

**THE ARAB REGION**  
And  
**TRADE LIBERALIZATION POLICIES**

**A Look into Sectoral Implications**

The Arab NGO Network for Development (ANND) is a regional network working on three main issues in the Arab region; development policies, democracy and socio-economic reforms, and globalization and trade. ANND members include 7 national networks and 27 non-governmental organizations from 11 Arab countries.

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## List of Relevant Abbreviations

AoA – Agreement on Agriculture  
CSOs- Civil Society Organizations  
DDA – Doha Development Agenda  
EEC – European Economic Commission  
EMP – Euro-Mediterranean Partnership  
FTA – Free Trade Agreement  
FDI – Foreign Direct Investment  
GAFTA – Greater Arab Free Trade Area  
GATS – General Agreement on Trade in Services  
GDP – Gross Domestic Product  
IFI – International Finance Institutions  
ILO- International Labor Organization  
IPR – Intellectual Property Rights  
IP – Intellectual Property  
ITO – International Trade Organization  
LAS – League of Arab States  
MDG – Millennium Development Goals  
MEDA – Middle East Development Assistance  
MFN – Most Favored Nation  
NAFTA – North American Free Trade Agreement  
NGO – Non-governmental Organization  
SSM – Special Safeguard Mechanism  
NAMA – Non Agricultural Market Access  
TRIPS – Trade Related Aspects of Intellectual Property Rights  
WB – World Bank  
WIPO – World Intellectual Property Organization  
WTO – World Trade Organization

## FORWARD





## CHAPTER 1: INTRODUCTION TO THE GENERAL DEBATE ON TRADE AND DEVELOPMENT

Trade policy has become increasingly important within the international, regional, and national policy-making spheres. It expanded beyond mere tariffs' policies and exchange of goods to have immense effects on macro and micro economic policies, as well as social and cultural realities.

In this context, international trade policies, institutions, and agreements have had a significant impact in reshaping global governance structures. Among other dynamics, the international trade system has been instituting new forms of legislation and relations in and among countries. It has been changing the economic geography of the world. Economic integration forces have boosted the roles of markets and profit-oriented policies in shaping people's lives and the cultural spheres they inhabit. International trade agreements are going beyond trade in goods and into areas which have direct impacts on the rights, living standards, dignity, and cultural norms of communities. Accordingly, the market processes have spilled over into the role of the state and its structures.

International trade processes bring about new power systems and necessitate different spaces for democratic participation and processes. Yet, one of the main problems of the current global structure has "much to do with economic globalization outpacing political globalization," leading to a "democratic deficit in our global economic institutions, which weakens even the democracy within our own countries."<sup>1</sup>

The availability of democratic processes and spaces in which states interact within global governance structures is highly skewed to the interest of developed countries. Accordingly, the level of influence and leadership in the current international trade system varies significantly between developing and developed states.

In this context, an increasingly prominent debate has emerged that pits neo-liberal theories regarding the role of international trade, which tends to ignore questions of development, against empirically justified, sustainable economic growth and equitable development within both developed and developing states. What is of utmost importance in the latter approach is that international trade be understood as a means to sustainable development and not an end in itself. Trade policies should be an integral part of national and regional development agendas. Accordingly, the chief aim should not be to liberalize trade but to set trade policies that secure social, economic, and cultural rights for all, as illuminated in the UN Millennium Development Goals (MDGs). Yet, only recently have the links between trade and development begun to be seriously explored by scholars, governments, and civil society actors.

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<sup>1</sup> Stiglitz, J. E. (2006). *Making Globalization Work*. New York, W.W. Norton & Co.

## HISTORY OF TRADE LIBERALIZATION

The origins of free trade lie in the colonial periods, wherein trade exchange was forced on colonized countries under unfair terms and for the interests of the colonial powers. Consequently, this was one of the reasons that gave rise to independent political movements that struggled to free the economies of developing countries from colonial power while building domestic economies.

The generation of political leaders coming into power after the colonial periods aimed at political and economic liberalization. Accordingly, a new trade system arose which opened more space for developing countries to seek their own trade partners, negotiate with partners using various tactics, and seek new markets and investments.

In the first five to ten years of that period, newly independent and developing countries experimented in their attempts to completely break the chains of dependency from the former colonial powers. In the case of Malaysia, for example, the government restricted foreign banks from coming in the country and local banks were encouraged to set up numerous branches, which today control up to 80% of the banking sector. The Malaysian government bought back the plantations of tin and rubber which were owned by the British via the stock market in Britain and under British commercial rules. The Malaysian government commercially purchased and did not nationalize these sectors. Presently, these are owned by the government and run by private sector. Malaysia is currently the biggest producer of tin and rubber.

At the end of the 1940s, three international financial institutions (IFIs) were established: the International Monetary Fund (IMF), the World Bank (WB), and the General Agreement on Tariffs and Trade (GATT). This came to be known as the Bretton Woods system (1944). The GATT was established to deal with trade in goods only; one of its main objectives was to put an end to the restrictions on trade in goods that were set up during war periods. The IMF and World Bank were to secure financial stability around the world and implement a fixed exchange rate system. The World Bank was established to offer loans to developing countries. In other words, they were established to serve and regulate, not control, the economy. In the mid seventies, the United Nations Commission on Trade and Development (UNCTAD) was established as a product of the work done by economic thinkers from the developing world; it aimed to fill the gaps in the GATT trading system. Soon, it developed into the major negotiating power in the international trade system. These institutions came to shape the trading system as known today.

By the beginning of the 1980s, neo-liberal policies pushed by both the Ronald Reagan administration in the United States (US) and Margaret Thatcher administration in the United Kingdom came to aggressively promote the interests of multinational companies. As such, they tried to dismantle the agreements initiated through UNCTAD. They advocated for trade reform beyond commodities and for the establishment of a new international trade system. With Reagan and Thatcher came a change in the IFIs' role, especially with the rise of the debt problem. These institutions came to implement economic reforms on behalf of the major global powers.

Limitations were set on the role of various UN agencies; this included the role of the World Health Organization (WHO) in the area of health, the United Nations Industrial Development Organization (UNIDO) in industrialization, and UNCTAD in conceptualization and negotiations of trade in commodities and intellectual property rights (IPRs). Each of these agencies was targeted and their funds decreased.

The Bretton Woods system and its new institutions- the IMF and World Bank - came to draw the basis for new trade policies. In return for loans given to developing countries trying to avoid bankruptcy, these countries were forced to implement structural adjustment policies pushing for liberalization of trade and investment, as well as privatization policies. In other words, trade policy of the developing countries came to be set by the IFIs, as opposed to the countries themselves.

The World Trade Organization (WTO) was born in 1994 as a result of the Uruguay Round of negotiations between 1986 and 1994. With the establishment of the WTO, services, intellectual property (IP), and investment together with agriculture were brought into the global trading system. It is worth noting that agriculture was left out of the system for forty years before 1994 because the European Union (EU) and the US were not able to compete in this area and worked hard to keep the agricultural sector outside the system.

During that period, the majority of developing countries were not aware of the implications and consequences of the WTO negotiations on their economies and development process. Between 1996 and 2000, developing countries represented in the G77 used to state in their declarations that they “believe in a totally free trade system that benefits all”. Today, however, many developing countries state that the free trade system does not benefit all countries since developing countries do not have the capacity to make use of the system as it currently stands.

## NEOLIBERALISM AND THE WASHINGTON CONSENSUS

During the last three decades of the twentieth century, neo-liberalism as an overall philosophy of economics became the dominant ideology of the international trading system. In essence, neo-liberalism promotes a market driven approach to economic policy making. It claims that free trade is a means for easing the technological and resource constraints and inflationary pressure on countries. With respect to the relation of international trade and development, neo-liberalism claims that the way to development and growth is through cutting all barriers to trade, rapid and whole-scale privatization of industries, limited intervention by governments, and market-driven exchange rates. These reforms are most prominently captured within a larger set of reforms widely known as the “Washington Consensus”.

The Washington Consensus promotes liberalization of trade irrespective of the development stage of different countries. The IFIs have had an important role in promoting this approach among developing countries. Accordingly, they called for a roll back in the role of the governments, whereby the regulatory role of government was ignored and replaced by the market. They promoted trade policy reforms as restricted to trade liberalization, assuming that specialization necessitated raw material and skilled labor to achieve a comparative advantage.

Neoliberalism argues that free trade is ultimately beneficial for developing countries. The WB states in a document addressing development in the Middle East and North Africa region (MENA) that, ‘in retrospect, it is clear that in the 1990s we often mistook efficiency gains for growth. The “one-size fits all” policy reform approach to economic growth and the belief in “best practices” exaggerated the gains from improved resource allocation and their dynamic repercussions, and proved to be both theoretically incomplete and contradicted by the evidence. Means were often mistaken for goals—that is, improvements in policies were mistaken for growth strategies, as if improvements in policies were an end in themselves.”<sup>2</sup> Despite this, the Bank continues with the same old recommendations for liberalization on the basis of universality.

Political considerations have been a major factor behind the increase in inter-state economic liberalization agreements, especially the rise of regional and bilateral free trade agreements (FTAs). These agreements are perceived as means to attract more foreign direct investment (FDI) and facilitations regarding aid and debt.

It is vital that developing countries realize that these agreements are crafting the future of their peoples. They will impact their access to basic public services, their ability to use new technologies and access related knowledge, their ability to get needed medicines at affordable prices, their food security, and even the sovereignty of their states. Because of the highly political nature of these agreements and their massive importance, it is crucial that every agreement undergo the most scrupulous analysis by a diverse group of stakeholders from the private and public sector, civil society, and academia.

These analyses should be coupled with strategic and well developed production master plans that envision sustainable development within the state’s various sectors, including agriculture, industry, and services. Trade policy should be developed in a way that allows domestic markets to increase their production capacities and compete at the national and regional levels. This necessitates rejection of the perspective that promotes development that is solely dependent on foreign producers and imports.

The most important pre-requisite for developing a trade policy is having clear national agenda and development policies based on equitable growth and full employment. Trade has to support local production and local employment. This will lead a country to the best form of development with distribution effect.<sup>3</sup>

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<sup>2</sup> Zagha, R., & Nankani, G.T. (2005). “Economic growth in the 1990s: learning from a decade of reform”. Washington, D.C., World Bank. P. 11.

<sup>3</sup> The development histories of Japan and Korea, among other newly emerging developing countries, are an example of how a country can focus on building its own local companies through the support of local industries, especially in their nascent stages, while limiting the entrance of foreign companies into the local market. Japan and Korea instituted high tariffs concomitant with heavy domestic subsidies to local companies, which boosted competition among local companies until they were able to stabilize within the local market and start competing regionally and internationally.

## A NEW EMERGING CONSENSUS

Neoliberalism and its most influential policy manifestation, the Washington Consensus, are declining in popularity and influence. Although there still is not a new development paradigm that effectively rivals the neo-liberal paradigm, there is an emerging consensus among scholars and civil society actors which argues that national governments and national development programs are necessary for development. National governments need the utmost policy space and flexibility in order to solve problems. Other international groups, such as the UN Department of Economic and Social Affairs (UNDESA), UNCTAD, UNDP (UN Development Program), and the ILO (International Labor Organization) have taken strong critical positions on the current trade and investment liberalization framework. In the words of one major international trade policy publication by the UNDP, “The shift in the approach of the trading system from reaching more markets to achieving human development means that this system should be no more evaluated from the perspective of achieving higher trade in services and products. However, trade processes should be seen from the perspective of enhancing human development opportunities on the national levels ... which is based on the independence of national policies that allows countries to achieve institutional change and progress.”<sup>4</sup>

Furthermore, this emerging point of view argues that liberalization has undeniable negative consequences when it is done in an extreme way. Liberalization should be achieved in a step by step sequence, based on the development level of each country. This denies the point of view promoted by the WB that “the counterarguments for faster (“big bang”) change are to gain credibility, ensure complementarity among different parts of the reforms, reduce uncertainty, and capture opportunity”<sup>5</sup> and that “there is little reason for gradualism.”<sup>6</sup>

The benefits from opening to the international trading system will not be fully realized without the international community refocusing on trade as principally a means to development. Thus, international, trade policy commitments and alignments must be analyzed on the basis of national socio-economic development indicators and plans. This issue was specifically addressed in the UNCTAD XI Declaration of June 2004, entitled the Sao Paulo Consensus:

The increasing interdependence of national economies in a globalizing world and the emergence of rule-based regimes for international economic relations have meant that the space for national economic policy, i.e. the scope for domestic policies, especially in the areas of trade, investment and industrial development, is now often framed by international disciplines, commitments and global market considerations. It is for each Government to evaluate the trade-off between the benefits of accepting international rules and commitments and the constraints posed by the loss of policy space. It is particularly important for developing countries, bearing in mind development goals and

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<sup>4</sup> (2003). *Making International Trade in the Service of the People* (Arabic: J’alu a-tijāra al-‘ālamīa fī khidmat a-nās). New York, NY, Earthscan Publications. P. 82.

<sup>5</sup> Das Gupta, D., & Nabli, M.K. (2003). *Trade, investment, and development in the Middle East and North Africa: engaging with the world*. MENA development report. Washington, D.C., World Bank. P. 4.

<sup>6</sup> Ibid. P.5

objectives, that all countries take into account the need for appropriate balance between national policy space and international disciplines and commitments.<sup>7</sup>

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<sup>7</sup> Sao Paulo Consensus, UNCTAD XI, 18 June 2004. Accessible at: [http://www.unctad.org/en/docs/td410\\_en.pdf](http://www.unctad.org/en/docs/td410_en.pdf).

## CHAPTER 2: OVERVIEW OF THE SITUATION IN THE ARAB COUNTRIES

### THE ARAB REGION, CIVIL SOCIETY, AND TRADE POLICY

Democratization and reforms has increasingly become a subject of discussion in the public arena of the Arab region since the mid of the nineties. These debates and related processes are due to both internal and external pressures, between which there has been much tension. Initiatives for political and social reforms proposed by the international community, mainly the US and the EU, are accompanied by aggressive proposals for neoliberal economic reforms which promote whole-scale trade liberalization and investment as a primary engine for growth. These two countries have pushed two main initiatives of trade liberalization throughout the region: the EU's neighborhood policy aiming at establishing the Euro-Mediterranean Free Trade Area by 2010 and the US strategy for attaining a US-Middle East Free Trade Area by 2013.

While the reforms that deal with political, social and peace issues are often under the spotlight, but at the same time constrained and paralyzed due to power dynamics in the region, economic reforms are implemented with a fast pace but with relatively low visibility as well as limited transparency and participation. Both governments and civil society in the Arab region struggle with countering self-seeking reform initiatives from outside the region by means of developing national agendas and clear reform proposals that are based on the needs of local communities. Yet, the dearth of well developed reform proposals from Arab leaders often reflects a lack of willingness of the Arab regimes to introduce serious changes and reforms.

Despite the heterogeneity of their economic situation, the Arab region for the most part shares the same approach to economic policies: the state has a high role and there is significant protection of imports. As a consequence, intraregional trade and the capital flows among them remain at a low level.

In the last two decades of the twentieth century, countries in the Arab region experienced the complex and intense dialectic between economic openness and strongly state regulated economies. At various degrees of intensity, the MENA states underwent economic liberalization. That the states were led to economic reform does not imply that this reform process was out of the control of state administrations; rather, any economic change within the MENA states were, as one prominent scholar states, "highly managed political affairs, to be controlled and manipulated in ways that owe more to the balance of social forces within the country and the need either to maintain old coalitions or to build new ones, than to absolute necessities enforced by bankruptcy or the market."<sup>8</sup> Economic liberalization was not, therefore, an independent phenomenon within a country; rather, it was an inherently political process.

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<sup>8</sup> Owen, R. (2004). *State, power and politics in the making of the modern Middle East* (3rd ed.). London and New York, Routledge. P. 114.



### **Box A: The Alexandria Declaration; reform in the Arab region**

The Alexandria Declaration, considered one of the leading declarations on reform in the Arab region, and the only fairly comprehensive civil society initiative in the region, resulted from the conference of Arab civil society that was held in Alexandria, Egypt in March 2004.

The Declaration addressed economic reform in the region and stressed the necessity to address poverty in its multiple dimensions, including social and political marginalization, lack of participation and constrained opportunities for upward mobility. Accordingly, the signatories of the Declaration believe that economic growth alone is not a sufficient instrument for poverty reduction. Therefore, it calls for the adoption of a closer implementation timeframe to fight poverty in conformity with the United Nations' Millennium Declaration.

The Alexandria Declaration addresses the employment problematic in the Arab region. It proposes enhancing the development of medium and small enterprise funding programs, empowering women to participate in the national work force, and reviewing current economic policies from a full employment perspective in order to address five million new Arab job seekers annually, with special emphasis on promoting youth employment. The Declaration explains that this will only be achieved by implementing policies that could raise actual economic growth rates to no less than an average of 6% to 7% annually over the coming decade. Creating jobs and reducing unemployment remains the main development challenge faced by the Mediterranean region as indicated by various institutions, bodies, and reports.

The Alexandria Declaration emphasized that Arab civil society and private (business) sector institutions have major contributions to make to economic reform. This contribution could be achieved by governments and civil society working hand in hand in the crafting and implementation of economic reform.

## MULTILATERAL, REGIONAL, AND BILATERAL ECONOMIC LIBERALIZATION

Arab countries have been increasingly signing liberal bilateral, regional, and multilateral trade agreements. As is the case with other developing countries, these trade agreements are being signed with economically and politically more powerful developed countries, mainly the US, Japan, Australia, and the EU. Arab countries are, therefore, put under a lot of pressure to open up their markets and change their national policy regimes for economic development through negotiations at the bilateral, regional, and multilateral levels.

The Arab countries have been developing regional economic integration plans through the Greater Arab Free Trade Area (GAFTA), which came into force in 2005. Twelve of the Arab countries are members of the WTO (Bahrain, Egypt, Jordan, Kuwait, Morocco, Oman, Qatar, Tunisia, United Arab Emirates, Djibouti, Saudi Arabia, and Mauritania) while six are negotiating accession (Lebanon, Libya, Iraq, Sudan, Yemen, and Algeria).<sup>9</sup> Under the Euro-Mediterranean Partnership, Algeria, Tunisia, Morocco, Egypt, Jordan, Lebanon, and Palestine have signed association agreements, while

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<sup>9</sup> This situation held as of July 2007.

Syria is still negotiating with the European Parliament. By 2010, a free trade area between all members of the Euro-Med agreement (15 EU countries originally in the agreement, 12 new EU countries after its recent enlargement, and 10 Southern Mediterranean countries) is to be established. Moreover, the EU and the Gulf Cooperation Council<sup>10</sup> (GCC) have accelerated negotiations during the end of 2005.

Furthermore, several Arab countries have embarked on bilateral FTAs with the US, including Jordan, Morocco, Bahrain, and lately Oman. The US administration envisions these FTAs as a step towards a US-Middle East Free Trade Area (USMEFTA) in 2013. However, several Arab countries, especially members of the GCC have been highly critical about these bilateral FTAs given the sensitivity of the issues negotiated and their potential impact on regional trade cooperation and integration plans among the Arab countries, including that of the GCC and the GAFTA.

Trade agreements cannot be tackled in isolation; the multilateral, regional, and bilateral processes are highly interlinked and have significant impacts on each other. Accordingly, addressing the regional prospects for the GAFTA cannot be separated from the stakes of Arab countries within the WTO or bilateral FTAs. However, coherence between the rules imposed by the various agreements is not evident and the strategy of quick engagement in such a large number of trade agreements is not clear, especially since Arab countries suffer from supply side constraints in most areas of production.

Moreover, agreements are being signed based on political considerations while their socio-economic impact remains vague. No socio-economic assessments of the implications are even being discussed. The agreements are being negotiated and signed in a non-transparent manner, while no effective involvement of civil society groups is taking place. Furthermore, human resource capacities are also limited compared to the amount of follow up and analysis needed to protect the interests of strategic sectors throughout these negotiations.

Uncalculated engagement of Arab countries in such multiplicity of agreements threatens the scope of policy space available to these countries, which affects governments' ability to pursue enhanced regional exchanges and trade enlargement as well as sustainable national growth and development in various sectors.

Trade agreements involve strategic sectors like water, electricity and power, police and security as well as sensitive sectors such as education and health care, transportation and postal services. Opening these sectors to market liberalization under the FTAs is associated with the WB's approach that advocates the replacement of the right to these services by the establishment of safety nets. Yet, imposed agreements and pressures on liberalization of public services impose direct threats to the right to food, health, and labor, whereby transnational enterprises are given the right to compete equally as national enterprises. It is important to take into consideration the impact of these concessions on different sectors of the economy, such as agriculture, services, health, and nonagricultural industries. This is why joining trade agreements must be part of a comprehensive

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<sup>10</sup> The GCC is an economic block made up of six Gulf countries in the Arab region, including Saudi Arabia, Qatar, Oman, Bahrain, United Arab Emirates, and Kuwait. They aim at creating a common Gulf market and common currency among the six countries.

process of national economic reform, especially given that trade agreements have expanded to cover areas that have significant impact on policy space available to national governments.

To face the challenges of employment, reducing poverty, reducing social and political marginalization, democratization and the reform process, among other challenges, the Arab countries need a sustainable socio-economic development plan. This plan must take international trade policy into consideration. Furthermore, to benefit from trade, the Arab region must internalize the fact that trade must be at the service of development needs and implemented in cooperation with both the private and civil society sector. Arab states must resist poorly calculated positions on trade negotiations that are due to, for instance, the lack of appropriate and well-defined national policies on various aspects of development. It is in the interest of the Arab countries to participate in rather than just integrate in the global trading system.

## OVERVIEW OF THE SOCIO-ECONOMIC CONDITIONS IN THE ARAB REGION

International institutions and civil society organizations agree that the first socio-economic concern for Arab countries is unemployment, which is worsening as a result of the impact of trade liberalization on local productive sectors. Unemployment in the Arab region ranges from 7.7% in Morocco to 40% in Yemen.<sup>11</sup> In Yemen, services, construction, industry, and commerce account for less than one-fourth of the labor force, while in Morocco this figure reaches 60%.

This is related to another particularity of the Arab region; that of the huge labor force growth rate. Over the next decade, the job demand in the Arab region is expected to increase by 4.5 to 5 million people a year. This represents an opportunity and a threat at the same time, for it necessitates the creation of new jobs, which in turn necessitates a GDP growth of more than 6% on a yearly basis.<sup>12</sup> For the Arab countries, however, annual GDP growth normally barely reaches 4%.<sup>13</sup>

In regards to the trade characteristics of the Arab countries, exchange with the EU covers between 40% to 60% of total trade in the Arab region, inter-Arab trade covers around 10%. The trade exchange that the Arab countries administer through the WTO does not exceed 30% of the total. While the oil exporting Arab countries register a current balance surplus, reaching the fifth position in the whole world trade in the case of Saudi Arabia, most of the agriculture and low quality industry-based exporters suffer a trade deficit.

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<sup>11</sup> Background paper on impact of trade liberalization on Yemen, prepared by Dr. Yehya Mohamad Saleh, for the Arab NGO Network for Development

<sup>12</sup> Reference can be made to the Alexandria Declaration, available at <http://www.bibalex.org/ARF/en/Files/Document.pdf>

<sup>13</sup> Refer to reports by the United Nations Development Program (Arab Human Development Reports) and reports by the World Bank (MENA Region Economic Development and Prospects)

## THE MAIN PRODUCTIVE SECTORS IN THE ARAB REGION

### Agriculture

Agriculture represents a strategic sector for almost all Arab countries, with more than 40% of livelihoods in the region depending on it.<sup>14</sup> Besides being a commercial operation for profit, it represents means for sustenance in the absence of alternative professions in some countries.

Although agricultural products are not the main exports of Arab countries, agriculture must be treated as a primary strategic sector given the number of lives that depend on it. Agriculture generates more than 20% of employment in Syria, Tunisia, Morocco, Algeria, and Egypt.<sup>15</sup> The added value of agriculture as a percentage of Gross Domestic Product (GDP) in the Arab region was 10.8% in 2002. Calculations for the year 2004 showed that agriculture contributed to 7 percent of the GDP in the Arab region. There are as well around 87 million workers in the agricultural sector, which makes around 31 percent of total population.<sup>16</sup> Yet, agriculture in many Arab countries remains fragile due to climatic hazards and unable to ensure the self-sufficiency of the local market.

It is evident, therefore, that appropriate policies on agriculture would yield a better future for a significant portion of the populations in the Arab countries and the economic development of these states.

### Industrial products

The industrial sector in the Arab Region includes the major mining and manufacturing industries, such as food industries, textile industries, petrochemicals, fertilizer industries, cement industries, oil refineries, transport and mechanical industries, iron and aluminum smelters, natural gas plants, and electricity generation.

On average, the industrial sector has contributed about 25-35% of the total GDP of the region according to statistics of the end of the 1990s. This has been mainly attributed to the increased value of extractive (mining) industries and revenues from oil. In 2005, industrial production growth was 4.1% in MENA countries and was estimated by the World Bank<sup>17</sup> to fall by around 0.4% by 2006. According to the same source, for resource poor and labor abundant countries, growth of the industrial production in 2005 was 2.2% and accelerated to an estimated 3.4 in 2006, while for

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<sup>14</sup> Oxfam. (April 2004). "Euro-Med: Seeds of a Raw Deal?" Oxfam Briefing Note.

<sup>15</sup> Which road to liberalization: A first assessment for the Euro-Med Association Agreement, C. dell'Aquila and M. Kuiper, Working paper No. 2, ENAPRI, Center for European Policy Studies, October 2003.

<sup>16</sup> Taken from the presentation of Dr. Adel Khalil, from the Council of Arab Economic Unity, given during the workshop on Free Trade Agreements in the Arab region, organized by the Arab NGO Network for Development and Third World Network (December 2006)

<sup>17</sup> World Bank. (2007). Economic Development and Prospects: Job Creation in an Era of High Growth. P. 2.

resource rich, labor abundant countries, it grew at 4.8% in 2005 and fell by 2.3% in 2006.<sup>18</sup> This is closely linked to the fluctuations in the oil prices.

All Arab countries face the challenge of diversifying their non-agricultural production base while being able to venture in added value and clean production. This is especially relevant as competition in the traditional sectors where Arab countries concentrated production, such as textiles, is facing very high competition from China.

Accordingly, it is clear that Arab countries are still looking into the most effective means to develop their industrial sector and achieve more competitiveness in this productive sector. They thus need every policy tool available to be able to develop efficient and competitive industries that are able to compete at the regional and international levels.

### Services

The economies of the Arab countries are increasingly moving towards dependency on services including labor, movement of people, health and education services, transportation, tourism, financial services, construction, consultation, architectural and managerial services. Energy and exploration services (oil and other natural resources), which are major strategic trade items in many Arab countries, are an important component in trade in services as well.

Services are the fastest growing sector in developing countries, and they are essential for achieving developmental goals, such as the Millennium Development Goals (MDGs).<sup>19</sup> In the Arab countries, tourism, travel, transportation, and business services have significant potential. Tourism plays a major role in the economies of many Arab countries, including Egypt, Jordan, Lebanon, Syria, Tunisia, and Morocco.

Total trade in services of Arab countries, including imports and exports, accounts for more than 20% of their collective GDP.<sup>20</sup> This percentage is much higher than the world average of 14%, according to WTO estimates. Trade in services also makes up around 24% of total trade exchange of the Arab countries. The average growth of Arab countries' exports in services have increased 5 percent between 1990 and 2000, while that in industrial products have increased around 0.5 percent. In this

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<sup>18</sup> The MENA region includes resource poor labor abundant (RPLA) economies: Djibouti, Egypt, Jordan, Lebanon, Morocco, Tunisia and the West Bank and Gaza; resource rich labor abundant (RRLA) economies: Algeria, Iran, Iraq, Syria and Yemen; and the resource rich labor importing (RRLI) economies: Bahrain, Kuwait, Libya, Oman, Qatar, Saudi Arabia and the United Arab Emirates (UAE).

<sup>19</sup> The MDGs are a set of eight development goals, referenced in targets and indicators, which were adopted by 191 heads of states during the Millennium Summit in 2000. World governments have committed to achieve these goals by the year 2015. The goals embody a collective of the development goals discussed and developed during the United Nations global summits organized during the 1990's.

<sup>20</sup> This is taken from presentation by Mr. Khaled Wali, responsible for the services file negotiations of the GAFTA, under the League of Arab States. His presentation was given in the regional workshop on free trade agreements in the Arab region, held by the Arab NGO Network for Development and Third World Network (December 2006)

context, services have become the biggest creator of employment in most of the Arab world. Yet, as other developing countries, Arab countries are net importers of commercial services and their capacities are still concentrated in certain sectors.

The services sector is increasingly threatened by bilateral agreements signed by Arab countries, since these agreements give way for multinational companies to control the market before Arab companies are able to mature and compete with international organizations.

## CHAPTER 3: Introducing the engagement of Arab countries with the WTO

### OVERVIEW

In 1994, 123 countries signed the inaugural WTO Agreement which expanded upon and included the previous General Agreement of Trade and Tariffs (GATT) of 1947 (now known as GATT 1994).<sup>21</sup> The foundation of the WTO is the principle of non-discrimination, outlined in two provisions of GATT 1994: Article I adopting the Most Favoured Nation (MFN) Principle and Article III adopting the principle of National Treatment. The MFN principle states that no country can give extra preference to another country without granting it to all other members of the organization.<sup>22</sup> The National Treatment Principle states that once border duties have been paid by foreign exporters no additional burdens may be imposed through internal measures that affect foreign exporters differently than domestic producers.<sup>23</sup>

The WTO is responsible for administering trade agreements, acting as a forum for trade negotiations, settling trade disputes, reviewing national trade policies, delivering technical assistance and training programs for developing countries.<sup>24</sup>

Currently, of the 151 members of the WTO<sup>25</sup>, 12 of the 22 Arab countries are members (Bahrain, Egypt, Jordan, Kuwait, Morocco, Oman, Qatar, Tunisia, United Arab Emirates, Djibouti, Saudi

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<sup>21</sup> The General Agreement on Tariffs and Trade of 1947 was an agreement that sprung from the failure of establishing the International Trade Organization (ITO) at the Bretton Woods Conference. The Bretton Woods Conference was intended to create the International Bank for Reconstruction and Development (commonly known as the World Bank), the International Monetary Fund and the International Trade Organization for the purpose of the global regulation of the economy as part of a plan for post-World War II recovery. The ITO failed to come into being largely due to opposition from the US Congress. What remained was the GATT of 1947, negotiated by 23 major trading countries, which was originally intended to act as prelude to the ITO but now established a new global trade regime. The GATT's main purpose was to reduce barriers to international trade. This was achieved through the reduction of tariff barriers, quantitative restrictions and subsidies on trade through a series of different agreements. The GATT was an agreement, not an organization. The GATT evolved through a series of rounds of negotiations over the decades. The Uruguay Round of negotiations (1986–1994) established the WTO which included the GATT of 1947 (now referred to as GATT 1994). At this time, an institutional form to the global trade regime was established and expanded into new areas such as intellectual property, services, capital and agriculture. (Trebilcock, M.J., & Howse, R. (2005). *The regulation of international trade*. London, Routledge. Ch. 1)

<sup>22</sup> Notable exceptions to this principle include provisions made for customs unions and regional free trade areas (GATT 1994, Article XXIV).

