



## **PRELIMINARY STUDY ON**

# **THE NEW GENERATION OF FREE TRADE AGREEMENTS AND THEIR IMPACT ON INTRA-OIC TRADE**

**SUBMITTED BY**

**THE ISLAMIC CENTRE FOR DEVELOPMENT OF TRADE  
AND  
THE ISLAMIC DEVELOPMENT BANK GROUP**

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# CONTENTS

	<b>Page</b>
<b>CONTENTS</b>	2
<b>LIST OF ABBREVIATIONS AND ACRONYMS</b>	3
<b>FORWORD</b>	4
<b>EXECUTIVE SUMMARY</b>	6
<b>INTRODUCTION</b>	8
<b>PART I: FEATURES AND SPECIFICATIONS OF THE FREE TRADE AGREEMENTS OF THE NEW GENERATION (FTA-NG)</b>	<b>9</b>
1. WHAT IS FREE TRADE AGREEMENT (FTA) AND WHAT ARE THE TYPES?	9
2. THE FTA AND WTO RULES	10
3. KEY LIMITATIONS OF CLASSIC FTA	11
4. KEY FEATURES OF FREE TRADE AGREEMENTS CALLED NEW GENERATION (FTA-NG)	12
<b>PART II: NEW GENERATION TRADE AGREEMENTS IN NON AND OIC MEMBER COUNTRIES</b>	<b>14</b>
<b>A- CASE STUDY OF SOME NEW GENERATION TRADE AGREEMENTS FROM NON OIC COUNTRIES</b>	
1. NEW EUROPEAN CONTEXT OF FTAs-NG CREATED BY THE LISBON TREATY	14
2. CASE OF THE FTAs BETWEEN THE EU AND CANADA (CETA)	15
3. CASE OF THE FTAs BETWEEN THE EU AND SOUTH KOREA	16
4. CHARACTERISTICS OF EFTA FREE TRADE AGREEMENTS	16
<b>B- PRESENTATION OF THE NEW GENERATION TRADE AGREEMENTS INVOLVING THE OIC COUNTRIES</b>	<b>17</b>
1. GULF CO-OPERATION COUNCIL AND THE EUROPEAN FREE TRADE AREA FTA (GCC-EFTA FTA)	17
2. CASE OF THE FTA BETWEEN THE EUROPEAN FREE TRADE ASSOCIATION (EFTA) AND UKRAINE	17
3. AGADIR AGREEMENT	18
4. GCC SINGAPORE FREE TRADE AREA (GSFTA):	20
5. CASE OF THE FTA BETWEEN THE EUROPEAN FREE TRADE ASSOCIATION (EFTA) and EGYPT	23
6. CASE OF MOROCCO	24
7. CASE OF EU FTAs WITH MALAYSIA WITHIN THE FRAMEWORK OF THE FTA WITH ASEAN	35
8. CASE OF THE FTA OF THE USA WITH THE MIDDLE EAST COUNTRIES	36
9. CASE OF TURKEY	40
<b>PART III: PRESENTATION OF THE MEGA-REGIONAL FTAs INVOLVING THE OIC COUNTRIES</b>	<b>42</b>
1. POTENTIAL IMPACT OF MEGA-REGIONALS ON OIC MEMBER COUNTRIES	42
1.1. Overview of mega-regionals	42
1.2. Impact on OIC Member States - transmission channels	44
1.3. Risks of increased difficulty in accessing markets due to harmonization of standards	46
2. IMPACT OF EPAs AND AFRICAN FTA ON AFRICAN ECONOMIES	47
2.1. Economic Partnership Agreements (EPAs)	47
2.2. Tripartite Free Trade Area (TFTA)	53
<b>PART IV: FINDINGS OF THE TWO SEMINARS ON NEW GENERATIONS OF FTAs ORGANISED BY ICDT AND IDBG</b>	<b>56</b>
1. BACKGROUND	56
2. OBJECTIVES	56
3. PARTICIPANTS	56
4. RECOMMENDATIONS	56
<b>PART V: POLICY OPTIONS AND RECOMMENDATIONS TO DERIVE THE BEST BENEFIT FROM TRADE AGREEMENTS</b>	<b>59</b>
1. FREE TRADE AGREEMENTS: SUBJECTS TO TWO CONTRADICTORY TYPES OF READING	59
2. SOME MEASURES AND POLICY RECOMMENDATIONS	60
2.1 BEFORE FTA	60
2.2 DURING THE NEGOTIATIONS OF THE FTA	61
2.3 FOLLOWING THE ESTABLISHMENT OF THE FTA	62
<b>BIBLIOGRAPHY</b>	<b>63</b>

## LIST OF ABBREVIATIONS AND ACRONYMS

FTA	FREE TRADE AREA
EFTA	European Free Trade Association
EFTA-NG	Free Trade Agreement of the New Generation
DCFTA	Deep and comprehensive free trade agreement
NAFTA	North American Free Trade Agreement
RTA	Regional Trade Agreement
ASEAN	<i>Association of South East Asian Nations</i>
NTB	<i>Non-Tariff Barriers</i>
CETA	<i>Canadian-EU Comprehensive Economic and Trade Agreement</i>
CRTA	<i>Committee on Regional Trade Agreements</i>
DCFTA	<i>Deep and Comprehensive Free Trade Agreement</i>
DH	<i>Moroccan Dirham</i>
IMF	<i>International Monetary Fund</i>
GATS	<i>General Agreement on Trade in Services</i>
GATT	<i>General Agreement on Tariffs and Trade</i>
GTAP	<i>Global Trade Analysis Project</i>
FDI	<i>Foreign Direct Investment</i>
CM	<i>Common Market</i>
MEFTA	<i>Middle-East Free Trade Area</i>
MERCOSUR	<i>Common Market of the Southern Cone</i>
MNT	<i>Non-Tariff Measures</i>
MFN	<i>(Clause of the ) Most Favoured Nation</i>
OIC	<i>Organisation of Islamic Cooperation</i>
OCT	<i>Overseas Countries and Territories</i>
WTO	<i>World Trade Organisation</i>
TBT	<i>Technical barriers to Trade</i>
GDP	<i>Gross Domestic Product</i>
RTA	<i>Regional Trade Agreement</i>
SAT	<i>Substantially All Trade</i>
SGP	<i>Generalised System of Preferences</i>
SPS	<i>Sanitary and Phytosanitary Measures</i>
TAIEX	<i>Technical Assistance and Information Exchange instrument of the European Commission</i>
ECT	<i>Common External Tariff</i>
TIC	<i>Technology of Information and Communication</i>
TRIPs	<i>Trade-Related Aspects of Intellectual Property Rights (TRIPS)</i>
CU	<i>Customs Union</i>
EU	<i>European Union</i>
USD	<i>United-States Dollar</i>
WTO	<i>World Trade Organisation</i>
FTA	<i>Free Trade Area</i>
CAFTA	<i>Central America Free Trade Agreement</i>

## FOREWORD

The world trade architecture witnessed a structural change during the last decade, notably by the increase of the conclusion of new generation of Free Trade Agreements and the launching negotiations for the creation of Mega Regional FTAs like Trans Pacific Partnership Agreement (TPPA) and the Transatlantic Trade and Investment Partnership TTIP between USA and EU.

In June 2015 Africa entered in the Club of Mega Regional FTAs, three major Africa's regional economic groupings signed an agreement on forming the continent's largest free trade area (FTA) in Sharm El Sheikh from 7<sup>th</sup> to 10<sup>th</sup> June 2015. The FTA will gather 26 countries and members of the three RECs, COMESA-EAC-SADC.

The major drivers of such trend are on the one hand the lack of progress of Doha Round, despite the adoption of an international agreement on trade facilitation in Bali in December 2013, Developed countries are planning to deepen concessions and go beyond Uruguay Round agreements and impose new multilateral disciplines and Rules WTO + and maximise their welfare. The other driver is geo political since there is a new restructuration of world economy and the growing of new powers like China and BRICS, Developed Countries are trying to maintain the statu quo and defend the vested interest against the new powers and emergent Countries.

The third major driver is development of Global Value Chain by the major Transnational Corporations. In fact, The upsurge of Global Value Chains requires new trade rules that are often negotiated within the New Generation of FTAs like, competition policy, FDI, services, Labor and harmonization of standards and the alleviation of Non-tariff Barriers.

*As matter of fact, "domestic policies are a more important barrier to international trade than in the past. For example, weak protection of intellectual property and investment rights hurts global value chains because moving production to another country (offshoring) increases the international exposure of a firm's knowledge and capital "IMF".*

In south countries, two main specific reasons pushed some countries to embark in new generation of FTAs ; we can quote on the one hand the complexities and hindrances that occur due to the spaghetti Bowl phenomena (overlapping of RTAs especially of RoO) and on the other, the lack of effectiveness of South-South Regional Trade Agreements, due to many factors of political and economic nature like the NTBs, lack of complementarity among the Countries, the insufficiencies in transportation infrastructure and logistics, and also the complexity of domestic procedures.

The lack of effectiveness of South-South Regional Trade Agreements pushed part of business sector, notably in ASEAN, to not recourse to export trough the existing RTAs. That's why the business community is lobbying to revise the past generation of RTAs and replace them by business friendly new FTAs.

In this regard, the business circles voice the inclusion in new RTAs some salient measures:

- 1. The need to adopt simplified and harmonised Rules of Origin (RoO);*
- 2. Tariff liberalisation should taken into account the industrial development levels of the member country;*
- 3. Setting up of a efficient body for dispute resolution and arbitration of commercial disputes;*
- 4. Adoption of a legally binding rules in order to enforce the removal of NTBs;*

5. *Special emphasis shall be put on two pillars, mainly in Trade Facilitation and industrial development through encouraging joint projects and industrial complementarities, in this regard the OIC Protocol on Rules of Origin is a good platform since it provide for cumulation of origin among the Participating States.*

Naturally, there are pros and cons to such New Generation of FTAs. Any potential gain for a country in exports or investments should be weighed against potential losses to domestic producers and consumers, and especially the loss to the government in policy space and potential pay-outs to companies claiming compensation.

The Organization of Islamic Cooperation is also setting up a Mega Regional RTA through the Trade Preferential System among OIC Member States (TPS OIC), this agreement which will be operational in couple of months is very promising especially through the Fast Track modality which can lead to the setting up of an OIC FTA.

Of course OIC can also learn from the Mega regional FTAs like the TPPA RECIP and the Tripartite Agreement concluded in Sharm Al Sheick in June 2015 and set up bridges among the exiting RTAs in OIC in order the strengthen the TPS OIC System. OIC Member States can draw lessons from such new agreements especially the provisions dealing with NTBs and Trade facilitation and logistics and other business friendly measures to ease and streamline trade flows.

# NEW GENERATION OF FREE-TRADE AGREEMENTS (NGFTAs)

## Executive Summary<sup>1</sup>

The proliferation of free trade agreements (FTAs) in the last three decades with an accelerated pace since the creation of the WTO in 1995, raises very mixed reactions both from the specialists, and from the countries involved, and even from countries left outside. So while some see these FTAs as being a significant contribution to the spread of free trade, some others see them as a form of protectionism and even Trojan horses to open-up developing countries' markets and prepare the way to multinational firms that Bhagwati (2004) calls the B-52s of capitalism.

Indeed, although Article XXIV of GATT permits the creation of free trade areas (FTAs) and customs unions (CU) under certain conditions, WTO experts have given up a long time ago to decide on whether all notified FTAs are in full compliance with these conditions. It is noteworthy that while these agreements have some clear advantages for member countries, they also entail many disadvantages and pitfalls both for some of these countries and for third parties.

These agreements have been criticized mainly because they seek to promote trade without targeting its real origins: i.e., industries producing goods being traded. In addition, critics of globalization and its corollary, free trade, continue to attack the claim of free trade agreements' adepts that these FTAs contribute to the well being of the population. According to these critics such as Michel Chussodovsky, it is exactly the quite opposite.

Developing countries including most of the OIC members engaged in a large number of FTAs especially with developed countries are often powerless against these partners to negotiate advantageous terms under these arrangements. Worse, many agreements initially presented as "bargains" have proven after their implementation, to be real threats to the economy of these countries and major sources of their trade balance deficit.

It is precisely to address the shortcomings of these agreements, which are limited to the simple dismantling of tariff and non-tariff barriers hindering the trade of goods and services that a new generation of arrangements emerged. This is the so-called new generation FTAs or FTAs WTO-Plus.

The main feature of these agreements is that they go well beyond trade to address areas sometimes with no relation, at least visible and direct, with trade, such as human rights and freedoms, the environment, the fight against poverty, the fight against corruption, etc.

What are these FTAs exactly? Do these agreements actually allow overcoming the limitations of previous versions? Do they present risks for countries that engage in them? What can be recommended to OIC countries to take benefit from them?

To address this kind of questions, this report is structured into five parts:

- ✦ In the first part, classic or traditional agreements are presented critically and in particular in comparison to their typology and compliance with multilateral rules of the WTO and the specificities of the new generation of agreements are presented on the basis of the identification of limitations and inadequacies of traditional forms of such agreements;

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<sup>1</sup> Prepared by Dr. Brahim ALLALI, Consultant at ICDT and ICDT's Staff

- The second part is devoted to the presentation the new generation of FTA in non and OIC Countries;
- The third part presents the mega-regional FTA involving the OIC countries engaged with an impact assessment of the latter at different levels;
- The fourth summarises the findings of the two seminars on New Generations of FTA organised by ICDT and IDB Group;
- The fifth and final part concluding the report, is devoted to the presentation of a set of measures and policy options based on the best practices for preparing, negotiating, implementing and following up free trade agreements.

## INTRODUCTION

The proliferation of free trade agreements in the last three decades characterized by a sustained pace acceleration since the creation of the WTO in 1995, arouses mixed reactions. So, while some consider it as a significant contribution to the spread of free trade, others consider them as stubborn protectionist trends and even Trojan horses to monopolize the developing country markets and open the way to multinational firms that Bhagwati (2004) calls the B-52 of capitalism.

In effect, although Article XXIV of the GATT allows the creation of free trade areas (FTAs) and customs unions (CU) under some conditions, the WTO experts have long since given up deciding on the compliance of signed agreements with these conditions. It must be said that if these agreements include a set of clear advantages for signatory countries, they also contain disadvantages both for some of these countries and for third parties.

Indeed, former agreements have always been blamed because they seek to promote trade without targeting its real origins. In addition, critics of globalization and its corollary, free trade, continue to attack the theory that these free trade agreements contribute to the welfare of the population. According to them, it is the opposite that is true.

Developing countries most of which are OIC members which have embarked on a plethora of free trade agreements especially, with developed countries are often powerless against these partners to negotiate advantageous terms under these agreements. Worse, many agreements initially presented as "bargains" have proven, after their implementation, to be real threats to the economy of these countries and a major source of the deficit of their trade balances.

It is precisely to remedy the shortcomings of these agreements reduced to mere dismantling of tariff and non-tariff barriers hampering trade in goods and services that a new generation of agreements emerged. These are the so-called new generation free trade agreements or free trade agreements WTO-Plus.

The main feature of these agreements is that they go well beyond trade and address areas sometimes with no relation, at least visible and direct, with trade, such as human rights and freedoms, the environment, poverty reduction, the fight against corruption, etc.

What are these FTAs exactly? Do they really allow overcoming the limitations of previous versions? Do they present risks for countries that commit themselves to them? What can you recommend to the OIC countries to derive the best benefit from them?

To address this kind of questions and many others that we shall endeavour to give answers through this report divided into five parts:

- In the first part, classic or traditional agreements are presented critically and in particular in comparison to their typology and compliance with multilateral rules of the WTO and the specificities of the new generation of agreements are presented on the basis of the identification of limitations and inadequacies of traditional forms of such agreements;
- The second part is devoted to the presentation the new generation of FTA in non and OIC Countries;
- The third part presents the mega-regional FTA involving the OIC countries engaged with an impact assessment of the latter at different levels;
- The fourth summarises the findings of the two seminars on New Generations of FTA organised by ICDT and IDB Group;
- The fifth and final part concluding the report, is devoted to the presentation of a set of measures and policy options based on the best practices for preparing, negotiating, implementing and following up free trade agreements.



## PART I

### FEATURES AND SPECIFICATIONS OF FREE TRADE AGREEMENTS OF THE NEW GENERATION (FTA-NG)

The primary objective of this part is to study the main forms of trade agreements and to describe the general context particularly, in terms of compliance with the multilateral rules.

In fact, the issue of FTAs is consistent with the broader problem of economic globalization. The latter referring to "Economic globalization constitutes the integration of national economies into the international economy through trade, foreign direct investment (by corporations and multinationals), short-term capital flows, international flows of workers and more generally human beings flows, and [finally] technology flows.» Bhagwati (2004-3)

#### 1. What is a free trade agreement (FTA) and what are the types?

Roughly, an FTA can be defined as the commitment of the signatory parties to remove trade barriers that may exist between them. However, each country remains free to define its own commercial and pricing policy towards third countries (Dent, 2006). This type of FTAs is generally known as the Free Trade Area (FTA)

The Customs Union (CU) goes further on the path of integration by allowing signatory countries to adopt a common external tariff (CET) and unify certain other trade policy measures against non-members.

The Common Market (CM) is based on the CU and involves, in addition to trade integration, the elimination of other barriers that may hamper the free movement of goods and services, labor and capital between the signatory parties.

The three types of FTAs above are called in the terminology of the WTO Regional Trade Agreements (RTAs) in reference to their English name. Some types of FTAs are also sometimes called "Preferential Agreements" which are generally of two types:

- ❖ Non-reciprocal agreements: These are usually tariff concessions, without compensation by some developed countries to some other developing countries.
- ❖ Agreements of Limited scope: such agreements usually involve only developing countries, which without creating an FTA, decide, by mutual agreement, to exchange preferences on a limited number of specified products.

There are many other types of FTAs. One of the most popular, but also more simple is to distinguish between the following types:

- ❖ Bilateral trade agreements;
- ❖ Cooperation agreements with preferential market access;
- ❖ Association agreements with a more or less elaborate institutional framework;
- ❖ Plurilateral or multilateral agreements with a group of countries or within the framework of the WTO.

In comparison with their intensity, it is possible to distinguish between three types of agreements that prevail in trade relations between countries. These are trade agreements, cooperation agreements that go well beyond the simple trade in goods and, finally, the association agreements that include aspects such as privileged market access, forms of economic financial or technical cooperation, etc.

Some countries prefer a more evolved form of FTA known as the "FTA Plus" or even New Generation FTA (FTA-NG). This form of FTA to which this report is devoted goes far beyond the simple elimination of import tariffs and other trade barriers to also address non-trade measures such as investment, intellectual property, political competition, public procurement, mobility of individuals, the environment, scientific and technical cooperation, e-commerce, etc.

## 2. The FTA and WTO RULES:

The success of the framework established by the GATT in 1945 to contribute to the reduction of tariffs from about 40% on average to around 4% in 1995, as well as the gradual dismantling of other barriers to trade, have favoured the emergence of a new model of bilateralism and regionalism (Dent, 2006). Within the framework of this model, some countries wanted to go even further in the process of integrating their economies through a greater reduction of tariff and non-tariff barriers under preferential agreements and trade blocks.

The WTO, institutional successor to the GATT, endorsed the regulatory framework authorizing these practices by admitting that, depending on how the FTA are designed and implemented, they can contribute positively to the development of the multilateral system. For example, "The promotion of free trade at a preferential level can help developing economies to implement domestic reforms and open up to the competitive market pressures at a sustained pace, thus facilitating their integration into the world economy. This can also benefit to the multilateral process by having a leverage effect for openness and competitive liberalization in trade relations." (WTO, 2005: 1). Also "regional trade agreements can serve as laboratories for change and innovation and may provide guidance for the adoption of new trade disciplines at the multilateral level. »(WTO, 2005a: 16).

