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THE NEW RULES OF ORIGIN REGARDING TEXTILES AND CLOTHING IN THE EU ASSOCIATION AGREEMENTS: THE CASES OF JORDAN, TUNISIA AND MOROCCO

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"To let every one make whatever he chose, and take his labor and send his goods to whatever market he liked."

Alfred Marshall, *The Principles of Economics (1910)*

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The Euro-Med. Arab Partnership Agreements (Euro-Med Association Agreements) of Tunisia, Morocco, and Jordan differ significantly in the terms of the new rules of origin in textiles and clothing, resulting in the discriminatory treatment by the EU towards countries of the Mashreq and the Maghreb. Significantly, the trade diverting impact of such discrimination is underscored in the paper. More importantly, several lessons can be learnt from the Moroccan and Tunisian Association Agreements with the EU (basically, identical arrangements regarding the rules of origin in general and textiles in particular) as well as that of Jordan. Furthermore, the procedures required by the Agreement underscore the necessity for specialized institutions in countries of the Arab Mediterranean Countries (AMCs).

The analysis is in six parts, the first delineates the history of the development of the economic relations between the (AMCs) and the EU with particular emphasis on the textile and clothing industry of the three countries. The second part examines the terms of the Euro-Med Agreements with respect the rules of origin and defines the terminology the concepts therein. The third part compares the rules of origin as applied in the Partnership Agreements to the three countries. The fourth identifies the results of the negotiation processes and identifies the terms of the agreement in the rules of origin that are negotiable, underscoring the negotiating strengths and weaknesses of the other ESCWA and Arab countries and ways and means of increasing their negotiation power. The last part is the summary and conclusion.

History of the EU-Jordan/Tunisia/Morocco trade in textiles and clothing

In 1995, the EU 15 textile and clothing industry employed over 2.3 million people in around 118000 enterprises with a total turnover of ECU 174 billion and exports of ECU 30 billion. Furthermore, the textile and clothing industry accounted for 5% of the value added of the manufacturing industry and contributed 8.5% in manufacturing employment.[1]

Exports of textiles alone amounted to ECU 18.3 billion, with the bulk of exports directed mainly at the USA, Switzerland, Japan, Poland, Tunisia and Morocco, which altogether comprise 45% of EU's total textile exports. The largest EU exporters are Germany, Italy and France, a structure that has not changed since the early 1990s. On the other hand, textile imports were ECU 13.5 billion, with the principal suppliers being India, Switzerland, USA, and Turkey, constituting 40% of the domestic demand. The largest importers in the EU were Germany, Italy, UK, France and Belgium. The trade balance was a favorable ECU4.8 billion.

[1] For a detailed treatment of the EU trade in textiles and clothing see *The EU Textile and Clothing Sector 1995.*

As for trade in clothing, the EU clothing exports reached ECU 12.3 billion in 1995, with the main exporters being Italy (36%), Germany (22%), and France (16%). More than half of these exports goes to Switzerland, Japan, USA, and Hong Kong. Clothing imports reached ECU 27.3 billion with the most importan6t important m porters being Germany, UK and France. The trade deficit in clothing was ECU 15 billion, with it being highly dependent on Asia, Eastern European and Ex USSR countries and Mediterranean countries--mainly Morocco and Tunisia.

Morocco and Tunisia, in 1995, were among the group of countries that the EU had a trade surplus with in textiles (ECU1.4 billion and ECU1.28 billion, respectively) and a trade deficit (ECU 0.75 billion and ECU 0.79 billion) in clothing. However, despite the seeming largesse of the numbers relative to the economies of Morocco and Tunisia, when taken as percentages, these figures present mere single digits that are less than 5% of the total trade of the EU in these goods. In terms of textiles, neither country appears among the principal trading partners with the EU between 1990-95. However, in clothing, both countries are listed among the top ten suppliers of clothing goods, with the size of their trade with the EU almost identical.