<sup>23</sup> A notable (and extremely detailed) exception to this principle includes the provision that allows for government agencies to favor local producers in purchasing goods for governmental purposes and not for commercial resale (GATT 1994, Article III:8).

<sup>24</sup> Find attached to this chapter as *Annex A* table showing the structure of the WTO

<sup>25</sup> Status as of September 2007

Arabia, and Mauritania) and six are negotiating accession (Lebanon, Libya, Iraq, Sudan, Yemen, and Algeria).<sup>26</sup>

The WTO member countries account for over 97% of world trade. Decisions in the WTO are made by the entire membership, typically by consensus. A majority vote is also possible but it has never been used in the WTO.

The WTO agreements are ratified by member countries who must take the WTO in its entirety without the possibility of negotiating exceptions or particular reservations as is common in international law treaties. Acceding countries negotiate an “accession package” with the WTO in which the detailed terms and timeline of WTO compliance and ratification are worked out.

The WTO’s top level decision-making body is the Ministerial Conference which meets at least once every two years. Below this is the General Council, which includes ambassadors and heads of delegation in the Geneva secretariat of the WTO. The Council meets several times a year in the Geneva headquarters. The General Council also meets as the Trade Policy Review Body and the Dispute Settlement Body.

Numerous specialized committees, working groups and working parties deal with the individual agreements including agreements on agriculture, non-agricultural market access, services, and trade related IPRs. They also work on other areas such as the environment, development, membership applications and regional trade agreements.

The Arab region has been significant through the history of the WTO; Marrakech, Morocco, witnessed the inauguration of the WTO upon the conclusion of the Uruguay Round of negotiations in April 1994, where the GATT was turned into the WTO. In addition, Doha, Qatar, hosted the 4<sup>th</sup> Ministerial Meeting of the WTO in November 2001. The meeting resulted in what came to be known as the “Doha Development Agenda”, given the promise made then by the WTO members to make achieving benefits that serve the development priorities of developing countries the priority of the round.

The WTO talks have essentially been a consecutive series of failures in moving the WTO membership towards an agreement on trade modalities in various areas, such as agriculture, non-agricultural market access, and services. For example, after the failure of the Seattle Ministerial Meeting and then the Cancún Ministerial Meeting during September 2003 there was a general mistrust in the processes of the WTO [see more details on the WTO Ministerial meetings in Box B]. Two main issues were at the forefront of the failure of the Cancún negotiations; (1) negotiations on agriculture where developing countries were calling on developed countries, mainly the US and the EU, to remove their agricultural subsidies and tariffs peaks, which are deemed trade distorting and (2) the four new Singapore issues (investment, competition, trade facilitation, and government procurement) which were pushed by developed countries onto the negotiations agenda but faced fierce opposition from developing countries, who argued that they are not ready to negotiate new issues before finalizing negotiations on pending issues. Furthermore, developing countries argued that

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<sup>26</sup> Information dated July 2007.



these issues extend beyond the trade-focused issues to national governments' control over private investments and public spending.

Overall representation and democratic practices inside the WTO have been increasingly questioned. It is not uncommon for the WTO consultations and negotiations to be dominated by the developed countries as the developing countries are often under-represented and lack in political and economic leverage. Often, negotiations have tended to engage a smaller group of the WTO membership in what came to be known as the Green Room process. Green Room meetings are smaller and less formal consultations between delegations (20-40 delegations), wherein delegates seek agreements that will subsequently be brought to the formal committee on a certain topic. These meetings may be convened by a chairman of a WTO council, committee, group, or by a mission and may be held in any chosen location. Often, agreements are solidified within these closed door meetings and then brought to the formal committee wherein the Green Room delegations may leverage the passing of the agreement. By their closed door nature, these meetings hinder the democratic process of the WTO by limiting the presence of delegations. Moreover, we have been witnessing that the negotiations process is often moving out of Geneva to other capitals of the world, such as Paris, Delhi, Brussels, and Washington. This has been led by what came to be known as the G4/ Group of Four in the WTO, which includes the US, EU, India and Brazil. This process led to weakening the voice of the rest of the WTO membership in the negotiations process, especially that of developing countries.

#### **Box B: WTO Ministerial Conferences**

WTO Ministerial Conferences are held once every two years. The conference is the highest level of decision making in the WTO. It brings together delegations from all of the WTO member countries. While official WTO decisions are made multilaterally via extended negotiations within the ministerial conference and other formal and informal meetings, WTO formal and informal meetings are often used by the major developed countries to push their particular agenda.

**Uruguay Round** (September 1986-April 1994): This extended period of negotiations covered tariffs, non-tariff measures, services, and IPRs. The GATT 1947 was renamed GATT 1994. New annexes included the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Rights (TRIPS). This Round concluded with the birth of the WTO on January 1, 1995.

**Singapore Ministerial Conference** (December 1996): Most notably, this conference dealt with the following controversial issues: investment, competition policy, government procurement, trade facilitation, and labor standards. Ultimately, with the exception of trade facilitation, negotiations on these "Singapore Issues" were put to an end.

**Geneva Ministerial Conference** (May 1998): Ministers introduced an anti-tariff declaration on global electronic commerce. Discussions on global electronic commerce are still underway within the Doha negotiations.

**Seattle Ministerial Conference** (November 30-December 3 1999): The Seattle Conference is permanently marked by its well publicized collapse; no WTO consensus was reached and the meeting ended in chaotic fashion. This collapse was due to the inability to resolve disagreements between WTO members, WTO members' frustrations over the handling of the Conference, and large public demonstrations in the streets of Seattle.

**Doha Ministerial Conference** (November 2001): The Doha Conference began a series of negotiations, the “Doha Development Agenda” (DDA) that continued through the Cancún and Hong Kong meetings. Among other things, the DDA aims to liberalize trade within agriculture, services, and nonagricultural markets.

**Cancún Ministerial Conference** (September 2003): This Ministerial Conference also collapsed due to a deadlock between WTO members on agricultural negotiations, specifically regarding domestic subsidies on agricultural products. This split was essentially between blocs of richer developed countries and developing countries. Three of the “Singapore Issues” -- investment, competition policy, government procurement -- were removed from the DDA.

**Hong Kong Ministerial Conference** (December 2005): The DDA was renewed during this Ministerial Conference and the target for a major trade agreement was set for the end of 2006 (this was not met). 2013 was set as a target to end agricultural export subsidies altogether. Concessions were made by developing countries on services, nonagricultural products, and other areas.

## ABOUT AGRICULTURE

### Overview

In the last 50 years, the agricultural trade system witnessed massive distortions; the world trading system has allowed for considerable protection and subsidization of agricultural sectors to the benefit of developed countries. During the 1950s, the EU and the US insisted that the agricultural sector remain outside the world trade system and GATT. This represented a remarkable special and differential treatment delivered to developed countries. During the Uruguay Round, agriculture was brought into the agenda of the WTO via the Agreement on Agriculture (AoA) in return for concessions from the side of developing countries in regards to services and TRIPs.

Before agriculture was included under the WTO agreements, there was abundant use of tariffs peaks, high tariffs, and quantitative restrictions in trade in agricultural products. The main aim of the agreement was to get rid of the restrictions and quotas through the tariffication process <sup>27</sup> and to organize domestic subsidies. However, the WTO left a lot of preferences and exceptions under the AoA.

Tariffs were reduced by 37% for developed countries or countries in transition over six years and by 24% over ten years for developing countries. Least developed countries were excused from lowering their tariffs.

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<sup>27</sup> Under the AoA, WTO members agreed to replace their non-tariffs barriers, such as quotas or import levies, to tariffs. Tariffs are considered more transparent forms of barriers to trade. This process is called the ‘tariffication’.

Export subsidies were limited, both through limiting the total quantity of subsidies and the range among the number of products being subsidized. According to the AoA, developed countries had to reduce their export subsidies by 36% over 6 years and developed countries had to reduce it by 24% decrease over 10 years. This was the first step of the agreement; according to Article 20 of the AoA, negotiations over the longer-term decrease in the tariffs and subsidies was supposed to start one year before the end of the 6 year period for implementation, which was supposed to be in the year 2000. However, the EU and the US tried to link the negotiations on agriculture with that on industrial products and services.

Subsidies to the agricultural sector by the EU and the US remain a highly controversial issue in the WTO negotiations still today. In fact, disagreement on these issues between developed and developing countries have led to the stalemate of the WTO negotiations several times. The main issues behind the failure of negotiations in Cancún and the ongoing impasse in the WTO negotiations after the Hong Kong Ministerial Conference in 2005 were the domestic support for agricultural production via direct and indirect subsidies. The US and the EU, under the Farm Bill 2002 and the CAP reforms (Common Agricultural Policy) respectively, have been supporting their agricultural sector with the highest agricultural subsidies offered today.<sup>28</sup> The total trade distorting subsidies of the EU and US for the year 2000 were 110 billion Euros and US\$ 48 billion respectively, while there applied trade distorting subsidies for the year 2000 were 64 billion Euros and 21 billion USD respectively.<sup>29</sup> It is estimated that the US total trade distorting subsidies reached the level of \$11 billion by 2006 and is not expected to change soon afterwards as no changes are expected to be introduced to the US Farm Bill. The EU subsidies as well are expected to drop to 12 billion Euros according to the schedules of the EU common agricultural policy.<sup>30</sup> Accordingly, the market prices of agricultural products are distorted, which cause a great loss to the agricultural sector in developing countries due to the dumping of cheap agricultural products into markets of the developing countries.

In July 2005, under the July framework adopted by the WTO membership through the General Council meeting, the rich countries agreed to put an end to their huge agricultural subsidies. Yet the commitment was left vague with no set timeframe or details of the reductions. For example, the total trade distorting subsidies are divided into four subcategories of different kinds of subsidies, which have a different impact on the US agricultural sector and products and that of the other WTO

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<sup>28</sup> During the first decade of the WTO, the level of subsidization of agriculture actually increased in developed countries. The total amount of agricultural subsidies provided by the OECD's member governments rose from \$182 billion in 1995 to \$280 billion in 1997, \$315 billion in 2001, \$318 billion in 2002, and almost \$300 billion in 2005. The U.S. and the European Union (EU) were spending \$9-10 billion more on subsidies in the early 2000's than they were a decade earlier. For every US\$100 of agro-exports from the U.S., government subsidies accounted for \$20-30. In the case of the EU, the figure was \$40-50. While unsubsidized smallholders in the developing world had to survive on less than \$400 a year, American and European farmers were receiving, respectively, an average of \$21,000 and \$16,000 a year in subsidies. Bello, Walden, "Why Small Farmers Deserve Protection from Free Trade", cited from Oxfam International, *Rigged Rules and Double Standards* (Oxford: Oxfam International, 2002), p. 112

<sup>29</sup> Bhagirath Lal Das, "Agriculture; Why the EU and US Offers are not Good Enough"

<sup>30</sup> Martin Khor (TWN), Developing countries upset with modality papers, Geneva, 18 July 2007, published in SUNS #6296 dated 19 July 2007

member countries which are impacted by the artificially low agricultural prices induced by this subsidy system. However, the July framework negotiations did not indicate whether the agreed upon reduction rates (set at 20% according to the July Framework) that the US agreed to apply during the first year of a worldwide trade agreement will be applied to the four categories as a whole or to each alone. It should be noted that none of the agricultural interest groups in the US or the EU have voiced concerns or comments regarding the July pact. No political reaction in any of the developed countries indicates that the rich countries have managed to protect their subsidies.<sup>31</sup> After the Hong Kong ministerial conference, the Doha agenda of negotiations faced an impasse due to the refusal from the US side to limit its agricultural subsidies to levels below the currently applied rates that are estimated at around \$11 billion as mentioned above.

On domestic support, negotiations include as well discussions of the criteria based on which subsidies are considered trade distorting or not. The WTO currently adopts the system of boxes, whereby there are three main boxes under which subsidies are administered: the green box considered non-trade distorting, the blue box considered non-trade distorting, and the amber or yellow box considered trade distorting. The criteria for clarifying the usage of various domestic support boxes under the WTO are under discussion.<sup>32</sup>

Besides the distortion caused by subsidies of developed countries, the second source of significant distortion in agricultural trade is caused by conditions placed on developing countries through financial aid packages by the IMF and the WB. The two institutions were pushed by the major powers to impose conditions on developing countries regarding agricultural liberalization. Accordingly, today many developing countries have applied tariffs between 0% and 20% on agricultural products, and are not allowed to make use of WTO flexibilities in that area. In Ghana, for example, tariffs on chicken had to be cut to 20% due to a conditionality accompanying an IMF loan, while bound tariffs (the upper bound of allowed tariff rates) were at 99%. After the chicken industry was doing well and creating jobs, the chicken production was destroyed due to the cheap subsidized chicken coming from Europe. The Ghanaian government had to raise the tariff rate to 40% under pressure from farmers, although it was withdrawn later due to pressure from IMF.

Food security in developing countries depends on the ability to use tariffs to block the negative consequences of the EU and the US policies. However, the IMF and World Bank policies have already lowered tariffs of developing countries to around 20%. Furthermore, bilateral FTAs very often push tariffs to zero levels.

Other than export competition and domestic support, negotiations on market access for agricultural products include discussions on tariffs formula reductions, tariff capping, and use of sensitive and special products.

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<sup>31</sup> Devinder Sharma. "WTO Framework; a Promise Belied". Accessible at <http://www.urfig.org/WTO%20framework-Devinder%20Sharma.doc>.

<sup>32</sup> For more information on the boxes, please find attached to this chapter Annex C

## Agriculture in the Arab Region

While the Arab states have a modest position in regards to agriculture negotiations in the WTO, agriculture represents a main sector for which Arab countries should be involved in the negotiations, given that it impacts a wide range of the population in various Arab countries. Arab agricultural exports are estimated at around \$6 billion, or 1% of international exports in agricultural products. However, its imports exceed 25 billion dollars or 6% of the international trade in agricultural products.<sup>33</sup>

Given the importance of the agriculture sector, liberalization of trade in agricultural products presents significant challenges for the Arab countries. All Arab countries are net food importers and their food security is highly impacted by the changes in world food prices. Liberalization will likely lead to an increase in the prices of food products, an increase in imports, and an increase in reliability in food acquisition on foreign sources—all of which pose serious threats to the Arab agricultural sector. Given the significant trade deficit in food products, the Arab region will be one of the primary regions affected by liberalization of trade in agricultural products and the rise of import prices. Accordingly, Arab governments should assess the potential impact of trade liberalization in agriculture on development and poverty eradication national plans, before proceeding with further trade liberalization negotiations.

Thus, appropriate policies on agriculture means a better future for a significant portion of the populations in the Arab countries and to the economic development of these states. According to an Oxfam note on Agriculture in the Euro-Med<sup>34</sup>, ‘fair rules on agriculture hold the greatest potential for poverty reduction, and should be accorded high priority’. The case given that agriculture policy affects, directly or indirectly, the livelihoods of the highest proportion of the population in the Arab region.

Because of the limitations in resources available, most Arab countries do not offer their agricultural sector high levels of subsidies. Yet, agricultural products from the Arab countries face competition from highly subsidized products, especially from the EU, US, and Japan. Only Jordan, Tunisia, and Morocco have subsidies that are subject to cuts under the WTO negotiations. Arab countries ought to argue for being exempted from reducing the 5% support that is allowed for them as developing countries under the AoA.

Furthermore, for the sake of food and employment security, Arab states should identify special safeguard measures and special products which they need to protect through the tariff reductions that are being negotiated under the AoA. This is essential to secure the policy space needed by Arab countries to pursue agricultural policies that are supportive of their development goals, poverty reduction, food security, livelihood, and market access.

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<sup>33</sup> Lebanese Parliament. (2003). The Role of Arab Parliamentarians in the negotiations of accession to the WTO (Arabic: Dawr al-barlamānāt al-‘arabīa fī mufāwadlāt al-indlīmām ilā munazlāma al-tijāra al- ‘ālmīa. Canadian-Arab Symposium Parliamentary Papers, Beirut. P. 52.

<sup>34</sup> Oxfam. (April 2004).

### **Box C: Egyptian Agricultural Policy\***

The Government of Egypt's (GOE) position regarding the liberalization of the agricultural sector is inconsistent with Egypt's current position as net food importer. Full liberalization of trade in agriculture is expected to negatively impact net food importers due to expected increases in world prices of agricultural products when domestic and export support are removed in developed countries. In addition, with successive devaluations of the Egyptian pound, it is likely that the import bill of basic food will increase. Nevertheless, the GOE led by the Ministry of Foreign Trade (established in 2002) has emphasized the need for liberalization of agricultural trade and better market access to be able to utilize Egypt's, as well as that of other developing countries, comparative advantage.

Given the natural supply constraints of water and arable land, empirical studies have shown that reduction of domestic support in developed countries is likely to have negative effects on Egypt.<sup>35</sup> To be able to utilize the comparative advantage that Egypt enjoys in a number of agricultural products, a major shift in policies concerning this sector needs to be devised. New technology in irrigation methods restricting use of water should be applied, identifying brands that enjoy both a comparative advantage and low water utilization should be encouraged and the GOE public awareness programs directed to the farmers on the best practice adaptable technologies should be intensified. Thus, the supply side constraints should be better addressed before opening up this sector. Liberalization of agricultural trade will have serious negative implications on Egypt's trade balance at least in the short and medium terms.

*\*This paragraph is based on a working paper on "The Social and Economic Impact of Trade Liberalization on Egypt", prepared for the Arab NGO Network for Development by Dr. Ahmed Farouk Ghoneim, Assistant Professor of Economics, Faculty of Economics & Political Science, Cairo University*

## ABOUT SERVICES

### Overview

Trade in services, which was introduced during the Uruguay round, remains a controversial issue. The General Agreement on Trade in Services (GATS) is based on requests and offers, through lists that specify the obligations of each country in the liberalization of specific service's sectors. Negotiations take place on the requests and offers to reach the lists to which the country is obliged to liberalize, based on the time periods that the country proposes and agrees with the other partner countries.

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<sup>35</sup> Hoekman, B.M., & Zarrouk, J. (2000). Catching up with the competition: trade opportunities and challenges for Arab countries. Ann Arbor, University of Michigan Press.

Services are very different from goods and they mainly involve investment through the access of the provider to a certain country and setting up a shop or a production outlet for their services. Accordingly, agreements on services are mainly investment agreements, allowing the foreigners to compete with the locals when coming inside the country.

Many countries have argued that the principles of national treatment are not possible when considering investment and that there is no reciprocity in the services provision given that the service providers in developed countries are huge versus very small units existent in developing countries.

Yet, developing countries came to accept services in trade agreements because they were under tremendous pressure from developed countries. The developing states did not agree until they were promised benefits in agriculture and industry in exchange. Moreover, these countries asked for the inclusion of movement of labor under the services agreement and for flexibilities in choosing the sectors to open, how to open them, and over what periods of time. This is known as a positive list approach, whereby countries choose which services they want to negotiate on; a negative list approach is where countries choose which services they are not going to negotiate on.

Accordingly, the initial agreement on services was development friendly and secured certain flexibilities for developing countries. According to paragraph 15 of the Doha Declaration (resulting from the WTO Doha ministerial conference in 2001), which highlights Articles IV and XIX from the GATS agreements, tackling the increase of participation by developing countries and the negotiations on specific commitments set the basis for negotiations on services in the WTO. Through this approach, there was space to protect the development policies of developing countries.

As most developing countries have offered very little in opening their services sectors, some developed countries tried to change the rules of GATS, whereby the EU pushed for a threshold of 60% of sectors to be liberalized. This was defeated in the WTO. However, developed countries continue trying to push these thresholds through various rounds of negotiations.

A new approach aiming at pushing the pace of negotiations is being marketed in the multilateral system. This new approach is based on benchmarking, which sets obligatory reduction targets and limits the main flexibilities that developing countries have under the GATS negotiations. For instance, there have been calls by the European Commission to open 90 out of the 150 sectors under GATS. This new approach could also be seen in proposals for Switzerland, Japan, Korea, Chinese Taipei, and New Zealand. This was clear in the sixth WTO ministerial conference that was held in Hong Kong, whereby developed countries tried to inject the specification of a “pluri\_lateral” process of negotiations in the services text.<sup>36</sup> This could result in the erosion of the flexible request-offer approach that has marked the GATS negotiations, the injection of a mandatory element, and forcing of many developing countries into sectoral negotiations designed to open key services.

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<sup>36</sup> The pluri\_lateral approach implies that a single developing country could be pushed to negotiate opening specific services sectors with a group or coalition of countries, which would mean that developing countries lose more of their bargaining power in the negotiations process. This approach is currently voluntarily but, nevertheless, influential.

In most developing countries, the services sector is the foremost sector in terms of added value to GDP. Locals have a comparative advantage in this sector due to geographical presence and local participation in this sector is often greater than that in industry. Services include basic social services that are sensitive and a right for all such education, water services, health, social protection, and energy. These should be excluded from trade liberalization for the cause of human development and social justice. Services also include strategic high-value sectors such as finance and telecommunication, which should not be subject to uncalculated liberalization.

Furthermore, random liberalization of the services sector could bring in risks from high levels of FDI flowing in (either through the stock market or physical factories); whereby a country could undergo a balance of payment problem and increase in debt if too much FDI flows in the country while too much foreign profit leaves. To offset this, there is a need for foreign investors in a certain country to export their production of services. However, the foreign investor often does not export but perform local services for the local market. Most of the Latin American countries have opened up to foreign investors with no regulation in that regards. This led to a high outflow of foreign exchange without corresponding earnings in foreign exchange, and accordingly led these countries into financial crisis.

In addition, during crisis periods, foreign companies are the first to leave the country, which was the case of Argentina for example. This situation makes it harder for the government to take corrective steps and stabilize the economy. During the financial crisis in Malaysia, the government prohibited investors who have invested their money for more than one year in Malaysia to leave the country. If Malaysia had committed inside the WTO, then it would not have been able to backtrack on such an issue. Singapore tried to enforce capital control under the FTA with the US but did not succeed.

Liberalization could be helpful for certain sectors but it should not be administered in a way that limits the country's ability to make policy decisions to protect its economy and financial situation in the future or in cases of crisis. In sum, it is important to distinguish between situations where a country is able to make autonomous decisions to liberalize and to choose liberalization in certain areas and another whereby a country is obliged to commit to liberalization under a trade agreement, such as the WTO agreement. For under the latter, there is no backtrack.

#### Services in the Arab region

Services are essential for the process and achievement of a country's development goals. In the Arab countries, tourism, travel, transportation, and business services represent a significant potential. However, in the Arab region as well as in other developing countries, supply capacities of services are very limited. Accordingly, Arab countries are net importers of commercial services and their capacities are still relatively undiversified.

In preparation for the 2005 Hong Kong WTO ministerial meeting, the Arab Ministers of Trade and Economy met and expressed clear rejection of the new benchmarking approaches. These ministers stressed the effective implementation of Article IV and XIX of the GATS. Arab ministers called for an emergency safeguard mechanism and appropriate special and differential treatment for developing countries, advance on domestic regulations to ensure commitments undertaken by members,



identification of trade distorting subsidies by developed countries and their elimination, and securing of technical assistance to Arab countries.

During the same meeting, the Arab Ministers of Trade and Economy also noted the essentiality of addressing issues of special interest to developing countries, including the issue of the international movement of natural persons (outsourcing, etc.), also called Mode 4,<sup>37</sup> which is benefiting developing countries. It is worth noting that Mode 4 will result in gains for both developed and developing countries. General gains will result in areas of investment and savings, entrepreneurship, human capacities, productivity, reduction of costs, and poverty alleviation.

In this context, Arab states alongside other developing countries ought to:

- Stand together, and with other groups of developing countries, in rejecting the new benchmarking and mandatory plurilateral approaches in services negotiations as well as the inclusion of basic services in the negotiations
- Take firm stands on the effective implementation of Article IV of the GATS, asking for mandatory adjustment of the negotiations if, after assessment, it is clear that they do not fulfill the objectives of the agreement
- Insist on the parallelism of negotiations on rules and on specific commitments
- Link the progress on Mode 4 in the services negotiations to any progress on the other three modes under GATS
- Ensure that a general exception is included in GATS preserving the right of developing countries to offer subsidies to their services sector without violating the principle of national treatment
- Ensure effective safeguard measures in the services negotiations to protect domestic services providers from sudden imports. They should support other developing countries' proposals in this regards

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<sup>37</sup> Under the GATS, trade in services is categorized under four different types or “modes” of service supply: mode 1 relates to provision of services across borders, e.g. transnational postal services; mode 2 refers to the use of services abroad, for example, through tourism; mode 3, a commercial presence, commonly means FDI in sectors such as banking, telecommunication and utilities. Basic services such as subsidiaries of foreign educational institutions or hospitals and private water suppliers are mostly covered under mode 3; and mode 4 denotes the movement of individual service providers, including labour migration. Service provision under mode 4 is of special interest for the developing countries.

- Stand firm on negotiating disciplines for qualification, standards, and licensing which could form non-tariff barriers for their services in the developed countries' markets
- Secure their policy space and identify the tariff caps appropriate to the future development of their services sectors
- Stand firm on the importance of negotiating emergency safeguard mechanisms and appropriate special and differential treatment, identification of trade distorting subsidies by developed countries and their elimination, as well as securing needed technical assistance
- Take active role in the negotiations and preparation of proposals on services, in which they need to protect the potential high return from their services sector
- Align with other developing countries to refuse mandatory participation in the sectoral approach

**Box D:**

***What makes trade a positive factor for the national development process in Egypt?\****

Exports are the key to making trade positive for the national development process. Having adopted an export-oriented strategy that replaced the import-substitution strategy of the 1960s implies that exports should be devoted special attention to enhance development. Moreover, sources of foreign exchange in the Egyptian economy are highly vulnerable to external fluctuations as oil prices, tourism and Suez Canal revenues are all determined according to external factors. The only sustainable source of foreign exchange is exports and hence efforts should be devoted to enhance that.

On the one hand, Egypt has a great untapped potential in exporting services where trade liberalization can help it to reap the benefits of liberalizing trade. On the other hand, imports of services are of crucial importance to reduce the transaction costs and production costs of many goods. In general, there is consensus among the different society stakeholders on the importance of enhancing exports, especially when compared to other debatable issues as privatization.

*\* Based on a paper by Dr. Ahmed Farouk Ghoneim (2005)*

## ABOUT NON-AGRICULTURAL MARKET ACCESS AND INDUSTRY<sup>38</sup>

### Overview

Formal negotiations on trade liberalization of non-agricultural products were birthed during the Doha Ministerial Meeting (2001). These negotiations are known as Non-Agricultural Market Access (NAMA).

There are two main issues that should be noted in regards to NAMA. First, the hardline positions of the US and the European Commission on NAMA are taken as reference point<sup>39</sup> in the negotiations on NAMA, thus, the objections and proposals of developing countries (including India and the African countries) are rendered on the margins. Secondly, developing countries will lose additional policy space on industrial and other non-agricultural production through the NAMA negotiations as it had been developing under the Doha agenda.

NAMA is a particularly important area of negotiations for the multinational companies and the big industries in developed countries, primarily the US. Accordingly, these lobbying groups keep track of the negotiations and aggressively push for their interests to be reflected on the negotiation table. Such reactions are highly important for developing countries to keep track of especially that such groups of interest in the WTO process follow closely the negotiations and their reactions are built on close calculations.

Because NAMA negotiations have a direct impact on industrialization paths, they have immense potential to positively benefit developing countries. Yet, the progress on NAMA does not reflect consideration of a development agenda. The issue of implementing a formula for tariffs reductions is being aggressively pursued by developed countries. Most of them want higher tariffs to be cut at higher rates given that most of their tariffs are bound at low rates.

Based on negotiations under the Uruguay Round, tariff cuts were done according to average calculations, through which sensitive products can be protected. Furthermore, products of interest to developing countries were supposed to be tariff free according to the talks in Seattle and there were committees negotiating that for certain products. This kind of work came to an end with the Doha round.

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<sup>38</sup> Much of what comes in this section is based on a presentation entitled “Industrial Policy Options for Development and Developing Countries in light of FTAs”, by Dr. Mehdi Shafaeddin, former head of the Macroeconomics and Development Policy Branch of UNCTAD, presently affiliate to the Institute of economic research of Neuchâtel, Switzerland. The presentation was given at a regional meeting on Free Trade Agreements in the Arab region, organized by Arab NGO Network for Development and Third World Network in December 2006.

<sup>39</sup> Raghavan, Chakravarthi. (2004). Giving away more policy space under NAMA? Third World Resurgence. 169/170. PP. 33-34.

During the Doha negotiations, it was agreed that the special needs of developing countries would be taken into account through:

- Implementing less than full reciprocity and flexibility in the agreement on industrial tariffs
- Giving special and differential treatment for developing countries
- Eliminating tariffs on products which are of interest to developing countries, including products subject to high tariffs or escalating tariffs
- Addressing implementation issues, including the technical capacities of the member countries
- Removal of non-tariffs barriers

However, developed countries tried to push developing countries to liberalize all individual products, reduce the tariff dispersion towards near uniform tariffs, bound the tariffs so as not to be able to change them in the future, and apply these principles uniformly to all developing countries with some exceptions for less developed countries (LDCs). To do that, developed countries proposed the Swiss Formula. This is the most harmful formula for tariff reduction, given that it leads to wider cuts for the higher tariffs.