In general, the rules of the WTO on RTAs are designed to get the most out of the creation and intensification of trade flows and minimize diversion effects of these flows. Inherited from the arsenal of the GATT, these rules are covered by three laws:

- ❖ Article XXIV of FTAs and Customs Union;
- ❖ Article V on economic integration; and
- ❖ The Enabling Clause of 1979 on developing countries and RTAs.

Article XXIV, the most important in this field, lays down the following basic requirements for RTAs:

- ❖ The signatories of the RTAs should not raise trade barriers to non-members (clause 4 and Article 5b);
- ❖ Plans and timelines for the establishment of a RTA must be completed within a reasonable time (5c clause);
- ❖ Member countries should immediately notify the WTO and other members of the project to create a RTA (clause 7); and
- ❖ Prices (tariffs) on imports and other restrictive regulations and trade rules must be essentially abolished for substantially all trade (SAT) (8b clause). The aim is to prevent countries from protecting industries and activities where trade flows creation opportunities are the most important (Dent, 2006).
- ❖ For its part, Article V of the General Agreement on Trade in Services (GATS) provides for the following key points in the case of a RTA involving the liberalization of trade in services:
  - ❖ The agreement must have substantial sectoral coverage (clause 1a);

- ❖ Implementation within a reasonable time (1bii clause);
- ❖ More favorable treatment should be given to developing countries (clause 3b)

The Enabling Clause provides for the granting of the preferential treatment to developing countries by way of derogation from the Most Favoured Nation (MFN). It falls within the framework of the types previously explained of the agreement with limited scope, and non-reciprocal agreement.

*"In short, I argue that the notion that globalization needs a human face – a staple of popular rhetoric that has become a dangerous cliché - is wrong. It raises a false alarm. Globalization has a human face, but we can make it more agreeable». Jagdish Bhagwati (2004-x).*

In this part we shall highlight the main features of the so-called new generation of trade agreements and how they can overcome some of the deficiencies and limitations of the old forms of agreements presented in the first part. To this end, we shall start first by identifying the main limitations and shortcomings of the so-called classical forms before presenting the specificities of the new generation of agreements.

### 3. Key limitations of classic FTAs:

Notwithstanding the Virtues recognized for FTAs, the latter have undergone numerous criticisms from specialists. For example, Dent (2006) notes that although WTO rules require from member countries to FTAs to include substantially all trade in the Agreement (Substantially all trade), in practice, only a few FTAs have managed to eliminate all the duties and restrictions on trade in agricultural products.

For their part, Cheng et al. (2009) point out that the proliferation of FTAs especially since the 90s, has trivialized the overlap of these FTAs. This overlap has many negative implications of which the duplication and complexity of the rules of origin, and the loss of economic efficiency of the FTAs themselves. In addition, the FTAs overlapping phenomenon further complicates the relationship between these agreements and the multilateral trading system.

Jagdish Bhagwati (1995) called for a stricter monitoring of FTAs by the WTO. In particular, he argues that the effects of trade diversion of these FTAs are often underestimated and that the free multilateral or global exchange provides much better benefits to partner countries. In addition, by excluding the non-signatory countries from the exchanged preferences, these FTAs are, in his opinion, discriminatory and involve at the same time, free trade and protectionism. That is why the author also recommends that these FTAs should be called "Preferential Agreements" rather than Free Trade Agreements.

Supachai Panitchpakdi, himself, during his term as WTO Director General from 2002 to 2005, did not hesitate to scold FTAs because they are “inherently discriminatory. None of them has managed to open markets in sensitive areas such as agriculture (...) [and that these FTAs] add to the complexities of the business by creating a multiplicity of rules and the poor countries are left out in cold”.

A study commissioned by the WTO in 2005 on the assessment of this World organization's achievements during its first ten years went in the same direction of the Supachai's criticisms. It stresses in particular that these FTAs create a lot of confusion in the international trading system by creating complex and inconsistent rules of origin, costly administrative rules and situations conducive to corruption (WTO, 2005b). Reports published by the World Bank and the IMF at the same epoch also point in the same direction.

Other limitations are usually referred to with respect to FTAs that we now refer to as classics. These are in particular the following:

- ❖ The levels of import tariffs has experienced a gradual decline as time goes by and especially for manufactured goods. This resulted in a reduction of the marginal importance but also the impact of conventional FTA signatories (Dent, 2006);
- ❖ Traditional FTAs generally include many exemptions which also limit the importance and the scope. Most of these exemptions relate to sensitive areas such as agriculture;
- ❖ Traditional FTAs, which more often concern exports (which are also imports from the other partner countries), ultimately cover only the result of the implementation of all the other national sectoral policies. However, the FTA cannot afford to increase exports and, accordingly, trade between the partner countries, in the event the implementation of those sectoral policies do not produce tradable goods and services;
- ❖ Traditional FTAs do not reflect the will of the countries to further integrate their economies in order to take better advantage of synergies;
- ❖ Several economic operators, FTA signatory countries complain of the difficulties in obtaining evidence of the origin of goods traded and, in general, in complying with the provisions of the FTAs.

For his part, Dent (2006) recalls that it is in the field of the RTAs that WTO rules are lagging and this is due, he says, to many causes, which he categorizes into two large families: systemic causes and procedural causes. While the first raise the fundamental question of the compatibility of the RTAs with multilateral rules, the latter are related to the timing and content of notifications and the need to develop a more transparent and efficient review process of RTAs. For example, none of the RTAs' examination report has been approved by the Regional Trade Agreements Committee (RTAAC) of the WTO since 1995 and that, in particular because of the lack of consensus within the Committee on the compliance with RTAs' rules of the WTO. Dent (2006) summarizes the main points of conflict as follows:

- ❖ Divergent interpretations of what the word "substantially all trade" should cover as stipulated in Article XXIV: 8b;
- ❖ Other trade regulations relating to preferential rules of origin introduced into the international trading system by the RTAs;
- ❖ Primacy of the multilateral system and the possible negative effects of the RTAs on third parties;
- ❖ The "grandfather" or transcendence status of the existing RTAs and the retroactive application of any new rules;
- ❖ The RTAs and development, especially in relation to the enabling clause of 1979.

#### **4. Key features of free trade agreements called new generation (FTAs-NG):**

The FTAs-NG are not limited to trade in industrial products, but also cover areas such as agriculture, NTBs, trade in services, government procurement, investment, intellectual property and competition policy . They may also have dispute resolution mechanisms. These agreements are normally part of what is commonly called mixed agreements.

“The EU has focused its commercial strategy on growth and competitiveness and strongly calls for establishing FTAs-NG. These agreements combine an ambitious agenda "WTO plus" with normative provisions such as clauses on human rights, the social dimension and sustainable development” .

The New generation of FTAs goes beyond trade in goods and covers the so-called issues or topics of Singapore (Singapore issues) or "WTO-plus issues". The strategy for trade in European Union known as the "Global Europe" emphasizes that FTAs can be based on international standards and exceed them to "go further and faster in promoting openness and the integration by addressing the problems and topics not yet ready for multilateral discussion "such as investment, government procurement, competition or the enforcement of intellectual property rights.

## PART II

### NEW GENERATION TRADE AGREEMENTS IN NON AND OIC MEMBER COUNTRIES

#### A/ CASE STUDY OF SOME NEW GENERATION TRADE AGREEMENTS FROM NON OIC COUNTRIES:

##### 1. New European context of the FTAs-NG created by the Lisbon Treaty:

As the European Union has gone further towards FTAs-NG, it is appropriate to tackle first this experience. Currently, there are more than 30 FTAs in force or in the process of ratification involving the EU in addition to nearly fifteen being negotiated agreements. The foreign trade policy of the EU is traditionally characterized by its aim of strengthening liberalization. This trend is maintained in the Lisbon Treaty, which states in Article 206 that "the Union contributes, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and FDI, and to reduce all barriers including tariff barriers».

Article 207: 1 places explicitly for the first time the common trade policy of the Union under the auspices of the EU's external action. Thus, this trade policy will now be guided by broader goals than simply progressive abolition of restrictions on trade and investment. The EU is increasingly combining the economic, political values and other standards in its external relations. In simpler terms, in this new vision, the EU's non-trade objectives will be pursued through trade.

"The EU is the champion of preferential trade agreements. There is currently only eight members of the WTO that deal with the EU on the basis of the clause of the most favored nation. "This number has even decreased with the entry into force of the free trade agreements with Canada and Singapore. The downward trend will certainly continue with the agreements launched in 2013 with the United States and Japan.

This strengthening of trade agreements is part of a renewed context of the Lisbon strategy for growth and jobs in the European Union and especially, non-completion of the Doha Round multilateral negotiations. This context has favored the emergence of a new vision in Europe calling for an end to the doctrine of Lamy of 1999 aiming at observing a moratorium on bilateral agreements in favor of multilateral negotiations.

The new EU strategy in this regard is to strengthen the competitiveness of its members through the facilitation of market access, especially in emerging countries through free trade agreements.

In this new strategy, key economic criteria that potential partner countries must meet are: the market potential measured both by its size and dynamism, the level of protection against EU exports, as well as trade negotiations with main competitor countries of the EU. Thus, the major countries and regions covered by the new strategy are South Korea, India, the ASEAN countries, those of MERCOSUR, Russia, the Gulf Cooperation Council and China.

The Lisbon Treaty is one of the names of the treaty meant to replace the Treaty establishing a Constitution for Europe. Its real name is the "Reform Treaty". It was signed on 13<sup>th</sup> December 2007 in Lisbon, hence its name, and it entered into force on 1<sup>st</sup> December 2009 after ratification by 27 countries of the Union.

It is also called "simplified treaty" following a campaign promise of Nicolas Sarkozy: which consists of replacing the text rejected by the French and the Dutch in 2005 by a simplified text that would not require going through a referendum.

The Treaty is a series of amendments to existing EU texts which it aims to modernize the operation. "If the Lisbon Treaty does not contain a key measure that advances the construction of Europe as the euro, it still fits in depth treaty rules so that the Union can respond to the new challenges of the 21<sup>st</sup> Century. Thus the treaty renovates the architecture of institutions, softens decision making and enhances the external representation of the Union».

The entry into force of the treaty has brought profound changes to the European policy of free trade agreements. Thus, on the one hand, trade is placed in the broader perspective of the foreign policy of the EU and decision-making and skills are redefined involving among other consequences, strengthening the powers of parliament European on the other hand.

The crisis background in which the new treaty came into force, added to European requirements for foreign trade. Thus, the "Europe 2020" strategy explicitly calls for supporting sectors and regions with a potential for growth and inclusion and initiates a strategic dialogue with key partners to this end. In this perspective, the European Commission emphasized in 2010 in its Communication "Trade, Growth and World Affairs" on the fact that "For an open trade policy in Europe to succeed politically, others, including our developed and emerging partners must match our efforts in a spirit of reciprocity and mutual benefit". He added in another passage that specific trade instruments such as the FTAs should be used to "encourage partners to promote respect for human rights, labor standards, environment and good governance including tax matters".

With the new generation of FTAs, the EU aims to emphasize the adoption of international standards in areas of greater integration to ensure that the rules adopted in major markets are consistent with European standards.

According to Gstöhl and Hanf (2014), the new strategy FTAs-NG of the EU also has constitutional implications on at least three levels:

- ❖ First, it aims at exporting the core values of the EU in partner countries, Europeans can contribute to improving the constitutional rights of citizens of those countries;
- ❖ Second, by establishing these standards as pre-requisites for more ambitious trade liberalization, the EU also seeks to protect the rights of its own citizens;
- ❖ Finally, this new approach must be set within the broader perspective of the Lisbon Treaty, which has subordinated the EU's trade policy to a broader range of objectives and significantly altered the conclusion of rules of trade agreements with countries outside the EU.

In general, the new NG-FTA concluded by the EU or are being negotiated, seek to integrate, in addition to economic and business conditions, clauses relating in particular to the following three main aspects: human Rights, working conditions and the social dimension, and finally Sustainable Development.

## **2. Case of the FTAs between the EU and Canada (CETA):**

After many years of tough negotiations, Canada and the EU could finally sign the Comprehensive Economic and Trade Agreement called CETA (Canadian-EU

Comprehensive Economic and Trade Agreement) on September 26, 2014. The signing of the agreement was preceded by an agreement in principle signed on 18<sup>th</sup> October 2013 in which the main points of agreement were recorded.

According to Fan (2014), Canadian authorities welcomed the agreement, which in their opinion is broader, deeper and more comprehensive than the NAFTA agreement signed in 1992 with the United States and Mexico. They predict a rise in bilateral trade with the EU by 20% and \$US 12 billion increase in Canadian GDP as a result of this agreement.

The text of the FTA-CETA covers a wide range of issues and areas related to trade and Innovation.

### **3. Cases of the FTA between the EU and South Korea:**

The FTA signed between the EU and South Korea within the framework of the new European vision, which consists in pursuing a trade policy reconciling economic growth, social development and environmental protection in accordance with Article 9 of the Lisbon Treaty.

South Korea was designated a priority partner for the EU in the Communication "Global Europe" of the European Commission in October 2006. This announcement was the prelude to the definition of a business strategy based on negotiation of a FTA-NG favoring countries with high export potential for European companies including South Korea.

In the FTA with South Korea and in addition to the goal of elimination of tariffs, emphasis was also placed on the liberalization of trade in services, investment as well as the search for new ways to overcome the technical barriers to trade and non-tariff barriers. Similarly, the FTA has set itself the goal of improving the conditions for sustainable development.

EU negotiations with South Korea began in May 2007 and ended in March 2009 after eight rounds of discussion. However, it was only on 15<sup>th</sup> October 2009 that the FTA was officially signed by both parties.

This FTA will liberalize trade between the two partners on the basis of the WTO-Plus. It also covers issues such as industrial subsidies, intellectual property, geographical indications, NTBs, sustainable development, environmental protection, the fight against protectionism, etc.

### **4. Characteristics of EFTA Free Trade Agreements<sup>2</sup>:**

EFTA free trade agreements typically foresee the elimination of import duties on industrial goods, including fish and other marine products, and provide for tariff concessions on processed agricultural products and selected basic agricultural products. While, in principle, EFTA grants duty-free access for the so-called "processed agricultural products" (e.g. chocolate and soup), certain measures are maintained to compensate for higher costs of raw materials used by the processing industries of the EFTA States. Concessions on basic agricultural products (e.g. fruit and meat) have traditionally been dealt with in bilateral agreements concluded between the individual EFTA States and partner countries, which form an integral part of the FTAs. All EFTA free trade agreements contain rules of origin, which establish the extent to which products

In addition to these elements, the "first generation" of EFTA free trade agreements

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<sup>2</sup> Source: Ivo Kaufmann Deputy Secretary-General of EFTA Head of Trade Relations, Going Global – Overview of EFTA's Free Trade Relations, EFTA BULLETIN, December 2013.



(concluded mainly in the 1990s with partners in the Euro-Mediterranean region) typically feature provisions on sanitary and phytosanitary (SPS) measures and TBT, trade remedies (e.g. safeguard measures) and the protection of intellectual property rights. Rules on competition aim to ensure that trade liberalisation under the FTA is not hampered by business practices that restrict or distort competition. A “second generation” of EFTA free trade agreements has added substantive rules and commitments on services, investment and/or public procurement, thereby responding more broadly to opportunities and challenges faced by businesses operating in today’s globalised economic environment. Building on the General Agreement on Trade in Services (GATS) of the WTO, these agreements provide for the further liberalisation of trade in services through sectorspecific commitments. With respect to investment, the focus lies on ensuring non-discriminatory conditions for the establishment of companies, subject to specific reservations. Bilateral investment treaties of individual EFTA States may complement that framework. FTAs containing comprehensive provisions on government procurement foresee access to procurement markets on the basis of reciprocity, non-discrimination and transparency, setting out the covered government entities. Increasingly, EFTA has also begun to include disciplines on trade facilitation, which are aimed at simplifying and accelerating the clearance of traded goods. Since 2010, in what may be called a “third generation” of FTAs, EFTA has begun to systematically introduce model provisions on sustainable development in its negotiating processes and reviews of existing agreements. These address environmental and labour standards insofar as they relate to trade and investment. FTAs containing such provisions have since been concluded with Hong Kong China, Montenegro, Bosnia and Herzegovina, and the Central American States of Costa Rica and Panama.

## **B/ PRESENTATION OF THE NEW GENERATION TRADE AGREEMENTS INVOLVING THE OIC COUNTRIES**

### **1. Gulf Co-operation Council and the European Free Trade Area FTA (GCC-EFTA FTA)<sup>3</sup>:**

The provisions contained in this Agreement are applicable to both the trade in goods and services. In doing so the signatories to the FTA seek to liberalise their markets so as achieve conformity with Article XXIV of the General Agreement on Tariffs and Trade. And to achieve the liberalisation of trade in services, in conformity with Article V of the General Agreement on Trade in Services. In addition, to this the Agreement seeks to promote competition in the respective signatory countries. At the same time the Agreement hopes to ensure adequate and effective protection of intellectual property rights. In the area of government procurement the Agreement looks to liberalise the markets so that companies in the signatory countries are treated as national. The final aspect of the Agreement is to increase the level of investment opportunities in the respective countries. The non-trade aspects seek to enhance the economic relations between the member countries.

### **2. Case of the FTA between the European Free Trade Association (EFTA) and Ukraine:**

The Free Trade Agreement between the EFTA comprises Iceland, Liechtenstein, Norway and Switzerland, on the one hand and Ukraine on the other, it entered into force on 1<sup>st</sup> June 2012. The agreement signed in 2010, regulates trade in goods and services between

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<sup>3</sup> Source: Free Trade Agreements Briefing Note; Government of Dubai; [www.dubaided.gov.ae](http://www.dubaided.gov.ae).

the signatory countries. Its nature as the New Generation Agreement results from the fact that it also covers the market competition, government procurement, investment and protection of intellectual property rights.

According to the text of the agreement, the parties shall abolish all customs duties on the import of a wide range of products. In addition, the text of the document stresses that "no customs duty on imports should be introduced." The agreement also provides for the gradual abolition of export duties and contains anti-dumping provisions.

The FTA EFTA-Ukraine provides for a list of objectives that the parties intend to achieve in the future and, in particular, the liberalization of trade in goods and services, elimination of TBTs, increased investment opportunities, promotion of competition in their economies, and the liberalization of public procurement.

On trade in services, the Parties have undertaken to ensure that all measures of general application affecting these exchanges shall be "reasonably administered", objective and impartial". As for investments, the new document ensures that signatory countries avoid imposing restrictions to protect the balance of payments.

In 2011, bilateral commodity trade between Ukraine and the members of EFTA countries totaled US \$ 1.2 billion, according to the official website of EFTA. During the last decade, the annual growth of this indicator amounted to 19%. In addition, Ukraine is listed as the second largest destination for exports from the EFTA traders in Europe, outside the European Union.

Ukraine's exports to EFTA countries mainly consist of inorganic chemicals, while the main export of EFTA countries to Ukraine are fish and pharmaceuticals.

Regarding the impact of this agreement, Martin Zbinden, Head of Free Trade Agreements Sector of the State Secretariat for Economic Affairs, said in February 2012 that the volume of trade between the signatory parties could double with the new agreement. "It is important to inform entrepreneurs about the new export opportunities [engendered by the free trade agreement," he said, commenting on the upcoming launch of the Free Trade Agreement between Ukraine and the EFTA States - Iceland, Liechtenstein, Norway and Switzerland.

Before EFTA, Ukraine had signed free trade agreements with Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Macedonia, Moldova, Russia, Tajikistan, Turkmenistan and Uzbekistan.

### **3. Agadir Agreement:**

The Agadir Agreement is a free trade agreement between Egypt, Jordan, Morocco and Tunisia. Named after the Moroccan city of Agadir, where the process to set up the pact was launched in May 2001, it was signed in Rabat in February 2004 and came into force in March 2007.