On the other hand, an empirical investigation of the trade between Jordan and the EU in textiles and clothing would speedily demonstrate that Jordan has on average (1994-1998) a trade deficit of ECU 28 million, with Jordanian exports to the EU being almost nothing.[2] Despite the insignificance of Jordanian textile and clothing trade with the EU, Jordan will be shown not to have enjoyed any privileges arising from policy bias beyond those enjoyed by Morocco and Tunisia.

Clearly, the European textile and clothing industry has been seriously affected since 1995 by overseas competition. Hence, to limit imports from low-cost suppliers overseas, the EU participates in the Multi-fiber Arrangement (MFA). A proposal by the Commission in October 1996 to accelerate liberalization of the textiles and clothing market in the EU provoked anger among industry leaders in member states, because no reciprocal concessions, in the form of removal of trade barriers, were being obtained from the major textile exporting countries in other parts of the world. The commission planned to include several 'sensitive' categories in the second stage of the MFA phasing-out of trade barriers, which was to start in January 1998. These categories include woolen yarns and fabrics, gloves, and synthetic ropes. A proposal by the Commission to impose duties of between 3% and 36% on imports of unfinished cotton fabrics, to counter alleged 'dumping' by several developing countries, was opposed by a majority of EU member states. The proposal aimed to help weaving industries (mainly in France and Italy), that have been adversely

[2] Jordan's total imports of clothing rose from US$27 million in 1990 to US$63 million (Annual Report of the WTO 1998), making the volume of its clothing imports from the EU almost 40% of its total imports.

affected by the developing countries practice of sharply undercutting their prices. Fabric finishers claimed that provisional duties would cause more job losses in the industry than the claimed 'dumping'. Duties were provisionally introduced, for a period of six months, in late 1996, but were removed in May 1997. In March 1998, provisional duties of between 14% and 32.5% were imposed on imports of unbleached cotton from six countries, despite opposition by nine EU member states.[3] Ministers of foreign affairs voted to remove duties in October.

The EU and the Development of the Mediterranean Policy

The Mediterranean policy of the EU was first formulated in 1994 to establish a pattern of relations with the Mediterranean countries in a "spirit of partnership", thus formally granting the EU a major role in a region where, as the largest trading partner, it already exerted significant influence in the area's socio-economic makeup.[4] In 1995 at the Barcelona Conference, partnership policy was further canonized into three main objectives:

- The establishment of a common area of peace and stability through increased political dialogue and enhanced security;
- The building of an area of shared prosperity through economic and financial partnership and the gradual introduction of a free trade area by 2010; and
- Bringing different peoples together through a social, cultural and human partnership.

A mere eighteen months after the Barcelona Conference, a second Euro-Mediterranean Conference of the 27 foreign ministers of the Member States of the European Union and its Mediterranean partners was held in Valetta (Malta) on 15 and 16 April 1995 to review activities under each of the three objectives and to design a future strategy for implementation of the objectives. At Malta, it was agreed that additional effort would be made to promote investment in the Mediterranean region and to increase mutual understanding and cultural dialogue between the partners.

In June 1995, the Cannes European Council set financial cooperation with the Mediterranean countries at ACU 4 685 million for the period 1995-99. Of this sum, ECU 3 424 million could be granted under the MEDA program, for which a regulation was adopted on 23 July 1996 (see Khader, 1997). The fund provides assistance to countries that join the Agreement to support the execution of economic adjustment programs and to overcome the financial difficulties that may result from establishing a free trade area. Moreover, the European Investment Bank is to provide an equivalent amount in financial support in the form of loans. Other assistance may be provided through bilateral co-operation.

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[3] In addition, members of the EU imposed sanctions on Egyptian cotton on several occasions in 1998 under the guise of counter-dumping.

[4] The European Union's Mediterranean partners are Algeria, Cyprus, Egypt, Israel, Jordan, Lebanon, Malta, Morocco, Syria, Tunisia, Turkey and the Palestinian National Authority. Cyprus and Malta, which had already been linked to the Union by Association Agreements since 1973 and 1971, respectively, are candidates for membership. Turkey entered into a customs union with the European Union in January 1996. *(Euro-Mediterranean Partnership*, European Commission, March 1997.)