Under this formula, the lower coefficients would result in more cuts. For example, a coefficient of 10 under the Swiss Formula will lead to a reduction of 33% for tariffs of developed countries, while a coefficient of 15 will lead to a reduction of 76% for developing countries tariffs. Tariff policy, which is practically the only policy tool that is currently left for developing countries, will be lost. Furthermore, developed countries are also pushing developing countries to open their markets while trying to impose the 5% rule on them, which would limit tariffs to no higher than five percent. Developing countries often face pressures from the international financial institutions in the case that they do not agree with these propositions.

The Doha Round was set on hold because the US did not agree to dismantle tariffs to the extent other countries requested from it. The Doha Round would have collapsed as well because of contradictions in the whole process of WTO rules, especially between design and implementation of those rules.

It is worth noting that all countries that have had successful industrialization experiences, with the exception of Hong Kong, had undergone a selective infant-industry protection process. Accordingly, governments intervened in the economy and did not start liberalization except after the maturity of their industries. All developed countries which industrialized learned from each other; for example, when the US tried to liberalize prematurely during the 1850s, they immediately realized that they were losing to the British industry and they retreated to protectionism. In fact, the history of developed countries shows that in 1931 they had tariffs higher than the rates that developing countries have today, although they were more industrialized at that point than the latter are today.

In this context, it is important to secure a space between the applied and bound tariffs<sup>40</sup> rates since the kind of industry that a country wants to protect today may vary from the kind of industry it needs to protect in the future. When a country's industry is still weak, it should not cut tariffs drastically, since small industries will be pushed out of the market; there has been evidence on this trend in several developing countries. Tariffs are not merely protective tools; rather, they are the policy tools through which to create opportunities for national industries to grow and be competitive. The ability to preserve a significant difference between applied and bound tariffs rates is needed.

History showed that liberalization forced on colonies caused sluggish growth and de-industrialization. In the case of India, 95% of the industry was destroyed, especially in the area of textiles. Among 50 developing countries that liberalized their economies, only 20 countries had rapid export growth of manufactured products, which was linked to an increased added-value in the manufacturing sector. In 50% of the cases, there was de-industrialization, a decline in the share of manufactured added-value to GDP, and crises in investments. The worst examples of liberalization are Mexico, Brazil, and Ghana. However, countries which had dynamic growth during the 1980s and 1990s continued to have dynamism in export and supply during the recession period in the early 21<sup>st</sup> century. Accordingly, expanding supply capacity is much more important during early stages of national economic development than expanding exports of manufactured goods.

On the positive side, a country that liberalizes at the right time and in the right industries can succeed, like the example of the Republic of South Korea or the case of the aerospace industry in Brazil. In that case, liberalization came after around 40 years of support, at a stage where the industry was near maturity.

Pre-matured and uniform liberalization will lead to de-industrialization and concentration of production in primary commodities. Yet, liberalization could help as a part of dynamic industrial policy. Accordingly countries need:

- An industrial policy before they go into any negotiations
- A dynamic comparative advantage theory instead of a static comparative advantage theory
- Securing differential treatment for developing countries as a rule and not as an exception
- Binding tariffs based on an average level and not on individual products
- Allowing export performance requirements and domestic clauses
- Changing of TRIPS to allow technology transfer to developing countries
- Flexibility to protect policy space

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<sup>40</sup> Bound rate is that which a country cannot exceed upon commitment under the WTO NAMA, except in very specific circumstances

## Industry in the Arab region

Trade with the EU covers 40% to 60% of the Arab countries' total trade and the inter-Arab trade covers around 10%, while the trade exchange they administer through the WTO does not exceed 30% of the total.<sup>41</sup> Given that the Arab countries opened their markets to the EU and liberalized trade in goods under GAFTA which came into force in January 2005, the value of protection in the context of the WTO, which covers only 30% of the Arab countries' trade, became of less relevance to them. Accordingly, we see that Arab countries often take passive roles in following and influencing the ongoing negotiations of the NAMA modalities undertaken in Geneva.

The most important non-agricultural product for the Arab region is textiles. Unsurprisingly, therefore, the most negatively affected by the liberalization of trade is the textile and ready-made garments sector. Significant industrial activity in textiles and clothes exist in each of Tunisia, Egypt, Morocco, and the United Arab Emirates. In regards to employment and exports, this sector has been historically one of the most important in places like Egypt. Egypt alone has more than 1.5 million workers in the textile industry. Arab exports from these countries reaches \$3 billion, of which are mostly directed towards the EU and the US. At the beginning of January 2005, all countries under the WTO had to remove all quotas on exports of textiles. With the new quota arrangements, China's manufactured textiles industry became a major threat to the markets of all WTO members. For example, the United Arab Emirates has been witnessing increasing pressures with around 30% to 40% of its garment manufacturing industries leaving the country, including 50 manufacturers leaving the Emirates in 2004. In addition, only 10% to 15% of the textiles manufacturing businesses are making profit. The leading garment manufacturing areas of Sharjah and Ajman took the worst hits. In addition to higher competition, higher labor costs and charges such as rent and electricity are factors which make the Emirates less competitive than other countries faced by the same challenge, including Jordan, Egypt, Kenya, Uganda, and Madagascar.<sup>42</sup>

In this context, Arab countries, as other developing countries, should protect their policy space and flexibilities; these include special provisions for newly acceding countries and LDCs' exemptions from tariff reductions. The Arab countries should stand firm on the implementation of special and differential treatment and less than full reciprocity<sup>43</sup> (Paragraph 16 of Doha Declaration) in the

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<sup>41</sup> Numbers provided by the presentation of Dr. Mohsen Helal- UN Economic and Social Commission for West Asia, during his presentation on the Industrial Section in the Arab region, presented at the regional workshop on free trade agreements in the Arab region, organized by the Arab NGO Network for Development and Third World Network (Cairo- December 2006)

<sup>42</sup> Information in this paragraph references in: Krayem, Hasan, p. 53 of publication on Role of Parliaments with WTO and Qadir, Jamila, (June 1 2005) "UAE garments industry badly hit by WTO rules", Khaleej Times Online, available online at:

[www.khaleejtimes.com/DisplayArticle.asp?xfile=data/business/2005/June/business\\_June29.xml&section=business](http://www.khaleejtimes.com/DisplayArticle.asp?xfile=data/business/2005/June/business_June29.xml&section=business)

<sup>43</sup> The principle of less than full reciprocity requires developed countries to do more than developing countries (ie, to make a deeper cut in their tariffs and a greater effort)

NAMA negotiations, which should be calculated in terms of market access opportunities and not potential revenue loss. Moreover, they should make use of Annex B of the July 2004 Package that indicates that the non-linear nature of the formula can be renegotiated and thus push for a linear formula based on average reduction of tariffs.

Arab countries, together with other developing countries, should secure a tariff reduction formula that includes the development coefficient that calculates specific conditions and needs of each country. They should take firm stands that negotiations on non-tariff barriers should proceed in parallel with tariffs reduction negotiations and that on dealing with tariff peaks of developed countries should be independent of the formula for general tariff reduction.

## INTELLECTUAL PROPERTY RIGHTS

### Overview

IPRs are protective rights awarded by society to individuals for their creative contributions to society. IPRs include trademarks (including service marks), industrial designs, geographical indications, copyrights and other related rights for artistic works as well as for generic systems including plant breeder rights, patents, layout-designs (topographies) of integrated computer circuits, and undisclosed information (including trade secrets).

The Agreement on Trade Related Intellectual Property Rights (TRIPS) was negotiated during the 1986-1994 Uruguay Round. The TRIPS obligations under the WTO came after World Intellectual Property Organization (WIPO) conventions; TRIPS sets minimal rules for IPR protection that integrates a lot of flexibilities. Standard settings are currently being developed at WIPO, which extend beyond the regulations under the WTO TRIPS obligations.

The TRIPS Agreement covers five main areas: (1) application of IPR to international agreements and to other agreements on IPR to TRIPS, (2) IPR protection, (3) TRIPS enforcement, (4) dispute settlement, and (5) special transnational arrangements within TRIPS. All WTO members have to abide by the TRIPS Agreement. The Doha Round readdressed the TRIPS Agreement, ostensibly emphasizing the importance of public health vis-à-vis TRIPS.

TRIPS have changed the whole discussion on IPRs. The agreement describes the rights given for the patent holder and those taken away from others, and the period of protection, which for example is fixed to a minimum of 20 years for patents. It is a one-size-fits-all agreement that reflects the interests of developed countries. In principle, the Doha Declaration was considered a positive step regarding negotiations on TRIPS and public health,<sup>44</sup> yet TRIPS needs to be adjusted towards establishing national legislation that is based on needs of human development as defined by the MDGs.<sup>45</sup>

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<sup>44</sup> See attached to this chapter as Annex B the Doha Declaration on the TRIPS agreement and public health

<sup>45</sup> (2003). Making International Trade in the Service of the People (Arabic: J'alu a-tijāra al-'ālimīa fī khidmat a-nās). New York, NY, Earthscan Publications. P. 13.

One of the problematic aspects in the agreement is that rights given through it are applicable without discrimination as to the place of the invention. For example, many countries do not have patents on medicines because they are considered essential products, such as in India and several of the European countries. However, the TRIPS Agreement treats all sectors alike; it does not distinguish between essential and non-essential goods.

In 2001, less than 1% of the US patents were granted to applicants from developing countries. Out of that percentage, 60% were from the more technologically advanced developing countries such as Brazil, India, and China. With respect to patent filings in WIPO, developing countries accounted for less than 2% of the applications between 1999 and 2001. Accordingly, developing countries are users of IPRs whereas developed countries are exporters of IPRs. As an example, in Malaysia, more than 90% of patents are owned by foreigners and not Malaysians.

In essence, TRIPs is the only agreement that requires governments to interfere in order to impose more restrictions and barriers through their legislation instead of removing barriers. This intervention aims to find a balance between the right of the consumer and that of the trademark owner. Therefore, any IPR regime should not solely rely on IPR legislation but should include other legal, social, economic, and other supportive measures that must exist to complement these regulations. These include unfair competition laws, viable national health care regimes, as well as social security and pension regimes. It should also be complemented with an advanced and mature consumer protection movement, national policies to enhance innovation and creativity, health and safety measures, independent judiciary, pharmaceutical price controls, effective drug control, and an active role for civil society. All these factors are still very weak in Arab countries.

Most arguments in favor of IPR argue that IP exists to promote innovation -- allowing an innovator to recover costs of the investment, which could be covered by the difference in prices of the protected innovations. They also refer to the need for innovation of drugs for new diseases and the need to promote local industries and technological transfer. These arguments need to be genuinely discussed. In reality, the higher prices brought about by IPRs significantly hinders access to medicines for poor.<sup>46</sup> In fact, Article 7 of TRIPS recognizes the importance of transfer of technology. It also recognizes that governments should prevent the abuse of patents by holders in a way that threatens transfer of technology. Accordingly, there is recognition within TRIPs that IP hinders transfer of technology and thus governments need to take certain measures to mitigate that.

Today, up to half of the population in developing countries continue to struggle to have access to essential and life saving medicines. Indeed, the World Health Organization (WHO) has categorized into six categories the various challenges that we face in terms of making essential medicines available to all people: unaffordable medicine prices, irrational use of medicines, unfair health financing mechanisms, unreliable medicines supply, the quality of medicines, the need for new medicines.

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<sup>46</sup> Oxfam (2004). "All costs, no benefits: How TRIPS-plus intellectual property rules in the US-Jordan FTA affect access to medicines", Oxfam Briefing Note.



## IPRs in the Arab region

IP agreements are related to IPR as much as to knowledge, education, access to information, poverty, access to medicines, and access to free or subsidized health systems. IPRs in the Arab region have been viewed negatively due to lack of awareness, lack of comparative advantage, and occupation with other pressing needs.

There remains weak participation of Arab countries in IPRs globally; for example, Arab countries do not possess any trademark registered internationally or a patent that can compete internationally. Arab countries filed 507 patents between the year 1977 and 2004. Also, between 2000 and 2004, only 135 trademarks have been owned by an Arab investor. To bring this into perspective, Microsoft alone files around 11 thousand patents yearly.<sup>47</sup>

Most Arab countries join the WTO without adequate preparation and thus lack of expertise to deal with the resulting obligations. As a result, Arab countries are facing what developing countries faced during the Uruguay round; they traded away IPRs in return for promises in other areas.

## SINGAPORE ISSUES

Singapore issues are referred to as such given that developed countries tried to add these issues to the WTO negotiations agenda during the 1996 WTO Ministerial Meeting in Singapore. No resolutions came from the Singapore meeting on these issues, though they are constantly being pushed by developed countries, whether through the multilateral or bilateral processes.

The four Singapore issues are: investment, competition policy, government procurement, and trade facilitation. In the Ministerial Conference in Doha, although members rejected the inclusion of the Singapore issues on the agenda, an undemocratic decision during the last day of the conference was taken to extend the meeting and begin negotiations on the issues. Between 2001 and 2003, developing countries insisted on rejecting negotiating these issues in Geneva. Later on, the collapse of the talks during the Cancún WTO Ministerial Meeting was linked to disagreement on the Singapore issues. In July 2004, with the exception of trade facilitation, an agreement was reached to put an end to any attempts to add the Singapore issues to the WTO negotiations agenda and the related working groups in the WTO were dismantled.

The removal of three of the Singapore issues (investment, government procurement, and competition) from the DDA was considered a success for developing countries as well as for the popular international movements that lobbied against these issues since 1996. However, this does not mean that Arab countries and other developing countries have entirely succeeded: bilateral agreements that the US has signed with several Arab countries, including Morocco and Jordan, bring with it conditions that go beyond the WTO regulations and include several of the Singapore issues.

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<sup>47</sup> El-Said, Mohammed K- Bilateral Free Trade Agreements, TRIPS-Plus and the Arab World: The Lacking Checks and The Erosion of Flexibilities

[For more information, please see the extended discussion on each Singapore Issue included in Chapter five, pages 74-78].

### **Box E: WTO-plus and WTO-minus**

Simply put, WTO-plus requirements are any measures that go beyond the WTO basic agreement; WTO-minus measures are requirements that are less stringent than the basic WTO agreement, thus depriving countries from certain flexibilities they have right to under the WTO. Similar logic is applicable to the terms TRIPS-plus and TRIPS-minus. Examples of WTO-plus measures faced by acceding countries include the binding of all tariffs, lowering tariffs on agriculture, extra commitments on trade related investment measures, additional protection in trade related IPRs, and more commitments on services. WTO-minus measures include erosion of special and differential treatment and transition periods, as well as discrimination measures used through the antidumping clause. Jordan and Oman, which had late accessions in 2001 and 2003, both had to give concessions beyond the WTO rules. *Arab countries should resist all WTO-plus and WTO-minus requirements, as they significantly hamper the development process.*

### ACCESSION TO THE WTO

Many developing countries are rushing into WTO accession without having an enabling environment that allows for a rewarding exposure to foreign markets. These countries are facing pressures to give up more concessions than older WTO members did. Jordan and Oman, which had late accessions in 2001 and 2003 respectively, both had to give concessions beyond the WTO rules.

Today for example, a country is asked to offer national treatment to firms even if they are not based in that country, which goes beyond the original national-treatment measures within the multilateral system.

The Arab region faces many challenges given that there are almost half of its countries outside the WTO, including Lebanon, Libya, Iraq, Sudan, Yemen, Syria, and Algeria. In this context, countries should stand together within the WTO system and build alliances with other developing country groups, to refuse any WTO-plus or WTO-minus concessions that are being forced on newly acceding countries. Moreover, Arab governments should consider setting practical mechanisms for cooperation and exchange of experiences between acceding Arab states and others members of the WTO. The WTO has witnessed the formation of several blocks of developing countries that lobby in defence of certain sets of interests; these include the G-20 which fights primarily for agricultural issues, the G-90 which deals with the Singapore issues, and the G-33 which stands up for negotiations on special products and special safeguard measures [for more information on these groups, please refer to Box P]. These groups mainly include countries from Africa, Asia, and the Caribbean and Pacific. The presence of Arab countries has been very limited in such blocks, except for the role of Egypt

Moreover, special and differential treatment should be provided for all acceding countries and in all negotiated areas. It is worth noting that several regional and international civil society groups have

built expertise over the years in analyzing trade from a developmental perspective and they could play a significant role in supporting Arab governments through a sustained consultation process.

#### **Box F: Accession to the WTO**

There are multiple stages to the accession process into the WTO. First, the country wishing to accede submits an application to the General Council of the WTO. The General Council then forms a working party which is open to all members of the WTO. The applicant country submits a formal and immensely extensive memorandum to the working party which covers all aspects of the applicant country's trade and legal regime. The working party, as well as other WTO members, may submit written questions in regards to the accession memorandum. After all questions have been answered, the working party enters extensive bilateral negotiations with the applicant country in regards to the terms and conditions of the applicant's accession into the WTO. This is a very important stage in the accession process as often developing countries are leveraged into accepting conditions that are greater than other WTO members (WTO plus conditions). Upon concluding negotiations, the working party sends an official accession package, including the protocol of accession and a schedule of trade policy reform commitments, to the General Council for a vote whereby two-thirds support is needed for the package to pass. Before fully acceding, the applicant country's parliament (or another specified body under the applicant country's law) must ratify the accession. Shortly after this ratification, the applicant country becomes an official member of the WTO.

#### ***General Process for Decision Making***

The following is the general process of major decision making within the WTO:<sup>48</sup> first, a country formally makes a presentation to a relevant formal body within the WTO. Following this are a series of informal consultations regarding the proposal. These consultations are called by the proposing country, the WTO Secretariat, or relevant committee chairman. It is not uncommon for these consultations to be dominated by the developed countries as the developing countries are often underrepresented and lack in political and economic leverage (also see the entry for "Green Room Meetings"). Finally, when an agreement is reached via consultations, the chairman brings the revised proposal to an open meeting of the WTO body for approval.

It is worth noting that a new group has formed inside the WTO called "Recently Acceding Countries" (RAMs) which includes Albania, Armenia, China, Croatia, Ecuador, Former Yugoslav Republic of Macedonia, Jordan, Kyrgyz Republic, Moldova, Mongolia, Oman, Panama, Saudi Arabia, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, and Vietnam. The RAMs calls for a differentiated treatment within the WTO negotiations due to the fact that in the process of accession the RAMs assumed extensive level of commitments in all WTO areas, distinguishing thereby the group from the rest of the membership. In this regards, RAMs consider that the aim of the WTO negotiations round should not be to deepen already existing discrepancies between developing members or to disadvantage those that have done their share in contributing extensively to the world trading system. Instead, members should pursue an approach that takes into account different realities which exist among their schedules and envisages a more balanced outcome.

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<sup>48</sup> This brief summary is a simplified adaptation of the excellent summary and analysis provided by Bhagirath Lal Das in his book, *The WTO and the Multilateral Trading System; Past, Present, and Future*, London: Zed Books, 2003, pp. 143-180.

### **Box G: Antidumping**

Generally speaking, product “dumping” means exporting a product at a price that is significantly lower than the price within the exporting country. Dumping undermines local industries as exceedingly cheap products from abroad flood and bury a local market. For this reason, dumping is sometimes called “predatory pricing”. Because of the drastic effects of dumping, the WTO passed the Agreement on Anti-dumping. This Agreement provides the mechanisms by which governments can react to dumping. The use of antidumping measures peaked in 2001 with 364 cases. Major users of the anti-dumping measure are India, the US, and the EC, whereas the major target of anti-dumping is China. Several Arab countries could be subjects of anti-dumping cases including Saudi Arabia, Egypt, the United Arab Emirates, and Libya.

The Doha declaration addressed the anti-dumping agreement, among other agreements. Ministers called for the clarification of these agreements through which developing countries could enforce their rights under them. However, Arab countries have not taken any specific stands relating to the discussed provisions, although they have a lot at stake including high interests in sectors which are impacted by anti-dumping measures such as steel and textiles.

### **CONCLUSION**

It is evident that the Arab countries have been a marginal player in the global economy. Yet, as they are increasingly opening up to the world economic system and introducing initiatives that enhance integration in the world trade system, Arab countries ought to take a more active role in the global economy. This mainly applies to the membership of Arab countries in the WTO and their ability to harmonize this membership with other bilateral and multilateral trade agreements with which they are getting involved.

WTO negotiations tackle issues such as manufacturing, services, agriculture, labor mobility, migration, market access, investment and others, in which the Arab countries have very high stakes. In addition, Arab countries have special common needs and priorities which they need to better identify and defend in the negotiations of the WTO. Thus, Arab countries need to place these trade practices at the basis of a broader and comprehensive development strategy that answers national needs and priorities.

### **Box H: Special and Differential Treatment**

Special and differential treatment (SDT) is integrated in the Doha Declaration via paragraph 44. Development related issues and SDT were packaged in the single undertaking under the WTO, leading developing countries to an inability to effectively follow the various processes, and thus loose the ability to trade off on various areas as the developed countries are able to do. Moreover, countries in accession are losing numerous flexibilities under SDT included in the Doha declaration. This happened in both the latest accession cases of Jordan and Oman.

For securing their right to flexibilities under SDT, the following should be taken into

consideration:

- Arab governments should stand firm on the implementation aspects of SDT in all areas of negotiations.
- Arab countries must work on introducing proposals of meaningful commercial provisions through which developing countries' flexibilities would be enhanced.
- Arab countries must identify their priorities on various development issues including food security, rural development, livelihood, technical assistance, concrete and substantive adjustment support, and regional integration.
- Arab countries should advocate for more *unconditional* aid for trade, targeting the supply side constraints of developing countries, especially LDCs, and managed through direct, simple, and practical procedures.

The Arab obligations with the WTO mean radical reorientations of their economic strategies in addition to wide-range political commitments and domestic institutional changes. Arab countries need to strengthen their negotiation capacities and coalition building in order to secure strong positions within the WTO. They should better understand the needs and capacities of their countries and region as a whole. Moreover, the changes brought about by their opening up to the WTO and other trade agreements should be part of their national policies.

Countries of the Arab region have still not considered a common position for them within the WTO, although the conditions in these agreements create significant common grounds between these countries, which are trying to move forward with regional integration processes through the Greater Arab Free Trade Area (GAFTA).<sup>49</sup> Cooperation and organizing in a unified block within the WTO would mean increased collective negotiation skills and sharing of information and expertise on the technicalities of the WTO. By working as a group, Arab countries would better understand the opportunities they have for better cooperation and the challenges they face due to "the gap with other similarly endowed regions as far as competitiveness in international markets and contribution to world trade are concerned."<sup>50</sup> This would mean a clearer voice within the WTO and thus a stronger position.

### **Box I: THE CASE OF LEBANON; a developing country negotiating accession to the WTO**

#### **Overview**

Trade liberalization has been a key feature of official Lebanese economic policy over the past decade. Such liberalization has been manifested in the signing of various FTAs with major trading partners, namely the European Union (EU), the EFTA States (Switzerland, Lichtenstein, Norway, and Iceland), and the Gulf Cooperation Countries (GCC). The full

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<sup>49</sup> For information on GAFTA, please refer to chapter six

<sup>50</sup> Nabli, Mustapha Kamel. (April 23, 2003). "On Trade Policy Integration into Development Strategies and Plans of Arab Countries". Opening remarks. Joint Meeting of Arab Ministers of Trade and Finance. World Bank. Abu Dhabi, UAE.

establishment of the Greater Arab Free Trade Area (GAFTA) was achieved in January 2005. Lebanon was one of the original signatories of the General Agreement on Tariffs and Trade (GATT) in 1947 but withdrew in 1949. In April 1999, the working party for the accession of Lebanon to the WTO was created, thus granting it observer status, three months after the application for accession was presented. At the time of this book's printing, Lebanon is in the last phase of negotiations to accede into the WTO.

Lebanon is committed to amending its laws to conform to WTO regulations. Already, several new draft laws have been submitted to Parliament. Furthermore, the government of Lebanon has presented policy initiatives in reference to "market access" (tariff and non-tariff trade barrier reduction) as well as trade affecting rules and regulations, which would be negotiated multilaterally or bilaterally depending on the areas that are under discussion. The working party on Lebanon's WTO accession has submitted their mandatory accession package to the WTO. After the ratification of the WTO General Council and the Lebanese parliament, Lebanon's accession will be complete.<sup>51</sup>

### ***Agriculture***

When Lebanese farmers are supported and strengthened, Lebanese communities and consumers are strengthened as well. Although agricultural products are not the main exports of Lebanon, agriculture must be treated as a primary strategic sector given the number of lives that depend on it; more than 300,000 Lebanese families, or 40% of the Lebanese population, have a direct or indirect income from agriculture (based on indicators from the Lebanese Association of Farmers).

Under its WTO accession package, Lebanon should not be pushed to renounce the ability to use tariff rate quotas and the existing WTO special safeguards, which can take both the form of quantitative restrictions and additional tariff measures. Lebanon should have access to the new special safeguard mechanism and special product provisions. Lebanon should be able to use these and all other instruments available to developing countries that are already members of the WTO.

Lebanon should not be denied the ability to regulate agricultural imports and import surges after accession. The phasing out of all export subsidies upon accession to the WTO is a big concession. In this context, there is a need to look into the reform of the support program for the Lebanese agricultural sector. The government should step up to its responsibilities in that regard; if the reform process is not easy the government should not be allowed to seek the easiest alternative which is to cancel the program as a whole.

### ***Industry***

Industry is core to the growth and development of any economy; a healthy and growing industrial sector supports the growth of the services sector as well as the agricultural sector. The Lebanese industry was hardly hit due to the removal of tariffs undertaken in the year 2000 on most products, even those that were locally produced. Industry has also been affected by swells of violence in the region.

Lebanese industries face several challenges: technical barriers for entering markets of countries that Lebanon already has agreements with, lack of any kind of protection against dumping, inability to effectively enforce the VAT at the borders, technical and

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<sup>51</sup> For a simple summary of the path to WTO accession, see Harvard's Center for International Development website: <http://www.cid.harvard.edu/cidtrade/issues/accessions.html>.

administrative obstacles, inadequacy of certain standards imposed by various agreements with the characteristics of the Lebanese production, limitations of the budget that is available to the sector (only 12.9% of the loans versus a contribution of 18% to the GDP), in addition to increase in production costs.

Under these circumstances, the Ministry of Industry notes that the opening of the markets and the competition from industries of other regions is a primary challenge for both the consumers and the producers in Lebanon. Accordingly, there is a need for undertaking corrective procedures and supportive tools for temporary periods, in order for the Lebanese production to be able to compete at the regional and international levels.

Subsidies and tariffs are strategic tools that every country needs to use to build a future for any of its industries. The ability to secure export subsidies upon accession for both agricultural as well as industrial products is of high importance.

It is worth noting that the governmental losses of revenues due to reductions of tariffs will necessitate changes in the tax system; indeed, Lebanon exercised taxes through the 2000 tariff reductions as a way to cope with the expected tariff reductions. When Lebanon accedes to the WTO, it will not be able to do anything to restore income from tariffs because it will be bound by the WTO agreement. With the loss of income from tariffs, the government will likely increase consumption taxes, which will in turn put more strain on the Lebanese consumer.

### ***Services***

The services sector in Lebanon provides a substantive share of job opportunities. Tourism, travel, transportation, communications, and business and financial services have significant potential. Moreover, the high levels of education and training and relative low costs of the professionals, including engineers, pharmacists, designers, researchers and technicians, and others is an advantage for Lebanese competitiveness. However, these potentials and advantages are threatened by the unmeasured opening up of these sectors.

In its negotiations for accession, Lebanon should try to secure the flexibilities available under the GATS, which recognizes the rights of developing countries to make fewer commitments. The relevant special and differential treatment provision of GATS includes opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with the country's development situation, and attaching conditions when making access to the national market available to foreign service suppliers.

Furthermore, Lebanon should ensure that basic, but quality, human services remain accessible to all as this is a right for every citizen. The lack of necessary legislation on accreditation and standards could be highly devastating in case that the basic services are open for competition.

### ***Employment***

The plan of the Lebanese Ministry of Industry -- prepared in August 2005 and entitled "Production for the Lebanese Youth 2010" -- clearly states that there is a lack of coordination between policy-making in Lebanon, which often pushes the adoption of economic policies and measures that negatively impact the productive sectors. These measures, though, are not even necessitated by economic liberalization and free market policies. Because trade today is administered within institutions and through agreements to which a country becomes legally bound for the years to come, national policy-making

should be smarter and much more forward looking in order to secure space for national interests and the benefits of future generations. Any economic policy for Lebanon should take into consideration the ability to secure over 35,000 new jobs for Lebanese youth entering the employment market every year.

### **TRIPS**

Lebanon has already committed to TRIPS-plus requirements through the association agreement with the EU, upon which Lebanon must join UPOV 1991 (Convention for the Protection of New Varieties of Plants) and the Budapest Treaty by 2008. UPOV 1991 restricts farmers' rights to exchange and share seeds. It is primarily designed for the interests of commercial farmers systems of developed countries. Until very recently, only a handful of developing countries have ratified UPOV 1991, while most of them have ratified UPOV 1998 which is broader. The costs of these agreements to the Lebanese farmer communities have not yet been estimated.

The WTO TRIPs agreements alone pose formidable obstacles to the fulfillment of the right to health, especially to access to medicines. Lebanon should resist any further TRIPS-plus requirements that it might be pushed to accept through the accession package. This is especially important given that Lebanon, at the time of this printing, is still negotiating concessions in the regards to copyright laws and pharmaceutical laws (*Latest briefing, 19 March 2007- Lebanon on the road to the WTO*). For example, Lebanon should not give any further restrictions on clinical test data for approving drugs, which delays the introduction of generic equivalents.

It is worth noting that transfer of technology has been critical for industrialization and a lot of developed countries did not grant patents to foreigners during the periods they were building up their industrialization process. There are a lot of myths promoted about the relation of high intellectual property protections and the promotion of innovations and investments; yet, high intellectual property protection in any country brings about high prices and costs and could be a factor to scare away investments that would prefer countries of lower production costs.

Lebanon should try to preserve all the flexibilities available in regards to TRIPs. Moreover, the WTO-plus commitments that Lebanon has already agreed to in bilateral trade agreements, such as the EU association agreement, pose a threat to development and should not be automatically multi-lateralized through the accession packages.

### **Costs of Accession**

In the process of complying with the WTO requirements, Lebanon will have to commit enormous financial and technical capacities for compliance with agreements such as the sanitary and phyto-sanitary measures and the Agreement on Technical Barriers to Trade. The major reforms to laws and practices taking place to comply with WTO requirements are for the benefit of foreign companies and are in areas of little or no benefit to ordinary citizens, such as intellectual property protection, customs valuation system, and quarantine regulations for imports. The World Bank estimated the costs of implementation of these



agreements at around USD100 million per agreement.<sup>52</sup> It also reported that reforms in these areas can cost up to one year's development budget.