The Agadir Agreement is open to further membership by all Arab countries that are members of the Arab League and the Greater Arab Free Trade Area, and linked to the EU through an Association Agreement or an FTA. Its purpose is to facilitate integration between Arab states and the EU under the broader EU-Mediterranean process, but it has other ramifications as well.

The accord aims at boosting the competitiveness of member countries and allowing their products into European Union (EU) markets, besides expanding cooperation, commercial

exchange and free trade between the four participating states. The Agadir Agreement spectrum includes customs, services, certificates of origin, government purchases, financial dealings, preventive measures, intellectual property, standards and specifications, dumping and mechanisms to resolve conflicts. The Free Trade Zone will make up a market of more than 100 million people and a combined domestic product of nearly 150 € billion<sup>4</sup>.

One important feature of the Agadir Agreement is that it uses the EU's rules of origin and provide for the cumulation provision of the Pan-Euro med `rules of origin is allowed between the four countries of The Agadir Agreement under the following conditions, as mentioned in the treaty.

There are certain benefits derived from the implementation of the cumulation of origin in the Agadir agreement, as follows:

- The bilateral cumulation will increase economic integration between each member country of Agadir and the EU, and also among the members themselves. Moreover, it will increase inter-trading among the Agadir Agreement members.
- The diagonal cumulation between the 4 countries and the EU and EFTA, which was implemented since 01/08/2007, could be a tool by which the Agadir Agreement members can play the role of subcontractors on behalf of the EU and from EFTA. This has also been applied between the EU, Morocco, Tunisia, Egypt and Turkey since July 1, 2006<sup>5</sup>.

These are at odds with US rules of origin, which makes it difficult for countries in the Mediterranean and the Middle East to apply one and the other in their trade relations with the two competing power blocs. The EU allows its Mediterranean FTA partners to cumulate value-added. This means that it turns a blind eye to where value was added, for the purpose of preferential tariffs, as long as it was in an FTA partner country. The US, apart from special arrangements like those applying to export processing zones, only considers value added domestically in the country exporting to the US. These conflicting regimes give the EU an advantage in its competition with Washington to secure a Euro-Mediterranean FTA as a counter-force to the US-Middle East FTA.

Barely two weeks after it entered into force, conflicts between the Agadir Agreement and the US-Morocco FTA emerged. Under the US FTA, Morocco agreed to refrain from lowering tariffs on certain agricultural imports from third parties that are not net exporters of those products. This is bound to affect Arab countries who were expecting to sell farm products tariff-free to Morocco under the Agadir deal.

In November 2008, the members of the Agadir Agreement signed a protocol on trade in textiles. Overall, though, the impact of the deal as seen by business executives and politicians has been "below expectations"<sup>6</sup>.

In addition to the presentation of these agreements, this part includes an assessment of their preliminary impact on trade in those countries to the extent of available data.

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<sup>4</sup> <http://www.medea.be/en/countries/arab-world-general/agadir-agreement>; [www.agadiragreement.org](http://www.agadiragreement.org).

Mohamed Tolba, a study on the agadir agreement as the gateway to establish a pan-Arab free trade area assessment of Agadir's trade effects (the case of Egypt). Phd thesis  
[http://211.253.40.86/mille/service/SAT/10000/IMG/000000005444/2010Fall\\_MOHAMEDTOLBA,El-MetwalyMohamed.pdf](http://211.253.40.86/mille/service/SAT/10000/IMG/000000005444/2010Fall_MOHAMEDTOLBA,El-MetwalyMohamed.pdf)

<sup>5</sup> Délai raisonnable signifie 10 ans selon l'entendement de l'Uruguay Round.

<sup>6</sup> Source : <http://www.bilaterals.org/?-Agadir-Agreement-&lang=en>

#### 4. GCC Singapore Free Trade Area (GSFTA):

The GCC and Singapore agreed to launch negotiations on a free trade agreement in November 2006. After four rounds of talks, the GSFTA negotiations were concluded on 31 January 2008. The GCC-Singapore FTA (GSFTA) is a comprehensive free trade agreement between Singapore and the GCC countries that includes the trade in goods and services under the articles GAT and GATS. The Agreement also includes provision to foster greater investment between the signatories. In the case of trade the rules of origin and customs procedures for goods between the countries have been simplified. Furthermore, the Agreement seeks to create a level playing field as far as government procurement is concerned.

##### **Main Aspects of the Agreement:**

This is a comprehensive agreement Trade in Goods, Rules of Origin, Customs Procedures, Trade in Services and Government Procurement among others. In addition, it covers the recognition of the Halal certification of Singapore's Majlis Ugama Islam Singapura (MUIS).

Other key features of the GSFTA are:

➤ **Trade in Services:** The GSFTA allows Singapore-based companies, Singapore Nationals and Permanent Residents to hold majority stakes in key sectors of the GCC markets. In particular, Singapore gained enhanced access in UAE, Saudi Arabia and Qatar for construction services, computer and related services, environmental services and professional services, such as legal, architectural, engineering, urban planning.

The GSFTA builds on the commitments made by Singapore and the GCC countries at the multilateral level, in particular, the WTO General Agreement on Trade in Services (GATS).

Specifically, *Singapore and the GCC have committed to liberalise various services sectors beyond its WTO commitments.* Singapore will enjoy preferential access in the professional services such as the legal services, accounting services and engineering services; and business services such as construction services, distribution services and hospital services.

Broadly, the schedule of specific commitments include the following:

- i. Business services: professional services, computer and related services, rental and others;
- ii. Communication services;
- iii. Construction and related engineering services;
- iv. Distribution services;
- v. Educational services;
- vi. Environmental services;
- vii. Financial services;
- viii. Health related and social services;
- ix. Tourism;
- x. Recreational, cultural and sporting services; and
- xi. Transport services.

The following GCC countries will relax and bind the foreign equity limits in certain key sectors of interest to Singapore:

- i. United Arab Emirates: Relax foreign equity limits in construction services, distribution services, hospital services and legal advisory services.

- ii. Qatar: the foreign equity limit is set at 49% but allowed up to 100% if the Singapore services supplier can demonstrate that he has sufficient experience.
- iii. Oman: allow 100% foreign equity for construction services.
- iv. Kuwait: Bind the foreign equity limit for the following seven sectors at 100%: construction; banking; insurance; information technology and software development; hospital and other health services; tourism and hotels; and culture, information and marketing.

Bahrain will bind its foreign equity limit for companies at 100%, while Oman will bind its foreign equity limit for companies at 70% across all sectors.

The above benefits will extend to the citizens, Permanent Residents, local companies as well as multinational companies (MNCs) based in Singapore or the GCC<sup>7</sup>.

➤ **Investments:**

Under the GSFTA, Singapore and GCC countries that have yet to sign bilateral IGAs with Singapore have committed to complete negotiations within 2 years. Bahrain, Oman and Saudi Arabia have signed bilateral IGAs with Singapore. Kuwait, Qatar and the UAE are committed to completing negotiations for bilateral IGAs with Singapore within 2 years from the commencement of negotiations.<sup>8</sup>

Singapore has Investment Guarantee Agreements (IGAs) in force with five out of six GCC countries, giving stronger protection to investments made in the markets on both sides. Singapore is currently negotiating an IGA with Qatar.

➤ **Mutual Recognition Arrangement for Goods:**

The GSFTA shall strengthen co-operation in the field of technical regulations, standards and conformity assessment procedures, with a view to increasing the mutual understanding of their respective systems and facilitating access to their respective markets.

When a Party assesses that another Party has taken measures which have created an obstacle to trade, the Parties shall agree to hold consultations within the framework of the Joint Committee in order to find an appropriate solution.

With respect to sanitary and phytosanitary measures, the Parties shall exchange names and addresses of their official contact points in order to facilitate technical consultations and the exchange of information.

The recognition of the Halal certification of Singapore's Majlis Ugama Islam Singapura (MUIS) will also pave the way for Singapore Halal certified products to gain faster access to the GCC countries. Within one year of the entry into force of this Agreement, the Parties will negotiate and make arrangements to provide for recognition by the GCC Member States of Singapore's Halal Certification Standards and Halal Mark.

➤ **Government procurement:**

The GCC and Singapore have committed to maintaining an open and transparent system of procurement. It incorporates the principles and practices of the Government Procurement Agreement (GPA) at WTO level to give competitive opportunities to the suppliers of both sides to penetrate each other's market.

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<sup>7</sup> Source : [http://www.fta.gov.sg/fta\\_gsfta.asp?hl=32](http://www.fta.gov.sg/fta_gsfta.asp?hl=32)

<sup>8</sup> Source : Free Trade Agreements Briefing Note; Government of Dubai; [www.dubaided.gov.ae](http://www.dubaided.gov.ae)

Singapore suppliers are also given the same price preference of 10% that is given to the GCC domestic suppliers for the use of any goods or services that is produced in the GCC State for the procurement of goods and services listed in the Annexes to the Government Procurement Chapter.

- Competitive threshold limits were set for government procurement opportunities from the central government entities will allow more companies to benefit from this area.

Examples:

for **Bahrain:**

All Goods Threshold: SDR 140,000

All Services specified in Appendix 4 Threshold: SDR 140,000

All Construction Services specified in Appendix 5 Threshold: SDR 6,000,000

**Kuwait:**

All Goods Threshold: SDR 400,000

All Services specified in Appendix 4 Threshold: SDR 400,000

All Construction Services specified in Appendix 5 Threshold: SDR 5,000,000

All Construction Services specified in Appendix 5 Threshold: SDR 20,000,000

**United Arab Emirates:**

All Goods Threshold: SDR 134,000

All Services Threshold: SDR 134,000

All Construction Services Threshold: SDR 5,844,000

- Singapore companies can find more information on the procurement opportunities from the websites.

Examples

**Bahrain:** official gazette and <http://www.tenderboard.gov.bh>

**Kuwait:** [www.ctg.gov.kw](http://www.ctg.gov.kw)

**United Arab Emirates:** <http://egov.uae.gov.ae>

#### ➤ **Country of Origin Rules:**

For the purposes of this Agreement, goods shall be deemed as originating goods from a signatory country and eligible for preferential treatment provided that they are wholly obtained or produced in the territory of the exporting country;

or

have undergone sufficient working or production that attains a qualifying value added of not less than thirty five percent (35%) based on the ex-works price using the following formula:

Ex-Works Price - N.O.M. x 100% ≥ 35%

where:

Ex-Works Price means the price paid for the good ex-works to the manufacturer in the Parties in whose undertaking the last working or processing is carried out, provided the price includes the value of all the materials used, minus any internal taxes which are, or may be, repaid when the good obtained is exported.

N.O.M. is the value of the non-originating materials.

#### ➤ **Movement of Natural Persons:**

The GSFTA provides rights and obligations to facilitate the movement of natural persons engaged in the conduct of trade and investment between the Parties. A natural person of a Party means a natural person who is a national or permanent resident of a GCC Member State or Singapore, according to their respective legislation.

Measures concerning entry and temporary stay of natural persons can be found in Annex 5.

Presence of foreign natural persons as self-employers is not allowed<sup>9</sup>.

➤ **Dispute Settlement:**

The GCC and Singapore have negotiated a comprehensive set of dispute settlement procedures. Disputes are subject to consultations, negotiations, conciliation and arbitration just like in the WTO, thereby enhancing the rule of law in international trade.

The Parties shall endeavour to resolve any dispute arising from this Agreement through consultations with the aim of reaching a mutually agreed solution.

A complaining Party may request in writing, to the Party complained against, for the establishment of an arbitration panel if:

- (a) Consultations are not held within 30 days from the date of receipt of the request for such consultations;
- (b) The disputing Parties fail to resolve the dispute through consultations within 60 days after the date of commencement of the consultations, unless the disputing parties agree to continue the consultations; or
- (c) A disputing Party fails to comply with the mutually agreed solution within the agreed timeframe.

The arbitration panel award is final and binding from the date of its notification to the disputing parties. The arbitration panel's decision on the length of time required to implement the award will be final. The award must be complied with within this time. Where no time is prescribed for implementing the award, the award must be complied with within 90 days of the date of the notification of the award.

## **5. Case of the FTA between the European Free Trade Association (EFTA) and EGYPT:**

- How about the specifics of the FTA?

In the field of industrial products, Egyptian exports to the EFTA States are duty-free as from 1 August 2007. E.g. this may be of particular interest to Egypt, world famous Egyptian cotton and manufactured textile products now enjoy<sup>10</sup> tariff free market access to the EFTA markets. Egypt on its side will gradually eliminate the custom duties on imports of industrial products from the EFTA States, with a similar schedule as is applied under the Egypt-EU Association Agreement. Concretely, tariffs on a number of industrial products originating in the EFTA States were reduced on 1 August 2007 and will be eliminated on 1 January 2008. Over the next couple of years, Egypt will progressively dismantle tariffs on many more products. The tariffs on the last remaining industrial products will be eliminated on 1 January 2020. The FTA between Egypt and EFTA also grants preferential market access conditions for many agricultural products, relating to particular export interests of the agricultural sector of Egypt. 8/12 Notably, fresh vegetables (such as onions and shallots, lettuce, tomatoes, beans, and many more) coming from Egypt and imported into Switzerland have been benefiting since 1 August 2007 from zero tariffs within the relevant WTO global quota. Further concessions from Switzerland to Egypt include tariff free quotas, e.g., for potatoes, table grapes and olive oil. In addition,

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<sup>9</sup> Source : [http://www.fta.gov.sg/fta\\_gsfta.asp?hl=32](http://www.fta.gov.sg/fta_gsfta.asp?hl=32)

<sup>10</sup> Source: Christian Etter, Egypt-EFTA Free Trade Agreement: Benefits and Opportunities for Companies from Egypt and the EFTA States.

a number of other products such as fresh fruits and jams benefit from reduced customs tariffs. With regard to processed agricultural products, the EFTA States grant Egypt for 5 years the same preferences as they apply to the same products originating in the EU, while Egypt continues to apply MFN tariffs to imports from the EFTA States. Five years from now, concessions from all parties will have to be negotiated. From a business perspective, as mentioned before, it is important to note that the EFTA-Egypt FTA will be part of the Euromed cumulation system, opening up the possibility for producers, exporters and importers to take advantage of so called **diagonal cumulation**. This means that inputs and parts from all participating countries can be combined in the production process, and the end product is still eligible for preferential tariff treatment when exported to any country participating in the Euromed system, in particular to the large EU-market. This not only further enhances the competitiveness of Egyptian Exports to the EFTA States and of EFTA Exports to Egypt. It also makes products from Egypt and the EFTA States more competitive on the EU-market.

The conclusion of a FTA not only contributes to an increase in trade flows between the preferential partners, but also constitutes a significant additional incentive for investments in the particular partner country. Also with regard to investments, the Euromed cumulation system is important. As just mentioned, production facilities based in Egypt can now source and deliver parts, components and other intermediate products as well as sell the end products at preferential conditions throughout the Euromed region. Given the comparative advantage of Egypt in the textile and agro-processing industries, and the fact that these sectors do produce and export on a regional basis, the interest of investors may focus on these, but also other Egyptian industries will become more interesting for foreign direct investors. The FTA will enhance the interest of investors in Egypt not only from Switzerland and the other EFTA States, but indeed also from other countries, as establishments in Egypt can make **use of the Euromed-cumulation** system irrespective of the nationality of their parent company. I am convinced that the FTA between Egypt and the EFTA States will send a strong signal to economic operators looking for new investment opportunities, provided overall investment conditions prove to be right. In this regard Egypt has 10/12 accomplished important reforms, e.g. in the areas of taxation and customs, and more reforms are underway. There are more provisions in the Agreement that contribute to improved trade and investment conditions. There are rules, e.g. on subsidies and competition policy.

Moreover, the Agreement provides for protection of **intellectual property rights** in areas such as patents, copyright, undisclosed information, industrial designs and geographical indications. **Specific provisions regarding investment** call for the Parties to create favourable conditions and protection for, as well as to promote, investment. In addition, the Agreement stipulates the objective of **liberalising trade in services** and prohibits restrictions on payments for current transactions, and on capital movements relating to direct investments.

## 6. Case of Morocco:

Among the most fruitful experiences in the OIC countries in the field of FTAs, those of Morocco are very interesting to study.

### 6.1. Assessment of free trade agreements signed by Morocco:

Morocco was among the Arab and African precursors towards the liberalization of its economy and its trade since the early 80's. This opening, which represents an irrevocable



strategic choice, was highly reflected by Morocco's active participation in the multilateral trading system under the WTO. The proliferation of free trade agreements it has concluded, in particular with key players in the global economy (especially with the European Union and the United States) and with emerging or developing countries with strong potential (Turkey, member countries of the Agadir Agreement, UAE, EFTA, etc.) is shown.

The conclusion of these agreements is justified by the need to adapt to the new demands of world trade and the need for diversification of products and export markets. Through these agreements, Morocco aims to create additional relays for economic growth through the expansion and diversification of its exports, and to enhance its attractiveness to foreign direct investment (FDI).

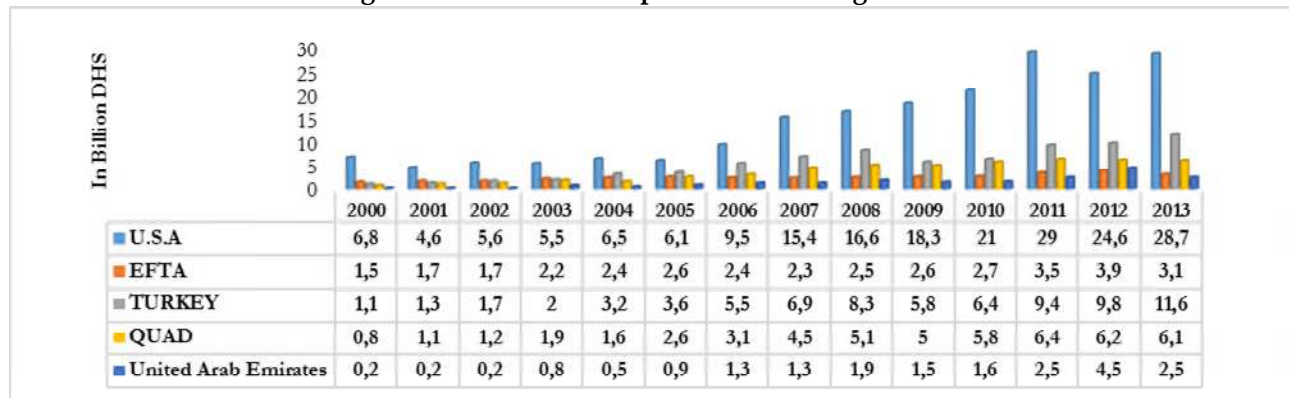
	Share in trade in goods (%)
With FTA signatories	65
With other countries	35

Source : Foreign Exchange Office

The progress made by Morocco on trade liberalization are clear, to the point that today more than half the country's foreign trade is carried out within the framework of these free trade agreements (Table 1).

