the GATT system. After the WTO introduced the modern dispute settlement mechanism there is no credible reason to invoke national laws to impose higher tariffs on another country in the event of a breach of the WTO rules. The WTO system is still largely based on diplomacy and all its member countries should seek to avoid departing from this mechanism to settle bilateral trade disputes.

The EU model is the main reference point for regional projects worldwide. There was great interest expressed by the member states of the GCC due to the relative success of the EU. There are however, differences between the regional groupings in the Middle East and the EU and as highlighted the major difference is the degree of economic complementarity among the member countries of the two systems.

The establishment of regional economic entities is no doubt a step forward towards achieving the goal of WTO, which is to ensure harmonious and well-functioning global trading system. It is easier for both the EU and other WTO countries to negotiate and settle any trade disputes. A WTO country need not negotiate with 28 different countries but just with the European Commission in the event of any disputes arising within the framework of the WTO. Such an approach can be followed by the GCC as well. The Charter of the UEA in Article 7 declares, “Member states shall coordinate their commercial policies and relations with other states and regional economic groupings”. Since the UEA explicitly acknowledges the need for the emergence of a single voice for the GCC countries in external trade matters, it might as well follow the EU model when it comes to negotiations in any global trade talks.

The Arab League is a political organization, which tries to help integrate its members economically. As a political body, it also solves conflicts involving member states without asking for foreign assistance. Economic achievements initiated by the League amongst member states however have been much less impressive than those achieved by smaller Arab organizations such as the (GCC). One of the reasons for the lack of closer cooperation within the LAS is due to its enlargement, which makes it more difficult to reach any decisions based on consensus. If it has developed along the lines of the EU with establishment of powerful and independent supra-national bodies and downsizing the areas of consensual decision-making, much more integration could have been achieved within the LAS.

The GCC as a sub-regional body have also assumed exclusive responsibility over many fields in the Gulf region. The assumption of such responsibilities has in turn led to the marginalization of the Arab League within this sub-region. The fact that the Arab League regional body is responsible over the entire Arab world did not prevent the GCC to assume greater responsibility in several areas of activity within this region.

Even though the GCC is blessed with the world's largest pool of oil and gas reserves, there is also the risk or threat of depletion of such resources. Apart from the investments from the Sovereign Funds of the GCC countries, they should also focus even more on developing cross border trade within the region including the LAS countries. The economies of the region have to gradually graduate from being import-dependent from outside the region on consumer and industrial goods to be more self-reliant within its own region. These countries should reverse the traditional direction of trade if they are to fully achieve the objectives of UEA.

Some of the GCC countries have made massive investment for example in agriculture and food self-sufficiency but they still depend largely on food imports<sup>(68)</sup>. Much of the land mass covered by the member countries of the Arab League largely consists of arid deserts, such as the Sahara. However, it also contains several highly fertile lands like the Nile Valley, the Jubba Valley and Shebelle Valley in the Horn of Africa, the Atlas Mountains in the Maghreb and the Fertile Crescent that stretches over Mesopotamia and the Levant. The territory of the Arab League also includes great fertile lands in the southern part of Sudan, which is referred to as the food basket of the Arab World. The oil rich GCC countries can invest in these countries, which could in turn generate

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(68) For example in 2004, the GCC countries spent more than USD 9.5 billion on food alone.

further economic integration not only within the GCC but the LAS as a whole.

The GCC sub-regional group is relatively a successful model of economic cooperation. It has much more potential to develop in line with the EU model that existed before the launching of the internal market in 1993. The legal framework of UEA is a forward looking agreement of the GCC countries and not least the most ambitious and far reaching comparable to the common market of the EU. If the GCC could put into practice the objectives of UEA, it could represent as a formidable economic bloc in economic negotiations with other blocs such as the EU or any other countries.

The gradual establishment of a common market within the GCC may lead to growing economic inter-dependence of the member countries. If we are to go by the EU experience, the process of economic integration was often followed up with closer political unity and such a process may not be ruled out even in the context of the GCC. The declared objective of UEA is to integrate the six economies into a one large, prosperous regional economy similar to the EU common market. If this objective is attained, it could be the GCC, not the more ambitious and advanced EU that can be an appropriate model to countries, which seek to cooperate at the regional level.



**Table of Contents**

| <b>Subject</b>   | <b>Page</b> |
|--|-------------|
| Abstract   | 265         |
| Introduction   | 266         |
| Different forms of economic cooperation                            | 267         |
| An overview of international trade arrangements                    | 268         |
| Tension within the WTO system                                      | 269         |
| Trade tension between the US and PRC                               | 270         |
| Legal basis for US unilateral action                               | 271         |
| Brexit-UK unilateral departure from the European Union             | 272         |
| Background to the Brexit   | 272         |
| Entry and exit of the EU   | 273         |
| Reflections on the nature of future international order            | 273         |
| Bilateral agreements as reaction to unilateral trade protectionism | 274         |
| EU as a model for other regional organizations                     | 275         |
| Accession criteria   | 276         |
| Composition of the Union   | 276         |
| Desirable level of regional integration                            | 277         |
| Environment and energy policy and solidarity in the EU             | 279         |
| International Agreements of the European Union                     | 280         |
| Legal status of international agreements under EU Law              | 280         |
| Legal basis to enter into International Agreements                 | 281         |
| Procedure to adopt a common commercial policy                      | 281         |
| EU as single trading entity  | 282         |
| Regional organizations in the Middle East                          | 283         |
| The League of Arab States (LAS)                                    | 283         |
| Gulf Cooperation Council (GCC)                                     | 285         |
| Common market of the GCC   | 286         |
| Relations between the GCC and the EU                               | 287         |
| Issues facing closer economic cooperation in the Middle East       | 288         |
| General comments on the potential future direction of the GCC      | 289         |
| Concluding remarks   | 290         |