In bilateral terms, the Euro-Mediterranean Partnership materialized in a series of Association Agreements between the Mediterranean partners and the European Union. Four of these so-called "new generation" agreements have been signed in the Mediterranean area: Tunisia on 17 July 1995, Israel on 20 November 1995, Morocco on 26 February 1996, and Jordan on November 24, 1997. Negotiations initiated with Egypt, Syria, Algeria and Lebanon in 1995 are still underway, with Egypt being the closest to signing an Agreement. Additionally, an Interim Agreement with the Palestine Liberation Organization on behalf of the Palestinian Authority was signed on 24 February 1997. The new generation Agreements do not have an expiration date, and are intended, among other things, to replace the Cooperation Agreements signed in the 1970s.

The EU Association Agreements

Although the Partnership Agreements between AMCs and the European Union are differ from one country to another, they are similar in that they consist of three major components and include a number of protocols and annexes. The three main components of a typical Agreement are:

Political and Security Issues

This section of the Agreement aims at establishing a number of common principles, which a partner would undertake to promote jointly with the EU. The respect for fundamental freedoms is recognized, and the rule of law is established as a basis for all relations. Moreover, relations between states are to be guided by certain principles acceptable to all. Furthermore, the initiative involves a dialogue that leads to the adoption of common principles by the partners, emphasizing the achievement or movement toward peace, security, democracy, human rights, and regional development as the engine for change. In this respect, a comprehensive agreement was reached between the EU and the AMCs.

Economic and Financial Partnership

This is probably the most important component of the Association Agreement because it covers the issue of trade and economic cooperation. It aims at establishing a Euro-Southern Mediterranean Region (SMR) Free Trade Area, to be established in progressive steps by the year 2010. The fields of economic development, resources and infrastructure are also to be included with particular importance attached to regional integration. The free trade agreement is based on the provisions of the Agreement as well as the General Agreement to Tariffs and Trade (GATT) and the General Agreement to Services (GATS).

The partnership covers: trade in agricultural and industrial products, right of establishment and services, payments and capital movements, competition, intellectual property rights, financial co-operation, economic cooperation in the field of industry, agriculture and investment, standards and measurements, transportation, telecommunications and energy, science and technology, environment and tourism, statistics, and the fight against illegal drugs.

Partnership in Social and Human Affairs

The partnership aims at encouraging exchanges among the civil societies of the EU and the countries of the SMR. In the context of decentralized co-operation, the emphasis is placed on education, training, young people, culture and the media, migrant population groups and health. Greater co-operation in the field of home affairs and justice is also envisaged, with action in particular against drug trafficking, terrorism, and international crime. There is comprehensive agreement between the EU and the SMR countries in this regard.

Identical Deals and the MFN Clause

All of the signed SMR countries' Agreements were to be identical. For example, a most-favored-nation clause, which appeared in the first pages of the early drafts of the Agreement with Jordan, promised that a benefit gained by one country would be extended to all partner countries. This same clause was present in the Tunisian and Moroccan Agreements. However, this clause disappeared in subsequent drafts of the Jordanian Agreement and the final Agreement. It became an implied understanding—possibly not binding also, since the negotiated Agreements are not identical and, consequently, the gains of countries differ.

Furthermore, Agreements in the negotiation stage differ from those already signed. A good example of this scenario is the no-drawback conditionality.[5] Jordan, according to the Agreement, has to cease granting drawback four years from the date of entry into force of the Agreement. Morocco and Tunisia, upon the date of entry into force of their respective agreements (already in effect in the case of Tunisia), have to suspend the granting of any drawback privileges—something which both of these countries would like to have reinstated in their Agreements. On the other hand, Egypt, Syria and Lebanon are negotiating for a longer drawback period than the one received by Jordan. They have already requested that the difference between the partner country duty and that of the EU on the same good be drawn back beyond the agreed grace period in order to avoid any resultant reverse discrimination to their industries.[6]

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[5] Rules of origin often contain provisions to ensure that materials imported from third countries have been charged with the appropriate customs duties before they can, after sufficient processing, enjoy the tariff preferences provided for in the agreements. This obligation and the prohibition of the reimbursement of customs duties levied on these materials when they are exported to another country under the terms of a preferential agreement is commonly called "the no-drawback rule".