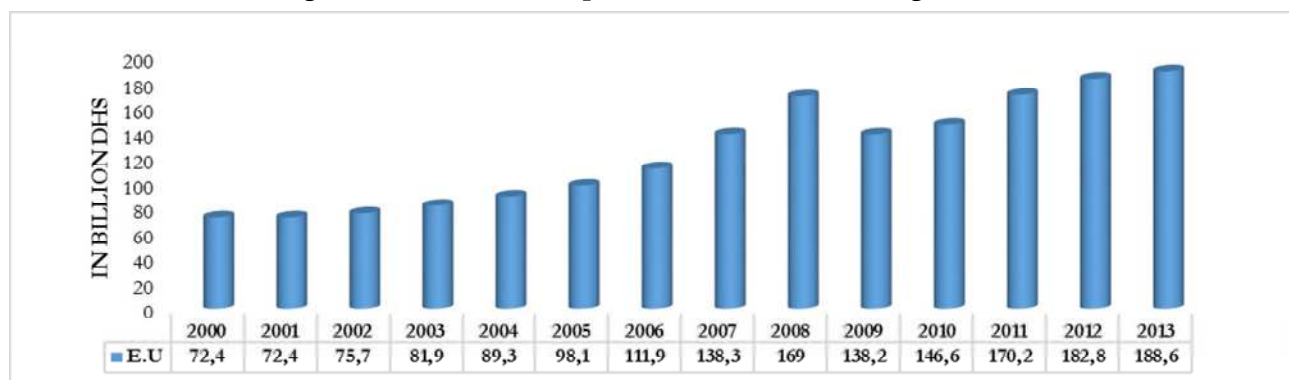
Improving the accessibility of national supply to partner country markets has fostered a significant increase in exports and diversification at sectoral and geographical levels. However, we must recognize that the Moroccan imports from the signatory countries grew much faster than exports to these countries as shown in the following figures (Figures 1 to 2):

Figure 1: Evolution of imports with FTA signatories



Source: Foreign Exchange Office

Figure 2: Evolution of imports structure with FTA signatories



Source: Foreign Exchange Office

This situation has generated a chronic deficit in the trade balance of Morocco. With the exception of Jordan with which it has a surplus, Morocco has a trade deficit with all its partners to which it is linked by free trade agreements (Table 4).

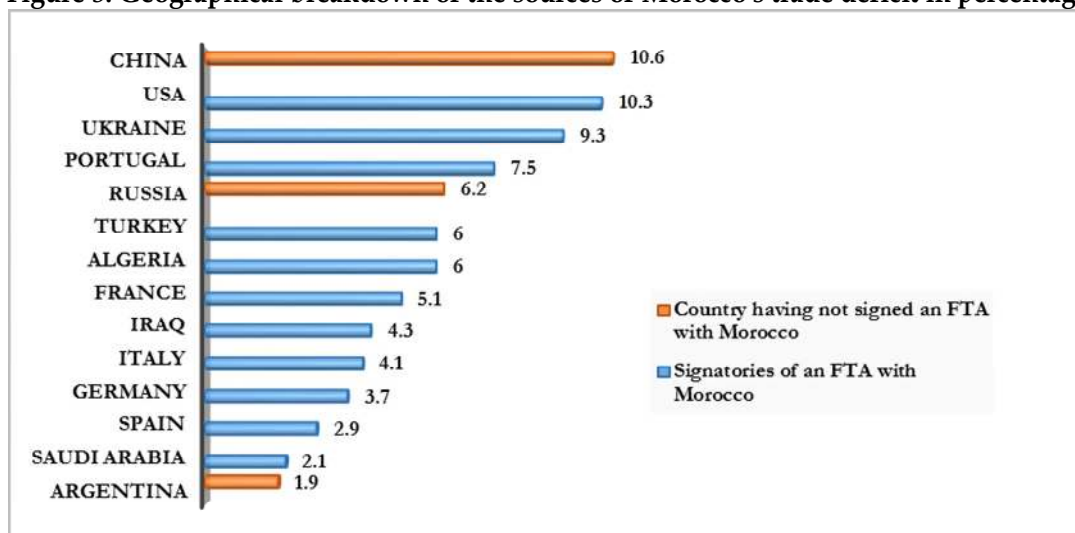
**Table 2: Morocco's trade development under FTAs**

FTA/ billion DHS		2000	2007	2013	Jan-Sept 2013	Jan-Sept 2014
EU	Exports	59.7	90.5	112.6	83.1	93.9
	Imports	72.4	138.3	191.5	144.8	147.2
	Global Volume	132.2	228.76	304.2	228.0	241.1
	trade balance	-12.7	-47.7	-78.9	-61.7	-53.2
	Cover rate	83%	65%	59%	57%	64%
FTA	Exports	0.5	1.8	2.4	1.9	1.5
	Imports	1.5	2.3	3.2	2.4	2.2
	Global Volume	2.0	4.1	5.6	4.3	3.7
	Trade Balance	-1.0	-0.6	-0.8	-0.5	-0.7
	Cover rate	33%	76%	75%	80%	68%
TURKEY	Exports	0.6	-47.7	3.6	2.6	3.0
	Imports	1.1	65%	11.7	8.9	11.1
	Global Volume	1.6	8.07	15.2	11.5	14.2
	Trade balance	-0.5	-47.7	-8.1	-6.3	-8.1
	Cover rate	52%	65%	30%	30%	27%
AGADIR AGREEMENT	Exports	0.8	1.3	2.4	1.6	1.6
	Imports	0.8	4.5	6.1	4.9	5.0
	Global Volume	1.7	5.8	8.5	6.5	6.6
	Trade balance	0.0	-3.2	-3.8	-3.3	-3.4
	Cover rate	98%	28%	38%	32%	31%
FTA/billion DHS		2000	2007	2013	Jan-Sept 2013	Jan-Sept 2014
USA	Exports	2.7	3.0	7.2	5.6	5.9
	Imports	6.8	15.4	28.6	21.5	22.8
	Global Volume	9.5	18.44	35.8	27.1	28.7
	Trade Balance	-4.1	-12.4	-21.4	-16.0	-16.9
	Cover rate	39%	19%	25%	26%	26%
UAE	Exports	0.1	0.3	0.4	0.2	0.4
	Imports	0.2	1.3	2.6	1.9	2.6
	Global Volume	0.3	1.5	3.0	2.2	3.0
	Trade Balance	-0.1	-1.0	-2.2	-1.7	-2.2
	Cover rate	40%	20%	16%	13%	16%
GAFTA	Exports	2.6	4.0	7.4	5.2	5.6
	Imports	15.2	29.0	56.8	40.5	39.9
	Global Volume	17.8	33.0	64.2	45.7	45.5
	Trade Balance	-12.6	-25.1	-49.4	-35.3	-34.3
	Cover rate	17%	14%	13%	13%	14%

Source: Foreign Exchange Office

In 2013, a significant portion (80%) of Morocco's trade deficit was due to trade carried out with 14 countries, including Europe, China, Saudi Arabia and the United States, as shown in the chart below (Figure 3).

Figure 3: Geographical breakdown of the sources of Morocco's trade deficit in percentage



However, and although the trade carried out with the signatories of an FTA represents 65% of total trade in goods, their contribution to the trade balance deficit of Morocco does not exceed 57% (Table 3).

Therefore, trade carried out with non-signatory countries of these agreements is the source of 43% of the total deficit of the balance of goods, although it represents only 35% of total trade in goods. China tops the list of these partners with about 10.6% of the total deficit.

Table 3: Distribution of trade deficit in percentage

	Share in trade in Goods (%)	Share in trade deficit of Goods (%)
Signatories of FTAs	65	57
non Signatories of FTAs	35	43

Source : Foreign Exchange Office

Therefore, despite the entry into force of these agreements and the benefits they offer, a share exchange is performed outside the preferential framework, which explains that FTAs are not the main determinant of the trade deficit, which remains structural in the case of Morocco.

In fact, the objectives of the FTAs signed by Morocco are mainly as follows:

- ❖ The dynamics of growth of the Moroccan economy driven by domestic demand;
- ❖ The effects of the global economy;
- ❖ The economic gap between the growth dynamics of the Moroccan economy and that of its main foreign partners;
- ❖ The ability of operators to meet the international standards requirements and quality standards; Etc.

In fact, if these FTAs are confronting the Moroccan economy to severe trials, they also bring opportunities. They are able in particular, to allow Morocco to control its macroeconomic balance, accelerate social and economic reforms aimed at upgrading the economy and increasing foreign direct investment.

FTAs also promote the allocation of resources for new competitive activities with high added value. These include new information technology, automotive components, electronic and aerospace components, and food products that meet international quality standards including biotechnology products.

However, for the moment, the expected objectives have not been fully achieved (growth, macroeconomic stability, human development). This situation can be explained by the low coherence between production and trade policies (sectoral strategies with respect to free trade agreements).

It is noteworthy that Morocco's FTAs were sometimes concluded without prior recourse to impact studies to determine not only the level of tariff and non-tariff concessions to accept, the progressive implementation in order to take into account the resilience of different sectors of activities, but also to consider corrective measures in case of unsustainable trade imbalance.

In addition, in order to ensure the success of the geographical and sectoral diversification of exports from Morocco within the framework of these FTA, a quick upgrading of the national economy (adaptation of the productive base, upgrading its logistics, etc.) has often been envisaged only a posteriori, which does not allow to realize very quickly the positive effects of these agreements.

## **6.2. Deep and Comprehensive Free Trade Agreement between Morocco and the European Union (EU-Morocco CAFTA):**

During the last decade, the legal framework governing trade relations between Morocco and the EU was consolidated with the entry into force of the Association Agreement in 2000 and the adoption of the plan Action in July 2005 as an integral part of the European Neighbourhood Policy. The advanced status granted to Morocco in 2008 resulted in a new, more ambitious and wide association phase. A new commercial dispute resolution mechanism took effect in 2012. The same year, trade agreements were concluded on agriculture and fishing. In January 2015, Morocco and the EU will initial an agreement on the mutual protection of geographical indications.

The EU is an important trading partner of Morocco, representing about 50% of the total trade of the country. The exchange of goods continued to rise in recent years, their value amounting to over 304 billion dirhams in 2013.

In December 2011, the Commission received a mandate from Brussels to launch exploratory talks on trade liberalization agreements, so-called new generation "Deep and comprehensive free trade agreements (CAFTA)" with the four countries of Agadir Agreement: Egypt, Tunisia, Jordan and Morocco. The launch of these negotiations would depend on the interest of each partner country and its willingness to participate, Thus, Morocco is the first partner in the Southern Mediterranean region with which the EU launches the formal opening of a negotiation process in March 2013.

According to a joint statement during the first round of negotiations in April 2013, it was announced that "The purpose [of these negotiations] is to upgrade the existing Association Agreement, which has already led many to duty-free trade in products since 2000. The negotiators will meet in Rabat and begin discussions on an agreement to deepen existing business relationships in a number of areas that are not yet covered, such as services and public procurement; the agreement should also allow a better protection of investments and new commitments on competition and intellectual property rights.

To improve the efficiency of the existing free trade arrangements, negotiators also seek to simplify customs procedures and reduce trade barriers related to the heaviness of incompatible or redundant industrial standards or, due to food security requirements. A chapter on sustainable development will help ensure that trade liberalization does not

have a negative effect on the environment or social norms.

Thus, CAFTA goes beyond the traditional concept of trade liberalization and reduction and/or elimination of tariffs, favoring closer economic integration and reducing non-tariff barriers at borders and beyond thereof. Thus, CAFTA will allow to "deepen" integration by reconciling the trade requirements, industry standards, and technical regulations and measures relating to plant and animal health in force in Morocco with the EU legislation; it will cover as such a "global" set of areas that are of fundamental importance in an exchange environment and modern investments, transparent and predictable.

The aim of the process is to achieve ultimately the free movement of goods, persons, services and capital across the Common Economic Space. Nevertheless, it is clear that the success of this new generation of agreement will depend on the political will and especially of Morocco's ability to implement all its provisions. It should be noted in this regard that since obtaining the advanced status in 2008, Morocco has made significant progress on the approximation of Moroccan legislation with the community acquis. Nevertheless, it is imperative now to develop a convergence plan so that this merger is done in a more structured and strategic way.

For its part, the European part is called to base its negotiations on a realistic, balanced and flexible regulatory convergence and to take into account the difference in the level of economic development and regulatory priorities of Morocco.

Furthermore, it should be noted that CAFTA will complete the Morocco-EU Association Agreement and will not be seen as a new agreement apart. Therefore, the aim is not to conclude a new contractual framework but rather to corroborate the existing association agreement by other aspects that have not yet resumed.

### **6.3. The benefits of CAFTA compared to other trade agreements between Morocco and the EU:**

The CAFTA should establish a framework for a gradual and sequenced preparation for a thorough integration of the Moroccan economy in the internal market of the EU, through:

- ❖ Easier access for Moroccan products to the European market of 500 million consumers; besides, once Morocco is close to the EU legislation in all areas covered by CAFTA, its products can be easily exported to other third countries;
- ❖ A more fluid participation of the enterprises of both parties in the context of public procurement contract awards;
- ❖ A stronger guarantee of security, better quality and greater choice of products and services for both Moroccan and European consumers;
- ❖ More favorable conditions for investment in the country should attract EU investors and other third countries,

Also noteworthy is the dynamic role that the establishment of CAFTA may have in the process of integration in the Arab Maghreb region and the Mediterranean region in general. Indeed, the EU has negotiated CAFTA also with other partners in the region, which should increase the opportunities of trade between the member countries of the AGADIR Agreement and constitute a favorable leverage for facilitating trade between these countries and improving the business and investment climate.

### **6.4. The results of the EU-commissioned study on the impact of EU-Morocco CAFTA:**

At the request of the European Parliament, a sustainable commercial impact study of the EU-Morocco CAFTA was commissioned by the European Commission to external

consultants (Ecorys Company). The final report of that study, which was published in November 2013, shows positive macroeconomic effects of CAFTA for Morocco and the EU.

This study has been prepared, among others, on the basis of public consultations with civil society that took place in Rabat and Brussels and presents an analysis of the economic, social and environmental dimensions of the Agreement (Table 4).

**Table 4: Main impact results of the EU-Morocco CAFTA**

Variable	EU	Morocco	EU	Morocco
	Short term		Long term	
National Income in millions euro	834	1.145	1.403	1.300
GDP variation in %	0.0	1.3	0.0	1.6
Consumer prices, variation in %	0.0	0.4	0.0	0.4
Wages, less-skilled workers, variation in %	0.0	1.4	0.0	1.5
Wages, more skilled workers, variation in %	0.0	1.6	0.0	1.9
Total imports, variation in %	0.0	8.0	0.0	8.4
Total exports, variation in %	0.0	15.3	0.0	15.3

*Source: Executive Summary of the Final Report of the Evaluation of the Sustainable Commercial Impact (TSIA) in support of negotiations for a deep and comprehensive Free Trade Agreement (CAFTA) between the European Union (EU) and Morocco.*

### **Overall macroeconomic effects:**

In the long term, the expected gains in national income should reach US\$ 1.4 billion for the EU and 1.3 billion Euros for Morocco. Given the size of the two economies, the gains in GDP in relative terms will be close to zero for the EU, but would represent a long-term increase of nearly 1.6% of GDP for Morocco.

For the EU, the impact of CAFTA on trade, wages and the price of consumer goods is expected to be negligible.

### **Effects on trade:**

For Morocco, the impact of CAFTA on trade flows would be important, with an expected 15% increase in exports and 8% of long-term imports, which would be reflected in an improvement in the trade balance in relative terms.

According to the results of this study and about the changes by sector in terms of trade, the most significant increase in Moroccan exports is expected to occur in the other transport equipment sector and should represent an 89% increase in exports in the long-term.

The Exports of all industrial sectors are expected to increase significantly (e.g. sectors, other than machinery and motor vehicles are expected to increase by 71 and 50% respectively). In particular, the other machines sector should primarily benefit the most from this trade liberalization since it should also show the largest increase in exports in absolute terms (3.3 billion of long-term euro). Furthermore, most services sectors are expected to record a decline in exports.

On the other hand, imports are expected to increase from 5 to 15% for all sectors (except for that of the primary energy). The largest percentage increase (+34%) is expected in the sector of meat processing. However, this sector represents a relatively small share of Moroccan imports.

### **Effects on added value:**

Despite the overall a priori positive impact of CAFTA on GDP for both parties, the results

differ by sector, while some sectors will grow; others are expected to show a downward trend. In Morocco, the most important effect is expected on the other machines sector with an 8.5% increase in the value-added sector in the long term; this is mainly due to the reduction of Non-Tariff Measures (NTMs). The Fruit and Vegetable sector, a relatively important sector in terms of value added and employment, is also expected to increase by 4% in the long term. In the services sector, public services and other services, already important sectors in Morocco, are expected to grow the most (+ 1% in the long term).

Regarding agriculture, Grains and Other Crops sector should be the biggest loser of the CAFTA (2.7% long-term reduction in production), mainly because of the alignment of the Moroccan NTMs with those of the EU. The leather sector should be the most affected by CAFTA with an estimated output reduction to 3.6% in the long term. Regarding services, ICT and other business services is expected to face a growing competition from European companies and could lose about 1.7% of its long-term production. Within this overall area, offshoring industry is unlikely to be adversely affected by CAFTA because of a currently liberalized trading environment and high expectations of the liberalization of trade in services under this specific CAFTA.

### **Effects on the environment and on social and human rights:**

Regarding the environmental indicators, CAFTA should provide a combination of positive and negative effects on the environment and the overall effect is difficult to predict with certainty.

In terms of air pollution, quantitative analyzes show that emissions of all pollutants in the short and long term will decline after the implementation of CAFTA. This overall positive effect is largely due to the transformation of the economic activity of primary energy, textile, leather, chemicals and transport to areas that emit less pollution in the air such as fruits and vegetables, utilities and other services, In monetary terms, the long-term positive effect on air pollution should lead to a reduction of external costs of 24 million Euros, CO<sub>2</sub> emissions are expected to decline from 600 metric tons in the long term and CAFTA should have a small but positive effect on climate change. Regarding all other kinds of environmental indicators, such as waste, biodiversity and the green economy, CAFTA should have a shared and even weak effect.

Significant positive effects would be expected in terms of wages for Morocco, with a potential increase in the long term between 1.6 and 1.9%. Although the price of consumer goods is expected to increase by about 0.4% due to increased income and demand that would follow, rising wages should improve the purchasing power of the average Moroccan citizens.

Regarding the situation of human rights, the effect of the agreement would be positive and indirect through advanced economic and social rights (such as improving the rights to an adequate standard of living and a better access to food) rather than through the evolution of cultural, civil or political rights.

### **6.5. A financial support of the EU to the implementation of the EU-Morocco CAFTA:**

This legislative approximation process envisaged in the CAFTA negotiations has already received a financial support from the EU. Indeed, the EU is implementing a range of projects that affect certain sectors of the CAFTA and plans to complement these interventions in the future. Thus, in the last five years, EU funding allowed the implementation of many twinning projects between Moroccan and European

administrations.

These projects have involved themes related to the fields of CAFTA as the normative framework of the political quality of industrial products, the introduction of a policy of competition and consumer protection policy, the application of the requirements of sanitary and phytosanitary standards and marketing of fishery products and strengthening the protection of industrial property. The TAIEX (Technical Assistance Information Exchange instrument), which is a very important tool in providing support, training or studies to administrations, has been used many times in the areas affected by CAFTA.

#### **6.6. The progress of CAFTA Morocco-EU negotiations: four rounds of negotiations:**

Negotiations on the Deep and Comprehensive Free Trade Agreement (CAFTA) between the EU and Morocco were launched on 1<sup>st</sup> March 2013. In order to mobilize actors in the public sector to engage in this undertaking aiming at deepening bilateral relations between Morocco and the EU, it was proposed to set up a "task force" comprising representatives of the Ministry of Foreign Trade, the Ministry of Foreign Affairs and Cooperation and the General Secretariat of the Government in a bid to control the work of these negotiations.

So far, four rounds of negotiations took place, the last was held in April 2014. The rounds were an opportunity for both parties to continue the exchange of information and clarifications on various texts of the Agreement and to review the objectives, extent, and the scope of each chapter under negotiation.

The negotiations of the Comprehensive and Deep Free Trade Agreement were conducted within the framework of 11 working groups related to various themes of CAFTA and may be subject to a regulatory approximation. On the occasion of these rounds, Morocco has stressed the need to consider the "development" dimension".