*\*See the attached CD which includes a more expanded case study on Lebanon.*

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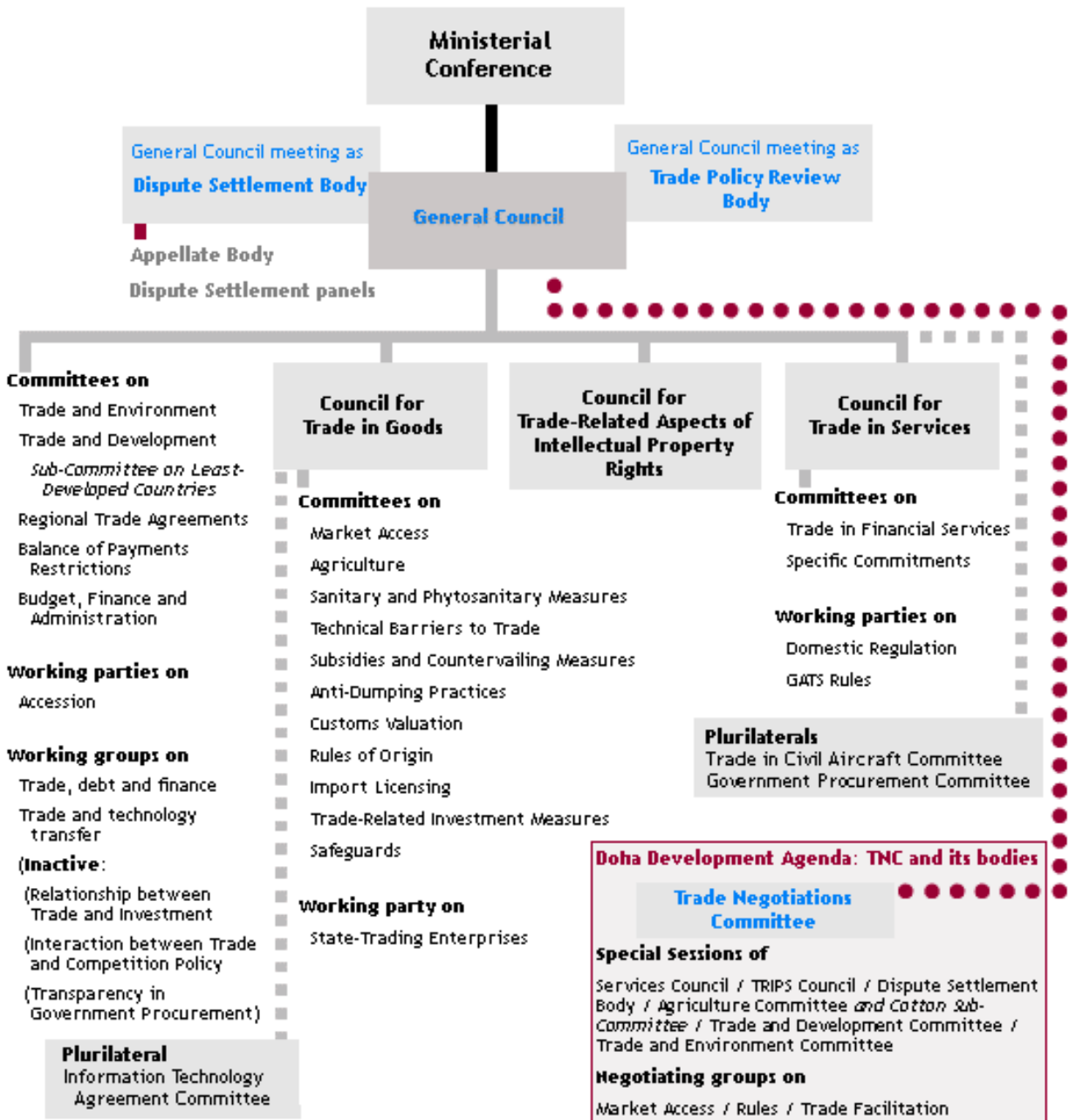
<sup>52</sup> Finger, J. Michael & Schuler, Philip. (2000). "Implementation of Uruguay Round Commitments: The Development Challenges", *The World Economy*. 23.

ANNEXES RELATED TO CHAPTER THREE:

ANNEX A:

ABOUT THE STRUCTURE OF THE WTO

Source: WTO website [www.wto.org](http://www.wto.org)



ANNEX B:

Declaration on the TRIPS agreement and public health

DOHA WTO MINISTERIAL 2001: TRIPS<sup>53</sup>

WT/MIN(01)/DEC/2

20 November 2001

Adopted on 14 November 2001

1. We recognize the gravity of the public health problems afflicting many developing and least-developed countries, especially those resulting from HIV/AIDS, tuberculosis, malaria and other epidemics.
2. We stress the need for the WTO Agreement on Trade-Related Aspects of IPRs (TRIPS Agreement) to be part of the wider national and international action to address these problems.
3. We recognize that intellectual property protection is important for the development of new medicines. We also recognize the concerns about its effects on prices.
4. We agree that the TRIPS Agreement does not and should not prevent members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO members' right to protect public health and, in particular, to promote access to medicines for all.

In this connection, we reaffirm the right of WTO members to use, to the full, the provisions in the TRIPS Agreement, which provide flexibility for this purpose.

5. Accordingly and in the light of paragraph 4 above, while maintaining our commitments in the TRIPS Agreement, we recognize that these flexibilities include:
  - a. In applying the customary rules of interpretation of public international law, each provision of the TRIPS Agreement shall be read in the light of the object and purpose of the Agreement as expressed, in particular, in its objectives and principles.
  - b. Each member has the right to grant compulsory licenses and the freedom to determine the grounds upon which such licenses are granted.
  - c. Each member has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS, tuberculosis, malaria and other epidemics, can represent a national emergency or other circumstances of extreme urgency.

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<sup>53</sup> This is available at [http://www.wto.org/English/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_trips\\_e.htm](http://www.wto.org/English/thewto_e/minist_e/min01_e/mindecl_trips_e.htm)

- d. The effect of the provisions in the TRIPS Agreement that are relevant to the exhaustion of intellectual property rights is to leave each member free to establish its own regime for such exhaustion without challenge, subject to the MFN and national treatment provisions of Articles 3 and 4.

6. We recognize that WTO members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPS Agreement. We instruct the Council for TRIPS to find an expeditious solution to this problem and to report to the General Council before the end of 2002.

7. We reaffirm the commitment of developed-country members to provide incentives to their enterprises and institutions to promote and encourage technology transfer to least-developed country members pursuant to Article 66.2. We also agree that the least-developed country members will not be obliged, with respect to pharmaceutical products, to implement or apply Sections 5 and 7 of Part II of the TRIPS Agreement or to enforce rights provided for under these Sections until 1 January 2016, without prejudice to the right of least-developed country members to seek other extensions of the transition periods as provided for in Article 66.1 of the TRIPS Agreement. We instruct the Council for TRIPS to take the necessary action to give effect to this pursuant to Article 66.1 of the TRIPS Agreement.

## ANNEX C:

### DOMESTIC SUPPORT IN AGRICULTURE; THE BOXES

In WTO terminology, subsidies are generally identified by “boxes” which are given the colors of traffic lights: green (permitted), amber (slow down — i.e. be reduced), red (forbidden). In agriculture, things are, as usual, more complicated. The Agriculture Agreement has no red box, although domestic support exceeding the reduction commitment levels in the amber box is prohibited; and there is a blue box for subsidies that are tied to programs that limit production. There are also exemptions for developing countries (sometimes called an “SDT box”, including provisions in Article 6.2 of the agreement).

#### AMBER BOX

All domestic support measures considered to distort production and trade (with some exceptions) fall into the amber box, which is defined in Article 6 of the Agriculture Agreement as all domestic supports except those in the blue and green boxes. These include measures to support prices, or subsidies directly related to production quantities.

These supports are subject to limits: “de minimis” minimal supports are allowed (5% of agricultural production for developed countries, 10% for developing countries); the 30 WTO members that had larger subsidies than the de minimis levels at the beginning of the post-Uruguay Round reform period are committed to reduce these subsidies.

The reduction commitments are expressed in terms of a “Total Aggregate Measurement of Support” (Total AMS) which includes all supports for specified products together with supports that are not for specific products, in one single figure. In the current negotiations, various proposals deal with how much further these subsidies should be reduced, and whether limits should be set for specific products rather than continuing with the single overall “aggregate” limits. In the Agriculture Agreement, AMS is defined in Article 1 and Annexes 3 and 4.

#### BLUE BOX

This is the “amber box with conditions” — conditions designed to reduce distortion. Any support that would normally be in the amber box is placed in the blue box if the support also requires farmers to limit production (details set out in Paragraph 5 of Article 6 of the Agriculture Agreement).

At present there are no limits on spending on blue box subsidies. In the current negotiations, some countries want to keep the blue box as it is because they see it as a crucial means of moving away from distorting amber box subsidies without causing too much hardship. Others wanted to set limits or reduction commitments, some advocating moving these supports into the amber box.

## GREEN BOX

The green box is defined in Annex 2 of the Agriculture Agreement.

In order to qualify, green box subsidies must not distort trade, or at most cause minimal distortion (paragraph 1). They have to be government funded (not by charging consumers higher prices) and must not involve price support.

They tend to be programs that are not targeted at particular products, and include direct income supports for farmers that are not related to (are “decoupled” from) current production levels or prices. They also include environmental protection and regional development programs. “Green box” subsidies are therefore allowed without limits, provided they comply with the policy-specific criteria set out in Annex 2.

In the current negotiations, some countries argue that some of the subsidies listed in Annex 2 might not meet the criteria of the annex’s first paragraph — because of the large amounts paid, or because of the nature of these subsidies, the trade distortion they cause might be more than minimal. Among the subsidies under discussion here are: direct payments to producers (paragraph 5), including decoupled income support (paragraph 6), and government financial support for income insurance and income safety-net programs (paragraph 7). Some other countries take the opposite view, namely, that the current criteria are adequate and they might even need to be made more flexible to take better account of non-trade concerns such as environmental protection and animal welfare.

More available at:

[http://www.wto.org/english/tratop\\_e/agric\\_e/agric\\_e.htm](http://www.wto.org/english/tratop_e/agric_e/agric_e.htm)

[http://www.wto.org/english/tratop\\_e/agric\\_e/negoti\\_e.htm](http://www.wto.org/english/tratop_e/agric_e/negoti_e.htm)

## CHAPTER 4: The Arab countries and the Euro-Mediterranean Partnership

### FROM THE BARCELONA PROCESS TO THE NEIGHBORHOOD POLICY

The Euro-Mediterranean Partnership (EMP) was launched through the Barcelona Process in 1995. It seeks a comprehensive approach through integrating three main tracks: political dialogue and security, economic relations, and cooperation in social, cultural and human matters. Under the EMP, Algeria, Tunisia, Morocco, Egypt, Jordan, Lebanon, and Palestine have each signed an association agreement with the EU, while negotiations with Syria are still incomplete (as of July 2007). The association agreements were introduced to replace the cooperation agreements signed with the European Economic Communities (EEC) in the 1970s.

To become operative, the agreement must be ratified by the European Parliament and the parliaments of all EU member-states. By 2010,<sup>54</sup> a free trade area between all members of the EMP (15 EU member-countries originally in the agreement, 12 new EU member-countries after its enlargement, and 10 Southern Mediterranean countries) is to be established.

The EU approach to trade policy is based on the common model of trade liberalization, which links trade to growth, economic reform, and attraction of FDI. The EU trade agreements lack liberalization of the agricultural sector and free movement of persons. The EU links liberalization of trade flows with substantial amounts of aid cooperation funds, which are administered through the Middle East Development Assistance (MEDA) program.

Building on the association agreements as well as the Barcelona Declaration is the European Neighborhood Policy (ENP), which was initiated in 2004 as a part of the framework of the EU enlargement. Its vision is to create a “ring of countries, sharing the EU’s fundamental values and objectives”.<sup>55</sup>

Ten years after the launch of the 1995 Barcelona Convention, the ENP sets new partnership mechanisms, further concentrating on enhancing the process of establishing a free trade zone. The keystone of the ENP is the set of Action Plans that are signed bilaterally between the EU and its neighbors. The Action Plans are blueprints for political, economic, and social reform that are needed to enhance cooperation with the EU. In this regard, the ENP marks a shift from the multilateralism of the Barcelona Process to bilateralism in the EU’s relations with its neighbors.

One of the key concepts of the ENP is differentiation. Each Action Plan is developed separately, taking into account the particularities of each country and its relationship with the supranational body. So far, Action Plans have been signed with Egypt, Jordan, Lebanon, Morocco, the Palestinian

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<sup>54</sup> The date of 2025 seems to be the new aim of EU to establish an economic community through a series of deeper FTA; this is according to its non-paper “ENP- A Series of Deep FTAs as a Path towards a Neighborhood Economic Community (NEC)” (COM(2006)726 final of 4 December 2006)

<sup>55</sup> Communication from the Commission on the ‘European Neighborhood Policy – Strategy Paper’, COM (2004) 373, p. 5.

Authority, and Tunisia. These are based on governmental work plans that do not appear to take into consideration assessments done of the ten year process. Accordingly, it does not incorporate new measures for enhancing the political, social, and development dimensions of the partnership.

The Action Plans are much broader than the association agreements; beyond the movement of goods they address services, movement of capital, TRIPS and Singapore issues. Negotiations have recently been launched to expand to agricultural and fisheries coverage as well as services and establishment of firms. Over time, the implementation of the ENP Action Plans, particularly on regulatory areas, is expected to prepare the ground for the conclusion of a new generation of “deep and comprehensive FTAs” with all ENP partners.

In addition to bilateral (vertical) trade liberalization with Europe, the Mediterranean Partners are committed to implement free trade among themselves ("horizontal" or South-South integration). For example, both the Arab Maghreb Union (including Morocco, Algeria, Tunisia, Mauritania and Libya) and more recently the Aghadir Agreement signed in February 2004 by Morocco, Tunisia, Egypt and Jordan are horizontal trade agreements. The Aghadir agreement was initiated with the objective of enhancing the capacities of Arab countries to access the potential benefits of the Euro-Mediterranean partnership. [Further horizontal trade agreements in the Arab region are addressed in Chapter six.]

**Box J: Arab Countries’ Association Agreements with the EU**

<b>Countries</b>	<b>Kind of agreement</b>	<b>Date of signature</b>	<b>Ratification</b>	<b>Adoption of Action Plans (ENP)</b>	<b>Financial support granted under MEDA II (2000-2006, millions of euros)</b>
Algeria	Association Agreement	Signed on 04.22.02	In process	Negotiations to come	
Egypt	Association Agreement	Signed on 06.25.01	In force since 06.01.04	2007	193.7
Jordan	Association Agreement	Signed on 11.24.97	In force since 05.01.02	2005	204
Lebanon	Association Agreement	Signed on 06.17.02	In force since 03.01.06	2007	74
Morocco	Association Agreement	Signed on 02.26.96	In force since 03.01.00	2005	812
Palestinian Authority	Interim Association Agreement, awaiting an Association Agreement	Signed on 02.24.97	In force since 07.01.97	2005	



Syria	Association Agreement	Negotiations concluded	European Council to decide on signature	Negotiations To come	93
Tunisia	Association Agreement	Signed on 07.17.95	In force since 03.01.98	2005	544

## THE PROJECTED ECONOMIC IMPACT OF THE EMP

Most Mediterranean partner countries accessed the EU market through preferential schemes administered before the association agreements were negotiated. However, what stops them from accessing the European market is often supply-side barriers and not recipient-side barriers. Accordingly, it is projected that these countries will suffer macro-economic deterioration and their trade balance will be negatively impacted due to the FTA with the EU. The countries will also likely suffer budgetary and employment vulnerability as well.

The sustainability impact assessment of the Euro-Mediterranean Free Trade Area that was commissioned by the EU Commission<sup>56</sup> showed that there will be a negative impact on the Gross Domestic Product (GDP) growth rate in developing countries, strong negative impacts on employment, human poverty levels, as well as the human development index.<sup>57</sup> Furthermore, the EU partnership has not helped Southern countries to face the challenge of employment. There has been progress in reduction of inflation, but, development objectives have not been served. Moreover, there has been no progress in purchasing power parity for the ten Southern Mediterranean partners nor increase in FDI flows.<sup>58</sup>

Economically, the EMP only addresses market access. It remains unclear whether this agreement will create opportunities for economic growth and development for non-EU states beyond market access.<sup>59</sup> The fact that economic assistance, both financial and technical, from the EU to the partners

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<sup>56</sup> For more information on this assessment, see the Sustainability Impact Assessment and Trade web portal of the Institute for Development Policy and Management at the University of Manchester: <http://www.sia-trade.org/>. As of present, 2 of the 3 phases of this large project have been completed.

<sup>57</sup> The Human Development Index (HDI) is a summary measure of human development that is published by the United Nations Development Programme (UNDP). The HDI provides an alternative to the common practice of evaluating a country's progress in development based on per capita Gross Domestic Product (GDP). The HDI is the signature trademark of the Human Development Report (HDR), an independent report commissioned by the UNDP that is written by a team of scholars, development practitioners and members of the Human Development Report Office of UNDP

(Reference from [http://www.eoearth.org/article/Human\\_Development\\_Index](http://www.eoearth.org/article/Human_Development_Index)).

For more information on the HDRs, check <http://hdr.undp.org/>

<sup>58</sup> Martín, Iván; "The Euro-Mediterranean Trade Policy in the Arab Region and its Social Impact", the International Institute for Arab and Muslim World Studies (Spain), presented at the regional workshop on free trade agreements in the Arab region, organized by the Arab NGO Network for Development and the Third World Network (Cairo, December 2007)

<sup>59</sup> Hoekman, Bernard. (July 2005). "From Euro-Med Partnership to European Neighborhood: Deeper Integration A La Carte and Economic Development." Egyptian Center for Economic Studies. Working Paper.

has primarily been geared towards strengthening Euro-Med Partnership implementing institutions, regulations, and policies towards EU norms and standards, indicates that the Euro-Med Agreement is more about integration. Integration does not necessarily mean partners will harmonize their laws to replicate those of the EU. Integration, however, still places the EU in the driver seat for policy-making in the region. While there is space for partner countries to develop their own laws and institutions, they are doing so in response to the EU. It would be hard to show that laws and institutions initiated in response to integrating with European standards, policies and institutions are necessarily helpful for the particular problems of the communities within each partner state.

Moreover, the EMP is not only an economic agreement about regional trade but it also contains specific chapters addressing political, security and socio-cultural issues which are just as significant as economic issues.<sup>60</sup> The Euro-Med Agreement falls under the EU's broader Neighborhood Policy which is an ambitious policy encompassing political economic and cultural cooperation. Its foundation is a basic principle of a commitment to common "values": democracy, rule of law, good governance and respect for human rights.<sup>61</sup> Regardless of distinctions between "economic" and "non-economic", the Neighborhood Policy integrates non-EU partners into EU norms, whether it outlines economic harmonization or common political values. In other words, non-EU partners may not necessarily implant EU laws domestically but must, in the least, respond to the specific points of the EU's agenda of economic integration and political values. Domestic social, economic, and political institutions in Arab countries will be affected by these changes in ways that remain to be understood.

## NON-AGRICULTURAL INDUSTRIES

Before the association agreements, the cooperation agreements of the 1970's offered a preferential treatment to the agricultural and industrial products entering the EEC and originating in partner countries. Association agreements were then constituted with the primary aim of solidifying these preferences in a legal framework through the establishment of a free trade area. This made exclusive treatment compatible with the most favored nation clause of the WTO Agreement. The association agreements stipulated that EU imports of industrial products from partner countries were exempt

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103. PP. 12 & 15; Martin, Will. "Assessing the Implications for Lebanon of Free Trade with the European Union," in Hoekman, B.M., & Zarrouk, J. (2000). *Catching up with the competition: trade opportunities and challenges for Arab countries*. Ann Arbor, University of Michigan Press. P. 103ff.; and Rutherford, Thomas F., et al., "A FTA Between The European Union and a Representative Arab Mediterranean Country: A Quantitative Assessment", in *Catching up with the competition: trade opportunities and challenges for Arab countries*. Ann Arbor, University of Michigan Press. P. 145ff; for a fairly recent provisional study see Cherfane, Carol Chouchani., et al. (Dec. 2005). "Economic, Social and Environmental Impact of the Euro-Mediterranean Free Trade Area." Presented at the Economic Research Forum 12<sup>th</sup> Annual Conference, Cairo, Egypt.

<sup>60</sup> As an example, see Chairman's Statement. (Nov. 28, 2005). Council of Europe, 10<sup>th</sup> Anniversary Euro-Mediterranean Summit. Press Release. Available at [http://ue.eu.int/uedocs/cms\\_Data/docs/pressdata/en/er/87164.pdf](http://ue.eu.int/uedocs/cms_Data/docs/pressdata/en/er/87164.pdf) (last visited May 5, 2006); see also Catalunya, Generalitat de. (2005). "Dossier Ten Years After The Barcelona Process: Assessment and Perspectives." Available at [www.gencat.net/relacions\\_exteriors/bcn10/eng/pdf/dossier.pdf](http://www.gencat.net/relacions_exteriors/bcn10/eng/pdf/dossier.pdf).

<sup>61</sup> Hoekman, Bernard. (July 2005). "From Euro-Med Partnership to European Neighborhood: Deeper Integration A La Carte and Economic Development." Egyptian Center For Economic Studies. Working Paper 103.

from any quantitative restrictions, customs duties, as well as any other charge having an equivalent effect.

For EU industrial exports, schedules were set establishing progressive decrease of partner countries' customs duties. While capital goods are generally exonerated since the entry into force of the agreements, non-locally produced goods and raw materials are exonerated after a few years. However, locally produced goods are protected over the longer term.

Safeguard measures are permitted under this system for new and infant industries or sectors undergoing restructuring or experiencing serious difficulties, particularly where those difficulties would entail severe social problems.

The treatment granted to the agro-industrial products in the agreements is based on a principle of partition between the agricultural component and the industrial component. A progressive dismantling was decided only for the industrial component. The agricultural component remains with normal tariffs.

Among the proposed benefits of the ENP is boosting trade via the elimination of both tariff and non-tariff barriers. However, it remains unclear how barrier removal will affect trade exchange and any expected benefits as implementation has been difficult due to the fact that meeting EU standards has been complicated in Southern and Eastern Mediterranean countries.

For example, the textile and clothing industry is the main industrial employer (particularly of women) in the Arab countries. Yet, Arab exporters are encountering difficulty in competing in the post-agreement on textiles and clothing system. Arab countries need more flexible rules of origin which permit wider sourcing of fabrics within the Euro-Med context.

## AGRICULTURE

The association agreements establish that the European Community and its partner countries shall gradually implement greater liberalization of their reciprocal trade in agricultural and fishery products. In fact, an asymmetrical relation was set through various lists of products and schedules. From the EU side, exonerations of duties for agricultural imports were set, with quota limitations on some imports. In return, Arab partner countries granted customs duties reductions just for a few products from the EU and only with restrictive quotas.

The objectives set by the Action Plans regarding the new generation FTAs to be negotiated with the Southern partner countries show that in the future the EU will try to continue the liberalization of agricultural products and processed agricultural products.

It is worth noting that while the EU engages in negotiations on tariff and non-tariff barriers for access of agricultural products, it does not cover the issues of agricultural subsidies that the EU offers within its Common Agricultural Policy. The global financial support from the EU to its agricultural sector

will amount to nearly €371 billion over the period 2007-2013 making the EU agricultural policies more akin to protectionist measures.<sup>62</sup>

The intended measures for agricultural trade liberalization present both opportunities and threats for agriculture in Southern Mediterranean partner countries. The opportunities would be exploited mostly by commercial farmers, while the small-scale traditional farming sector would face the heaviest threats. The fall of prices consequent to the competition from the EU highly subsidized exports will reduce the ability of small farmers to compete in the newly opened markets. Meanwhile, the increased export opportunities are expected to favor commercial farms rather than small-scale farmers. In those areas where agriculture is primarily commercial, employment should rise. The overall result is expected to be a fall in rural employment, leading to higher poverty levels, and increased migration to the cities in search of alternative livelihoods.

In their negotiations with the EU, Arab countries should seek agreements that provide meaningful access to markets for small agricultural producers, including technical and financial assistance to help them meet the set standards and requirements. Moreover, the principle of asymmetry<sup>63</sup> in the negotiations on agriculture is crucial for Arab countries and must remain as it was established in the previous agreements.

## SERVICES

Regarding services, the association agreements only reaffirmed the commitment of members to fulfill their obligations under the WTO GATS, with the exception of those who were not WTO members by the time the association agreements were signed.

Furthermore, the Action Plans present the process towards the conclusion of bilateral agreements on trade in services. They stress the need to enhance the exchange of experience and know-how on general or sectoral legislation with a view towards convergence of the partner countries' system with the EU's regulatory framework in the services area. During the Euro-Mediterranean Trade Ministerial Conference in Marrakech in March 2006, eight Eastern and Southern partner countries agreed to open negotiations on the liberalization of trade in services and the right to establishment.

Through this process, developing countries could be losing opportunities to build their services sectors through premature liberalization. Arab countries have a lot of potential in the services sector as well as for common services projects among them. These are threatened by the increasing pace of bilateral agreements signed by Arab countries, since it gives way for multinational companies to control the market before Arab companies are able to mature and effectively compete with international organizations. Furthermore, Arab countries could be losing the safeguards that were

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<sup>62</sup> European Commission. (May 27, 2006). "Inter-institutional Agreement on budgetary discipline and sound financial management." Available at <http://europa.eu/scadplus/leg/en/lvb/l34020.htm>.

<sup>63</sup> The principle of asymmetry refers to the variance or differentiated obligations undertaken by members to an agreement based on certain considerations such as their level of development

available within the multilateral system through agreeing to a negative-list approach.<sup>64</sup> In light of this, the prospects of inter-Arab economic cooperation in services such as transportation, electricity, energy, information and communication technology, banking and others will be limited.

Furthermore, in discussing liberalization of services, it is essential to differentiate between basic and strategic services and other commercial services, while ensuring that any agreement will not threaten the rights of citizens in Southern Mediterranean countries to have access to quality services. This is of special importance given that Southern Mediterranean countries are already suffering from negative social impacts due to the cuts in government budget revenues resulting from trade liberalization. In other words, while access to modern producer services can assist poor people in increasing their productivity, concessions in this area should not undermine the ability to provide the people with universal services essential for human development, such as health, energy, water/sanitation and education. Measures to defend financial stability, cultural identity, and effective control of energy resources should be undertaken as well.

#### CONCERNS ABOUT THE NEW ENP ORIENTATIONS

- Within the framework of moving into the ENP, constituencies in Southern Mediterranean Countries, especially civil society organizations, were looking forward towards a mechanism that could enhance progress on human rights, sustainable development, and democratic reform initiatives. However, the trade and economic liberalization tracks have been continuously dominating the partnership process and often hindering progress on other tracks; political and social components were intentionally compromised for the sake of enhancing economic liberalization and FTAs.
- Post the ENP, the EU considers deepening the trade agreements with the Mediterranean countries, as reflected upon through the communications by the European Council and Parliament on “Strengthening the ENP” (dated 4 December 2006) and non-paper on “ENP- series of deep FTAs as path towards a Neighborhood Economic Community” (dated April 13<sup>th</sup> 2007).
- Given the new approaches that the EU has been outlining in documents such as the above in addition to the Commission’s Communication on “Global Europe: Competing in the World” prepared as of October 4<sup>th</sup> 2006, the EU seems to be looking solely at its own corporate and economic agenda; most of its suggestions and plans, so called partnership initiatives, remain disconnected from the socio-economic reality of its partner countries. Moreover, they rely on the Action Plans, which themselves are still a questionable tool and need evaluation in regards to how much space they make available for real

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<sup>64</sup> The negative list approach to negotiations means that countries choose which services they are not going to negotiate on, while all other services will be included in the agreement; whereas the positive list approach implies countries specifically designate which services will be included in the agreement, while the undesignated remains out of the agreement.

participatory processes that reflect the needs of communities in the Eastern and Southern Mediterranean countries.

- The pace of North-South integration is continually advancing, even though South-South economic and trade integration is far from being fully realized. However, South-South integration should be a pre-requisite for further FTA negotiations between North and South countries, which was what the EU had previously shown in its policy towards the Aghadir agreement.
- Furthermore, trade sustainability impact assessments should be carried out before and after the FTAs are signed, and their results should be integrated in the process of the ENP negotiations. The results of the trade sustainability impact assessment that was commissioned by the EU Commission should present basis for reforming the partnership agreement and its mechanisms and not deepening the trade liberalization commitments. This assessment shows that on the short and medium terms, Southern Mediterranean partner countries will be negatively impacted in regards to employment, average wages, and government spending on social services. Any new propositions should work towards addressing these challenges.
- It is assumed in EU publications that a context based on dismantling tariffs and adopting a common regulatory core of standards will stimulate trade and investment. However, this is not an automatic process and results of trade liberalization are directly dependent on each country's level of development. That said, however, the EU invites Eastern and Southern Mediterranean partner countries to adopt and harmonize with an already decided framework of conditions, regulations, and standards of the EU. This framework is not developed in partnership between Northern and Southern partner countries and does not take into consideration the development stages of Southern Mediterranean partner countries. It also does not consider the financial and human resources that are needed to lead the reform process towards such a harmonization, while at the same time Southern partner countries face high budget constraints and loss of revenues due to the trade liberalization agreements themselves.
- Within this context, it is not clear what further deepening of the trade agreements between the EU and the Southern Mediterranean countries would bring the latter that they are not already receiving in regards to their relationship with the EU. However, it is clear that the ENP would bring much deeper commitments as well as WTO-plus provisions that would limit policy space of the developing Southern Mediterranean countries and make it harder for them to commit to and implement the association agreements. The EU focuses on promoting a network of FTAs that would considerably facilitate flow of goods, capital, and services in the neighborhood area, while nothing is mentioned on the movement of people which is of highest interest to Southern Mediterranean countries.

**BOX K: EU ASSOCIATION AGREEMENTS  
CASE EXAMPLES (LEBANON, EGYPT, AND ALGERIA)**

**Lebanon<sup>65</sup>**

In order to accelerate the implementation of the trade aspects of the association agreement, the Interim Agreement on Trade and Trade-Related Provisions between Lebanon and the EU was signed on July 22, 2002 and entered into force on March 1, 2003.