#### **Trade defense:**

The CAFTA's scope regarding trade defense aims to build on existing provisions of the association agreement on safeguard measures, anti-dumping and countervailing measures. The negotiations taking place on this aspect in relation to trade defense instruments may not present a major risk. The consensus between the two partners is possible in so far as the reference in the field remains the WTO multilateral arrangements both for Morocco - which has just adopted a law 15-09 meet international standards - and the EU inspired by similar multilateral arrangements.

#### **Transparency:**

The chapter on transparency in CAFTA contains provisions on publication, inquiries and contact points, non-discrimination, etc. The CAFTA, which provides a separate chapter on transparency aims to ensure access to information in a transparent, fair and non-discriminatory whatsoever on current or future actions. On this issue, it is certain that the two sides will build on multilateral provisions, i.e. Article X of the GATT - for trade in goods - and Article III of the GATS - for trade in services - constituting a reference in this field.

#### **Competition:**

The provisions of CAFTA seek to implement a comprehensive competition law covering all economic activities. At this level, we must recognize that Morocco needs to make a



major effort to move closer to the EU acquis, but this effort requires real both technical and financial assistance that is targeted with well-defined objectives. A provision of the agreement that draws attention is the one that calls on Morocco to create a body with sufficient powers and means for the implementation of all provisions of the agreement.

**Customs and Trade Facilitation:**

This part of the agreement covers the horizontal provisions to regulate the procedures of customs procedures and trade facilitation so that they are administered consistently. CAFTA aims a progressive approximation of Moroccan legislation and customs procedures with those of the EU, and negotiations between the two parties should endeavour to find the mode of application of the practices and procedures related to customs procedures and trade facilitation affecting the selective control aspects, including security measures pre-arrival and pre-departure declarations and simplified customs procedures for licensed economic operators.

**Renewable energy:** the provisions of CAFTA invite Morocco to establish a legislative framework for renewable energy to encourage EU companies to invest in this sector. The expected contribution of CAFTA mainly targets trade in renewable energy knowing that the energy trade is already covered by the provisions of the association agreement.

**Technical Barriers to Trade (TBT):** the stated objective through CAFTA is to reduce barriers Technical Trade in industrial products and consolidate the process of aligning the Moroccan technical regulations and compliance assessment procedures as far as possible with those of the EU. This is actually the part of the agreement that requires Morocco to provide considerable adjustment effort given the large number of areas covered in this case, the development of infrastructure, the conformity assessment, the system of standardization, accreditation, market surveillance, etc.

**Trade and sustainable development:** the example of the multilateral negotiations which have integrated the aspect of sustainable development in trade, CAFTA also refers to it as a common objective of both parties which wish to make of trade a stimulus to sustainable development

**Intellectual property rights:** in this area, Morocco is expected to harmonize its legislation with that of the EU with regard to the protection of intellectual property rights. The protection standards regarding intellectual property rights provided for by these Agreement concern copyright and related rights, trademarks, designs, patents and geographical indications.

**SPS Measures:** The objective of this component of the agreement is to facilitate trade in goods subject to the requirements of sanitary and phytosanitary (SPS) while maintaining a level of protection for the concerned parties. The main provision that emerges from the CAFTA text is that Morocco must commit itself to approximate its legislation in the SPS area to EU legislation. Obviously, the EU countries took several years to achieve harmonization of their laws. Hence, the need for both technical financial assistance of the EU to succeed in this approximation process.

**Services and right of establishment:** CAFTA incorporated negotiations on services and right of establishment which have been the subject of prior negotiations of a partial agreement since 2008. Both parties agreed that the services and the right of establishment are negotiated under CAFTA because trade in services faces regulatory obstacles, which only a comprehensive and integrated framework can reconcile the positions. These are the

obstacles to mutual recognition and professional qualifications which greatly handicap the benefit of services provided by non-Community persons (Mode 4). There are also administrative procedures relating to visas which complicate access to the European market even to service providers.

**Public procurement:** public procurement is among the important part of the negotiations within the framework of CAFTA. The latter aims at ensuring that Morocco is close to European legislation on the subject. In economic terms, the impact of this goal seems difficult in view of the asymmetry in levels of development between the two economies. The question is whether Moroccan operators are economically able to access to European public procurement even if they are provided with information to face the competition of the EU more competitive rivals.

#### **6.7. Morocco launches an impact and accompanying study of CAFTA Morocco /EU negotiations:**

With the aim of enabling Morocco to conduct an impact study and accompanying negotiations, it was agreed with the EU to postpone the holding of the 5<sup>th</sup> round of negotiations while ensuring the continuation of technical contacts during this period to allow the continuity of the current process. In this context, several videoconferences were held or planned in order to continue the exchange of information and comment. This study, which was launched to provide support for negotiations and whose control has been entrusted to an interdepartmental committee composed of the heads of the various ministries involved in these negotiations, is divided into five lots on key themes including:

1. Trade in Services and Investment
2. Technical Barriers to Trade
3. Sanitary and Phytosanitary Measures
4. Other areas of negotiation:
  - Public procurement;
  - Energy related trade aspects;
  - Trade and Sustainable Development;
  - Trade defense measures;
  - Customs and trade facilitation;
  - Intellectual property;
  - Competition and state aid;
  - Transparency.

The assessment of the overall impact of the Deep and Comprehensive Free Trade Agreement between Morocco and the European Union (CAFTA):

The purpose of the accompanying study is to explore the economic, social and environmental impacts of CAFTA on Morocco and to identify ways and means to maximize the impact of this agreement on economic and social development.

#### **6.8. Consultations with the private sector and civil society:**

In addition and in keeping with the new vision adopted by the Ministry of Foreign Trade on trade negotiations and to institutionalize consultation with civil society and the private sector, several meetings were held:

- ❖ With the private sector to address the concerns, positions, grievances and needs for all the themes covered by the negotiations.
- ❖ With representatives of civil society in March 2014, the objective was to present the

state of play of negotiations, the vision of Morocco as to the different themes of the CAFTA and inquire into grievances and orientations of civil society.

In addition, an international seminar was organized in October 2014. The objective was to present the latest methodological innovations in analysis modeling of the impact of free trade agreements.

#### **6.9. Convergence Process: a mid-term review:**

In its latest report on the "Implementation of the European Neighbourhood Policy in 2014: Progress achieved in 2014 and actions to be implemented." the EU recognized that Morocco has achieved a significant progress in many areas, including consolidating human rights and freedoms.

However, the same report notes the slow pace of reforms on several other areas. Thus, the authors stress the poor record of the organic laws of the Constitution of 2011. Indeed, four years after the adoption of the final constitution, only eight organic laws out of the nineteen planned were adopted. It is true that several texts are being developed, but some are still stalled, such as the organic law on the formalization of the Amazigh language. The report recommends speeding up the implementation of the new constitution, particularly, through the adoption of all the organic laws stipulated and the establishment of mechanisms and structures thereon.

The report also recommends to the kingdom to deepen and make strategic progress toward a national regulatory convergence plan with the EU. Similarly, although the report welcomes the significant progress made in the reform of justice and especially, the establishment of the Higher Council of the Judiciary Reform of Civil and Criminal procedures, etc. it strongly recommends continuing the same path and even speeding its pace.

Compared to the issue of mobility, particularly, with regard to visas and readmission, the report recommends continuing and even accelerating the negotiations. These have indeed slowed somewhat pending the results of sectoral impact studies and because of the refusal of the Moroccan side to play the role of the policeman of illegal immigration. Concerning the thorny issue of the fight against poverty, the report noted with satisfaction that finances has been put in order thanks to the reform of the compensation fund. They recommend, however, finding, in parallel, a system to address social and gender territorial inequalities.

Finally, the report encourages the Government to adopt without delay the organic laws and texts for wider participation of civil society in public life.

#### **7. Case of EU FTAs with Malaysia within the framework of the FTA with ASEAN:**

Malaysia is among the top thirty countries in the world in terms of international trade and occupies the twentieth position in the ranking of the World Bank in relation to the size of "Doing Business". The country has experienced a sustained economic and social development in recent decades and has recorded growth rates of GDP among the highest in Asia. Furthermore, Malaysia is the third richest economy of ASEAN and the second main EU trading partner within the regional bloc.

With respect to its relationship with the EU, Malaysia is one of the main beneficiary countries of the GSP. More than 70% of its exports enter the EU market free of customs duties. At the same time, the EU is the third largest provider and 4<sup>th</sup> of FDI supplier of

Malaysia within ASEAN.

Negotiations with Malaysia, which began and were then suspended shortly before have resumed in October 2010. The EU-commissioned impact study shows that the overall effect of the FTA will be positive for Malaysia. The optimistic scenario shows that in the long term, the Domestic Income of Malaysia is expected to increase by 11.7 billion Euros and GDP should increase by 7.42%. The wages shall increase by more than 8.5% and the export value by 8.32%.

According to the study, the sectors that will benefit most from the FTAs are: apparel and shoes and especially the leather sector which will improve by 154%. For cons, the areas of gas, machines and tools, manufactured goods and minerals will decline to some extent.

According to the authors of the study, the automotive industry and the spare parts will experience a growth in their production and exports. Malaysia is the second largest producer of motor vehicles in the ASEAN. However, the national brand "Proton" must improve its compliance with safety and quality in order to increase its export competitiveness.

The financial and insurance sectors will also benefit from the implementation of the FTA. Malaysia is actually one of the five ASEAN countries that have a large financial sector.

Similarly, the country is expected to need more manpower both skilled and unskilled due to the growth of high value-added activities. At the same time, improved salary conditions must be noted in different industries and in particular in those that will benefit most from the implementation of the FTA. By cons. other sectors such as seafood industry will experience stagnation or even a slight decline due to the implementation of the FTA.

As this is a new generation of FTAs, its effects have also been analyzed in social terms. Thus, the authors of the impact study found that the said FTA is likely to have a positive impact on reducing poverty in Malaysia, as well as on health and safety through the adoption of the standards specified in international agreements. The FTA will also have positive effects on the creation of jobs particularly in the sectors mentioned above that will benefit most from the FTA, especially the automotive and textile and clothing sectors .

In addition to these direct effects, the FTA should also indirectly favor sectors such as education mainly because of improved salaries and investment conditions.

The FTAs will also have effects, though mixed, on the environment.

## **8. Case of the FTA of the USA with the Middle East countries:**

The United States are bound by FTAs with a number of Arab countries. However, it is appropriate to distinguish between two types of agreements: FTA with Jordan on the one hand, and MEFTA agreements on the other.

### **8.1 Free Trade Agreement of the United States with Jordan:**

The FTA with Jordan is the second that the United States signed in the region after the one they had signed with Israel in 1985, but the first with an Arab country. However, it was not until the Clinton Administration that a serious dialogue begins with the Jordanians and especially after the signing of a peace agreement with Israel in 1994 and accession to the WTO in early 2000. It is in this context that the US-Jordan FTA was signed in October 2000 after its approval by Fast-track procedure. The implementation of this FTA was carried out by the Administration of George W. Bush and its entry into force occurred on

17<sup>th</sup> December 2001 at a time when the United States sought allies in the Arab world.

This FTA provides for a 10-year period for the dismantling of tariff and non-tariff barriers on almost all industrial and agricultural products. The adopted rules of origin are almost the same as those agreed with the Israelis several years ago and which retain a percentage of local value added of 35%.

A safeguard clause allows returning to the protective levels before the implementation of the FTA in the case of massive imports of products. Trade in services was liberalized in a positive list approach. Compared to the rules protecting intellectual property, it was agreed to adopt those of the WTO (TRIPs). By cons, investments are not covered by this FTA because of the prior existence of a bilateral agreement related to investment.

The main products exported by Jordan to the United States are mainly textiles and clothing; these products are likely to benefit from the accumulation of origin with third countries. It is not then surprising that the export of these products to the US market increased considerably since the entry into force of the Agreement.

The US-Jordan FTA also includes mutual commitment of the signatories to implement national rules of work and environmental protection, thus making it an agreement that goes beyond the classical form of FTAs to be part of ALE-NG.

## **8.2. Agreements with other countries within the framework of the MEFTA initiative (Middle-East Free Trade Area):**

Folsom (2007: 1) writes that "much more than elsewhere, trade agreements of the United States in the Middle East and North Africa pursue economic objectives in a seething political environment. This environment has led to an approach of " if you're not with us, you are against us " in a region known for its subtleties. »

Thus, it was in May 2003 that the Bush administration announced its MEFTA initiative. This is a "systematic plan with clearly identified prior economic relations between the United States and 14 countries in the Middle East and four North African countries". (Folsom. 2007: 8).

The date chosen for the complete implementation of MEFTA was 2013. According to the Bush Administration, "MEFTA aims to promote peace, prosperity and democracy in this volatile region [Middle East and North Africa]: the Arab world has a great cultural tradition but lacks significant economic progress".

The United States has established a set of criteria to be fulfilled by candidate countries to join MEFTA. Thus, they require that the country joins the WTO in order to create conditions for free trade. In this regard, all countries approached were already WTO members except Iran, Iraq, Syria, Yemen, Lebanon, Algeria and Libya. Applicants must also enter into a bilateral trade and investment agreement with the United States. At that time, these agreements were concluded only with Egypt, Jordan, Morocco and Tunisia.

The expected response of most countries to this initiative has been quite positive. Thus, Saudi Arabia has joined the WTO and bilateral trade and investment agreements were signed with Qatar, Iraq, Kuwait, Lebanon, Oman, the United Arab Emirates and Yemen. Besides, Libya, Lebanon and Algeria were negotiating their accession to the WTO.

### **8.2.1. Morocco /USA Free Trade Agreement:**

The free trade agreement (FTA) between Morocco and the United States (US), signed on 15<sup>th</sup> June 2004 and enforced on 1<sup>st</sup> January 2006 can be regarded in many respects as a new

generation of FTAs. Indeed, in addition to covering all business sectors of both countries: industrial products, agricultural products, services, government procurement, the agreement also includes aspects related to the protection of intellectual property, the environment, labour, governance. etc. (Abdelmalki et al. 2011).

It should be noted that Morocco responded from the outset to the criteria set up for the negotiation of FTAs under MEFTA. Indeed, the country was signatory of the GATT in 1987, was one of the founding members of the WTO in 1995. In addition, it was tied to the United States by an investment treaty since the early 1990s. Negotiations for the conclusion of an FTA with the United States were already in progress when taking the MEFTA Initiative.

Folsom (2007) notes that in many respects, the FTA between Morocco and the United States opened the way to all other agreements signed under MEFTA. Indeed, "the agreement has a broad perspective and covers goods, services of various types, electronic commerce, intellectual property rights, investment, labor and the environment. (...) The FTA between Morocco and the United States became the "model" for MEFTA. "Folsom (2007: 10).

This very ambitious agreement provides for several different modalities of customs tariff dismantling by the sectors concerned. The study of Abdelmalki et al.. 2011) set as objective the evaluation the consequences of this agreement both in terms of well-being and the growth and evolution of the sectoral trade balance of both countries and more generally on possible contribution of this agreement to the emergence of the Moroccan economy. For this purpose, the authors used a partial equilibrium model to identify activities and "sensitive" issues. This identification is made possible thanks to a very fine level of disaggregation (Specification six-digit level). They also used a general, balanced, calculable model (GTAP) to assess more rigorously, inter-sectoral and intra-sectoral allocative effects of the creation and diversion of trade flows and the impacts in terms of well being.

It must be emphasized that the signing of this agreement took place in a context characterized by the hope that the agreement will allow to revive social, Institutional, administrative, regulatory reforms, etc. likely to promote the economic emergence of the Kingdom. Nevertheless, the context was also marked by many concerns, namely, Morocco is not really able to take advantage of opportunities provided to it under the agreement, due to a too imperfect knowledge of the US market and the existence non-tariff barriers to its penetration in particular with regard to the respect of sanitary and phytosanitary standards. Most of the apprehensions focus logically on Agriculture. The most frequently expressed concern is that the shock of the opening creates destructive effects brutally destabilizing the rural world and weakening the rural social fabric (job destruction. impoverishment of the rural population, questioning of agro pastoral practices. increased food dependency of the country, increased pressure on natural resources, rural exodus. etc.).

There is little doubt that from its entry into force, this agreement has submitted the Moroccan economy to increased competition on price and quality for a number of products. This competitive pressure has logically led to some improvement in the competitiveness of Moroccan firms, according to Abdelmalki et al. (2011), in such circumstances. It is also very probable that duty free access of US exports to the Moroccan market will result in a substantial diversion of trade in the future. While, this agreement

allows Moroccan consumers to enjoy lower prices, these gains are likely to be dropped off by the losses by producers in several activities, notably the relative loss of the state tariff revenue and by the purchase of goods from the United States rather than from more efficient sources. This could result in a net loss in the economy as a whole. Furthermore, it is likely that Morocco will suffer from the deterioration in its terms of trade since the tariff reductions that must allowed are substantially greater than those of the United States, because of the disparity in their Initial levels of effective protection. However, simulations carried out in this regard by Abdelmalki et al. (2011) show that trade liberalization modalities of the Moroccan economy in the context of this agreement will play a positive role globally. For example, Moroccan exports of several products will increase rather substantially (Table 5).

**Table 5: Impact of total liberalization on the Moroccan exports to the United States for some selected products (in million US dollars and in % of the Moroccan sectoral exports to the USA)**

SECTORS	CHANGES IN TERMS OF WELFARE	%	Cumulative
Cereals	8.07	32.4	32%
Electric equipment	3.20	12.8	44.8%
Plastic and derivatives	1.79	7.2	52%
Paper and products thereof	1.61	6.5	58.5%
Rubber and rubber articles	1.16	4.6	63.1%
Mineral products, petroleum, oils & lubricants	1.13	4.5	67.6%
Vehicles and accessories	0.85	3.4	71%
Tobacco and tobacco products	0.79	3.2	74.2%
Aircraft and products thereof	0.75	3	77.2%
Energy industry and by products	0.66	2.7	79.9%
Steel and iron	0.46	1.8	81.7%
Cotton	0.40	1.6	83.3%
Fiber products	0.36	1.4	84.8%
Chemicals	0.33	1.3	86.1%
Iron and steel articles	0.32	1.3	87.4%
Pharmaceuticals	0.24	1	88.3%
Others	2.8	11.7	100%
<b>TOTAL</b>	<b>24.9</b>	<b>100</b>	<b>100%</b>

*Source: Abdelmalki et al. (2011: 32)*

The results show the interest of a gradual and asymmetrical agreement. Furthermore, this agreement should have a significant impact not only on trade between the two countries but also on their commercial relations with third countries. The most important trade diversion will affect the European Union and particularly France and Spain, which are the two Morocco's main trading partners (Table 6). Diversion effects also affect some countries in North and sub-Saharan Africa. In short, according to Abdelmalki et al. (2011), the agreement could allow Morocco to diversify its markets and dilute its trade dependence vis-à-vis its traditional partners.

**Table 6: Impact of full liberalization on Moroccan trade with third countries (in millions of US\$)**

PARTNER	Global Trade Diversion
EU	+92.60
AMU	-0.24
Tunisia	-0.20
Algeria	-0.03
Libya	-0.16
Rest of Africa	-3.63
European Union	-36.43
France	-17.23
Spain	-4.77
Rest of the World	-51.28

*Source: Abdelmalki L. (2011: 33)*

### **8.2.2. US - Bahrain FTA:**

After Morocco, the Kingdom of Bahrain in 2004 became the second partner of the United States under MEFTA. The main products exported by this country to the United States are textiles while its main imports consist of aircraft.

In terms of its coverage, the agreement is much like the one signed with Morocco except that it excludes to take into account investment because it was the subject of a treaty signed in 2001, while in the case of the agreement with Morocco, the already existing investment treaty was repealed and its scope included in the FTA.

### **8.2.3. US - Oman FTA:**

Oman has become the third partner under the MEFTA in 2006. Folsom (2007) notes that it is primarily its strategic position in the region that fostered the conclusion of an FTA with Oman in 2006.