The Interim Agreement formally launched a twelve-year transition period. Under the agreement, all tariffs and quotas on Lebanese agricultural products entering the European Union would be eliminated immediately upon entry into force of the agreement, with several exceptions which are considered "sensitive" areas in EU agricultural production. These exceptions are listed in Protocol 1 of the Interim Agreement, which outlines the trade conditions for all agricultural products originating in Lebanon. Similarly, Protocol 2 of the Agreement sets the trade conditions for EU agricultural products. Lebanon should start implementing all its commitments to tariff reductions, as set out in the Interim Agreement within 5 years after the entry into force of the agreement, at the end of which, both the Lebanese government and the EU would assess the situation in order to determine measures in accordance with the stated intent of achieving trade liberalization between Lebanon and the EU.

For processed agricultural products, the EU has committed to an immediate elimination of duties on a large number of products originating from Lebanon, on entry into force of the Agreement. On the other hand, Lebanon has promised to completely remove duties on 120 product groups from the EU and to cut tariffs by 30% on 100 other product groups. This trade reduction will happen gradually between year 6 and year 12 of the transition period.

With regard to industrial products, Lebanon has enjoyed duty-free and quota-free market access to the EU market since the Cooperation Agreement of 1978. The Interim Agreement sets forth a process of gradual reduction of Lebanese tariffs on EU industrial goods beginning in year 6 after the entry into force of the agreement and to be completed by year 12.

In parallel, the EU has committed to offering financial assistance to Lebanon in areas of particular importance to accommodating the provisions of the association agreement; these include the modernization of the customs authority, competition laws, reinforcement of the administrative structure necessary for the agreement's implementation and for WTO accession, improvement in intellectual property protection, and capacity building in relation to standards and norms. From 1995 to 2000, Lebanon received over 150 million Euros in grants under the MEDA program, the EU's main funding arm for the Euro-Med Partnership. In the same vein, the MEDA II program for 2000-2006 aims to continue facilitating the transition towards free trade. As part of the National Indicative Program 2002-2004, the EU has earmarked €30 million to support the development of the Lebanese trade sector.

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<sup>65</sup> Based on background paper by Dr. Karim Makdessi, of the American University of Beirut, which he prepared for ANND in June 2006 for the purposes of its program on socio-economic impact of trade liberalization on Lebanon.

## Egypt<sup>66</sup>

Since 1977, Egypt has had an economic and financial cooperation agreement with the EU, whereby it was offered custom free access of its industrial products to the EU market, with certain quotations within the multi-fiber agreement on textiles and garments. With the accession to the WTO, the enforced reciprocity necessitated moving from the cooperation agreement to an FTA/association agreement as a part of the Barcelona process.

The EU is the most important trading partner for Egypt. In the mid 1990s, more than 42% of Egypt's exports and imports were with the EU, while it decreased to 28% by the beginning of 2003. The negotiations between the EU and Egypt extended from 1995 until 1999, and in 2001 the agreement was signed and its implementation started in 2004. Studies by Egyptian scholars and by the World Bank (covering Jordan, Egypt, Tunisia, and Morocco), which were conducted before the signing of the agreement, showed that the impact on Egypt will not be as negative as expected, especially not as much as the negative impact of the agreement on Tunisia and Morocco. This was explained by the fact that the Egyptian exports of garments and textiles were in a category that differs from that of Chinese exports.

The economic and financial agreement necessitates that Egypt remove the tariffs on the industrial products over a period of 12 years. This period is extended to 16 years for cars. Egypt had free access to the EU market given the previous preferential agreement it had with the EU. Better market access for Egyptian textiles in the EU was not expected from the agreement, given this area was subject to a quota similar to that adopted under the multi-fiber-agreement, which was dismantled worldwide by 2005.

There are four lists based on which liberalization is implemented through the agreement: first, there is one for preliminary resources/raw materials. These are liberalized starting the first year of the agreement and extending over four years. A second list for the intermediate resources and its liberalization starts in the fourth year and extends over six years. A third list is for the final products; its liberalization starts the sixth year and extends over eight years. A fourth list is for cars, on which liberalization starts the eighth year and extends over eight years.

The association agreement does not cover agricultural and processed agricultural products, except for an increase in some quotations. Under the agreement, the industrial component in the processed agricultural products became tariff-free but the agricultural component remained under protection. In addition, labor exchange was not included in the agreement. GATS allows the movement of labor within Mode 4 in order to take upon a certain temporary job. But Egypt still did not exploit these conditions. Both the services and IPR areas under the association agreement with the EU are referenced in what came within the WTO and does not give any additional preferences to Egypt.

Aid associated with the agreement is administered through the MEDA I and MEDA II programs. This processes does not demand from the EU any support for transfer of technology or support for sectors that improve Egyptian technological capacities. Accordingly, the efficiency, objectives, and usage of these resources are under question. Egypt receives financial aid to improve and develop industrial and human resources. Part of

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<sup>66</sup> Based on the presentation by Dr. Hanaa. Khayr Deen from Cairo University on "The Euro-Med partnership and its relation with Aghadir Agreement; the Egyptian experience with the Euro-Med association Agreement" during a workshop on FTAs and the Arab region held in Cairo, Egypt, Dec. 2006.



this aid goes to environmental issues and transfer of technology.

Financial support within the agreement aims at:

- Supporting the reforms needed for trade liberalization and modernization of the economy
- Supporting the private sector
- Improving human resources
- Enhancing structural adjustment and privatization
- Supporting the national social fund for development and education system reform
- Enhancing research and development

In general, the association agreement will not significantly benefit Egypt, since Egypt has already benefited from market access to the EU before the association agreement. It is worth noting that the EU is very strict in regards to its health policies, which necessitates much effort in awareness raising among the Egyptian producers and agricultural farmers in order to avoid having related regulations used as non-tariff barriers, thus limiting Egyptians exports to the EU.

### **Algeria<sup>67</sup>**

The association agreement between Algeria and the EU is standard; it gives twelve years – until 2017 – to transition to zero level tariffs between the two countries. Concerns are mounting regarding Algeria’s ability to face the challenges resulting from the trade liberalization process, especially when national sectors and industries are neglected.

Algeria exports 58% of its products to the EU and 59% of its imports come from the EU. The EU exports less than 1% of its total exports to the Algerian market. Yet, the trade balance between the two is positive for Algeria, due to the oil imports, which make-up more than 98% of Algeria’s exports to the EU. It should be noted that Algeria is the only country that has a positive trade balance with the EU. Algeria’s neighboring countries have relative heterogeneity among their exports, while Algeria is increasingly becoming a mono-exporter of oil.

The monetary resources that oil trade makes available threaten the Algerian economy. The economy is focused on hydrocarbons, which make up 98% of exports, 78% of government tax revenues, and 40% of GDP. Moreover, the country’s development process over the past ten years was highly linked to the prices of oil.

Despite high revenues from oil exports, Algeria has not been able to reflect related benefits within a sustainable development process. The structural adjustment policies that were adopted in preparation for the association agreement did not benefit the Algerian economy due to the weakness of the public institutions. Moreover, liberalization policies and strategies were weakly selected and were not clear on their purpose.

Tariffs were reduced based on the advice of the WB and the IMF to levels that are the

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<sup>67</sup> Based on the presentation by Mr. Youcef Ben-Abdallah, of the Center for Applied Development Economics Research in Algeria, entitled, “Risks Related to the FTA on Algeria” during the workshop mentioned above.

lowest in the region, except for those in Turkey and Israel. Average industrial tariffs in Algeria are at 11% and reach a maximum of 30% while tariffs in Tunisia average around 20%. Accordingly, the industrial sector in Algeria has witnessed a de-industrialization process, whereby its contribution to GDP decreased from 16% to 6% over that period of tariff cuts. Moreover, most of the industrial sector is privately owned, except for oil and gas. 90% of the businesses in Algeria are family-based and small or medium sized; they do not have the capacity to compete at the international level. Thus, the Algerian economy is prematurely liberalizing while the private sector still cannot compete on the international level.

## CHAPTER 5: ARAB COUNTRIES AND FTAs WITH THE UNITED STATES<sup>68</sup>

In addition to increasingly engaging in the WTO, Arab countries have been joining in a multitude of regional and bilateral FTAs, among of which are FTAs with the United States. Jordan (2001), Morocco (2005), Bahrain (2006) and Oman (2006) have already embarked on FTAs with the United States. The United Arab Emirates (UAE) and Egypt are also actively seeking FTAs with the USA.

Current bilateral FTAs with the US are different from any past US FTAs. The roots of these agreements stem from the neoliberal policies imposed by the Reagan administration. While the US Congress largely rejected these policies, Reagan tried to push them through the State and local levels. Reagan's administration tried to use the GATT, the North American FTA (NAFTA),<sup>69</sup> and later the WTO Uruguay round to deliver these agreements.

Corporate interests in FTAs increased as large corporations realized that they can use FTAs as power instruments for their own interests. These corporations went on to fund the elections of consecutive US presidents coming to office. Accordingly, this agenda was pushed under the disguise of fighting poverty and supporting the global business agenda. However, this same agenda held interests contrary to free trade, such as pushing extreme patent systems and other protectionist processes.

### THE US APPROACH TO FTAs

Developed countries, especially the United States, are increasingly moving towards bilateral FTAs through which they try to achieve the interests that they failed to secure in the multilateral system. These bilateral agreements often exceed trade in goods and include investment, government procurement, and competition, all of which are not part of WTO negotiations. Also, bilateral agreements try to eradicate escape clauses and flexibilities that developing countries can use under the WTO, such as in the TRIPS Agreement,<sup>70</sup> services, manufactured goods, and agriculture.

With the impasse in the WTO, the FTAs are also expanding in new areas including environmental and labor rules. They are increasingly taking the form of economic, social, and environmental agreements. Labor and environmental groups lobbied to get these standards in the WTO, but developing countries perceived that these can potentially be used as protectionist tools by developed countries. Ultimately, NGOs in the global South worked to raise the awareness of their governments on this issue and stopped these standards from entering the WTO rules. In the NAFTA agreement,

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<sup>68</sup> The preparation of this chapter have benefited significantly from the presentations given during the regional workshop on free trade agreements in the Arab region, which was organized by the Arab NGO Network for Development and the Third World Network (Cairo- December 2006)

<sup>69</sup> NAFTA is the FTA between Canada, the United States, and Mexico which came into effect in January 2004.

<sup>70</sup> For example, FTAs with the US forces developing countries to sign TRIPS-plus agreements which include the WIPO Copyright Treaty, the WIPO Performance and Phonograms Treaty, the Patent Cooperation Treaty, the Patent Law Treaty, the Trademark Treaty, and Union for the Protection of New Varieties of Plants (UPOV).

these standards were incorporated through a separate chapter and not in the heart of the market access chapter. Increasingly, these standards are being added to bilateral FTAs.

The major trading powers, notably the US and the EU, and more recently Japan and China are driving this bilateral FTA process, each following its own “template” of objectives. The “fear of exclusion” has created a chain reaction among developing countries seeking FTAs with major trading countries. Accordingly, in return for what appears to be rather marginal benefits, developing countries are making major concessions. These new neoliberal agreements will have a negative impact on human development greatly exceeding that of the WTO multilateral trade agreements. For instance, studies of NAFTA showed that the US model for FTAs failed, both economically and in relation to specific promises such as increased efficiency of the private sector, efficiency in prices, and increase in FDI.<sup>71</sup>

FTAs are also a tool for the US to enforce changes in domestic policies and secure guarantees for US corporations, which were not achieved through the WTO. The extreme components of the US FTAs, including investor rights, the top-down mandatory service sector liberalization, privatization and deregulation, the coverage of government procurement of goods and services, and the inclusion of competition policy all undermine developing countries’ ability to keep western-based super companies out of the local markets. For example, the IPR requirements in the FTAs go beyond what is required by the US constitution and the US courts. These extreme components are included in NAFTA and in all the US FTAs with Arab countries, although they appear to a lesser extent in the agreement with Jordan.

Currently, the US requires secrecy when it negotiates FTAs. Under the secrecy provision, the US may videotape the negotiations when they are taking place in the US. However, when negotiations are in other countries, the host country is not even allowed to audio-record the negotiations. Different states have taken different positions on this. For example, Columbia published the agreement in the newspapers while it was being negotiated, because it perceived that the agreement was very important and needed to be discussed at the national level. The Thai-US agreement text was leaked to the press and was posted on an internet webpage. In some countries, representatives from civil society and the private sector have been included in the negotiating teams to face the groups of advisors that the US includes in the negotiations.

It is important to highlight that the US is not going to give concessions on agriculture through an FTA; it cannot give these concessions outside the WTO and the multilateral process because domestic and export subsidies cannot be isolated per country and can only be negotiated within the WTO. In regards to industrial products, preferences on textiles -- which are the key area of interest for developing countries -- have been cut, due to the end of the preferential agreement under the WTO.

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<sup>71</sup> For instance, see the following reports published by Public Citizen: (Feb. 2005). “NAFTA’s Threat to Sovereignty and Democracy: The Record of NAFTA Chapter 11, Investor-State Cases, 1994-2005; Lessons for the Central America FTA.” Available at

<http://www.citizen.org/documents/Chapter%2011%20Report%20Final.pdf>;

Also, see (Oct. 2006). “Documenting the Evidence of the Failed NAFTA-WTO ‘Trade’ Model.” Available at [http://www.citizen.org/documents/FLYERO\\_1.pdf](http://www.citizen.org/documents/FLYERO_1.pdf).

Accordingly, developing countries will not gain in that area under the bilateral FTAs. In services, the US is asking for different treatment, whereby the lenient treatment under the positive list approach is eroded. In investment, an FTA overthrows the ability of a country to choose its investment policy regarding local and foreign investments. On government procurement, the choice that the government makes in purchasing products or building projects will be limited by the FTA, whereby this sector will be open up to the foreign suppliers and contractors. This consequentially has drastic implications on local policy. Thus, developing countries should not expect high returns from bilateral FTAs given the templates promoted by the US and other developed countries.

In essence, bilateral FTAs ultimately address more than just greater market access; they are also tools which constrain national policy of developing countries and thereby limit their potential for development.

The main aspects of a typical bilateral FTA include:

- Market access in goods
- Services in general
- Specific services chapters dealing with financial services and telecommunications
- IPRs
- Investment, government procurement, competition policy
- Labor and environmental standards and issues

Following is an explanation of implications that could result from various provisions under these chapters.

#### ON MARKET ACCESS FOR NONAGRICULTURAL PRODUCTS

Bilateral FTAs include extensive rights and obligations in regards to market access of non-agricultural products. In the Jordan-US FTA, tariffs were eliminated on manufactured products, creating a free trade zone between the two contracting parties.

A country signing a bilateral FTA with the US has to offer the products from the partner country treatment that is no less favorable than the treatment given to products from any other country. As a simple example, if Jordan gives preferential treatment to Japanese goods above products of other countries, then the FTA obliges Jordan to give goods coming from the US a similar treatment to that of goods coming from Japan. The entire lists of goods to be given this treatment in addition to the timeframe for implementation (modalities for reduction) are included in the annexes of the agreement. In case of Jordan, the agreement limits its ability to put export taxes or restrictions on goods destined to the US market. Many countries that export raw resources or unfinished products may not want to export them but to use them in local industries to the benefit of the local economy. These measures cannot be maintained under an FTA such as the one between the US and Jordan.

It is worth noting that developed countries have very low tariffs in the industrial sector, which average around 3% to 4%. In terms of manufactured products, the developed country markets are fairly open. Accordingly, a developing country will not gain a lot in terms of market access due to a bilateral FTA with the US, since its obstacles lie in its supply capacity and not tariff rates in the US market. However, some anomalies do still exist, including tariff peaks and tariffs escalations on a few products. Tariff peaks and escalations are used to protect processed goods as well; for example, tariffs on exports of cocoa from developing countries are very low, while it increases on processed cocoa, and becomes much higher on chocolate.

Countries that suffer most from this kind of liberalization are developing countries, especially in regards to textiles, clothing, and other labor intensive products. For example, the textile and clothing industry is the main industrial employer (particularly of women) in Arab countries. Arab exporters are encountering difficulty in competing now that the Agreement on Textiles and Clothing has expired. The margins of preferences accorded by FTAs do not seem sufficient to maintain a competitive edge against Asian suppliers, particularly when they are further handicapped by stringent rules of origin.

FTAs lead to clear costs when a country completely opens up its markets, given that tariffs revenues are lost. Tariffs revenues in many Arab countries make up between 10% to 30% of the governments' revenues. In addition, local markets lose policy space, especially in relation to the promotion of future imports. Furthermore, countries who are negotiating accession to the WTO but have already decreased their tariffs rates through a bilateral FTA will find it very hard to start their negotiations in the WTO from high tariffs rates. For countries that are already members of the WTO, commitments to lower tariffs through FTAs will undermine their capabilities of being defensive in the WTO negotiations. Such could be the case for Egypt, Jordan, and Morocco.

As the number of bilateral agreements signed by the US increases, the preferences accrued by partner countries become limited, while they face increasing competition from other countries with which the US has signed FTAs. Accordingly, for the sake of taking advantage of FTAs, it is more important to be a more efficient producer than to merely have market access.

The following conditions are important in regards to non-agricultural market access negotiations:

- It is important to have very targeted approaches in negotiating agreements on non-agricultural market access.
- Countries need to identify what products in which they are interested.
- If agreements are based on reciprocity, then countries should limit the agreement to a specific number of products in exchange for a certain number of products on which they can accrue preferences.
- The agreement should be time bound in order to allow partner countries to review the agreement and secure clear special and differential provisions which are internationally recognized in trade agreements.

- Governments should consult local trade unions and industries to identify where the strengths and weaknesses are of the local industrial sector.
- The government should have a well crafted industrial plan that can form the intellectual basis for negotiating any FTA.

## ON MARKET ACCESS FOR AGRICULTURAL PRODUCTS

In its bilateral FTAs, the US requires zeroing out of agricultural tariffs over time. The only thing that is negotiated is how long it will take to remove all tariffs. However, under the WTO, tariffs are cut to a certain negotiated level. In order to reflect on potential results from the agricultural provisions of bilateral FTAs with the US, it is worth looking at the results of NAFTA, which presents a 12-year data set of the actual implementation of the free trade model on agriculture. Within NAFTA, tariffs on corn in Mexico were completely removed by 1999, while the US subsidies for corn did not change. As a result, the volume of exchange of corn between the US and Mexico was huge. However, the human cost in Mexico included the displacement of 1.5 million farmer families over two years and the dramatic increase in debt, hunger levels, and the number of people with limited access to food. Except in years of draught, Mexico had never imported corn prior to the WTO and NAFTA implementation processes. When tariffs were cut, the US subsidized corn was much cheaper. Accordingly, the price paid to the Mexican corn farmer declined by 80% over two growing seasons. The agreement also removed price controls and set up the right of acquisition for foreign firms. Although jobs were created, the Mexican economy was not able to absorb the number of displaced farmers looking for new jobs. Furthermore, when China joined the WTO in 2001, half of the jobs created in Mexico left for China. Consequently, immigration from Mexico to the US increased by 60%. The income for farmers in all three countries of the NAFTA declined, while Mexico was the hardest hit.<sup>72</sup>

The US agricultural policy is set through the US Farm Bill. For negotiating purposes, the bill is set by Congress almost exclusively. A new farm bill was negotiated during 2007 within the US legislative process; the new bill is expected to last four to six years. To change the US Farm Bill, there is a need to change the whole model of approaching agricultural policy. This could include, for example, setting laws that do not allow countries to export subsidized products, in order to avoid dumping of low priced products in importing countries. These subsidized products would be channeled into domestic markets. Accordingly, this would allow countries with real comparative advantage to export in a greater manner.

## ON SERVICES

Most developing countries have offered very little in opening their services sectors under the WTO. As a result, some developed countries tried to change the rules of GATS; for example, the EU pushed for a threshold of 60% of sectors to be liberalized. This was defeated in the WTO. However, developed countries continue trying to push these thresholds through the bilateral FTAs. This is clear

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<sup>72</sup> For more information, see Carlsen, Laura (September 19, 2005), "The Price of Going to Market", IRC Americas [www.americaspolicy.org](http://www.americaspolicy.org)

in the US agreements with Singapore and Jordan. Under bilateral FTAs, the services obligations extend beyond the WTO obligations. Moreover, the positive list approach is replaced by the negative list approach [more on this is available in the services section under Chapter three, pages 29-31] under which countries lose the ability to protect sectors that may prove profitable in the future.

Finance and telecommunications are two specific services sectors on which the US is trying to remove all restrictions over related investments. This appeared in the US agreements with Chile and Singapore. As a result, US companies investing in telecommunications will be given the right to use the facilities of the existing local telecommunications infrastructure in the partner country. It is worth noting that in most developing countries, even if telecommunication services are privatized, the government could still have a big share and strong connections with the owning company and its policies. However, such arrangements are forbidden by US bilateral FTAs, under the argument of fair competition. Liberalization could be helpful if implemented in isolated sectors, but it should not be administered in a way that limits the country's ability to take policy decisions to protect its economy and financial situation in the future or in cases of crisis.

Moreover, while access to modern services can assist poor people to increase their productivity, concessions should not undermine the ability to provide universal access to services that are essential for human development, such as health, energy, water/sanitation and education. Measures to defend financial stability, cultural identity, and effective control of energy resources should be preserved, while export opportunities should be pursued, such as freer movement of service suppliers.

#### ON TRADE RELATED INTELLECTUAL PROPERTY

It is agreed that the TRIPs agreement sets the minimum standards of intellectual property protection; it incorporates the minimum levels of protection and the most-favored nation treatment, thus trying to harmonize the protection of intellectual property. The TRIPs agreement was supposed to be the last agreement of its kind and thus was expected to bring stability to the international IP system. Yet, pushed by developed countries, TRIPs represented the beginning of further multilateral initiatives in the field while developing countries believed it was the last multilateral effort of its type. Everything that extends beyond TRIPs is considered TRIPs-plus and enforces stronger requirements and provisions.

TRIPs-plus obligations enforced through bilateral FTAs, especially those with the US, come in the form of data exclusivity, extension of patent terms, restrictions on use of compulsory license,<sup>73</sup> limitations on oppositions, protection of data, and linking patents with registration.

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<sup>73</sup> A compulsory license allows a country that holds it to produce or import a generic form of a patented product. Under the Declaration on TRIPs Agreement and Public Health (Adopted on 14 November 2001) each Member has the right to grant compulsory licenses and the freedom to determine the grounds upon which such licenses are granted.



The FTAs with the US are the strongest on IPR and TRIPS-plus provisions; these tend to increase with each bilateral agreement. For example, the Jordan US FTA was signed in 2001 and the Oman FTA was signed in 2006. The copyright protection under the agreement with Jordan was based on the TRIPS requirements which average around 50 years, while under the agreement with Oman it was extended to 70 years. These are unprecedented extensions and the highest of their type. FTAs also impose protection of pharmaceutical new uses and limits definitions and flexibilities available through the TRIPS agreement.

#### TRIPS-plus provisions and patents

A patent is a 20 year monopoly on medicines. This means that none other than the patent owner can import the patented medicine, until the period is over or unless a country issues a compulsory license. Patents are usually granted to inventions that fulfill three criteria: novelty, inventive steps, and capability of industrial applications. Patents are enforced per country and based on application. Countries that do not have obligations of patents on medicines can make use of importing generic medicines.

The WHO report of the Commission on IPRs, Innovation and Public Health<sup>74</sup> stresses that “Bilateral trade agreements should not seek to incorporate TRIPS-plus protection in ways that may reduce access to medicines in developing countries.” That said, TRIPS-plus obligations abound within FTAs. Yet, the US FTAs, especially those signed by the Arab region, hold requirements that extend beyond what is incorporated in the TRIPs agreement. These include the following:

- The US bilateral FTAs require patents on new uses of existing products (i.e. new combinations, new uses of existing substances), resulting in a lot of secondary patents on medicines and negative implications on access to medicines through prolonging the monopoly over medicines.
- FTAs impose as well an obligation for no pre-grant opposition, which does not allow any opposition from groups before a medicine is granted a patent. This appears in the US agreements with Bahrain, Morocco, and Oman and it limits the ability of impacted communities to oppose patent granting.
- FTAs include patent term extensions in cases of delays that occur in granting the patent to the patentee. Extensions are required when the marketing approval process takes too long as well. The Ministry of Health is normally responsible for this process whereby it registers medicines based on examining its effectiveness including if it has extreme side effects and if it is made of good quality manufacturing. TRIPS-plus measures may push ministries to review medicines quickly and thus limit the thorough checks on medicines.

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<sup>74</sup> To access the report, please visit the WHO website: <http://www.who.int/intellectualproperty/en/>

- FTAs also include measures regarding data exclusivity. Given the technicality of such a topic, a brief overview follows. In the process of registering a product, a company presents to the Ministry of Health data of tests on animals and humans to be used in the decision whether or not to register the product. This data results from extensive clinical tests and is protected through an agreement under the WTO. Thus, it is protected from unfair commercial use. This data is undisclosed; it requires considerable effort to generate, and is about new chemical entities. When a generic version is developed, there will be no need for the generic producer to repeat all the clinical tests since it could be expensive, would take a long period of time, and could be considered unethical regarding the repetition of un-needed testing procedures. Accordingly, the generic medicine has to just show that the medicine is chemically the same as the original one and that it is of good manufacturing quality. This procedure is allowed under the WTO. However, under an FTA, the obligation on data exclusivity does not allow the reliance of the generic data on the clinical test data by the inventor of the medicine for a certain period of time (usually it takes 5 years, while the EU enforces 11 years of data exclusivity). Accordingly, a generic medicine cannot be produced over that period because it cannot be registered using the original clinical test data.

Accordingly, data exclusivity leads to the following situations and limitations (1) if a medicine has no patent anymore, normally the generic medicine can sell straight away. But if there is data exclusivity enforced, the generic medicines would not be used because it could not be registered except if a country ignores its registration rules. (2) If a medicine had a patent and data exclusivity is enforced within the patent term, compulsory licenses- to import or export medicine under cheaper terms- cannot be issued since data is needed to register the generic version of the medicine (3) if data exclusivity is enforced at the end of the patent term, and extends beyond the 20 years of patent term, the monopoly over the medicines will remain even after the patent time.

- The FTAs enforces linkages as well. In most countries worldwide, the Ministry of Health is the Drug Regulatory Authority that looks over efficacy, quality, and safety of medicines and grant marketing approval. It grants the marketing approval of a drug. This is separate from the patent office which looks over novelty, inventive steps, and industrial applicability to grant patents. The former includes mainly pharmacists and doctors while the latter consists of scientists and lawyers. The US FTA links the ability of granting marketing to the patent status of drugs. By enforcing linkages, the drug regulatory authority cannot grant marketing approval to a generic medicine during the whole patent period because they will have to wait for the expiry of the patent. Without the linkage requirement, generic versions should be able to register during a patent period because a generic medicine may have modified the medicine so it does not infringe the patent or it has been produced or imported under a compulsory license. Accordingly, linkages result in less competition from generic versions and renders compulsory licenses ineffective.

It is worth noting that the TRIPS-plus provisions lead to changes in national patent laws; accordingly, a country is obliged to apply them for patent applicants from all countries since it is very complicated to use different laws for different countries.

#### Impact on plant varieties and agriculture

The TRIPs agreement allows members to provide for the protection of plant varieties either through patents or through an effective *sui generis* system<sup>75</sup> or through any combination thereof. However, the US FTAs and EU bilateral agreements are pushing for ratification of UPOV (Union of Plant Varieties) 1991, which is primarily designed for the interests of commercial farmers systems of developed countries. UPOV 1991 restricts farmers' rights to exchange and share seeds. Until very recently, only a handful of developing countries have ratified UPOV 1991, while most of them have ratified UPOV 1998, which is a much broader agreement.

The WTO TRIPS agreement gives members the right to exclude from patentability plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, FTAs obliges each signing party to make patents available for plants and animals. FTAs also enforce patenting on life forms, which could lead to misappropriation of genetic resources and traditional knowledge. Within such a context, there have been several cases in India where indigenous knowledge and genetic resources have been patented by US firms.<sup>76</sup>

In addition to patents on plants that give monopoly over plants, patents on genes of plants have increasingly been pursued. For example, the Basel based biotechnology giant Syngenta claims that it invented more than 30,000 gene sequences of rice (more than 99.5% of the rice genome) and is seeking global patents over thousands of genes in rice. In this process, "...the multinational giant is all set to 'own' rice, the world's most important staple food crop".<sup>77</sup>

#### TRIPS-plus provisions and access to knowledge

The bilateral FTAs with the US include a technological protection measure (TPM) (i.e. protection for technology built inside the product), which prevents access to certain products. Such FTAs oblige countries to provide adequate legal protection and remedies against circumvention of effective

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<sup>75</sup> A "sui generis" system means "one that is of its own kind"; it refers to creation of a new national law or the establishment of international norms that would afford protection to plant varieties (Black's Law Dictionary, referenced in "Is a Sui Generis System Necessary? -Benefit Sharing Agreements", International Intellectual Property Institute (January 2004), <http://www.iipi.org/speeches/NewYork011404.pdf>)

<sup>76</sup> In regards to cases of bio-piracy in African countries, including Egypt, Morocco, and Tunisia, see the book McGown, Jay. (2006). *Out of Africa: Mysteries of Access and Benefit Sharing*. Edmonds, Washington, The Edmonds Institute and The African Centre for Biosafety.

<sup>77</sup> Sharma, Devinder. (Aug/Sept. 2005). "Rice set to be in the grip of Swiss company's global patents." *Third World Resurgence*, 180/181.

technological measures. These obligations extend beyond the Copyright Treaty of the World Intellectual Property Organization. The US agreements with Morocco and Bahrain even include accidental breach of the technological measures. The results of these kinds of TRIPS-plus obligations are numerous, including: (1) right holders will be allowed to enforce exclusive rights in excess of those granted by local copyright; (2) fair use of copyrighted material will be limited (persons will be unable to make copies for personal use); (3) freedom of expression and scientific research will also be limited; (4) trade will be restrained and monopolies therefore encouraged; (5) technological innovation will be stifled and reverse engineering prevented; (6) resale, lending, and donation of information goods will be prevented (e.g. e-books are goods that use TPMs cannot be sold on, lent or given away); (7) libraries will be restricted as to how much they can provide access to information, especially under-resourced libraries which lose their statutory rights; (7) and the processes of distance education will be hindered due to rising costs of providing instructional materials, placing barriers to storing, transmitting, and using distance education materials.

#### TRIPS-plus enforcement issues

Major developed countries are trying to involve the international police and World Customs Organization on the matter of enforcing trade-related intellectual property. Enforcement covers criminalizing actions; for example, under the US-Singapore FTA, companies can institute criminal action on whoever infringes their property.

The TRIPs agreement supports criminal sanctions in cases of “willful trademark counterfeiting or copyright piracy” done on “a commercial scale” with penalties to “include imprisonment and/or monetary fines sufficient to provide a deterrent”. However, the US bilateral FTAs define “willful trademark counterfeiting or copyright piracy on a commercial scale” as infringements that have no direct or indirect motivation of financial gain (for instance, children sharing music), and willful infringements for purposes of commercial advantage or financial gain.

According to the FTAs, remedies to the problem of trademark or copyright infringement should include “sentences of imprisonment as well as monetary fines sufficient to provide a deterrent to future infringements”, and the local authorities “shall further establish policies or guidelines that encourage judicial authorities to impose those remedies at levels sufficient to provide a deterrent to future infringements”<sup>78</sup>. This context implies significant threats to consumer access and consumers’ rights; it affects daily life and jeopardizes regular daily actions.

#### ON INVESTMENT, GOVERNMENT PROCUREMENT, COMPETITION POLICY, AND TRADE FACILITATION

Investment, government procurement, competition policy, and trade facilitation, commonly referred to as the Singapore issues, are a long term plan of the developed countries [see Chapter three on the

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<sup>78</sup> This language appears in US bilateral FTAs with several countries. Reference can be made here to presentation on TRIPs plus measurements in US bilateral FTAs, by Sangeeta Shashikant- TWN during workshop on Free trade agreements in the Arab region, organized by the Arab NGO Network for Development and Third World Network- Cairo (December 2006)

WTO, pages 40-41 for an introduction to the Singapore Issues]. After failure to include them on the WTO agenda, developed countries are pushing them through the bilateral FTAs. In the US FTAs, the US refuses any agreement unless the Singapore issues are included. US officials have repeatedly stated that they will continue to press for agreements covering transparency in government procurement in bilateral free trade deals as long as there is no government procurement deal in the WTO. Accordingly, most of countries negotiating with the US have accepted these chapters for discussion.

## On Investment

In order to protect and support local investments and industries, governments have to set investment policies and control regulation related to foreign investment. National development plans to build up the economies of developing countries and create jobs include macroeconomic plans in taxation, social development, government expenditures, exchange rates, monetary and fiscal policies, in addition to sector specific policies, such as in agriculture and industry. Accordingly, governments build up and promote local industries through selective protection of sectors at certain periods, setting tariffs on foreign investment to limit or keep out foreign companies, or allow foreign companies to come in on certain conditions, such as transferring certain technology to local companies or sharing company ownerships, setting joint ventures, or limiting activities to certain sectors or localities.

Due to the WB and IMF structural adjustment policies, many developing countries do not have proper planning for and control over their economies. Policy advice given to developing countries by the IFIs has focused on linking economic growth to the creation of an environment attractive to foreign investors. Accordingly, most countries have reduced their economic policy to just that: creating an adequate environment for investors and securing market access in order to be able to sell products abroad. Policies aiming at building local industries to export and compete have been left behind.

Foreign investors do not solely help a country to grow; indeed they seek countries where the local industry and market are growing through domestic policies and try to benefit from that. Countries with big populations, like Egypt and Algeria, will not benefit enough from foreign investments and cannot rely on that to create jobs. Thus, economic reliance should primarily be on local investments.

Investment has become a central issue in FTA negotiations, where commitments on the right of establishment and national treatment of foreign investors are being sought after, in both the services and investment chapters of FTAs. Investment provisions aim at attaining national treatment, right of establishment,<sup>79</sup> and elimination of performance requirements. Trade-Related Investment Measures (TRIMs) under the WTO prohibit two of these latter requirements but the FTAs include them all.

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<sup>79</sup> Current bilateral FTAs with the US include pre-establishment rights which give companies the right to invest and establish in a country before they even enter the country. Post-establishment rights mean that a company does not have any rights except after the government decides to allow the company to enter to the local market. Pre-establishment rights were rejected in the WTO. With pre-establishment rights, the 'potential' investor has the rights of an investor. These rights include national treatment, and the decision on the legal entity on which they choose to perform.

Moreover, sometimes investment is treated as a cross cutting issue which undermines mode 3 commitments<sup>80</sup> under the GATS.

The national treatment obligation under a bilateral FTA implies that the US investor should not be treated any less favorable than any other foreign investor that is going to invest in the partner country; this appears in the agreement between the US and Morocco. Moreover, the imposed minimum standard of treatment makes sure that the US investor is not treated any less than a certain threshold. When a government is not able to protect a certain foreign property, such as in a case of conflict eruption, it is considered to be not doing enough to protect this property and could consequently face potential law suits when not able to live up to its obligations under the FTA.

Expropriation is another important issue regulated within these trade agreements. More broadly, there are three kinds of takings under the investment agreement:

- Confiscations: such as in the case of a dictator taking property for their own benefit, which is illegal and leads to a compensation that has to be paid for
- Nationalization practices: this is considered as a legal expropriation if it follows certain criteria including public purpose, non-discrimination, prompt adequate payment; yet under an FTA a government is still forced to pay a compensation for that
- Expropriation

This has led to a significant increase in related cases; for example any kind of government measures or regulations that undermine profitability or increase the cost of a business could be potentially considered as expropriation. Argentina has been sued for a couple of million dollars for such cases.

According to bilateral FTAs with the US, a government cannot impose domestic content requirements, export requirements, currency exchange requirements, or redistributive policies. Performance requirements are prohibited and no restrictions are allowed on money transfers.

Furthermore, the US FTAs include investor-state dispute settlement provisions [see Box L] which can penalize social and environmental measures as well as prohibit performance requirements, including those aimed at transfer of technology and upgrading skills. In this regard, any act by the government that is inconsistent with any of these regulations and causes the foreign investor any kind of injury or loss or damage provides basis for a claim against the government.

It is worth noting as well that the definition of investor and investment in an FTA is very broad, whereby it goes beyond the regular definition that includes establishing plants or production processes to sell and make profit. Under the bilateral FTAs, the definition includes every asset that has such characteristics of an investment. For instance, in the US-Morocco FTA, “investment” is defined as “every asset that an investor owns or controls, directly or indirectly, that has the

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<sup>80</sup> The GATS distinguishes between four modes of supplying services: cross-border trade, consumption abroad, commercial presence, and presence of natural persons. For more information, visit [http://www.wto.org/english/tratop\\_e/serv\\_e/gatsqa\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm)

characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk.” Accordingly, the definition has been broadened beyond physical assets to include rights that are conferred by the government, such as IPRs, licenses, and others. Furthermore, the definition of investor covers any person that attempts to make an investment.

### **Box L: Investor-State Disputes**

A main example of the US pushing for trade rules beyond the WTO which were established by international consensus is the investor dispute rights which are granted within US bilateral and regional FTAs.

The key aspect of these investment agreements within FTAs are that they are signed between governments but are enforceable by private companies. Thus, the private investor may use a trade agreement to establish new rights that it can privately enforce, such as suing the governments of the countries in which it is investing. There have been forty two such cases filed under NAFTA, twelve of which are already decided. In five of these cases, the foreign investor has won whereby 35 million dollars have been paid out. Several of the cases amount for more than 200 and 300 million dollars each. A company can sue for compensation in the case of any government action that can undermine its “foreseeable, reasonable, future profit”. Accordingly, the risk in an investment is shifted to society; a government has to pay any compensation from the treasury. Payments in these cases should be made in hard currencies: in Dollars, Euros, or Yens.

These overbearing investor rights grant superior rights to foreign investors *vis-à-vis* domestic investors and hinder national development of developing countries.

### On Competition Policy

In regards to competition policy, when a company enters another country through an FTA, the competition chapter allows the foreign company and product to compete and operate at the same level playing field as the local company. Accordingly, any support or subsidy given by the government to local companies should be applied to foreign companies as well. Governments are forced to buy from foreign companies and not solely from locals, and locals are forced to work with foreigners and not just locals. Furthermore, companies are forced to open their distribution networks to foreign companies. As an example, take the case of Japanese Fuji and American Kodak. When the latter went into the Japanese market through an agreement that removes tariffs between the two countries, the US sued Japan to force Fuji to open its distribution networks to Kodak. Accordingly, as it is currently, the agreement on competition is an attempt to prevent governments from giving any privileges, subsidies, promotions, or support for economic development to locals.

### On Government Procurement

Government procurement is a major instrument through which the government can boost the local economy, build up local entrepreneurs, give contracts to local institutions, and fight corruption. In the case of a recession, a government may choose to increase its expenditures on government procurement to move the economy out of recession; yet, if the money being spent goes to imports

then the economy will not recover out of recession. Government procurement is also important for social engineering purposes, especially when a country has numerous ethnic and religious communities. The government may allocate certain expenditures to contractors or communities from a certain ethnic group, especially disadvantaged communities, in order to avoid civil conflict and strengthen communities' inter-relations. Accordingly, government procurement and its positive discrimination is a main instrument for nation building, national unity, and prevention of civil war. However, an FTA limits the ability of a government to give preference to locals. It necessitates national treatment, which is defined in the WTO as giving conditions and terms to the foreigner that are no less favorable than the local. The WTO does not include government procurement as part of its national treatment rules. Unsurprisingly, this is currently being pushed through bilateral FTAs.

### On Trade Facilitation

The issue of trade facilitation is the only one from among the Singapore issues that remains under official discussions in the WTO. Trade facilitation addresses the red tape that stands as a barrier to accelerating the movement, release, and clearance of goods, including goods in transit, as well as technical assistance and capacity building in this area. Time-bound steps and clear mechanisms for implementation should be put in place in this area. Some proposals on trade facilitation address the creation of one single window for customs, as well as putting all the information on the internet. In addition, some proposals address the establishment of gas pipelines and gas transit routes. Currently, developing countries, including Arab countries, play a defensive role and have not taken proactive stands on trade facilitation. Developing countries need to address the challenges that they face in this area and identify the costs of the trade facilitation items.

### STRATEGIES TO COUNTER THE US APPROACH TO FTAs

In light of increasing pressure and rapid movement towards signing bilateral FTAs, especially with the repetitive impasse of the WTO negotiations, governments need to have clear policies ready, including their industrial development plan, services plan, and IP and development plan, before starting any negotiations. These policies set the analytical framework for scrupulous cost-benefit analyses of potential trade agreements. Also, these policies should be under-girded by a clear strategy for participating in the new rapidly evolving trading system in a manner that would ensure greater achievement of development goals while furthering regional economic integration. Prior to negotiations, the necessary legislation should be carved out to ensure the greatest achievement of national development goals.

Cost-benefit analyses should consider the consultation of the public, private, and civil society sectors. Moreover, given that the agreements' provisions impact the policies and work of various sectors and communities, various ministries should be involved in the negotiations.

Information and research results coming from the civil society sector, including the unions, should be included in the cost benefit analyses for richer and more accurate results. As an example of an action step in this context, the government of Malaysia included on their website an invitation for any group that wants to be consulted regarding the FTA negotiations with the US. In Indonesia, the



government held joint meetings with NGOs while negotiating its FTA with the US. In Australia, there were parliamentary inquiries that accepted submissions from anyone.

Moreover, the private sector is often not aware of what is going on when the FTA is being negotiated and how it could affect the sector. In some countries, like Australia, the government implemented an outreach campaign to raise the awareness of the private sector and businesses on how to participate in the negotiations.

In the negotiations strategy, it is important to identify and hold to a bottom line that a country can not move beyond in any negotiations. For example, the Southern African Custom Union, including Botswana, Namibia, Lesotho, and Swaziland, left the negotiations over the US FTA because the obligations in IPR, investment, and government procurement were too much for them to accept, given the high levels of HIV positive persons among their populations. Switzerland walked away from the US FTA, after the first round of negotiations, because it refused any linkage provisions in IP provisions, given that their staff at the Ministry of Health did not have the capacity to cover linkage.

Civil society is responsible for strategically mobilizing in various ways to voice their concerns regarding any unfair agreement. For example, in Thailand, people living with HIV Aids demonstrated (by sleeping in the streets) when the negotiations were taking place. This helped the negotiators to stand in opposition of the IP provisions that the US was trying to impose on Thailand. Furthermore, civil society organizations in Thailand did several studies on FTAs previously signed by Thailand and its impact on farmers, which was distributed for awareness raising purposes. In addition, South Korean civil society and academia did a 300 page analysis of the US FTA and the national television station covered documentaries on the implications resulting from US FTAs in other regions. As a result, the support for the FTA in South Korea went from 60% in favor to 60% against. The coalition behind these mobilizations was very broad and included farmers, actors and artists, and workers.

#### **Box M: US-Jordan FTA Case Study\***

Jordan was the fourth country to sign a bilateral FTA with the United States, after Canada and Mexico (NAFTA), and Israel. The agreement was set into operation by the end of 2001. Negotiations for the FTA between the US and Jordan started while Jordan was still preoccupied with negotiating accession to the WTO and trying to achieve that by the end of 1999. The team that was responsible for the FTA negotiations was the same team that negotiated with members of the WTO. Extra personnel joined the negotiations team to follow the negotiations over environment and labor issues. Although Jordan accumulated experience while it was negotiating previous agreements, the negotiating team had limited capacities since the government lacked qualified people in a number of areas.

The FTA was a highly political decision whereby the US tried to secure everything that it did not manage to get from Jordan in the context of the WTO. Given that the decision for negotiating an FTA with the US was political and the text of the agreement over which negotiations took place was set by the US, the Jordanian negotiators were trying to get the best out of the negotiations knowing that they were in a weak situation. One of the weak points with negotiators is that they are typically not lawyers who are equipped to understand the FTA legal diction and framework. Moreover, there is often pressure on the

negotiating team from the government side to seal a deal as soon as possible, especially since ministers try to associate themselves with the success of achieving progress on signing agreements.

In relation to the other Arab FTAs with the US, the Jordan FTA was a Clinton Administration project. It was much less stringent, such as in regards to IPRs and investor rights, than the US FTAs with Morocco, Oman, and Bahrain. Still, Jordan gave a number of commitments in several areas including IP commitments that were all TRIPS-plus. Besides IPR, the bulk of the US-Jordan FTA focused as well on services and equity. Under the WTO services negotiations, there were restrictions on equity and capital flows; whereas under the FTA with the US, the latter got free access to the Jordanian market for equity in several areas of services.

The US-Jordan FTA reduces tariffs on commodities to zero over a specific period of time. In the services sector, the FTA does not go beyond the WTO obligations. The agreement is based on a positive list approach which is the same as the WTO measures; this is considered a preference since US agreements with other countries are based on a negative list approach. However, the agreement is stronger on commercial presence.

Provisions on labor and environment in the agreement did not exceed the content of the ILO agreements, stating that the rights of workers should be reflected in the Jordanian laws. Aid for improving environmental laws was included in the agreement.

The private sector was part of the negotiation team, including the Chambers of Industry and Trade and the Union of Pharmaceutical Industrialists. However, in many incidences the representatives of the private sector were not up to what was asked from them; their position was based on criticism and opposition although they did not present any alternatives. Many of the discussed issues were new to the private sector and not enough assessment and cost-benefit studies have been done in the areas affected by an FTA. The negotiation team got support from consultants from the WB, UNDP, UNCTAD, and other international agencies.

*Astonishingly, there were no assessment studies commissioned by the Jordanian government prior to signing the agreement, nor have there been since the agreement's ratification.* Participation of the parliament was and remains very weak and ignorant of the issues addressed.

*\*This section draws on a lecture by Mrs. Tammam El Ghoul, who is former Minister of Social Development in Jordan and part of the FTAs negotiation team. She participated in the Regional Meeting of Experts and Civil Society Organizations On FTAs in the Arab region, Cairo, Egypt, December 2006.*

## CHAPTER 6: INTER-ARAB TRADE COOPERATION

### BACKGROUND

As global trade expands, negotiations and changes to international trade agreements are increasingly becoming a reflection of the interests of major financial and political lobbyists in the world.<sup>81</sup> The exposure of the local investors and producers to the multinational companies through these agreements is imposing significant challenges to local industries and communities and imposing threats to national sovereignty. Developing countries have worked towards enhancing South-South cooperation through coming together in various blocks and groupings to strengthen their voice and have their interests better served in the current global context. Many regional trade blocs have been established to increase trade via trade liberalization and to promote more weight for developing countries in multilateral negotiations or bilateral negotiations with developed countries.

There have been several trade cooperation initiatives involving Arab countries in the last two decades. The creation of the League of the Arab States (LAS) in 1945 was seen as a step in this regards. In the early 1960s the LAS issued a declaration calling for the creation of the Arab common market. In 2005, some Arab countries launched the Greater Arab Free Trade Area (GAFTA).

Many other initiatives were undertaken among various countries, especially between Syria, Egypt, and Libya as well as Sudan and Egypt. The Arab Maghreb Union (UMA) was formed in 1989 by Algeria, Libya, Mauritania, Morocco, and Tunisia in order to coordinate greater cooperation among the Maghreb countries. However, all of these initiatives have remained highly unproductive with the notable exception of the Gulf Cooperation Council (GCC).

There is also the initiative for a Mediterranean Arab Free Trade Area (MAFTA), or the Aghadir agreement, which emerged as a sub-regional initiative within the Euro-Mediterranean Partnership, and it includes Jordan, Morocco, Tunisia, and Egypt. The agreement aims at enhancing and developing the GAFTA cooperation, establishing a strong alliance to face the challenges of international and regional trade agreements, and enhancing proper mechanisms for trade liberalization within the Euro-Mediterranean context.

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<sup>81</sup> This can be easily seen in the case of the United States, where its agricultural and industrial lobbies have played a major role in the negotiations process inside the WTO. Industrial lobbies push the US negotiators to stand through severe negotiations processes inside the WTO towards achieving zero manufacturing and industrial tariffs. Often, they come out after certain progress has been achieved in the WTO negotiations claiming it as a big success for them. Moreover, farmers lobbies, which include the main agricultural companies in both the United States and the European Union, have played the major roles in the negotiations on agricultural agreements within the WTO process. These lobbies have succeeded in keeping the subsidies level for agriculture at a very high level that distorts trade in agriculture and imposes serious damages for the work and lives of small farmers in developing countries.

### **Box N: Between Trade Creation and Trade Diversion**

In theory, regional trade agreements aim at enhancing trade creation among countries; trade creation takes place when part of the domestic production in a country which is a member of a free trade area is replaced with lower-cost imports from a more efficient member country in the same area. Trade diversion means that a free trade area diverts trade, away from a more efficient supplier outside the FTA, towards a less efficient supplier within the FTA. Often the agreements that the Arab countries sign and are implementing lead to trade diversion and not trade creation. For example, when comparing trade creation indicators for Egypt, the Aghadir agreement comes in first with the greatest trade creating potential, followed by GAFTA, the Common Market for Eastern and Southern Africa (COMESA), and the Euro-Mediterranean agreement.<sup>82</sup> However, the Euro-Mediterranean agreement is, though, the most successful agreement regarding implementation procedures compared with COMESA, GAFTA, and the Aghadir agreement.

Regionalism attempts to address the strong external pressures upon states resulting from the effects of current global economic interconnectedness, trade, investment, production and information. The Arab region continues to lag behind on regional cooperation compared to other regions. Trade within regional blocks in the Arab region often remains limited. One of the reasons for the weakness and limitation of inter-exchange between developing countries is that these countries are often more liberalized towards the external world than towards the other developing countries within their region or trade bloc. Such is the case with the Arab countries.

#### **THE GREATER ARAB FREE TRADE AREA (GAFTA)**

Arab countries have been struggling with moving towards a regional trade area since the economic and social council in the LAS first put forward a declaration in 1981 for trade liberalization and expansion amongst the Arab countries. GAFTA was the outcome of the declaration of Heads of Arab States made in the Cairo 1996 Arab Summit.

In January 2005, 17 out of 22 Arab countries (Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen) removed tariffs on the movement of goods between them under the GAFTA framework. This step was an accelerated implementation of GAFTA, which was initially planned for 2007.

The Agreement calls for the gradual reduction of tariff and non-tariff trade barriers, the set-up of a body for dispute settlement, and an agricultural calendar between signatory countries. Beginning on January 1, 1998, tariff rates, fees, and taxes began to be annually reduced at a rate of 10%. Certain products are exempted from the execution program of GAFTA, as they are forbidden for religious, environmental, security, and health reasons.

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<sup>82</sup> Afifi, Tamer. (June 2005). "Egypt in an Arab-African-Sandwich: Are GAFTA and COMESA to be Implemented?" Conference on Middle East and North African Economies: Past Perspectives and Future Challenges, Brussels. Available at [http://www.ecomod.net/conferences/middle\\_east\\_2005/middle\\_east\\_2005\\_papers/Afifi.PDF](http://www.ecomod.net/conferences/middle_east_2005/middle_east_2005_papers/Afifi.PDF).

The agricultural calendar represents a roadmap that lists ten agricultural products per country that can enter another country's borders freely for a period of up to seven months each. The agricultural calendar stipulates that the cumulative period of the total list cannot exceed 45 months.

The technical issues under study within GAFTA are the rules of origin, which necessitates consideration of the economic interests in the Arab countries and the treatment of free-zone areas. Issues of concern in this regard are the protective policies in many Arab countries and their focus on production of raw materials. Moreover, institutional weaknesses, even at the level of the LAS secretariat, lack of transparency in the processes, and political and security instabilities in the region create serious hindrances to the implementation of GAFTA. These impact the potential advantages of GAFTA, including the expansion of the market for many Arab countries, increase of investment opportunities, regulation of fair competition, and enhancement of research and development.

Currently, the general secretariat of the LAS, mainly the Economic and Social Council, is responsible for follow-up of the agreement's implementation; however, the LAS does not have the capacity to put sufficient pressure on members to implement the agreement in case of non-deference.

#### GAFTA and Services<sup>83</sup>

Trade in services in the Arab countries represents more than 20% of national GDP. The average growth of Arab countries' exports in services has increased 5% between 1990 and 2000, while that in industrial products has increased around 0.5%. Inter-Arab trade focuses on services more than goods. For example, Egypt's trade with the Arab countries includes 16% services and 12% goods and that of Tunisia includes 12% services and 7% goods.

However, GAFTA does not include trade in services. Developing a new agreement on services started in 2002 and the legal framework of the agreement was set in 2003. The services agreement necessitate that at least three Arab countries sign it. The limited number of countries negotiating the agreement could allow for a faster pace of progress on the concessions. The agreement will be GATS-plus,<sup>84</sup> whereby the commitments would exceed those made by the Arab countries in the WTO.

The agreement will include:

- A positive list approach, whereby each country can put on the list of its commitments what is relevant to its trade policy
- Consideration of environmental and cultural heritage aspects
- Consideration of the principles of most favored nation and national treatment

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<sup>83</sup> This section is mainly based on the presentation by Mr. Khaled Wali – League of Arab States, on “The services sector in the Arab region the services agreement within GAFTA; current situation, challenges, and prospects”, during the workshop on free trade agreements in the Arab region, organized by the Arab NGO Network for Development and the Third World Network in Cairo (December 2006)

<sup>84</sup> GAFTA-plus refers to the same logic explained in the “WTO-Plus, WTO-Minus” in Box E.

The idea behind the services agreement aims at increased exchange between Arab countries and, in turn, more competition between Arab companies, which is expected to lead to better results for the consumer in the region. The agreement would allow the cross accreditation of university degrees among Arab universities. Moreover, it would enhance transparency in allocating information on trade in services among the members. It also attempts to facilitate the movement of labor among Arab countries in different sectors. For example, services in transportation, transit, and mining will be developed. In that regards, the oil-producing countries could play an important role through utilizing the human services made available by other Arab countries in the oil sector.

Challenges towards making the agreement more cogent include:

- Reaching a common definition to what services encompasses
- Enhancing the availability of statistics on the service sector
- Dealing with the lack of capacities among Arab countries that are not members of the WTO, namely, for they lack experiential capacities to understand how to deal with the agreement and put forward concessions

Outcomes since the start of GAFTA implementation

After six years of the work towards GAFTA, inter-Arab trade increased from 9% in 1997 to 10% in 2005. The components of the production and the geographic allocations of the trade exchange did not vary much, and most of it is still focused on raw materials, whereby 44% to 55% is concentrated in these areas and in drink and food. The trade percentage of industrial products decreased from 39% in 1995 to 25% in 2004. In regards to geographic concentration, inter-Arab trade is still focused in certain Arab countries; the Gulf Cooperation Council (GCC)<sup>85</sup> percentage in inter-Arab trade in 1993 was 73% and increased to 74% in 2004. Trade is concentrated in the six neighboring countries of the Council, whereby Saudi Arabia and Oman cover half of these exchanges. Inter-Arab trade has witnessed a concentration in the imports as well; the GCC currently covers 50% of imports from the Arab region, decreasing from 54% in 1999. Two thirds of inter-Arab exports are concentrated in eight countries, namely, the GCC countries in addition to Jordan and Iraq<sup>86</sup>.

There is, thus, a visible lack of progress in regards to inter-Arab trade. Some reasons behind this lack of progress are due to:

- The exceptions on products maintained by some countries within GAFTA
- The long time needed for implementation of the agreement's mechanisms, whether dispute settlement or others
- Existence of non-tariff barriers

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<sup>85</sup> For more information on the GCC, please check Chapter six.

<sup>86</sup> Presentation by Dr. Ibrahim El Issawy About the Greater Arab Free Trade Area, presented during the regional workshop on Free Trade Agreements in the Arab region, organized by Arab NGO Network for Development and Third World Network, Cairo- December 2006. For more information about the workshop and proceedings report, please consult ANND website at [www.annd.org](http://www.annd.org)

- Discrepancies in policies of support and subsidization of local productions between various Arab countries, leading to differences in prices and pushing some countries to increasing protectionist measures on their products

## THE AGHADIR AGREEMENT

The Aghadir Agreement for the establishment of a free trade zone between the Arab Mediterranean countries was signed in Rabat, Morocco on 25 February 2004. It is viewed as a possible first step in the establishment of the Euro-Mediterranean free trade area envisaged in the Barcelona Process.

The Aghadir Agreement aims at enhancing cooperation between countries south of the Mediterranean, through creating a free trade area between Jordan, Morocco, Tunisia, and Egypt. Lebanon and Syria expressed their interest in joining the Agreement. Other potential signatories are Algeria, Libya, Mauritania and the Palestinian Authority.

The Aghadir Agreement was only implemented in January 2006; Jordan and Morocco were late in passing this agreement through their parliament, and Morocco raised several problems throughout the process.

The agreement presents an opportunity for bilateral and regional accumulation in regards to rules of origin. According to the Pan European Rules of Origin included in the European Union's preferential trade agreements, countries that have signed a free trade area with the EU and bilateral free trade areas among themselves and follow the same system of rules of origin are allowed to cumulate inputs.<sup>87</sup> This is expected to enhance cooperation of countries in the Southern Mediterranean.

The Aghadir Agreement does not have many internal implications as it does not address the internal mechanisms and institutions related to the trade process. Furthermore, it does not cover agricultural products on which liberalization was implemented within the GAFTA framework.

## THE GULF COOPERATION COUNCIL (GCC)

The GCC is a trade bloc involving Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates (UAE). The unified economic agreement between these countries was signed on 11 November 1981 in Riyadh, Saudi Arabia.

The work towards economic integration in this block started in 1983 and during less than 20 years inter-trade between GCC countries increased more than six folds. In 2003, the GCC customs union replaced the free trade area and it led to increasing the exchange between the six countries by 54%. It is expected that the GCC common market will be achieved before the end of 2007 and a common currency reached by 2010. Up to this point, the common currency has been rejected by Oman -- one of the GCC countries -- which currently hinders the process.

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<sup>87</sup> Based on a background paper on Trade Liberalization in Egypt, by Dr. Ahmed Farouk Ghoneim of Cairo University, prepared for the Arab NGO Network for Development in 2005.

According to the first article of the GCC customs union that was established in 2003, there is a common tariff system used by GCC countries towards any foreign market; accordingly, there is one entry point at which the common tariffs are collected. The transfer of products among the GCC is tariff free, and the products of the six countries are given a national treatment in any of the GCC countries. There is also a common national treatment for all GCC citizens in any of the six countries, especially in relation to movement of labor, work, education, accommodation, insurance, investment, movement of funds, establishment of businesses, work in public sector, in addition to all economic activity such as ownership and bond trading.

The GCC economy is considered one of the more open economies in the region. However, the trade obstacles in these markets are not decreasing and there is no real change in the percentage of foreign trade they undertake. The oil products remain the bulk of the trade exchange of these countries while non-oil products are not able to adequately compete within foreign markets. Accordingly, the increase in FDI in the GCC during the last couple of years has been focused in the oil industry alone, thus revealing a lack of a sound investment environment that can lead to further development.

The exchange markets in the GCC are small in size and average prices are low and directly linked to oil prices. Most companies that are listed in these markets depend on the government's money which is also linked to the oil markets. The productive sectors and industrial sectors have low levels of contributions to the exchange markets while the Gulf Banks have the bigger proportion in the exchange market. The number of enterprises and foreign investments in the exchange market remains low.

The GCC faces the challenge of increasing its level of competitiveness within a globalizing world. This challenge necessitates progress on economic complementarities and integration among the six countries as well as working as one bloc inside the WTO.

Besides joining the WTO, the GCC signed several cooperation agreements with other regional blocks and countries such as the US, EU, Japan, and China. In principle, when it comes to international economic relations, the member countries set a common economic policy towards any foreign partner or bloc with which they sign an agreement. Surprisingly, though, the GCC countries joined the WTO independently and they committed to trade reform schedules without any coordination among themselves.

The GCC countries are also signing FTAs unilaterally. Two of the Gulf countries, Bahrain and Oman, have unilaterally signed FTAs with the US in 2004 and 2006 respectively. Saudi Arabia, the only GCC member country that has not launched free trade negotiations with the US until the present, showed the most aggressive opposition to these bilateral FTAs, claiming that they weaken the position of the GCC, which is seeking a common market and a single currency. It accused its smaller Gulf neighbors of weakening Gulf solidarity by forging separate economic and security agreements with foreign powers.