Unlike Morocco, Jordan and Bahrain, Oman seems to be the only country which has not fulfilled the requirement of having previously signed an investment treaty with the United States as a prerequisite for signing the FTA. This is probably why its agreement comprises a rich chapter 10, which includes the essential of what you can expect from an investment treaty.

### **8.2.4. US - United Arab Emirates FTA:**

The United Arab Emirates are members of the WTO since 1996. In 2004, the UAE signed an investment treaty with the United States and the negotiations for an FTA under MEFTA progressed normally until the acquisition by Dubai ports World by a British company that was responsible for managing six US ports in 2005. This event raised the outcry of the press, the Congress and the American public as a whole for several weeks.

## **9. Case of Turkey:**

In today's world, countries have a tendency to engage in bilateral and regional FTAs because of World Trade Organization's (WTO) under achievement in high level of liberalization, WTO's regulations' being not enough in today's conditions and inefficiency of the multilateral trade system to provide better market access. As a result of this tendency, there are approximately 400 FTAs which are notified to WTO.

Turkey, being party to the General Agreement on Tariffs and Trade 1947 (GATT) and member of the World Trade Organisation (WTO) since 1995, conducts Free Trade Agreements in line with Article XXIV of GATT 1947. According to this Article, Turkey could grant more favourable treatment to its trading partners within a customs union or a free trade area without extending such treatment to all WTO Members, subject to certain conditions.

Without prejudice to WTO provisions, the Turkey-EU Customs Union constitutes major legal basis of Turkey's free trade agreements (FTA). Under the Customs Union, Turkey shall align its commercial policy with the EU's Common Commercial Policy. This alignment concerns both the autonomous regimes and preferential agreements with third countries.

Article 16 of the Decision No. 1/95 of the Turkey - EC Association Council on implementing the final phase of the Customs Union provides that Turkey would, among the others, take the necessary measures and negotiate agreements on a mutually advantageous basis with the countries concerned.



Turkey, in line with the tendency in the world for negotiating FTAs and its Custom Union obligation, negotiates and concludes free trade agreements with third countries in parallel with the EU. Together with the EU Common Customs Tariff, the preferential trade regimes constitute the most important part of the trade policy applied towards third countries.

Changing environment in multilateral ground such as the stalemate in Doha and economic crisis, the EU decided to focus on bilateral trade agreements as a tool to boost growth with the introduction of its new trade strategy called "Global Europe" in 2006. In line with that strategy, to increase/maintain its competitiveness in the world markets, the EU started to negotiate FTAs with specific provisions on services, investment, public procurement, intellectual property rights. Turkey is preparing itself for such changing environment. Having initiated/launched negotiations parallel to the EU, Turkey also adapts itself to the wide range of topics covered in the Agreements and negotiates new generation FTAs with its prospective partners.

So far, Turkey has concluded FTAs with 33 countries, 11 of which were repealed due to the accession of these countries to the EU. Currently, Turkey has 17 FTAs in force; namely, EFTA, Israel, Macedonia, Bosnia-Herzegovina, Palestine, Tunisia, Morocco, Syria<sup>11</sup>, Egypt, Albania, Georgia, Montenegro, Serbia, Chile, Jordan, Mauritius, and South Korea. Additionally, the FTAs signed with Lebanon, Kosovo, Malaysia, Moldova and Faroe Islands are under ratification process. Besides, the FTA negotiation with Ghana was concluded and it is expected to be signed in the first half of 2015.

Meanwhile, there are 13 countries/country blocs that Turkey has started FTA negotiations; namely Peru, Ukraine, Colombia, Ecuador, Mexico, Japan, Singapore, Dem. Rep of Congo, Cameroon, Seychelles, Gulf Cooperation Council<sup>12</sup>, Libya and MERCOSUR. Moreover, Turkey has launched initiatives to start negotiations with 10 countries/country blocs, which are the USA, Canada, Thailand, India, Indonesia, Vietnam, Central American Countries, other ACP Countries, Algeria, and South Africa.

Turkey-South Korea FTA is the first new generation FTA of Turkey. It consists of 4 agreements: Framework Agreement, Trade in Goods Agreement, Agreement on Investment and Agreement on Trade in Services. Framework Agreement and Trade in Goods Agreement are in force; and the Agreement on Investment and Agreement on Trade in Services have just been signed and expected to enter into force soon.

In total, Turkey signed FTAs with countries having an economic size of 3.8 trillion \$ and providing 1.4 trillion \$ import market. Turkey's export to its FTA partners is approximately 21 billion \$. FTAs' share in total export and import of Turkey are 13% and 9% respectively.

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<sup>11</sup> The FTA between Turkey and Syria was suspended on 6 December 2011.

<sup>12</sup> The Gulf Cooperation Council suspended its all FTA negotiations.

## PART III

### PRESENTATION OF THE MEGA-REGIONAL FTAs INVOLVING THE OIC COUNTRIES

#### 1. Potential Impact of mega-regionals on OIC Member Countries<sup>13</sup>:

Free trade agreements (FTAs) or regional trade agreement (RTAs) are not new phenomena. Countries, developing and developed alike, have been increasingly negotiating and concluding RTAs. According to WTO figures based on notifications by WTO Members, 263 RTAs are in force as of July 2015. Around half of these RTAs only cover trade in goods (137) or only services (1) with the other half covering providing market access in goods as well as services (125 RTAs)<sup>14</sup>.

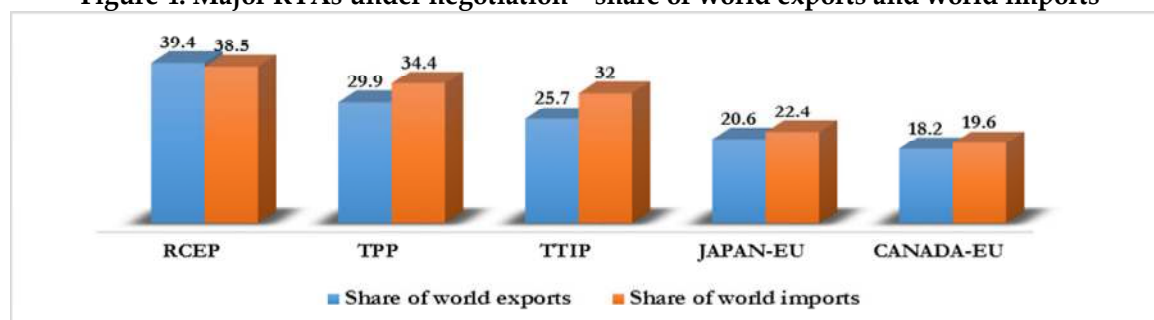
More recently however two trends are emerging. First, RTAs are increasingly being viewed and/or used as a tool for increasing regional economic integration between developing countries, akin to the developments that have taken place in the European Union (EU). Examples include the Association of Southeast Asian Nations (ASEAN), East African Community (EAC), the Greater Arab FTA (GAFTA) and the launching of negotiations towards a prospective Continental Free Trade Area across Africa in June 2015.

Second, there is trend among the major trading powers (China, EU, US) to negotiate FTAs with a large set of players that include several emerging economies in Asia. These initiatives are referred to as 'mega-regionals'. It is believed that this trend is stirred by the lack of progress in the WTO's Doha Round. For instance, the US Trade Promotion Authority Act that allows for RTAs to be ratified more easily by US Congress provided it meets the predefined trade negotiation objectives of the Act, does not even mention conclusion of the Doha Round among its trade negotiation objectives (the former Act of 2002 did).

#### 1.1. Overview of mega-regionals:

Here a 'mega-regional' is defined as an RTA that has many parties (at least 3, counting the EU as 1), is globally significant in terms of trade impact (at least 25% of world trade) and the substance of the trade agreement goes well beyond current WTO disciplines.

**Figure 4: Major RTAs under negotiation - share of world exports and world imports**



Based on the trade impact and number of parties, 3 'mega-regionals' currently under negotiation qualify - the Regional Comprehensive Economic Partnership (RCEP), the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP).

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<sup>14</sup> <http://rtais.wto.org/UI/PublicPreDefRepByRTAName.aspx>

### a) RCEP:

RCEP covers mainly Asian countries including India and China as well as Australia and New Zealand.

RCEP is the largest mega-regional in terms of trade covering almost 40% of world trade. Based on news reports and statements of officials, RCEP will cover trade in goods, trade in services, investment, economic and technical cooperation, intellectual property, competition, dispute settlement and other issues. Draft chapters on Intellectual Property have been leaked. Based on the texts, a negotiated outcome on IP is not likely to go far beyond current WTO TRIPS Agreement. Market access in services is expected to be a major addition to the existing trading relations between the parties.

News reports indicate there is no clear sign of a major breakthrough in the negotiations. For instance India reportedly has submitted a relatively sizeable list of goods that should be excluded from tariff liberalization, as India fears import surges from Chinese manufactured goods due to its weaker domestic industrial base compared with China.

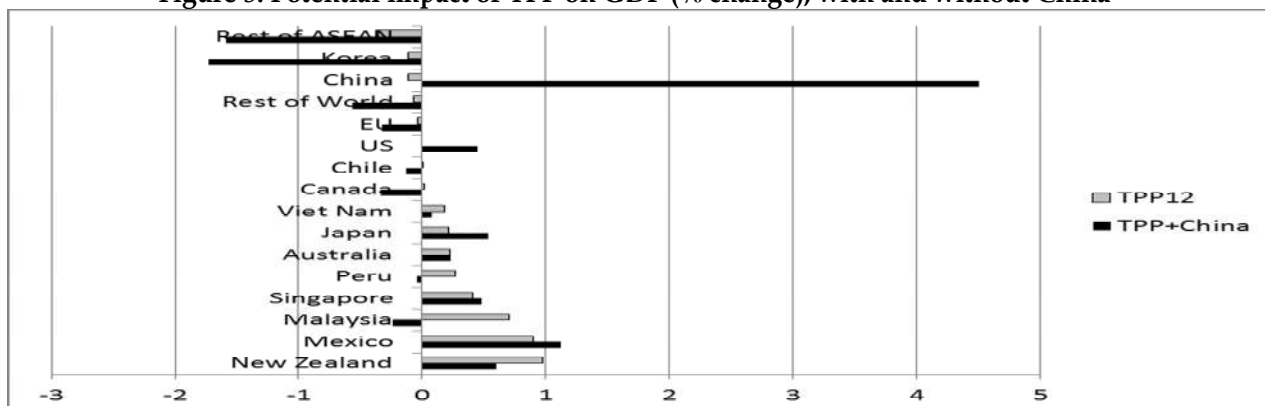
While RCEP will encompass a high share of world trade and would deepen trading relationships between the parties, it is unlikely to be a game changer in terms of new rules. Based on current developments it not expected that RCEP will go far beyond current WTO disciplines. Therefore, 'mega-regionals' in this Chapter refer to the TPP and the TTIP.

### b) TPP:

TPP has 12 negotiating parties across Asia and the Pacific. The original participants are Australia, Brunei, Chile, New Zealand, Peru, Singapore, United States and Viet Nam. Malaysia joined the negotiations on 5 October 2010 during the Third Round in Brunei Darussalam. Mexico and Canada were accepted as members and joined the negotiations at the 15th round in December 2012. Japan has been accepted as the 12th member. Colombia, South Korea, Taiwan and Philippines might accede to TPP after its conclusion.

TPP is not only an economically driven agreement, but also motivated by (geo) political motivations, in particular the US 'pivot to Asia' and the rivalry between US and China in Asia. The figure below illustrates this. In terms of economic benefits, for the United States it would be better if China would be added as a TPP partner. However for other countries the inclusion of China would worsen the (initial) benefit of TPP or would result in economic losses.

Figure 5: Potential impact of TPP on GDP (% change), with and without China<sup>15</sup>



<sup>15</sup> Cheong, 2013,

<http://www.adbi.org/files/2013.07.11.wp428.trans.pacific.partnership.east.asian.regionalism.pdf>

## c) TTIP

TTIP is an agreement under negotiation between EU and US. Norway, Iceland, Switzerland and Turkey might accede (partly) to TTIP after its conclusion.

### 1.2. Impact on OIC Member States - transmission channels:

At present, only Malaysia and Brunei are among the OIC Member States that are directly involved in the negotiations of a mega-regional, the TPP. Turkey might be directly impacted by the TTIP between EU and US, as it is currently in a customs union with the EU for non-agricultural goods and some agricultural goods.

While most OIC Member States are not a negotiating party to either the TPP or TTIP, these mega-regionals will have an impact through three main transmission channels:

- Introduction of new generation issues. Such rules can impinge on the development prospects of developing countries whether or not party to TPP/TTIP.
- Trade diversion, through exclusion from the RTA, erosion of preferences and restrictive rules of origin that will re-orient trade from OIC Member States to TPP or TTIP Members.
- Risks of increased difficulty in accessing markets due to harmonization of standards.

#### a) Introduction of new generation issues

The new generation issues that are currently negotiated between TPP and TTIP will bind its members. Consequently, they are likely to seek extension of the application of new rules to third countries, by bringing them to the WTO or through bilateral agreements (trade agreement, cooperation agreement).

There is no generally agreed definition of 'new generation issues'. Usually this term signifies rules that are generally not included in RTAs, especially in the RTAs of or between developing countries, as well as rules that go far beyond what is currently agreed at WTO.

A separate concept from 'new generation issues' are the 'Singapore issues', the four issues that were introduced to the WTO agenda at the December 1996 Ministerial Conference in Singapore, namely trade and investment, trade and competition policy, transparency in government procurement and trade facilitation. Trade ministers adopted an agreement on the latter issue at the Bali ministerial in 2013.

Other 'new generation issues' include

- Intellectual Property Rights - rules that go beyond WTO TRIPS Agreement
- Labour - enforceable rules that go beyond 1996 WTO declaration made by trade ministers in Singapore to respect core labour standards.
- Environment - enforceable rules on domestic environmental law and enforcement of obligations arising out of Multilateral Environmental Agreements (MEAs)
- State owned/controlled enterprises - no preference to /by State owned/controlled enterprises for nationals
- Regulatory Coherence - prescribe the way how domestic laws are being prepared, drafted and published
- Sanitary and Phytosanitary Measures (SPS) - rules that stipulate rules on harmonization (e.g. on fertilizer), biotechnology
- E-commerce / digital trade - e.g. no localization of data

- Services – market access and regulatory disciplines, for instance in financial services or maritime services.

Here two examples are provided of new rules, relating to Intellectual Property Rights (IPRs) and State Owned Enterprises (SOEs).

*IPRs:* Intellectual Property Rights are one of the thorniest topics in the TPP negotiations. It deals with the balance between rewarding innovators or IP owners versus the accessibility and affordability of products that are accessible to the vast majority of the population or farmers (in the case of inputs such as fertilizers). In the TPP, IP owners are afforded a very high level of protection, especially in the area of patents. For instance TPP members will be asked to verify that no drug patents are infringed before approving marketing of generic drugs (referred to as ‘patent linkages’) and patent holders can abstain from sharing drug test data with generic manufacturers (‘data exclusivity’). Furthermore, patent terms are extended beyond what it required by the WTO TRIPS Agreements. These are only a few examples.

Besides that, the draft IPR Chapter of the TPP is not only about Intellectual Property *per se*, it also deals with liability of Internet Service Providers (ISPs) as well as the medicines reimbursement regimes, limiting the ability of government to keep medicines prices low, including under mandatory health insurance schemes. Such rules branded as IPR rules can have a major impact on security and health policies.

*SOEs:* In the TPP negotiations, the US is seeking additional disciplines on the commercial activities of SOEs and designated monopolies that go beyond existing obligations in the WTO and in RTAs, including obligations with respect to: ensuring that SOEs and monopolies act on the basis of commercial considerations and accord non-discriminatory treatment in purchases and sales, providing courts with jurisdiction over claims involving commercial activities of SOEs, and impartial regulation of commercial SOEs and private competitors.

Such rules cannot be taken lightly as they take away the ability of the government to favour government owned or controlled entities. Furthermore, some of these rules can have major political economy impacts. For instance, SOEs in Turkey are worth USD 200billion and employ almost 600,000 people, most of them in the primary sectors (i.e. farmers).<sup>16</sup>

## **b) Trade diversion**

A trade agreement is likely to re-orient trade from third countries to TPP/TTIP members. The effect depends on the amount of trade and the existence/loss of preference margin.

TTIP is an agreement between two entities at a roughly similar level of development. Rollo et al (2013) concluded that there is practically no similarity between, on the one hand, the structure at HS 6 digit level (around 5000 product categories) of the non-fuel exports of the low income countries to the EU and the US, and on the other hand, the exports of EU to US or US to EU. However, this does not mean that the EU and US are producing similar products as other OIC member states.

According to available research, the general impact of TTIP on preference erosion by OIC member countries seems to be small. For Bangladesh, Cambodia and Pakistan, trade

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<sup>16</sup> OECD Dataset on the Size and Sectoral Composition of National SOE Sectors (2012). Includes Majority-owned listed entities, Minority-owned listed entities, Majority owned non-listed enterprises and Statutory corporations and quasi-corporations

diversion as a result of TTIP seems unlikely to be a major problem in EU and US market because of strong initial competitiveness. Nonetheless, there are some cases where the absolute impact on exports is likely to be significant. In particular the impact appears to be very significant in the US market for Niger with a drop in exports of -12.1%, followed by Kyrgyz Republic (-4.5%) and Malawi (-3.1). Nepal, Ghana and Pakistan experience reductions in the US market export share of between 1% and 2%, while exports of other low-income countries would be reduced by less than 1%.

Other examples of trade diversion due to TTIP: Afghanistan is expected to sell less pistachios (-3%), prunes (-18%) and walnuts (-7%) in US market, as the EU would increase exports to the US. Kyrgyz Republic would see similar effects. In the case of Bangladesh, it could see small drops in textiles exports, for instance knitted cotton t-shirts (-0.5%, -USD12 mln) in US market and men's/boys suits, of wool or fine animal hair, not knitted (-16%) in EU market. Pakistan could see a drop of exports of plain weaved cotton fabric (-2%) in US market.

In contrast to TTIP, TPP is an agreement that also includes developing countries. For instance, inclusion of Viet Nam in the TPP may impact significantly on textile and apparel producers that access the US market at preferential rates. It could lead to a relocation of (parts of) a supply chain to Vietnam from other OIC Member States. Mexico has emerged as major agricultural producer especially of sugar, and has built up some manufacturing expertise. TPP would be an outlet for Mexican sugar and manufactured products to the detriment of OIC producers. TPP has a higher potential to divert trade from OIC Member States to TPP members than TTIP. Yet, research on this is almost non-existing.

Besides the lowering or elimination of tariffs between TPP/TTIP parties, the rules of origin that will be agreed will have negative impacts on third countries. Analysis shows that rules of origin in FTAs greatly change firms' sourcing decisions and trade in intermediate goods. The Rules of Origin of the North American FTA (NAFTA) between US, Canada and Mexico had a negative impact on the import of intermediaries from third countries, on average 18%, up to 62%, decrease.<sup>17</sup>

Likewise TPP and TTIP can and will have negative impacts on exports of intermediate goods by OIC member states, if no action is taken

### 1.3. Risks of increased difficulty in accessing markets due to harmonization of standards:

Conceptually, harmonisation of standards between RTA parties can have several effects for third parties

- Trade facilitative - if the common standard can be met, the product can be sold in all RTA parties, e.g. in EU as well as US.
- Trade barrier - compliance with requirements becomes more strict. E.g. if a product is blacklisted for import in EU, it will also be blacklisted in US.
- Trade facilitative for RTA parties only. For instance, the test results of only EU/US laboratories are recognized for imports into the US; mutual recognition agreement that only applies to products from US or EU markets.

Thus, harmonization of standards is not by definition facilitating trade for third parties. For instance, harmonized rules on mycotoxins can lead to higher trade barriers. Mycotoxins including aflatoxins and ochratoxins - naturally occurring toxicants that are virulent carcinogens, found especially in nuts, dried fruit, coffee, cereals, oilseeds, milk

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<sup>17</sup> Final Goods to Inputs: the Protectionist Effect of Rules of Origin, Conconi, Garcia-Santana, Puccio, Venturini, March 2015

(animal feed). The EU has very strict limits and sampling regimes for these mycotoxins, which are stricter than those of the US.

If EU and US agree to harmonize this standard up to EU level, TTIP would bring about enhanced competition by US exporters that have more rigorous mycotoxin controls. The impacted countries in such case would include Afghanistan, Kyrgyzstan, and Pakistan.

### **Concluding remarks:**

Megaregionals can have negative third party effects on OIC member states, through exclusion, preference erosion, restrictive rules of origin, and harmonization of standards as well as new rules that can limit the space for development policies if these rules are made effective through WTO or other means. More research and awareness is needed to appraise the mega-regionals and the new generation issues, including with reference to RTAs.

## **2. Impact of EPAs and African FTA on African Economies**

### **2.1. Economic Partnership Agreements (EPAs):**

#### **♦ Background:**

In 2000, the European Union and the African, Caribbean and Pacific Group of States, otherwise known as the ACP group, adopted the Cotonou Agreement, which is a framework treaty on trade, aid and political cooperation. It replaced the previous Lomé Convention, providing for a general set of privileged relations between the EU and the ACP countries in matters of market access, technical assistance and other issues. The objective is to facilitate the economic and political integration of the ACP countries into a liberalised world market over the next 20 years.

Under the Cotonou Agreement, the parties agreed to negotiate a separate set of free trade agreements between the EU and the participating ACP countries, tailored to six clusters of countries (West Africa, Eastern and Southern Africa, Central Africa, SADC, the Caribbean and the Pacific). For the EU the EPAs are meant to be comprehensive free trade agreements, laced with rhetoric about "development" and "regional integration". For the EU, comprehensive means not just about the liberalisation of trade in goods, but also about liberalisation of services, investments and government procurement, and the strengthening of intellectual property rights, competition rules, etc.)

The negotiations on these EPAs started in September 2002 and were supposed to be completed by 31 December 2007. Hence, a WTO waiver to maintain the EU's unilateral preferential trade relations with ACP countries until that date was sought and granted. (The EU pushed "WTO compatibility" of the EPAs as a frame for the talks and ACP countries accepted it.) As the talks advanced, ACP governments became caught between a rock and a hard place. They wanted the bits of market access that the EPAs offered, but would have to pay an extremely high price in terms of loss of customs revenue, destabilisation of their economies from the expected flood of EU imports, unclear financial aid commitments from Brussels, reduced political autonomy, etc. Civil society, labour unions and business groups in the ACP countries studied the implications and came out with vigorous campaigns to stop the signing of the EPAs.

The 31 December 2007 deadline for the EPAs to be signed came and went in a flurry of drama. Only the Caribbean region concluded negotiations on a comprehensive EPA before the deadline; a number of states – including Papua New Guinea, Fiji, Ghana and Cote

d'Ivoire – initialled bilateral interim EPAs on goods only to secure the continuation of their exports. Others, like Senegal, swore they would not sign until development concerns were seriously taken on board. Since then negotiations continued to revise the interim EPAs which appeared to contain many problematic provisions; and to arrive at regional agreements. These negotiations have not led to any new agreement yet and in order to put pressure on the negotiations, the EU has imposed a new deadline: ACP countries which have initialled or signed (interim) EPAs but have not ratified or started to implement these agreements before 1.1.2014 will lose their preferential market access to the EU.

A state of play as of February 2014 (courtesy of Marc Maes at 11.11.11) is provided below:

**Table 7: Status of EPA (as of February 2014)**

EU-ACP sub-group	Status of agreement
<b>Caribbean</b>	<ul style="list-style-type: none"> <li>• full EPA initialled in Dec 2007 and signed in October 2008 (and December 2009 by Haiti) and approved by the European Parliament (March 2009). Ratification still pending in most Caribbean and EU states. Caribbean countries experience difficulties with the implementation of the EPA.</li> </ul>
<b>Central Africa</b>	<ul style="list-style-type: none"> <li>• interim EPA initialled (Dec 2007) and signed by Cameroon only (January 2009), approved by the European Parliament (June 2013)</li> <li>• 7 countries have not initialled anything yet</li> </ul>
<b>West Africa</b>	<ul style="list-style-type: none"> <li>• interim EPA initialled (Dec 2007) and signed by Cote d'Ivoire (Nov 2008) and approved by the European Parliament (March 2009)</li> <li>• interim EPA initialled by Ghana (Dec 2007)</li> <li>• 14 countries have not initialled anything yet</li> </ul>
<b>East Africa</b>	<ul style="list-style-type: none"> <li>• interim EPA initialled by Zimbabwe, Seychelles, Mauritius, Comoros, Madagascar, Zambia (Nov-Dec 2007) and signed by Zimbabwe, Seychelles, Mauritius and Madagascar only (August 2009). Zimbabwe and Seychelles have in the meantime ratified the agreement while Madagascar and Mauritius have notified provisional implementation; as a result this is the first and until now only African (interim) EPA for which implementation has begun. The European Parliament has approved this interim EPA in January 2013.</li> <li>• interim EPA initialled by East African Community members Burundi, Kenya, Rwanda, Tanzania, Uganda (Nov 2007)</li> <li>• 5 countries have not initialled anything yet</li> </ul>
<b>Southern Africa</b>	<ul style="list-style-type: none"> <li>• interim EPA initialled by Botswana, Lesotho, Namibia, Swaziland, Mozambique (Nov-Dec 2007) and signed by Botswana, Lesotho, Swaziland and Mozambique only (June 2009)</li> <li>• Angola has not initialled anything yet</li> </ul>
<b>Pacific</b>	<ul style="list-style-type: none"> <li>• interim EPA initialled by Papua New Guinea and Fiji (Nov 2007) and signed (July 2009) and ratified (February 2011) by Papua New Guinea only.</li> <li>• 13 countries have not initialled anything yet</li> </ul>

Applying the principle of reciprocity, the EU asked West Africa to open up its market to European products by 80% over a period of 15 years, in exchange for immediate 100% EU market access for West African products. Yet WTO rules would have allowed for an interpretation that took more account of the enormous differences in development between the two regions. The EU could have accepted 60% market access over a period of 25 years, as proposed by the West African states.

During the negotiations the EU also went much further than WTO requirements on liberalisation, by including services, investment and procurement alongside goods. West Africa was opposed to this, and wanted to maintain its ability to protect these sectors from EU competition. Twelve out of sixteen West African states fall into the category of Least Developed Countries (LDC). They do not have any interest in concluding an EPA because the EU grants LDCs unilateral trade preferences under the Everything But Arms (EBA)



regime, which offers them free access to the EU market without obliging them to liberalise in exchange. This explains why at the end of 2007 the EU was not able to get agreement on a regional EPA. However, the EU has threatened all the non-LDC ACP countries with loss of free access to the European market, and with application instead of the Generalised System of Preferences (GSP). This system, which already applies to other non-LDC developing countries, is more favourable than the one which applies to developed countries, but it re-establishes customs duties on exports to the EU.

As a result, following strong EU pressure which was denounced by the ACP Council of Ministers, instead of a regional EPA, two non-LDCs, Cote d'Ivoire and Ghana, signed bilateral interim EPAs limited to trade in goods.

After the signature of the interim EPAs, the EU has continued to give Cote d'Ivoire and Ghana free EU market access.

Given the prolonged regional negotiations, these countries have not finalised the procedure to bring the bilateral interim EPAs to enter into force.

In view of this situation, the EU could have accepted the proposal from the Trade Ministers of the African Union, to consider West Africa as an LDC region. This would have enabled West Africa to benefit from the EBA regime, without having to conclude an EPA. Instead the EU set a new deadline for the completion of negotiations by threatening to withdraw free access to the EU market for the ACP non-LDCs that have not taken the necessary steps for the implementation of the interim EPA by 1 October 2014.

The EPA anticipates the elimination of West African customs duties for 75% of the tariff lines. Yet if one looks at the value of the exported European goods corresponding to these tariff lines, liberalisation will reach 82%.

The implementation of this decision will take 20 years, in 3 phases. However, the largest part of the liberalisation will take place within 15 years. The final 5 years concern only a handful of products.

♦ **Current situation of EU-West Africa Trade:**

West Africa accounts for more than 38% of total trade between the EU and all African, Caribbean and Pacific (ACP) regions. The EU supplies a large part of the equipment that contributes to economic growth and development in the region and is the main export market for West African agricultural and fisheries products. European annual exports are worth approximately €30 billion. West African exports to the EU account for €38 billion.

♦ **Benefits of EPAs for Africa, the Caribbean and the Pacific (ACP) Countries:**

EPAs is aimed to help the creation of conditions for trade and investment. Together with development aid, that can deliver a number of benefits for ACP countries:

- ✦ more markets, more sales – by opening the EU market fully to imports from ACP countries, strengthening and boosting trade between ACP countries themselves;
- ✦ better infrastructure, administration and public services – to increase and improve productive capacity, training opportunities and knowledge transfer;
- ✦ more transparency / political and economic stability – political dialogue has become an integral part of the ACP-EU relationship, aiming to uphold democratic standards, good governance and human rights.

As in other ACP regions which are implementing an EPA, this agreement will be put into practice in a mutually beneficial way. For West Africa, it will increase its exports to the

EU, stimulate investment and contribute to developing productive capacity, with a positive effect on employment.

EU-West Africa trade has surged over the last decade:

- West African exports to the EU have increased by 280%.
- EU exports to West Africa have increased by 125%.

West Africa is also the most important investment destination for the EU in Africa:

- €15 bn, i.e. 30% of EU investment flows in Africa, went to the West African region.

The EC puts forward a number of seemingly positive points, in favour of the EPA:

- The EPA offers free access for West African goods to the EU market;
- The EPA supports the regional integration of West Africa;
- Agricultural products are excluded from liberalisation;
- The EPA will provide aid to West African states to enable them to benefit from the EPA;
- The EPA respects the policy space of West African states.

In fact, a 'West Africa EPA Development Programme' (usually referred to by its French acronym PAPED) has been set up and includes among its objectives the reinforcement of regional integration and the strengthening of the competitiveness of the West African economies. The EU also "undertakes to provide funding to cover the fiscal impact (...) for the period of tariff dismantling" (art.60.3).

However:

- The financial contribution of €6.5 billion for the first 5 years is well below the needs estimated by the West African region of € 9.5 billion.
- The EPA does not include the same legal commitment for the EU to finance PAPED as for the West African states to dismantle their tariffs.
- The European contribution is not new money but mainly consists of funding that is already planned in the European Development Fund (EDF), the EU and EU member states budgets.

♦ **West African states losses':**

There is a considerable difference in the levels of development of the two trading partners. According to South Centre, only 6% of the tariff lines are products for which West Africa is more competitive than the EU. Although this analysis deserves to be refined, it gives a good idea of the magnitude of difference in competitiveness. There is a power imbalance between the West African and EU economies that threatens existing West African production and may hinder the emergence of new ways of generating employment and wealth.

- Finally, the multiplication of free trade agreements between the EU and other regions in the world gives those regions similar advantages. This will lead to a 'preference erosion' for West Africa. Therefore West Africa will get less and less benefit from an EPA.

According to estimates by South Centre, West Africa will lose more than €746 million a year in fiscal revenue from the tariff reductions and eliminations in the first 5 years of implementation and almost € 1.9 billion a year by the end of the 20 year period. While this estimate could be refined, these figures do provide an indication of the order of magnitude of losses. In comparison the amounts foreseen for the PAPED are €1.3 billion a year for five years. In addition the mechanisms for compensating losses are not specified. Yet these compensations are indispensable to allow continued financing of the building of schools and hospitals, support for family farming, and other public services.

The uncertainty of adequate additional financing is aggravated by the fact that the Cotonou Agreement, which is the basis for the EDF and the financing of PAPED, will expire in 2020. If the EPA comes into force this will be right at the moment when West Africa is undertaking tariff eliminations.

♦ **Benefits for European Consumers:**

- lower prices – removing trade barriers produces healthy competition on the EU market and lower prices for consumers;
- more choice – exotic new produce from Africa, the Caribbean and the Pacific (ACP countries), and new varieties of familiar goods like coffee, cocoa, mangos, pineapple etc.;
- good quality and good value – tropical products grown in tropical climates;
- jobs – in the long run, trade will help ACP countries become more prosperous. In turn, that will generate more demand for European products and expertise, which will be good for employment.
- ethical choices – many thousands of small-scale, family-run businesses in ACP countries will benefit from being able to sell their produce in the EU.

♦ **Benefits for farmers and manufacturers in Africa, the Caribbean and the Pacific:**

- no quotas, no duties on exports to the EU – free access to the EU market of half a billion people for all ACP products, providing plenty of scope for economies of scale
- access to a larger free market including EFTA countries – including Switzerland and Norway
- building regional markets – boosting trade between ACP neighbours and regions, with very significant potential benefits for ACP exporters
- no undue competition – ACP countries will only gradually open their markets to EU imports, and producers of the most sensitive 20% of goods will enjoy permanent protection from competition
- no shocks – EPAs will be implemented in a way that avoids unnecessary shocks. Duties will be phased out over a period of 15 (and up to a maximum of) 25 years, with safeguards and support on offer for ACP countries that encounter problems.
- coverage of services and foreign investment – EPAs don't just deal with trade in goods but with issues relating to development too – because trade is development.
- wider reforms – EPAs are part of the wider development agenda for ACP countries, to strengthen the law, attract local and foreign investment and create the conditions for greater prosperity.

♦ **Impact on agricultural sector:**

The EPA provides for continued protection of 18% of products, known as sensitive products and agricultural products constitute a large part of these. However the EPA still holds a risk for West African agriculture:

- Agriculture is a major sector for West Africa. It provides 60% of employment and satisfies 80% of the food needs of the region. At the same time farmers belong to the social category that is most affected by extreme poverty.
- It is therefore positive that the agricultural products that are commonly consumed are generally considered as sensitive and can be protected.
- However, imports of agricultural raw materials for local processing are generally liberalised which leads to increased competition with the equivalent local products. In

particular European milk powder is imported in bulk and reconditioned locally to be turned into liquid milk, which directly competes with local milk production.

- Although the EU “commits itself not to make use of export subsidies”, other subsidies under the Common Agricultural Policy (CAP) allow the EU to sell its agriculture production at less than the cost price, competing unfairly with West African agriculture.
- West Africa will no longer be able to make use of export taxes to support local processing of West African raw materials. This both deprives the region of an instrument to develop local agro-processing industries and reduces fiscal revenue. While export taxes are a tool that needs to be used with caution, West African states should retain the policy space to use them if deemed necessary.

♦ **EPAs: concrete results:**

- A logistics management company in Lesotho now only has a two-page export application form to fill in rather than the old 23-page form, and the application is processed in 15 minutes rather than 7 days, thanks to the new EU-financed Trade Investment Facility.
- Textile producers in Kenya now have access to the rich European market with nearly 500 million consumers – with the added benefit of less strict Rules of Origin – under the EAC-EU interim EPA.
- Pineapple exporters in Ghana can rest assured their business environment won’t be upset by any unilateral decision. Greater predictability means they can safely invest more in processing and marketing their fruit.
- No worries for farmers in the Caribbean – 75% of EU agricultural products will still face import tariffs, and the other 25% will not see duty-free competition start for another 10-25 years.
- Europeans can get coconut oil from Fiji without flying there in person – a trip to the local supermarket may be enough. Pacific suppliers now have a duty/quota free access to the EU.
- Textile producers in Kenya and Tanzania can now source their raw materials from more efficient producers in Asia under the EPA. The final products – clothes – will still enter the EU duty and quota-free.
- All ACPs that have signed an EPA can benefit from more flexible, simplified and advantageous rules of origin, which allow them to use cheaper, better quality or more innovative inputs from other countries in their exports and so move up the value-added ladder rather than exporting predominantly raw materials.

♦ **The Way Forward:**

With support from select regional economic communities (RECs) and Member States, the African Union should take the lead in efforts to ensure that the EU reconsiders arbitrary deadlines. More than anything else, these EU/EPA deadlines do not take into account the requirements for genuine negotiation nor progress being made in the region towards creating the requisite environment for mutually beneficial outcomes.

Negotiating deadlines must be set in tandem with African integration goals - meaning that they are delayed until the next decade - allowing ample time for Africa to conclude a Continental Free Trade Area (CFTA) and the African Customs Union as it was foreseen in the Abuja Treaty.

In summary:

- EPAs should not be about making countries comply with EU trade strategy but must address and support the development challenges partner countries are facing;
- The EU must address the genuine concerns of ACP countries by introducing much more flexibility in the negotiations;
- The EC should offer genuine alternatives to EPAs for countries that are not in a position to conclude EPAs. This means maintaining Market Access Regulation (MAR 1528 grants duty free quota free access to EU markets to those countries which have initialled an interim EPA) and reforming the GSP so as to offer EBA for the whole of Sub-Saharan Africa in line with PCD and Art. 21 TEU obligations.

## 2.2. Tripartite Free Trade Area (TFTA):

African heads of State gathered in Sharm el Sheikh on June 10<sup>th</sup>, 2015 to sign a milestone trade deal creating a Cairo-to-Cape-Town common market, spanning the eastern half of Africa from Egypt in the north to South Africa in the south. The completion of the Free Trade Area (FTA) procedures among the three African blocs, the Southern African Development Community (SADC), the Common Market for Eastern and Southern Africa (COMESA) and the East African Community (EAC), depends on the unification of the rules of origin and tariff, according to Egypt's Minister of Industry and Trade Mounir Fakhry Abdel Nour. This should be followed by the approval of the parliaments of participating countries on the proposal of the FTA and its rules.

The signing of the TFTA Agreement is indeed an important development; its adoption has been on the cards since October 2008.

Critics argue a single trading bloc will not work where individual sub-regional ones have failed. To the contrary, the consolidation of the three trading blocs will build on previous trade gains and will result in the whole being larger than the sum of its parts.

Between 2004 and 2014 trade within the COMESA region grew from US\$8 billion to US\$22 billion. Over the same period trade within SADC grew from US\$20 billion to US\$72 billion and for EAC it rose from US\$2.6 to 8.6 billion. The overall trade between the three areas rose from US\$30.6 billion to US\$102.6 billion over the same period.

Despite the growth, only about 12% of Africa's trade is intra-regional. It is 22% for South America, 40% for North America, 50% for Asia and 70% for Western Europe. The tariff liberation of 60-85% will have a significant impact in facilitate the cross-border flow of goods and services.

The TFTA will benefit Africa in at least six mutually reinforcing ways.

**First**, the conclusion of the agreement will generate the impetus for the creation of similar arrangements in western Africa, bringing economic powerhouses such as Nigeria into a continental free trade area. In fact, negotiations for an overarching agreement will be launched in 2015, with the projected creation of an Africa-wide free market in 2017.

**Second** is a much larger market whose free flow of goods and services will help to maintain economic growth at 6-7% per year. At this rate the combined GDP of Africa is projected to reach \$29 trillion by 2050, which would be equal to the current combined GDP of the EU and the US. With additional policies, such growth will contribute significantly to spreading prosperity and reducing poverty.

**Third**, the TFTA will serve as an impetus for investment in Africa's cross-border infrastructure. It is estimated that Africa needs to invest nearly \$100 billion annually in infrastructure over the next decade. Less than half of this target is met currently. One of

the reasons for the low level of investment has been poor coordination across the different trading blocs. Building infrastructure will also create additional jobs and foster the development of engineering services.