After these two bilateral FTAs, the finance ministers of the six Gulf countries of the council have reached a settlement to accommodate these bilateral agreements. They agreed to exempt the US products coming into the markets of the GCC from the unilateral tariff system they have adopted. Accordingly, the US imports will be exempted from the 5% customs duties levied by the GCC states on goods coming from the rest of the world.

It is still unclear what the GCC countries gain from such an exemption being granted to the US, and what the impact is of the huge military and political role that the US plays in that region on the decision that has been taken.

#### THE COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA (COMESA)

The Common Market for Eastern and Southern Africa is a preferential trading area with 22 member states stretching from Libya to Zimbabwe. COMESA was formed in December 1994 replacing a Preferential Trade Area which had existed since 1981. Nine of the member states formed a free trade area in 2000, including the three Arab countries Egypt, Sudan, and Djibouti. COMESA envisions a common market and a monetary union in the future. It also aims at reaching deeper stages of regional integration as a customs union.

#### Box O: Case example: Egypt

##### Membership of Egypt in regional trade agreements; A spaghetti bowl of trade agreements

Name of Agreement	Year
GAFTA	1998 (entry into force)
COMESA	1998 (entry into force)
EU-Med Partnership Agreement	2002 (signature and ratification), 2004 (entry into force)
Aghadir Declaration	2001 (initiated) and 2004 (signed)
TIFA	1999 (signing and entry into force)
Free trade area with EFTA, Turkey, South Africa, Nigeria, and Australia, India, Tanzania, and Sri Lanka, EMUWA	Potential under negotiations or discussion*
A number of bilateral preferential trade agreements with Arab countries including Lebanon, Syria, Morocco, Tunisia, Libya, Jordan, and Iraq	Throughout the 1990s

Source: Ministry of Foreign Trade (2003), *Aggregated Foreign Trade Report*

\* This is based on what has been mentioned in the newspaper as stated by officials.

The core hindrances to market access of Egyptian exports are mainly supply constraints. Thus, opening up to the outside world without addressing *a priori* these bottlenecks is likely to increase the trade deficit in the short and medium terms without achieving tangible benefits from improved market access. This has been the case with the COMESA where Egypt, since its adherence, has suffered from continued increases in trade deficit. For example, in 1997, Egypt's trade deficit with

the COMESA was \$102 million; it increased to \$155 million in 2000.<sup>88</sup> Moreover, there is no coherence between the different regional trade agreements signed by the Government as they have different rules of origin, different schedules of tariff dismantling, different systems of standards, and so on. (Source: Ghoneim, paper presented to ANND, 2005)

## REFLECTIONS AND RECOMMENDATIONS ON THE LIMITATIONS OF REGIONAL INTEGRATION AMONG ARAB COUNTRIES

### Realizing the lack of harmonization between regional agreements

Currently, there is no coherence between the different trade agreements signed by Arab countries; they have different rules of origin, different schedules of tariff dismantling, and different systems of standards. This incoherence leads, in effect, to more obstacles for greater regional economic cooperation and integration.

In the case of Morocco, for example, there exist significant complications due to the multiplicity of bilateral and regional FTAs being signed, especially on rules of origin. This often increases administrative complications, limits the ability to integrate on the regional level, and destabilizes investment and trade flows. Moreover, tendencies towards participating in and expanding GAFTA are often faced by the reality of prioritizing the exchange with Europe, which is the largest partner for Morocco at over 70% of Morocco's total trade.

The agreements that the Arab countries sign with developed countries tends to weaken any cooperation plans between them as well. For example, the US bilateral agreements that were signed with Gulf countries on a unilateral level resulted in complications in the GCC process. The agreements of the Arab countries with the EU on a bilateral level divided the southern Arab-country partners into three categories: the Mediterranean partner countries of the EU, the countries within the GCC, and miscellaneous other countries, such as Yemen. In this context, more legal complications resulted that may contradict or hinder the process of cooperation and integration between Arab countries. It is worth noting that to accrue benefits from the agreements with the EU, the Arab countries need to actually activate the agreements among them and to have a common plan to increase their competitiveness relative to other countries.

### Rebuilding the internal markets

As already stated, the limitation of inter-exchange between Arab countries is due to the fact that their economies are more liberalized and open towards the external world than towards each other. Arab countries lack the needed supportive factors for benefiting from trade. Accordingly, what is needed is not the removal of the barriers between the markets in the Arab region, but a rebuilding of the markets themselves. The problem is not in the ability to disperse excess capacities but to find

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<sup>88</sup> Data obtained from the COMESA website, [www.comesa.int](http://www.comesa.int).

capacities from within, which are capable of serving the regional needs and competing at the international level.

Therefore, the focus should be on development and not trade in itself. Regional common work should shift from liberalization of trade to development of production capacities and structural linkages between production cycles and systems among the Arab countries. These countries need to develop the resources available to them in a manner that is concomitant with political development. This will result in enhancing development cycles and increasing trade among Arab countries as well as their exports to foreign markets. As Arab countries set complementary development policies, they can start to take on common regional projects with greater potential and with the states that are ready for such initiatives.

Achieving more cooperation and information exchange

Complementary and coherent development policies are needed in the Arab region. Among possible opportunities that could increase cooperation and advantages in the region are:

- Common work on research and development
- Common information and knowledge centers to support policy making, including consultation agencies and think tanks that support policy making at the regional level
- Enhancing cooperation in redrawing the map of industrial production of Arab countries and division of industrial activity with the participation of both the public and the private sectors
- Nationalization of certain industrial activity which could push for more complementarities and building of comparative advantages
- Cooperation in the financial and banking sector; it is worth noting that there presently exists no direct exchange between banks in the Arab countries; any transfer happens through banks in the United States
- Cooperation on the development of basic infrastructure
- Common enterprises for marketing certain products, whereby common and complementary steps for the marketing process could be established
- The setting of common export processes for products of common interest to several countries, whereby negotiations capacities in the importation cycle could be enhanced

What worked for the West after it developed and reached a high level of industrialization and productivity does not necessarily work for developing countries. Increase in growth, productivity, and cooperation on production cycles is highly needed. Arab countries need liberation and not liberalization; they need development in the fight against backwardness and dependency which could make the success in the fight for trade easier. Thus, in regards to inter-Arab trade, the Arab countries should heed the following points:

- Arab countries need to set a coherent agenda in the trade agreements, whereby they can stand firm within various trade agreements in the service of deepening and strengthening intra-Arab trade.
- Arab countries need to emphasize the factors that improve their supply-side capacities, development of infrastructure in high value added industries, and diversification of economies and productions, which will help open more space for achieving complementarities and common interests at the regional level.
- Arab countries need to work on harmonizing their trade integration policies under the GAFTA, before proceeding on signing trade agreements with other blocs and countries.
- Arab countries should identify common areas of interest to defend within the global community and they should work together to define how developments within international trade will impact the Arab region.
- Arab countries should identify practical mechanisms for information exchange.

## CHAPTER 7: CHALLENGES FACING ARAB COUNTRIES DEALING WITH TRADE POLICY

Given the complicated context of a continuously expanding and changing global trade system as addressed in the previous chapters, Arab countries are facing multiple layers of institutional, legal, as well as social and political challenges in their attempt to join various trade forums. Challenges range from structural internal ones, lack of strategies, limited capacities, as well as implementation challenges related to the agreements and contracts which they sign.

### LACK OF EFFECTIVE GOVERNANCE

Effective governance at the institutional level, which is necessary for ensuring sustainable development within a globalizing world, is one of the main challenges facing the region. Economic growth is dependent on the regulatory framework as well as the accountability and transparency of public sector institutions and their structures and procedures.<sup>89</sup>

Comprehensive and real institutional and structural reforms cannot be limited to decreasing the bureaucratic procedures; instead, they necessitate considering how institutions preserve the rights of the citizens. Moreover, the effective performance of the institutions is directly linked to the success of the political reform process, including the assertion of the independence of the judiciary system. In this context, Arab countries struggle in addressing the needed reforms of the institutions that would enhance market integration and in redesigning the administrative apparatus that could support such reform.

The lack of political as well as economic freedoms remains the main barrier to development in the Arab region. Accordingly the Arab countries should improve the clarity of the public sector system, enhance free flow of information, strengthen efficiency and accountability, and expand participation of citizens. Economic growth cannot be achieved without achieving awareness and involvement of the people in various processes, whether economic or political. This warrants governments that adequately fight corruption.

It is worth taking into consideration that besides public sector reform, Arab economies in oil-producing countries face problems of oil dependency, lack of diversification, high unemployment and inadequacy of the labor markets. Moreover, the lack of adequate policies has led to weaknesses in investments around the Arab region. The low trust levels in various aspects of Arab economies have resulted in low levels of FDI, whereby “merely 1.5% per cent of total world FDI inflows and 5% per

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<sup>89</sup> Shaden, Halazoun. (May 2004). “Key Public Sector Institutions in the Arab Region; Responding to Globalization and Promoting Investment.” Prepared for a Project Advisory Group meeting of the UN DESA DPEPA. Available at <http://unpan1.un.org/intradoc/groups/public/documents/UN/UNPAN003619.pdf>.

cent of FDI received by developing countries in 2002 trickled into the region in 2000”,<sup>90</sup> the major part of which were channeled into three countries namely Egypt, Tunisia and Jordan.

#### UNCLEAR STRATEGY

The strategy for being engaged in a large number of regional and bilateral FTAs is far from being clear in Arab countries. Opening up to the outside world without addressing significant supply-side bottlenecks is likely to increase the trade deficit of the Arab countries in the short and medium terms without achieving tangible benefits from improved market access.<sup>91</sup>

Simultaneously negotiated international trade agreements are forcing Arab countries to react to different integration agendas. Each of these agreements contains a different impetus and each result in different laws. Additionally, these laws and regulations can be controversial and could create conflicts while applying them.

In the current landscape, national reforms are taking place based on the requirements of foreign agreements and not on the basis of the needs of communities within the Arab states. This can be obviously seen in cases such as Oman or Bahrain. These two countries are adapting their laws to conform to US intellectual property standards, adjusting their customs laws for GCC, reducing tariffs for GAFTA, potentially creating human rights laws to address the EU's concerns, simultaneously trying to integrate into the US and EU markets, and trying, with no clear agenda, to integrate into the world market.<sup>92</sup>

This mélange of trade liberalization contracts are threatening the scope of Arab countries' policy space. This affects governments' ability to pursue enhanced regional exchanges, trade enlargement, and sustainable national growth and development in various sectors.

#### LIMITED CAPACITIES

The lack of human skills and technical capacity are the most binding constraints to effectively enforce such agreements. Developing countries in general lack the capacity to understand, follow-up, analyze, and negotiate the conditions and rules that are continuously being introduced by the global trade system. Examples from Egypt and other Arab countries illustrate these challenges, as they face problems in implementing a number of the WTO agreements, particularly the TRIPS Agreement, Technical Barriers to Trade Agreement, and Sanitary and Phyto-sanitary Agreements.

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<sup>90</sup> Mehalaine, Walid- UNDP/SURF-AS. Presentation on Arab Trade, Development Agenda, and the Achievement of the MDGs. Prepared for the Experts' group meeting, Arab Ministerial Conference on the WTO (Amman 26-28 September 2005)

<sup>91</sup> Based on a background paper by Dr. Ahmed Farouk Ghoneim of Cairo University prepared for the Arab NGO Network for Development in 2005.

<sup>92</sup> Fakhri, Michael. "A new framework for development: a study of regionalism in the Arab world."

Given that countries are engaged in negotiating several FTAs at the same time, the human capacities available for that will not cover the needs of the negotiations, which will eventually lead to a weaker bargaining position. Not only is there limited negotiation capacities among Arab governments and little awareness of trade issues within civil society organizations in the Arab region, but there is also a dearth of studies examining the full effects -- social, economic, cultural, and legal -- of these agreements upon Arab countries. These countries often lack any impact assessment exercises or studies of the agreements they sign. This is incredibly unfortunate as it weakens their negotiating position and leads to failure in taking measures necessary to support their local communities in the changing contexts that the agreements impose.

#### LACK OF COALITION BUILDING

Given the pressure that developed countries have been facing due to opening their markets and integrating in the global trade system according to rules that do not serve their local interests, many of these countries have come together in groups and coalitions to speak out for certain common interests. Joining such groups is important to resist self-serving Western trade policy schemes, such as WTO-plus concessions being imposed on newly acceding countries.

#### **Box P: Examples of Issue Groups within the WTO**

**G20:** The Group of 20 is an alliance of developing countries that emerged at the WTO ministerial conference of Cancún in 2003. It took its origin in the Brasilia Declaration signed by Brazil, South Africa and India in June 2003. It aims at tackling the trade-distorting policies that the EU and US preserve to protect their less competitive sectors. The G20 tried to counter the position of the EU and US during the Cancún conference. It proposed an alternative outline to agricultural liberalization. It still primarily focuses on this issue today.

**G90:** The Group of 90 emerged in the Cancún meeting too. It is a coalition between the world poorest and smallest nations. It includes altogether the African, Caribbean and Pacific Group, the African Union, and the group of Least-Developed Countries. Its role is to enhance the voice of the poorest countries in the WTO. As G90 economies are mainly based on the primary sector, one of its major purposes is to force developed countries to remove their subsidies on agricultural products. The final objective is to ensure G90 products a greater access to global markets.

**G33:** Another group which had been set up earlier was the G33, led by Indonesia and focused on demands for special and differential treatment and special products. It proposed special rules for developing countries at WTO negotiations, aiming at allowing them to continue to limit access to their agricultural markets. It is basically composed of developing countries.

**Cairns Group:** The Cairns Group gathers 19 important agricultural exporting countries. Its first meeting took place in Cairns in 1986 on an Australian initiative. The Group's main objective is the liberalization of trade in agriculture via the abolishment of the export subsidies and trade-distorting measures practiced in the EU and US. Agriculture was put on the agenda of the Uruguay Round as a result of the efforts of the Cairns Group to integrate this subject into trade liberalization.

That said, however, Arab countries have not effectively joined together in coalitions to counter balance the intense negotiation leverage of developed countries. Accordingly, they have been weak on building alliances with other developing country groups, including those mentioned in Box P and the group of African and Caribbean countries.

## IMPLEMENTATION CHALLENGES RELATED TO BILATERAL FTAS WITH DEVELOPED COUNTRIES

Challenges in the implementation process of FTAs are often linked to the language induced in the agreements. Where countries can not agree, they often deliberately use ambiguous terms.

For example, one can find the word ‘reasonable’ in several FTA texts. Accordingly, if there is a dispute over an IP related clause, a tribunal has to decide what is meant by the word ‘reasonable’. In choosing between a stronger and weaker IP protection interpretation, the tribunal takes into account the preamble and objectives included in the agreement. With the exception of that with Singapore, all US FTAs include ‘foster creativity and innovation’ in their preamble/objectives. Accordingly, support for ‘innovation’ is often interpreted as intending stronger IP protection; thus the result will be a decision by the tribunal that pushes for stronger IP protection.

Furthermore, all US FTAs, except that with Jordan and Bahrain, have investment chapters.<sup>93</sup> In these chapters, ‘investment’ is often defined broadly. It may explicitly include IP as an investment and list the types of IP including patents and undisclosed information and/or have a ‘catch-all’ item that covers ‘any tangible or intangible property’. These agreements often have an ‘expropriation’ provision, whereby expropriation is not defined. For example, government measures which reduce the value of the investment may be considered as expropriation. Compensation, including interest, must be paid for any expropriation. Failure to pay the compensation for expropriation often allows for investor-state dispute resolution by the investor (e.g. patent owner), who can directly sue the government at an international tribunal. An investor does not have to persuade its home government to sue. In case the government loses at the investor-state tribunal and does not pay the penalty, the penalty can often ultimately be enforced by the government of the suing party via tariffs on any export.

On health issues, some bilateral FTAs with the US include side letters on public health, whose impact is not clear yet. The text of the side letter reads: “The obligations in the intellectual property chapter do not affect the ability of either party to take necessary measures to protect public health by promoting access to medicines for all, in particular concerning cases such as HIV/AIDS, tuberculosis, malaria, and other epidemics as well as circumstances of extreme urgency or national emergency.” This was included in the Morocco-USFTA. While the side letter may not be able to override provisions in the main text of the agreement, the term ‘necessary measures’ is a high test to satisfy.

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<sup>93</sup> Bilateral investment treaties (BITs) with developed countries often have similar provisions to the investment chapter included in the FTAs. A country can usually withdraw from a BIT within a 6 to 12 months’ notice. However, withdrawing from a BIT often leaves existing foreign investments with 10 to 20 years of BIT protection. BITs are less enforceable (for example, failure to pay compensation for expropriation under a BIT cannot be penalised by tariffs).



For example, a country has to prove that there were no less trade restrictive measures available to achieve the same public health purpose.

Regarding dispute settlement, the related chapters under an FTA allows governments to sue each other at an international tribunal for violating any obligation under the FTA. Non-violation complaints can also be brought forward. As a simple example, even if a Government D has complied with all the obligations of the FTA, Government D can be liable if a Government X reasonably expected a benefit that has been nullified or impaired. In such cases, Government D cannot know what Government X 'reasonably expected' to get except when the tribunal is set. Non-violation complaints apply to IP in all the US FTAs. In this context, tariffs can be imposed on exports from the country found to have breached the FTA.

Furthermore, the language of the agreements becomes stricter over time. On this account, Morocco's and Oman's FTAs with the US are much worse than the US FTAs with Jordan and Bahrain, which were signed earlier. For example, under the FTA with Jordan, IPRs and data exclusivity cover the chemical entity. However, in the agreements with Morocco and Oman that came later, the language extends to cover new pharmaceutical products or agricultural chemical products, whereby the same product could be used for several treatments. Moreover, under the language with Jordan, there could be a ban of the use of the chemicals for other treatments, yet the US is trying to push Jordan to agree to the implementation of the language used in newer agreements.

#### **Box Q: Trade Interlinks with Political Processes**

*FTAs have also thrown up sensitive political challenges.* Within the processes leading to a bilateral free-trade agreement with the US, both Jordan and Egypt signed a protocol Qualified Industrial Zones (QIZ). Within this agreement, the US forces the use of a minimum Israeli input to allow the products to enter duty-free to its market. Specifically, 11% Israeli component in any product is required to have market and quota free access to the US. Such agreements unduly associate broader US economic policy in the Arab region with American support for Israel, thus further complicating both political and financial relations, between the US and the Arab countries. This leads to a situation where the normalization of relations with Israel becomes a process independent of the political negotiations and progress towards finding a just solution for the Palestinian-Israeli conflict. It is worth noting that the assessment of the Jordanian QIZ signed after the peace treaty between Jordan and Israel does not show that the Jordanian economy has harvested the expected gains -- neither regarding employment, environmental standards, value added infrastructural development, or net exporting values.

#### **RECOMMENDATIONS**

Arab countries should identify their goals, draw up a strategy for participating in the new rapidly evolving trading system, and make these goals and strategies available to the public in order to allow collaboration with civil society in the region. There should be commitments to conducting clear cost benefit-analyses of the FTAs within the region, which should be made available to the scrutiny of the public. The possible human development implications of any trade agreement should be identified, and the necessary legislation and regulations to defend human development goals should be carved

out prior to the negotiations.<sup>94</sup> Furthermore, transparency in the negotiations process should be assured, whereby civil society can give more strength to government positions and help it defend national positions in the negotiations.

Many Arab countries have several potential agreements under negotiation with both developed and developing countries. Within their strategy, Arab countries need to take into consideration that trade agreements cannot be tackled in isolation; the multilateral, regional, and bilateral processes are highly interlinked and have significant impact on each other. Moreover, addressing the regional prospects for the GAFTA region cannot be separated from the stakes of Arab countries within the WTO or bilateral FTAs.

Any strategy should realize that developing countries in general are being continuously pushed to give concessions and agreeing to certain provisions in bilateral and regional agreements that they have been long struggling against under the multilateral process. These agreements, which add further economic constraints, jeopardize the Arab region's social and economic development. TRIPS-plus requirements within US FTAs, which are extensively discussed above, are an example of these constraints. Accordingly, Arab countries should try to preserve all the flexibilities available to them as developing countries under the multilateral trade contracts within the WTO.

Impact assessment studies and cost-benefit analyses are a must for any country before signing of any major agreement. In addition, a study post the implementation period is needed to look into the results of the agreement. Studies should look at sector by sector benefits and losses. They should look at the agreements with special focus on poverty and employment indicators of the country.

These studies and analyses should be made public and the Arab governments should be active in raising the awareness of citizens to the implications of these trade agreements. Moreover, costs and benefits should not be calculated in terms of the current situation and capacities only, but should also take into consideration the need for policy space for future generations as well.

Businesses and civil society groups should also be included in the decision making process.

In short, Arab countries should:

- Set a coherent agenda with regards to inter-Arab trade agreements, whereby they stand firm on having various trade agreements in the service of deepening and strengthening intra-Arab trade
- Promote policies that recognize trade as a potential means towards development and not an end in and of itself
- Emphasize the factors that improve their supply-side capacities, development of

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<sup>94</sup> Based on the presentation by Mr. Murray Gibbs from the United Nations Development Program on Arab FTAs during a workshop on FTAs and the Arab region held in Cairo, Egypt, Dec. 2006.

infrastructure in high value added industries, and diversification of economies and productions, which will open more space for achieving complementarities and common interests at the regional level

- Work on harmonizing their trade integration policies under GAFTA, before proceeding on signing trade agreements with other blocks and countries
- Identify common areas of interest to defend and share information on negotiations of various trade agreements and their possible impact on common interests
- Identify practical mechanisms for information exchange
- Refuse to sign FTAs with TRIPS-plus and WTO-plus provisions that limit the flexibilities available to them as developing countries
- Push for socio-economic assessments of trade liberalization policies before signing any further trade agreements
- Advocate for increased policy space for civil society organizations and developing countries in setting trade policies
- Strengthen ties between scholars, civil society organizations, and the Arab governments in order to evaluate trade and development policies specifically suited for the region
- Make space and institutional mechanisms for enhanced interaction of civil society organizations with national governments and international organizations regarding trade policy

## CHAPTER 8: THE ROLE OF CIVIL SOCIETY ORGANIZATIONS

“Twenty years ago nobody was interested in trade agreements, but with the power of huge organizations like the WTO and other multilaterals, we have started to think about questions of democracy and the fact that national governments are being bound by international rules, which then makes them fiddle with national laws or priorities. You can vote governments in and out but once you accede to an international agreement, it’s incredibly difficult to get out of. So, people are very wary about ceding authority to rules that they have no way of rescinding or changing.”<sup>95</sup>

Representative of one Washington-based civil society group

### BACKGROUND

The involvement of civil society organization (CSOs)<sup>96</sup> in trade policy processes has become perhaps the central issue in the lively and often acrimonious debate on the "democratic deficit", held by many to exist in the functioning of the international trade system as it is administered today.<sup>97</sup> The more trade impacts various aspects of economic, social, and cultural realities and interferes in social trends, domestic affairs, norms of life, national traditions, and social institutions that touch on the people’s rights and standards of living, the more CSOs see a necessity for interference. Trade policies should not be limited to government officials and business representatives. It is important that all stakeholders in the development process be involved in setting the negotiations agenda in a more transparent and inclusive way. Dialogue between governments and CSOs is therefore significant for setting trade agendas based on development priorities. The role of CSOs is essential if trade policy is to be oriented towards achieving the MDGs and supporting development-oriented national policies.

The role of CSOs in following trade policy making has evolved and expanded significantly since the first visible mobilizations organized during the demonstrations of Seattle at the 3rd WTO Ministerial Conference. Today, civil society no longer addresses trade issues in general terms; rather, it is involved in presenting alternatives, texts, proposals, plans, and strategies. In fact, CSOs want "in" on trade policy – they want more than to merely be listened to and politely shown the door when the time comes for serious decision making. What they are clearly seeking is rebalance, not simply to be heard.<sup>98</sup> In this context, CSOs can support the new emerging paradigms and discourse on trade and development, which challenge the Washington consensus approach and come from authoritative and

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<sup>95</sup> Shamsi, Jasmine. (Jan. 2000). "Engaging with Civil Society; Lessons from the OAS, FTAA, and Summits of the Americas." International Center for Human Rights and Democratic Development, Ottawa, Canada.

<sup>96</sup> Civil society here refers specifically to the organizations involved in challenging the current globalization perspectives and those embodied in the alternative globalization movement.

<sup>97</sup> Curtis, John M. "Trade and Civil Society: Toward Greater Transparency in the Policy Process."

Department of Foreign Affairs and International Trade. Prepared for the PRI-GCON Working Group on World Trade Issues. Available at <http://www.international.gc.ca/eet/pdf/12-en.pdf>.

<sup>98</sup> Ibid

legitimate sources, including the UN agencies. Civil society should study these approaches and promote them to the public and government as alternatives to the current dominant paradigm.

## CIVIL SOCIETY'S INVOLVEMENT WITH REGIONAL AND INTERNATIONAL TRADE BLOCKS AND INSTITUTIONS

The engagement of CSOs with regional and international trade blocks and institutions remain haphazard and far from being institutionalized. This reality can be interpreted in two ways: it could imply more leeway for civil society groups to exert pressure in influencing agendas without being restricted to accreditation and bureaucratic processes. But it could also represent a lack of consistency in the process of engagement and weakness in the ability to voice genuine concerns.

Negotiations of trade and investment deals outside blocs or institutions such as the WTO, especially those done on a bilateral level, remain steeped in secrecy. Some governments give businesses and private sector groups access to such agreements, while civil society groups often remain outside these consultations.

In general, much of the process of engaging with governments on policy making processes depends on the level of cooperation at which the governments are willing to engage in with civil society. In addition, "the likelihood of winning a seat at the table depends very much on the tackled agenda. Officials have been far more open to consultation on issues such as the environment, where public support for civil society's involvement is strong and where advice from CSOs is respected. This openness has been less forthcoming on controversial issues such as trade."<sup>99</sup>

However, CSOs see multiple reasons why they should participate in the processes of regional and international trade agreements. "The participation of CSOs in trade discussions helps to ensure that a wider range of issues are considered."<sup>100</sup> Moreover, they can represent the voice of various interest groups affected by these trends of globalization. "At the trade policy front, many of the criticisms of globalization raised by these groups reflect genuine, deep-seated concerns about the nature of the global economy and its impact on society--particularly on weak or marginalized groups. Moreover, these groups can form part of a more flexible, collaborative approach to global policy questions, particularly as they often bring issue- or country-specific knowledge and expertise to the table."<sup>101</sup>

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<sup>99</sup> Shamsi, Jasmine. (Jan. 2000).

<sup>100</sup> Note by Mr. Chantal Blouin. For more information on reports by Mr. Blouin on WTO and NGOs see the "Report on WTO Symposium on Issues Confronting the World Trading System"

[http://www.nsi-ins.ca/english/pdf/symposium\\_report.pdf](http://www.nsi-ins.ca/english/pdf/symposium_report.pdf)

<sup>101</sup> Bates, Jenny. (November 1999). "Civil Society and the WTO; A Voice, Not a Vote." Backgrounder for the Progressive Policy Institute. Available at:

[http://www.ppionline.org/ppi\\_ci.cfm?cp=3&knlgAreaID=115&subsecid=900026&contentid=653](http://www.ppionline.org/ppi_ci.cfm?cp=3&knlgAreaID=115&subsecid=900026&contentid=653)

## Engagement with the WTO

The founding charter of the WTO includes a mandate to "make appropriate arrangements for consultation and cooperation with NGOs concerned with matters related to those of the WTO."<sup>102</sup> However, it is not clear what the term "concerned" refers to, or what "matters related to those of the WTO" includes. Accordingly, this gives leeway for the WTO to act flippantly in regards to cooperation with CSOs. In October 1996, the General Council of the WTO adopted a set of guidelines to further clarify the relationship between civil society groups and the global trade body. These included pledges to publish a larger number of WTO documents, to establish informal arrangements, to receive input from NGOs, and to hold ad hoc symposia on issues of interest to civil society, such as the High Level Symposium on Trade and the Environment, which the WTO organizes annually for governments, private sector, and CSOs.<sup>103</sup>

Furthermore, some individual governments have been lately taking steps to enhance their consultations with various groups regarding the WTO accession and negotiations processes, although the influence that civil society has in such consultations is not clear.

One cannot disregard that civil society groups have played a major role in leading to increased coverage of trade issues and promoting development and human rights. Some claim these groups also had a major role in working towards the failure of several trade meetings, such as the WTO Ministerial Conferences in Seattle and Cancún, where they sought to convince their governments that "No Deal is Better than a Bad Deal." Undoubtedly, CSOs played a major role in pushing certain issues onto the center of the WTO agenda, such as cotton, and other issues of interest to developing countries.

In regards to the Arab region, the role of CSOs in following trade negotiations through the WTO remains very limited, even though there are currently six Arab countries negotiating accession to the multilateral institution. During the Arab region preparatory ministerial meeting (held in Jordan) prior to the Hong Kong Ministerial Conference of WTO, even though the focus was on linking trade to the MDGs and stressing the need for development-oriented trade policies in the Arab region, the role of CSOs in trade policy making was not discussed nor were CSOs given the floor to participate. Yet, if the approach of linking trade to development priorities is to be practically implemented, it is essential that all stakeholders in the development process be involved in setting the negotiations agenda.

## Engagement with the Euro-Mediterranean process

Within the Euro-Mediterranean process, consultations with CSOs often take place within the framework of the Euro-Mediterranean Civil Forum. The forum was part of the recommendations of the Barcelona convention as a mechanism for involving civil society in the process of building the Euro-Mediterranean partnership. The EU has also elaborated a consultation process through the EU

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<sup>102</sup> Shamsi, Jasmine. (Jan. 2000).

<sup>103</sup> Notes by Mr. Chantal Blouin

Civil Society Directorate; yet this process still involves elitist organizations and has a more informative role rather than a consultative one. Moreover, the EU Delegation in the partner Mediterranean countries has established offices to coordinate work with local CSOs involved in activities related to the Euro-Mediterranean partnership. However, the outreach of these offices to local organizations is still very limited and the channels for coordinating with and including these CSOs remain weak.