**Fourth**, the prospects for the larger markets and supporting infrastructure will spur industrial development. This will not only create jobs but it will also have the added advantage of diversifying Africa's economies that are largely dependent on raw materials. The associated technological development will lead to the creation of new industries.

Trade among the three blocs over the last decade has been dominated by intermediate products and manufactured goods, contrary to the common belief that African countries are trading in similar agricultural products. These trends underscore the potential role of the TFTA as a driver of industrial development and in the manufacture of high-value products.

**Fifth**, the signal of larger markets will also help to stimulate trade in services. The first beneficiary is likely to be the financial sector, which will be able to lend to larger industrialists seeking to benefit from economies of scale. Such financial services will reinforce the increase in cross-border investments by emerging African firms that are serving as regional champions of industrial development.

**Sixth**, by being part of larger markets, small African countries will no longer be restricted to producing their traditional products. With better policies and human resources they can become the locus of new manufacturing operations that serve wider markets.

By providing a single economic space with harmonized trade policies and a regulatory framework, the TFTA solves the problem of multiple memberships, rationalizes trade negotiations, reduces the cost of doing business, supports industrialization, and stimulates cross-border infrastructure projects.

The implementation of this treaty could change, for the better, the manner in which African trade and integration are conducted. It will take time before this Agreement will enter into force (14 ratifications are required) and domestic follow-up measures in the Member States will be in place.

The three blocs will take alternating turns leading TFTA, and working to reduce customs duties - the hope is to achieve an 85-percent reduction in tariffs within three years - and non-tariff trade barriers such as superfluous paperwork at borders.

A pan-African trade agreement may help Africa negotiate better trade deals with the rest of the world.

The three African blocs population includes about 625 million people, and has a trade volume of about \$1.2tn.

In 2017, when it comes into force, the common market created by the customs union will encompass 51 percent of the continent's GDP - about \$1 trillion annually (884 billion euros) - and a slew of big countries with huge growth potential, such as Ethiopia, Kenya and Mozambique.

A key motivation for the establishment of freer trade within Africa is that freer trade and more harmonized markets generate a more compelling case for foreign direct investment. The less businesses have to deal with superfluous paperwork, long delays at borders, and a multiplicity of regulations and officials, the better the business case for investment.

TFTA provides a mechanism for identifying, reporting, monitoring and eliminating non-tariff barriers to trade, officials said. And it aims at raising Africa's share of global trade, which currently stands at just 2 percent.

The remainder of the Agreement contains those provisions which are typical of an FTA for trade in goods. The main text provides for basic commitments regarding non-discrimination, tariff liberalization, rules of origin, non-tariff barriers, trade remedies, standards, exceptions, dispute settlement, institutional aspects, infant industries, SPS and TBT issues, and customs cooperation.

### **Concluding Observations:**

This TFTA instrument is a sui generis agreement which contains provisions on what the participating states found possible to agree on during the four years of negotiations.

The original ideal to transform the three existing RECs into one new FTA, and to find answers for problems on overlapping membership, has not been achieved.

The parties have undertaken to negotiate and endeavour to conclude protocols on trade in services within on trade-related matters, including Competition policy, Cross-Border Investment, Trade and Development, and Intellectual Property Rights within 24 months upon entry into force of this Agreement.

An assessment of the TFTA benefits will have to await the finalization of the outstanding issues and how implementation will be undertaken by national administrations and regional structures. The establishment of a TFTA secretariat will be a very important development but there is no binding obligation to have one.

The ultimate TFTA benefits will depend on the extent to which private firms, and investors will be able to trade and do business under lower tariffs, harmonized technical standards, and rules of origin conducive to modern value chain conditions. This has direct implications for the domestic governance aspects of trade obligations and the pursuit of regional integration plans. The incorporation of the necessary trade in service undertakings, enforceability, legal remedies for private parties and dispute settlement will provide the benchmarks for a final verdict. There is further work to be done.

## PART IV

### FINDINGS OF THE TWO SEMINARS ON NEW GENERATIONS OF FTAs ORGANISED BY ICDT AND IDBG

#### 1. Background:

Within the framework of the implementation of Resolution No. 22 of the 30<sup>th</sup> Session of the Standing Committee For Economic and Commercial Cooperation of the Organization of Islamic Cooperation (COMCEC) relating to the preparation of a study on "The New Generation of Free Trade Agreements and their impact on intra-OIC trade and the holding of a seminar on this issue, the Islamic Centre for Development of Trade (ICDT) and Cooperation and the Integration Department of the Islamic Development Bank (IDB) organised a seminar on the New Generation of Free Trade Agreements among the OIC Arab and African Member States, in Casablanca, Kingdom of Morocco, from 4<sup>th</sup> to 6<sup>th</sup> May 2015 and another for the benefit Asian Countries plus Turkey, Albania, Guyana and Suriname in Istanbul, Republic of Turkey on 25-27 May 2015.

#### 2. Objectives:

The objectives of the seminar were as follows:

- ❖ To study the configuration of the New Generation of Free Trade Agreements and their potential impact on intra-OIC trade in Arab, Asian and African Countries plus Tukey, Albania, Guyana and Suriname;
- ❖ To present the preliminary outcomes of the study on the New Generation of Free Trade Agreements and to consider the ways and means likely to enrich it in collaboration with the various experts involved;
- ❖ To exchange national and regional experiences in Free Trade Agreements and especially the so-called New Generation FTAs;
- ❖ To propose a way forward to boost the use of NG-FTAs to contribute to enhancing intra-OIC trade.

#### 3. Participants:

The Representatives of the following Member countries participated in these two seminars: Saudi Arabia, Bahrain, Burkina Faso, Cameroon, Comoros, Cote d'Ivoire, Egypt, Gabon, The Gambia, Guinea, Morocco, Niger, Nigeria, Senegal, Sudan, Togo, Tunisia, Albania, Bangladesh, Kazakhstan, Kyrgyzstan, Pakistan, Suriname, Tajikistan, Turkey and Turkmenistan.

The following organizations also participated in this seminar: the Economic Commission for Africa (ECA North Africa Office), Technical Unit of the Agadir Agreement, the Arab Maghreb Union, SESRIC (Ankara Centre), the South Centre, the Economic Cooperation Organisation (ECO Secretariat), International Trade Centre (ITC), the Islamic Development Bank Group (Cooperation and Integration Department) and ICDT.

#### 4. Recommendations:

After a fruitful debate, participants laid stress on the importance of sharing the experiences of the WAEMU, ECOWAS, COMESA, SADC and QUAD countries, and those acquired through the NG-FTAs of Morocco, Bahrain, UAE, Egypt, Tunisia and Turkey with the EU EFTA and the USA in order to better use NG FTAs by the OIC countries assessing the strengths, weaknesses and business and investment opportunities.



The participants recommended the following:

**Study on NG-FTA:**

- ❖ contribution of the participating countries and experts of the ECA, UTA, ECO, ITC and the South Centre to enrich the preliminary study with concrete recommendations in order to facilitate the establishment of the New Generation Free Trade Agreements among the OIC Member States at the bilateral, regional or OIC levels;
- ❖ To add a chapter on the best practices of the NG FTAs among OIC Countries in the final study in order to have a common vision for enhancing intra-OIC trade;
- ❖ To strengthen of the analytical aspect of the study using the analysis tool (SWOT): analysis of Strengths, weaknesses, opportunities to exploit the potential of free trade agreements and their impact on Member States;
- ❖ To analyse the expected impact resulting from the commitments to other matters contained in the new generation of trade agreements such as the rights, freedoms, labor, good governance analysis, etc. ...;
- ❖ To include in the study of several options to help Member States to cope with the loss of customs revenues in the light of the signing of free trade agreements;
- ❖ The consideration of the observations and views of the participating countries and their inclusion in the amended version of the study to be circulation to Member States by September 2015, for its final submission to the Meeting of the COMCEC in November 2015.

➤ **At national level :**

- ❖ To periodically assess free trade agreements in order to reap the benefits of these agreements by the various signatories depending on the environment of the global and regional economy;
- ❖ To carry out impact studies on national economic sectors of the FTAs before their signatures so as to better negotiate sectors and timetables;
- ❖ To further consult the private sector and civil society including research institutions, among others, by creating a web page within the Ministry in charge of foreign trade for their observations and comments;
- ❖ To use FTAs as trade development tools not only between signatory countries but also with other third promising markets;
- ❖ To adapt national standards to those of the countries and often of partner companies in the target markets in general and Halal Market in particular;
- ❖ To encourage Member States to ratify the Trade Facilitation Agreement within WTO which should be viewed as a tool to remove trade barriers and improve business environment;
- ❖ To encourage Member States to establish National Single Windows in order to enhance intra-OIC Trade.

➤ **At regional level :**

- ❖ To bolster consultation among the OIC Member Countries in order to strengthen cooperation in technical areas of common interest and which are retained in NG FTAs ;
- ❖ To promote NG FTA between the signatories by organizing awareness-raising seminars for the benefit of stakeholders (commitments, sectors, calendars, formalities....);

- ❖ To focus NG FTAs more on regional industrial complementarity;
- ❖ To harmonize national laws on the Rules of Origin and standards for the benefit of NG FTA;
- ❖ To further strengthen and revitalize the existing RTAs between OIC countries;
- ❖ To study the feasibility of creating compensation fund to offset gains and losses resulting from the implementation of NG FTAs involving OIC countries;
- ❖ To establish a monitoring and evaluation system of NG FTAs in the OIC countries;
- ❖ To encourage OIC Regional Economic Grouping to establish their Regional Single Windows in order to facilitate the establishment of the OIC Single Window in next years;
- ❖ To facilitate the establishment of regional corridors under sub-regional RTAs/FTAs;
- ❖ To encourage countries not participating in the TPS/OIC, to sign and ratify this agreement and its protocols in order to enhance the volume of intra-OIC trade;
- ❖ To conduct regional assessment impact of NG FTA/RTAs with a view to enhancing capacity of regional cooperation organisations for monitoring and effective implementation of the RTAs/FTAs;
- ❖ To organise a training seminar on new issues within FTA including IPRs and Competition Policies among the OIC Member States in collaboration with ICDT and IDB (Department of Cooperation and Integration);
- ❖ To organize an annual Economic Integration Forum of the OIC by involving all Secretariats/Committees heads of Regional Economic Groupings and the private sector in a bid to take advantage of NG FTAs and study their impact on the economies of Member States in collaboration with the IDB Group, ICDT and the Islamic Chamber of Commerce, Industry and Agriculture (ICCIA);
- ❖ To organize training sessions in the modelling of the NG FTAs so as to understand the impact of these agreements on the expansion of intra-OIC trade (French, Arabic, and English).

## PART V

### POLICY OPTIONS AND RECOMMENDATIONS TO DERIVE THE BEST BENEFIT FROM TRADE AGREEMENTS

#### 1. Free Trade Agreements subjects to two contradictory types of reading:

As it has been emphasized, at least implicitly, in the first part of this report, the FTAs in general are likely to be subjected to two forms of reading:

A pessimistic reading that brings out the limits of these agreements and their difficult and sometimes impossible, consistency with multilateral rules. WTO experts also seem to have thrown in the towel on the thorny question of whether the agreements notified to the organization or not they comply with the terms of Article XXIV of GATT and Article V GATS. Likewise, Dent (2006: XV) reports after his study that "rather than contribute positively to building a regional community in Asia Pacific, this study concludes that the intensification of bilateral FTAs is more likely to have the opposite effect. In short, the new trend of bilateral FTAs appears to undermine both the coherence and viability of existing regional organizations, and can potentially increase competition in a significant manner between countries, strengthen power asymmetries and exacerbate differences of the development levels in the region".

The optimistic reading enhances the value the effects of the FTA on the general welfare of the citizens of member countries and the convergence of objectives with those of the WTO. "According to a very optimistic interpretation, FTAs - through the establishment of common rules, institutions, procedures and forums for dialogue between government officials, parliamentarians and citizens - could in the long run, even develop into building blocks for developing more ambitious common policies". Gstöhl and Hanf (2014: 746).

In fact, if the classical FTA are not sufficient since they are limited to trade whose levers and causes are certainly outside these agreements; those of the these new-generation have the opposite effect. Indeed, these agreements cover many different fields and whose interactions and spillover are difficult to define. Speaking about the FTA-NG between the EU and Ukraine, Bruce Pitcairn Jackson (2011: 60) writes talks on a deep and comprehensive agreement (DCFTA) are proving to contain too much for Ukraine to swallow all at once. Thus, in order to access European markets. Ukraine must harmonize its rates and regulations with, virtually all European regulations, which would be a Herculean effort to any post-Soviet economy. And even if it succeeds, the EU insists on withholding access to agriculture, some services, multiple products and labour mobility which neutralizes most of the benefits of free trade for Ukraine. "

In fact, the objectives of the FTAs signed by developing countries including those of the OIC depends on a set of elements and factors including:

- ❖ The dynamic growth of the economy driven by domestic demand;
- ❖ The effects of the global economy;
- ❖ The economic gap between the country's dynamic economic growth and that of its main foreign partners;
- ❖ The ability of operators to comply with international requirements of standards and quality standards;
- ❖ The specific value chains of its main industries;

In general, if these FTAs are confronting the economy to severe trials, they also bring opportunities. They are able in particular to allow the countries concerned to control its

macroeconomic balances, accelerate economic and social reforms aimed at upgrading the economy and increasing foreign direct investment.

FTAs also promote the allocation of resources for new competitive activities and high added value and optimize the value chain of priority sectors of the country to meet international quality standards.

However, for the moment, the expected objectives have not been fully achieved for most OIC countries (growth, macroeconomic stability, human development, etc.). This situation can often be explained by the low coherence between production and trade policies (sectoral strategies in relation to free trade agreements).

It should be noted that FTAs were sometimes set up without prior recourse to impact studies to determine not only the level of tariff and non-tariff concessions to accept, the progressive implementation to take account of the capacity resilience of different sectors, but also to consider corrective measures in case of unsustainable trade imbalance.

In addition, to ensure the success of the geographical and sectoral diversification of exports of the OIC countries within the framework of the FTA, quick upgrading of the national economy (adaptation of the productive tool, modernization of logistics, etc.) was often considered only afterwards, which does not allow realizing very quickly the positive effects of these agreements.

## 2. Some measures and policy recommendations:

To facilitate the understanding of the measures and recommendations proposed in this section, we prefer to present them in the following three categories structured according to the chronology of negotiation and implementation process of FTA: before the FTA: during the negotiation FTA, and after the establishment of the FTA.

### 2.1. Before the FTA:

The key question here is to know what governs the decision to start negotiations in order to enter into an FTA with a country or group of countries.

Although, the question seems obvious and even trivial, the answer is not always sufficiently researched and even often ignored. Indeed, in many cases, the decision is purely political. The will to further strengthen political relations with a particular country is often enough to encourage policy makers to propose the conclusion of an FTA. Although, it is true that the excellent political relations are an important ingredient in the success of an FTA, it is far from being neither the only nor the most decisive factor.

As many FTAs are concluded thanks to the excellent political relations between the countries involved, the deterioration of these relations is also often used to ossify these agreements or even terminate them. **Therefore, we must avoid basing FTAs exclusively on political reasons.**

In Canada and the US for example, it is often the enterprises, directly or through professional organizations, which ask the authorities to initiate negotiations for the conclusion of an FTA with any country in view of the potential trade development. Based on this request or on their own initiative, in case a study considers that it would be relevant to do so, the authorities open public consultations nationwide. The purpose of these consultations is to gather opinions and suggestions of all parties likely to be affected by the possible conclusion of such an FTA. Such initiatives, heavily publicized on the websites of government agencies, allow the competent authorities to make the inventory

of all the arguments for and against the agreement. Only when these authorities are convinced of the desirability of concluding such a FTA with the target country they enter in talks to start negotiations.

Usually, a **preliminary impact study** is conducted during this phase to have a first evaluation of both direct and indirect potential effects of the conclusion of such an agreement in various fields. In addition to this assessment based on sophisticated simulation models. The study also allows authorities to identify:

- ❖ Sectors, products and by-products to be favored within the framework of the negotiation of the agreement and for which they will try to request the most possible privileged access to the partner country market;
- ❖ Sectors, risk products and by-products that should be protected from exports from the partner country under the agreement;
- ❖ Other areas unrelated to trade, but whose liberalization and/or development could help to strengthen the competitiveness of national enterprises: intellectual property, public procurement. etc.
- ❖ Other areas unrelated to trade but whose improvement is in line with the dissemination of national standards and values: environmental protection, integration of women in business, restrictions on migration flows. etc.
- ❖ The impact on value chains of major national industries;
- ❖ The impact on the commitments already made by the country under other bilateral, plurilateral or multilateral agreements;
- ❖ The impact on partner third country of the national economy.

Regarding the OIC countries, prior preparation to the initiation of negotiations for the conclusion of new FTAs should go even further. Indeed, it is no longer as in conventional FTA to simply negotiate the removal or reduction of tariffs on a particular product. Under these agreements, all or most of the legislation economy and even the whole society should be moulded in a bid to comply with those of the partner country or region.

The challenge is much more important than mere trade liberalization. The authorities of the concerned country must therefore wonder on their readiness to make such changes and to what extent.

The stakes may be even more important in the case of countries that engage in negotiating several FTAs like these, since it will avoid conducting contradictory reforms based on the commitments made within the framework of agreements. We recommend in this respect to know exactly what can we accept to change, to what limit and what should be not absolutely modified.

## 2.2. During the negotiation of the FTA:

The proper preparation of the previous phase makes quite fluid the negotiations of the concerned country's authorities. Thus, these negotiators come to the negotiating table knowing exactly what they want to get and what another country is able to give them.

However, two important points should be highlighted in this phase

- First, concerned private and public national parties are directly involved in negotiations or at least kept regularly informed of the progress of the latter. So, will they make suggestions, request additions of products or services to those already being discussed? or recommend protecting a particular sector or product;

Then, an impact assessment and extensive simulations are conducted concurrently with

negotiations and depending on the evolution of the latter. The impact study must not be confined to sectors most directly affected by the implementation of the agreement. It must also cover the areas likely to be impacted indirectly by far by the said implementation. Thus, it said in the executive summary of the impact study carried out during the negotiation of the FTA between the EU-AACC and Canada that: "The impact assessment evaluates the economic, social and Environmental impacts in Canada and EU in three main areas, sixteen subsectors and seven cross-cutting issues. It also assesses the impact of CETA on the United States, Mexico and other countries and regions, including a number of developing countries and overseas territories and the EU's TBTs of Saint Pierre and Miquelon and Greenland". European Commission (2011: 14).

### 2.3. Following the establishment of the FTA:

It is highly recommended not to accept any commitment to negotiations if:

- ❖ The direct and indirect impacts of the commitment on the economy and society are not fully known;
- ❖ Neutralization or mitigation of its adverse effects are not defined and ready to be implemented.

In addition, for some products or sectors, a transitional period is required (phasing out) to comply with the terms of the FTA in order to mitigate possible negative effects consecutive to a sudden change in the situation.

In addition to the above measures, it is strongly recommended to establish the following two types of devices:

- ❖ A monitoring device for the implementation of the provisions of the FTA at national level and its effects according to the simulations of the impact study. This device must also include deviations correction mechanisms under different scenarios provided in the impact assessment;
- ❖ An implementation monitoring mechanism of the provisions of the FTA at the level of the partner country. Indeed, the success of the negotiated FTA is strongly conditioned by the respect of their respective commitments by members. Any breach at this level must be raised and notified immediately to the partner so that it can address this problem.

The introduction of these devices requires the existence of competent and equipped organizations to conduct this monitoring work and to recommend necessary corrective measures if any.

This monitoring as well as the continuous interaction with all parties concerned, could lead the country's authorities to ask the revision of certain provisions of the agreement or the addition of new areas or sectors of interest to the country.

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