Furthermore, CSOs in the Mediterranean countries launched the process of establishing the Euro-Med NGO Platform, with the aim of monitoring, lobbying, and advocating on the whole process. The platform aims at enhancing the process of organizing the Civil Forum through adopting more institutionalized ways of civil society's operation and meetings in regards to the partnership. The NGO Platform is more independent from the EU and from the agenda of the Euro-Mediterranean Ministerial meetings than the Civil Forum. Several regional specialized networks were established within the framework of the Platform, such as the Euro-Mediterranean Human Rights Network, the Euro-Mediterranean Development Network (which is under construction), and other networks that follow environmental issues, cultural exchange issues, and youth mobilization. On the agenda there are initiatives for establishing networks for gender organizations, trade unions, and other sector specific NGOs. In this context, these platforms often focus on human rights and development issues, while their input on trade issues remains rather limited.

It is worth noting that several European groups and networks working on trade and trade-related issues such as aid are based in Brussels (the EU headquarters) and have active access to the European Commission and Parliament. Accordingly, they actively follow the official proposals on trade agreements and EU trade policy towards the Mediterranean. Building partnerships and exchanging information with such groups opens opportunities for southern organizations not present in Brussels to follow more closely the development in the EU's trade policy, and gives them a chance to comment and participate in the debate.

#### Engagement with the League of Arab States (LAS) and related Arab regional blocks

A special department for civil society was lately created within the structure of the LAS. The department is supposed to come out with a concrete proposal to enhance consultations with civil society and to increase their impact in the decision making process of the LAS. A few consultations with CSOs have taken place in certain ministerial councils such as the Arab Council of Social Affairs, which mainly included organizations representing people with disabilities, in addition to consultation in the Council of Environment, and others working on Information and Communication Technologies. However, these consultations were not genuinely reflected in the decisions of the ministerial meetings and summits. Consequently, this cannot be considered a major change in the LAS policy regarding involving CSOs, since the department is still very limited in capacities and has no clear mandate.

When it comes to trade issues, the general secretariat of the LAS, mainly the Economic and Social Council (ECOSOC), is responsible for the follow-up of the implementation of the Greater Arab Free Trade Area; however, the LAS does not have tools to pressure members to implement the agreement

in case of non-deference. ECOSOC lacks, among other mechanisms, a clear and institutionalized process for civil society's engagement. Moreover, information on the process and negotiation developments within GAFTA is still not in the public sphere as much as is needed. Part of this is due to the lack of an active role of CSOs seeking this information.

In short, it is obvious that genuine consultation with civil society is largely absent in all forms of regional trade blocks and initiatives existing among Arab countries, including the LAS, GAFTA, and the GCC.

## THE ENGAGEMENT OF CIVIL SOCIETY ORGANIZATIONS IN THE ARAB REGION

Discourse surrounding economic reforms in the Arab region includes core questions and significant controversies over the orientation of the economic system, the role of the state, the relationship between the state and the market, and the social dimensions of development. The Alexandria Declaration, which is considered one of the leading declarations on reform in the Arab region, highlights this discourse. This Declaration is the only fairly comprehensive civil society initiative for reform in the Arab region. It stresses the necessity of addressing poverty in its multiple dimensions, including social and political marginalization, lack of participation, and constrained opportunities for upward mobility. In this context, the Declaration emphasizes the core role of Arab civil society and private sector institutions in the economic reform process.

CSOs in the Arab region are involved in various areas of development work, including poverty alleviation, education, health, environment, and gender equality. CSOs include main constituencies concerned by trade areas, such as groups of farmers and agricultural workers, trade unions (especially within services like water and energy services), as well as syndicates of health services. They also include groups whose constituencies are consumers, academia, youth, women, and media, all of whom have a major stake in the negotiations within the WTO. Accordingly, consistent and frequent consultations between government and CSOs should represent an added-value for the national development processes.

In order to positively benefit from globalization, regional economic cooperation between Arab countries is definitely needed. Accordingly, CSOs should consider the mechanisms through which they can further push and enhance the process of regional institution building and reform processes. Engaging with official institutions, even if the latter are inefficient and bureaucratic, can be one of the means through which civil society can contribute to promoting reform processes.

Additionally, Arab governments should realize the importance of consistent and frequent consultations with CSOs. Arab countries need to institutionalize such initiatives, thus allowing for accumulation of experiences and enhancing coordination between government and civil society on trade issues. Proper, consistent, and institutionalized involvement of CSOs in trade negotiations enhances transparency, participation, legitimacy, and efficiency of the negotiations.



## WHAT IS NEEDED FROM CSOs?

The role of CSOs is highly relevant at all stages of the policy making process. Civil society groups can play a core role in influencing trade policies based on national developmental needs. Moreover, these organizations can have a very important role in trying to improve the stipulations of trade agreements, following the mechanisms that result from the agreements, and helping communities face the resulting social and economic challenges.

Fundamentally, the role of CSOs is important at two main stages: first, at the time of negotiations, and through lobbying for better terms of negotiations, and second, during the implementation process after the signature of the agreements, focusing on exploiting flexibilities and opportunities towards the interest of local communities.

Within this context, the different roles that civil society groups can play include:

**Contributing to setting the agenda:** Civil society should be engaged in setting the agenda. For example, rather than simply accepting sweeping neo-liberal prescriptions that link trade with economic growth and thus development, civil society should debate whether trade should be discussed purely in terms of economic growth or, instead, in terms of distribution of wealth and social equity. CSOs could contribute to analytical readings and assessments of the socio-economic impact of trade liberalization and the perspectives of various stakeholders in that area.

Civil society groups should endeavour to connect trade liberalization and policy to social, environmental, cultural, and poverty eradication processes. In other words, they should ensure that trade is viewed within the framework of sustainable development.

**Representing the concerns of different groups and stakeholders:** A direct impact of the proliferation of trade agreement is the increasing vulnerability of various local groups, such as small and medium scale industries, local community production, farmers, etc. Therefore, the need for proper participation and representation in the decision-making processes of all those groups becomes essential. Hereby, CSOs can play a major role in organizing the campaign efforts of the above mentioned groups.

**Contributing to the strengthening of national capacities, resources, analysis, and information infrastructure:** The process of strengthening local capacities is one of the major challenges facing developing countries undergoing the processes of entering into various kinds of trade agreements. Therefore, capacity building could have a double aim, including strengthening negotiating skills and capacities in order to reflect national interests in the agreed upon agreements. In addition, it could address the capacities of participation of various interest groups in the decision-making process.

**Contributing to enhancing partnership and democratic practices:** Democratic practices and efficiency of partnership, including governments, private sector, and CSOs is vital to ensure the transparency, accountability and the participation of all members in the process. The willingness to embrace a democratic system at the local level is a key factor in identifying the local challenges, in assessing the

needs of various impacted groups, and drawing the national agenda. Moreover, the democratic process is an important factor to assure the acceptance and the support of the local communities, in addition to the consent of other involved regional and global parties.

Engaging in advocacy and awareness campaigns: CSOs need to increase their awareness campaigns on the socio-economic impact of trade liberalization. They should direct these campaigns towards local communities and the various interest groups and stakeholders. They should monitor, advocate, and lobby the decision makers in order to take into consideration national and local requests and priorities. As an example from another region, in the process on negotiating a South Korean FTA with the US, South Korea's civil society and academia did a 300 page analysis of the US FTA and the national TV covered documentaries on other US FTAs. In addition, CSOs need to enhance their efforts in providing various interest groups with the needed information in order to know how to face the threats and to benefit from the challenges and opportunities brought about by the processes of integration in regional and international trade blocks. CSOs can function as "watchdogs" on official public policies; this means civil society should be actively participating in research, particularly on the impact of trade policies and trade agreements on the various social sectors. Civil society groups should take the lead in collecting information and data, and disseminating this to the general public in a bid to increase awareness of both producers and consumers.

Providing services: CSOs need to continue to enhance their traditional role in service provision and in responding to the needs of the local communities to alleviate social and economic impact of trade liberalization policies. Civil society is active in contributing to the alleviation of the socio-economic side effects of trade liberalization.

#### PROBLEMATICS FOR CSOs IN PARTICIPATING IN THE TRADE POLICY-MAKING PROCESS

There is a genuine concern about the extent to which CSOs are able to participate in the revision of the agreements before and after their ratification and about their ability to participate effectively in limiting the negative impacts of these agreements.

The weakness of the role that CSOs in the Arab region play in this area stem from the lack of democratic practices and transparency from the side of the government in dealing with these agreements, as well as the limited awareness among CSOs in regards to trade policy implications. Civil society groups lack the adequate environment in which to freely operate. Moreover, the flow of information from governments to CSOs remains very limited and access to information on agreements come late, at a time when groups can no more contribute towards avoiding negative implications of trade agreements. Access to information determines the level of input that can be expected from civil society.

In some countries, civil society and the private sector have been included in the negotiating teams to face the US group of advisors within the negotiations. Yet, interaction between CSOs and their governments mostly remain superficial and lack consistency. It can be noted however that the participation of businesses in the consultations during the negotiations processes is often more active and efficient because they tend to be relatively more organized in their demands.

Furthermore, a gap exists between government policies and the work of national research centers, which poses a question mark on the legitimacy and credibility of the officials negotiating and signing the agreements.

Transparency in the negotiation process should be assured, whereby civil society can give more strength to government positions and help it defend its own positions.

It is worth noting that some Arab countries like Lebanon have involved CSOs in consultation committees with the government and negotiation teams. However, such initiatives remain inconsistent and limited in scope. Accordingly, it does not allow for accumulation of experiences and enhancement of the coordination between government, civil society, and businesses.

Institutionalizing the efforts of these groups, through establishing joint committees to follow trade issues and staying in direct contact with the relevant governmental agencies is needed to enhance the role of civil society in this area.

#### **Box R: Challenges facing the engagement of CSOs with trade policy making**

*The case of Lebanon\**

A close analysis of Lebanon's policies reveals a lack of support for integrated approaches to policymaking, limited implementation of commitments, and inadequate public participation in the decision making process. These shortcomings are in part due to limited technical and institutional capacity associated with the difficulty of overcoming a traditional environmental management culture that is unable to handle the more dynamic, multi-sectoral approaches needed to achieve sustainable development. However, it is also in large part due to an absence of political will, particularly at the national level, to implement sustainable development commitments. This is despite the fact that sustainable development provides the counterbalance that can help negotiators and decision makers mitigate the disruptive effects of unfettered trade liberalization development models on the ground.<sup>104</sup> This reflects itself negatively on the spaces and channels available for CSOs to give input into the trade policy making process in a constructive and influential way.

Yet, the importance of placing trade policy within the context of sustainable development cannot and should not be underestimated if civil society is to have any kind of impact on the public policy debate of trade liberalization.

\* This section has been taken from the background paper by Dr. Karim Makdessi, of the American University of Beirut, which he prepared for ANND in June 2006 for the purposes of its program on the socio-economic impact of trade liberalization in Lebanon.

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<sup>104</sup> Churfane, Carol Chouchani & Makdissi, Karim. (2006). "Envisioning an Arab Agenda for Trade and Environment" in Trade and Environment: Visions from the South (ed. Najam et al), Palgrave Macmillan.

## RECOMMENATIONS FOR CSOs

Civil society groups need to seriously consider the importance and need for their advocacy role in the area of trade policy making, the mechanisms they can use, the partnerships they can foster, and the information they need. Accordingly, they groups need to expand their capacities in order to respond to the challenges brought about by the proliferation of trade agreements, and to find a space through which they can achieve substantive participation in the development process on the national, regional, and international scenes. Moreover, CSOs have a special role in localizing regional and global agendas and making them relevant to the national needs.

CSOs, especially in developing countries, are more service providers than advocacy groups. They are involved in the implementation processes of national policies and programs, but are not partners in the design, set-up stages, and evaluation processes of policy making. Thus, there is a mounting need to address the ability of CSOs to have an effective role in advocacy and to consider the level of awareness among these groups of the mechanisms available for them to enhance their participation in policy making.

In this context, some practical recommendations include:

- Asserting their role as partners to government and other involved agencies- such as UN agencies- in identifying local needs and setting clear, comprehensive, and relevant national policies. Civil society groups could enhance their role in this regards by building national coalitions in various sectors, thus increasing their resources and strengthening their support group. It should be stressed that the elaboration of the local agendas is a prerequisite for addressing regional interests and agendas of international institutions. In principle, there is a need to have clear and well defined local agendas, according to which priorities and outlines of regional plans would be set.
- Establishing a network to institutionalize the process of follow-up on trade issues; set a clear plan for follow up of WTO related meetings and other agreements, while monitoring the progress of the agreements and sharing information on the subjects at hand. Engaging in networks could present a significant added value for civil society's work on advocacy and lobbying. In this process, it is important to take into consideration the selection of the groups to be involved and the credibility of the NGOs involved.
- Helping to build the capacity of other CSOs. Within the mounting challenges, there is a need that part of the involved civil society groups concentrate on raising awareness among other organizations about the impact and challenges brought on by emerging and continuously evolving trading system. One staff member of an involved organization once expressed the concern that, "once you're inside, the skills involved are negotiating skills

and very few CSOs' staff have those skills."<sup>105</sup> Thus, it is essential to address the kind of capacities and skills available for CSOs to be effectively involved in the process of negotiations on policies within regional and international blocs and the kind of trainings they need.

- Enhancing the relationship of local Arab CSOs with regional and international organizations working on issues of trade and development, and building partnerships at the national, regional, and global levels for campaigning and sharing information. Many civil society groups point to the importance of the networks that grew out of hemispheric activity in alleviating the isolation felt by many groups and in sharing the experiences of their counterparts in other countries. "Engaging at the multilateral level enhances our knowledge about issues," was the way one women's organization put it. Working at the multilateral level has encouraged organizations to forge alliances and consequently improve their own analysis and impact. In addition, policy-makers are often more welcoming of perspectives and opinions that are backed by a group of CSOs that represent a wider and diverse constituency, rather than one organization. This would help groups get a seat at the table in the process of policy making.
- Linking up with experts and researchers at universities and research centers to strengthen the scientific arguments behind the advocacy work that civil society groups want to do; details and expertise are needed to empower the work of the groups. Accordingly, groups could work on enhancing research on strategic sectors and the implications of agreements on the certain communities.
- Producing evidences and alternatives to the files being studied and agreements being evaluated at the official level. CSOs ought to concentrate on researching the socio-economic impacts of the regional and international engagements and alterative mechanisms for maintaining development processes at the national levels.
- Promoting an ex ante and ex post monitoring and evaluation process of governmental policy. CSOs ought to preserve consistency in participation and involvement with trade issues and negotiations. The mere engagement at that level makes civil society groups aware of continuous developments and able to react to the changes and take proactive steps in this regard.
- Linking the work on trade issues to other core areas of civil society, such as human rights, environment, women's issues, as well as the right the to basic services including health, education, habitation, and environmental protection.

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<sup>105</sup> Shamsi, Jasmine. (Jan. 2000).

- Disseminating information on the impact of trade agreements. Work mechanisms could include linking up and lobbying on the staff of certain governmental institutions and ministries following trade agreements. Rural areas ought to be covered through the process of information dissemination. It is important to try to build bridges, trust, and credibility with the governmental institutions.
- Promoting projects that support small commodity producers, which find it hard to access the international market.
- Building law suits in protection of the rights of citizens and the poor and small enterprises.
- Stressing the right to access information, including those agreements that have been signed as well as those that are being currently negotiated. There is a need for proper access to information related to regional and international engagements of national governments. Huge amounts of information are often available for CSOs to use. However, groups need updated and relative information that could allow them to properly participate in the process related to regional and international blocs.

**Box S: On the role of civil society actors in trade policy making and negotiations**

*The Case of Egypt\**

In Egypt, the issue of joining several regional trade agreements is not debated in the media or the government though it is highly debated among academics. The role of civil society in discussing all such issues remains negligible.

In general, civil society is represented through the Federation of the Egyptian Industries (a quasi-governmental body) in all the committees that handle the negotiations of bilateral, regional, and multilateral agreements. The Federation of the Egyptian Industries is supposed to represent the voice of the industrial civil society, however, in many cases the representation is not effective due to the different interests of the industries and sectors which are often not along the same lines. Moreover, there is a special committee at the Federation for Foreign Trade Policy that is supposed to raise the concerns related to such agreements to the head of the Federation and undertake the necessary actions to transmit such concerns to the policy makers. This committee was established in 2004.

The agricultural civil society is hardly represented in trade negotiations with the exception of large exporters who are well represented in the so called 'export councils' (previously named commodity councils). There are around 15 export councils, each concerned with a specific sector and its members represent the exporters of a certain group of commodities. The exporters represent themselves and not specific NGOs. Such export councils meet on regular basis with the Minister of Foreign Trade and Industry to discuss the problems related to exportation of their products. In general, small exporters are not represented and the members of those export councils are determined by the Minister of Foreign Trade and Industry.

The committees that handle trade negotiations are led by government officials from the Ministry of Foreign Trade and Industry, while the committees comprise representatives from different ministries including agriculture, environment, etc.

The role of civil society in being fully engaged in trade matters in Egypt is still at its infancy. The government appointed in 2004 has made a shift toward engaging the business community in managing economic and trade issues. The most evident example was the appointment of a businessman as a Minister of Foreign Trade and Industry. However, the role of non-profit civil society organization is still not fully represented. A large number of the members and heads of such NGOs are represented in different committees related to trade issues, nevertheless, not as representatives of their NGOs but rather as independent consultants.

Much of the problem lies in the lack of awareness among the civil society about the importance of such issues and the absence of specialized NGOs dealing with trade issues.

\*This section is taken from the background paper on trade liberalization in Egypt that was prepared by Dr. Ahmad Ghoneim

## LESSONS LEARNED FROM CIVIL SOCIETY MOBILIZATIONS

It is important that CSOs interested in working on trade issues take into consideration all stages in which they can interact and try to expose the trade negotiations and their impacts. The most important first step for civil society groups is to gain the ability to take the debate on trade from closed rooms to the public sphere.

As for the WTO accession process, governments often go through years of negotiations within working parties of interested WTO members. Usually, there are specific WTO teams within the Ministries of Economy and Trade in the acceding country. CSOs should try to build relations with these groups and secure a place within the official negotiating process. If not, then groups should try to consistently follow the negotiations process and produce an expert analysis of the social and economic implications of the package deal that the country is being presented by the members of its WTO accession working party. It should be noted that recently acceding countries are being faced with obligations that extend beyond the rules which older members of the WTO were committed to [For more information, refer to the Chapter three on the WTO]. These should be put under the spotlight by civil society groups, especially given their consequences on limiting national policy space in developing countries.

It is important to engage with parliamentarians in regards to all trade agreements. The parliament is the last body that has to approve the agreements. Parliamentarians are, however, often not engaged in the process of negotiations and not aware of the consequences of the agreements being negotiated. Civil society groups have an important role in engaging parliamentarians and raising their awareness about the implications of trade agreements and their right to question what is being negotiated by ministries of trade and economy.

Furthermore, it is important to realize that governments are not monolithic; there is often an internal fight within governmental offices, through which civil society groups can find space to reach out to certain officials and negotiators who can be influenced. With this knowledge, CSOs and experts can begin identifying departments, actors, bureaucratic systems, political bodies, judicial bodies, and

others within governments and international organizations that could be the focus of their activism or that could be potential sympathetic allies.

There are several international, regional, and national initiatives on trade issues by NGOs, social movements, as well as UN bodies. It is important to engage and link up to these efforts. For example, the World Health Organization initiated a project entitled “Social Indicators of Health” and set up an international commission following this process wherein CSOs are partners. The initiative focuses on following the impact of globalization, including FTAs, and its social implications, on health issues. One group that has been especially effective in struggling against corporate globalization is Our World is Not for Sale network (OWINFS <http://www.ourworldisnotforsale.org>). OWINFS is “a worldwide network of organizations; activists and social movements committed to challenging trade and investment agreements that advance the interests of the world’s most powerful corporations at the expense of people and the environment.”<sup>106</sup>

**Box T: Some reflections on the role of Moroccan civil society in trade processes\***

Civil society in Morocco includes many unions and employer groups that represent the interests of different economic sectors. These are headed by the federation of unions in Morocco. Besides these employer groups, participation in trade related decision making has been rarely expanded to include other civil society factions. The latter often lacks organization and structured representation; they have limited involvement in following trade negotiations and understanding of the complicated processes of negotiations, which is often limited to official departments in national ministries. Moreover, there are no consumer protection organizations in Morocco that are capable of defending the consumers’ rights and fighting for laws that protect those rights.

While civil society’s role is limited in the negotiations processes, they are also not actively engaged in evaluating and monitoring the socio-economic impact of trade agreements. This effort is often limited to experts and specific researchers. Moreover, CSOs in Morocco tend not to have good relations with ministries and official departments working on trade issues.

Yet, private sector organizations are more effective in impacting governmental policies based on their interests, especially given their size in the market and their relatively more organized lobbying pressures.

Some steps forward have been taken by some Moroccan civil society groups in light of the FTA signed between the US and Morocco in 2003. This agreement imposes stricter IPRs protection measures than what exists under the current international treaties. Moroccan CSOs have loudly called against the treaty due to its detrimental public health impact, particularly with respect to access to medicines.

\* This section is based on the paper on Trade Liberalization in Morocco, prepared by Mr. Mohamad Benayad for the Arab NGO Network for Development

While civil society’s mobilization is often associated with public demonstrations, behind the scenes, many civil society groups undertake different forms of lobbying tactics and mechanisms. This was

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<sup>106</sup> For the Our World is Not for Sale webpage, see <http://www.ourworldisnotforsale.org/>



clear during the WTO 6<sup>th</sup> Ministerial Conference in Hong Kong as well as previous ministerial meetings. Some groups present specific critical analysis and discourse through which they try to lobby the governmental positions. They try to build institutional relations with governments and negotiating groups and they also enter into discourse with the decision makers to influence their policies. Others call governments to depart from capitalist systems and the WTO as an embodiment of this approach, and develop alternative policies for economic and trade policy making.

For example, during the Hong Kong 6<sup>th</sup> WTO Ministerial Conference, there were two groups playing a core role in the mobilizations undertaken by civil society: one was Focus on Global South that was active in street mobilizations with groups of farmers and other stakeholders, while the Third World Network was active in lobbying the negotiating teams inside the conference center, holding panels on various agreements, and disseminating analyses and critical input on the agreements and its impacts. Although the work mechanisms of these organizations differ, their objectives and vision overlap; accordingly their work and mobilization become complementary to each others.

In this context, three broad functional categories of civil society coalitions or networks are identified: "mobilization networks," whose chief objective is to rally support for a specific set of activities; "technical networks," which are designed to provide information to CSOs to facilitate their participation in the policy process; and networks dedicated to servicing developing countries, which are dubbed a "virtual secretariats" for the latter.<sup>107</sup>

Given the limitation of resources, capacities, and previous experience in the area of trade policy advocacy, and discrepancies in capacities of CSOs among varying regions, the exchange of experiences among regions and different groups takes on a significant added value.

#### THE ROLE OF CSOS WITHIN AN EMERGING GLOBAL GOVERNANCE PROCESS

In principle, the role of CSOs is definitely developing as trade agreements and mechanisms increasingly influence the global governance architecture. Change in the role of the state and in the capacities and dynamics of the market as a result of trade mechanisms today implies change in the challenges facing CSOs. As civil society activity unfolds in relation to a new governance apparatus,<sup>108</sup> the character of civil society is expected to increasingly change, whereby their attention moves from the state to other sites and networks of governance including global regulatory institutions, such as the WTO.

The need for CSOs to advise and push social justice concerns in state policies, and to face up to capitalism and neo-liberal policies increases as the state is less able to secure a dignified and stable standard of living for its citizens. In his latest book *Making Globalization Work*, Joseph Stiglitz states, in reference to the current democratic deficit in global governance processes, that it is necessary to have "more openness, including improvements in procedures to ensure not only more transparency but that more voices are heard. NGOs have taken on increased importance in ensuring that voices

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<sup>107</sup> Curtis, John M. "Trade and Civil Society: Toward Greater Transparency in the Policy Process."

<sup>108</sup> J A Scholte, "Globalization and Governance: From Statism to Polycentrism", Working paper No. 130/04 (February 2004), Center for the Study of Globalization and Regionalisation (CSGR), University of Warwick, [www.csgr.org](http://www.csgr.org)

other than those of the multinational corporations get heard in the process of global economic decision making.”<sup>109</sup>

The mobilization of CSOs in regards to advocating a different trade policy and economic system has contributed to the rising dynamics of global civil society. Yet, it is still unclear at what level of engagement CSOs, representing a link or voice coming from the grassroots, can become a force that is capable enough to be a real player in shaping these trends and contributing to democratization of the global governance system.

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<sup>109</sup> Stiglitz, J.E. (2006). Making globalization work. p. 283, New York: W.W. Norton & Co.

## **Brief Glossary of Key Terms:**

**Bilateral Agreement:** A trade agreement signed between two parties.

**Capital flows:** Capital flows are the movements of capital from one country to another. It contains foreign direct investment, portfolio investment (including trade in stocks and bonds), and other investment (which includes transactions in currency and bank deposits).

**FDI:** Foreign Direct Investment is defined as a cross-border investment in which a resident in one economy (the direct investor) acquires a lasting financial interest in an enterprise in another economy.

**IPR:** Intellectual property rights are the legal rights given to persons over the creations of their minds. It deals with the several aspects of intellectual property: copyright, trademark, patents, industrial design right and trade secret.

**LAS:** The Arab League or League of Arab States is an organization of predominantly Arab states. Headquartered in Cairo, the League's charter states that the League shall co-ordinate in many fields, including economic affairs and commercial relations.

**MDGs:** The Millennium Development Goals are eight goals that United Nations member states have agreed to try to achieve by the year 2015. These goals are:

1. Eradicate extreme poverty and hunger
2. Achieve universal primary education
3. Promote gender equality and empower women
4. Reduce child mortality
5. Improve maternal health
6. Combat HIV/AIDS, malaria, and other diseases
7. Ensure environmental sustainability
8. Develop a global partnership for development

**MENA countries:** Middle East and North Africa countries. It includes all Arab countries from Mauritania to Iraq, together with Gulf countries and Djibouti.

**Mode 4 liberalization:** The fourth mode of services supply liberalization consists of permitting the cross-border delivery of services through the temporary movement of persons.

**\*Most Favored Nation:** The principle of not discriminating between one's trading partners (GATT Article I, GATS Article II and TRIPS Article 4).

**Multi Fiber Arrangement:** The Multi Fiber Arrangement (MFA) (a.k.a. Agreement on Textile and Clothing (ATC)) ruled the world trade in textiles from 1974 through 2004, imposing quotas on the quantity developing countries could export to developed countries. It expired on 1st January 2005.

Multilateral Agreement: A trade agreement signed by multiple parties.

\*National Treatment: The principle of giving others the same treatment as one's own nationals. GATT Article 3 requires that imports be treated no less favorably than the same or similar domestically-produced goods once they have passed customs. GATS Article 17 and TRIPS Article 3 also deal with national treatment for services and intellectual property protection.

Negative list approach: The comprehensive inclusion of all service sectors, unless otherwise specified in the list of reservations. A negative list approach requires that discriminatory measures affecting all included sectors be liberalized unless specific measures are set out in the list of reservations.

Positive list approach: The voluntary inclusion of a designated number of sectors in a national schedule indicating what type of access and what type of treatment for each sector and for each mode of supply a country is prepared to contractually offer service suppliers from other countries.

Neo-liberalism: The overall philosophy of economics of the international trading system. In essence, neo-liberalism promotes a market driven approach to economic policy making that eases the technological and resource constraints and inflationary pressure on economies.

\*Non tariff barriers to trade: These are non-tariff measures that inhibit trade, including quotas, import licensing systems, sanitary regulations, prohibitions, etc.

Patent: Patents are exclusive legal rights given to an entity for the protection of their novelty, inventive steps, or capability of industrial applications. Patents are normally granted for twenty years.

Government procurement: Government procurement is the purchase of goods and services made by a government. This is a major instrument through which the government can boost the local economy, build up local entrepreneurs, give contracts to local institutions, and fight corruption.

Qualified Industrial Zone (QIZ): A QIZ is an industrial zone that permits duty free access to the US market if the goods are produced in the zone and meet certain rules of origin. Both Jordan and Egypt have signed a QIZ.

Regional FTA: An FTA between countries within the same region. Examples include the North American Free Trade Agreement (NAFTA), South Asia Free Trade Agreement (SAFTA), and the Greater Arab Free Trade Area (GAFTA).

Right of establishment: The condition whereby foreign investors from a member state in a trade agreement have the same economic rights under national legislation as given to the state's nationals. This removal of restrictions on foreign investors pertains to land, buildings, movement of people, etc.

\*Rules of origin: Laws, regulations and administrative procedures which determine a product's country of origin. A decision by a customs authority on origin can determine whether a shipment

falls within a quota limitation, qualifies for a tariff preference or is affected by an anti-dumping duty. These rules can vary from country to country.

\*Safeguard measures: Actions taken to protect a specific industry from an unexpected build-up of imports, generally governed by Article 19 of GATT. The Agriculture Agreement and Textiles and Clothing Agreement have different specific types of safeguards: “special safeguards” in agriculture, and “transitional safeguards” in textiles and clothing.

\*Sanitary and Phyto-sanitary (SPS) requirements: Implemented by governments to protect human, animal and plant life and health, and to help ensure that food is safe for consumption.

\*Subsidy: There are two general types of subsidies: export and domestic. An export subsidy is a benefit conferred on a firm by the government that is contingent on exports. A domestic subsidy is a benefit not directly linked to exports.

\*Tariff: Customs duties on merchandise imports. Levied either on an ad valorem basis (percentage of value) or on a specific basis (e.g. \$7 per 100 kgs.). Tariffs give price advantage to similar locally-produced goods and raise revenues for the government.

\*Trade facilitation: Removing obstacles to the movement of goods across borders (e.g. simplification of customs procedures).

Washington Consensus: The dominant set of economic reforms which were promoted to developing countries by the major IFIs in the last quarter of the twentieth century to the present. These reforms include fiscal discipline, redirection of public expenditure, tax reform, interest rate liberalization, a competitive exchange rate, trade liberalization, liberalization of inflows of FDI, privatization, deregulation (removing barriers to entry and exit), and securing property rights.

Differences between the WB, IMF, WTO: The World Trade Organization is in charge of ruling the trade among its member states, while the World Bank is responsible for providing finance and advice to developing countries and the International Monetary Fund is accountable for the supervision of the global financial system.

\*Some of all of these definitions have been obtained from the WTO glossary available at [http://www.wto.org/english/thewto\\_e/glossary\\_e/glossary\\_e.htm](http://www.wto.org/english/thewto_e/glossary_e/glossary_e.htm)

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