The aim of the no-drawback rule is to restrict trade circumvention by operators using preferential arrangements to introduce materials and components from non-preference countries onto the home market without customs duties having been levied anywhere on them.

[6] The agricultural calendars provided to each country are not identical. The EU would block any attempt to grant a small producer additional duty free quantities because it would claim that such privileges would have to be extended to other countries in the Med. area which may be large producers of the item. Agriculture is highly protected.

Another example of unequal treatment is the rules of origin principle whereby the countries of the Maghreb are allowed full cumulation among each other, while the countries of the Mashreq are only offered bilateral cumulation with the EU. Therefore, as far as the Mashreq is concerned, the EU is entitled to cumulate with all of its members while the member countries are only allowed cumulation with the EU which further weakens the competitive positions of these countries.

Indeed cumulation would help establish backward and forward industrial linkages, enhance the potential for intra-regional trade, and possibly offset some of the "hub and spokes" nature of the EU web of agreements. Furthermore, having no regional cumulation would weaken the possibility of a greater Arab-Arab economic integration that would hopefully stem from the Association Agreements.[7]

Rules of origin-basic concepts:

In the Agreements, a product shall be considered as originating in a country if it has been either wholly obtained or has undergone sufficient working or processing in that country, to the degree that satisfies the Rules of Origin. The Rules of Origin, as stated in all the European-Mediterranean Association Agreements, ensure that only products originating in a beneficiary country benefit from the preferential trade arrangement stipulated in the Agreements. The rules of origin are contained in a protocol and cover, in addition to a fairly complex definition of what may be considered to be originating, details of administrative measures that are to be applied in order to ensure the agreement is applied correctly. Basically, if goods shipped to the EU are to benefit from the preferential tariff treatment provided under the Agreement, they must comply with the rules of origin. Otherwise, normal duties apply.

With regard to the definition of the concept of originating products, there are three criteria to be considered; "wholly obtained", "sufficient transformation" and "cumulation". Once the originating status of a product is established, administrative procedures are necessary to enable the product to obtain the preferential treatment that it is entitled to. In the Community's agreements, proofs of origin are required, essentially the EUR.1 movement certificate. EUR.1 certificates are therefore issued by the customs authority in the exporting country if the products are judged to be originating and submitted with the products to customs in the importing country. In brief, the steps to be taken by the exporter from a country who wishes to obtain preferential access for a product are as follows:

1. Determine the tariff heading (HS heading) of the product concerned;
2. Check whether the product is eligible for preferential treatment under the agreement;
3. Verify that any tariff quota or reference quantity is complied with;
4. Ensure that the origin criteria are met;
5. Ensure that special requirements if applied, are satisfied.
6. Prepare the documentary evidence.

[7] At least in Jordan, this closer Arab-Arab economic integration was touted during the negotiation process as one of the positive outcomes of the Agreement.

A product is considered to originate in Jordan, for example, if:
(a) all materials used and processing done are wholly obtained in Jordan
(b) it is sufficiently worked or processed, although non-originating materials are used
(c) it has accumulated origin with non-originating materials from permitted countries

The coming sections explain in detail these three criteria.

- **Wholly obtained products**

Goods originate in a certain country or area when they are wholly obtained in that country. Examples of "wholly obtained" goods are mineral products extracted within the territory of the country concerned, vegetable products harvested there, live animals born and raised there, fish caught by vessels of the country benefiting from the preference and waste and scrap collected there.

Furthermore, goods are also considered to be "wholly obtained" if they are manufactured from wholly obtained materials, such as a wooden table produced from wholly obtained wood, or meat produced from wholly obtained animals.

The following is a list of products that are considered to be wholly obtained in a country:

a) Mineral products extracted from their soil or from their seabed;
b) Vegetable products harvested there;
c) Live animals born and raised there;
d) Products from live animals raised there;
e) Products obtained by hunting or fishing conducted there;
f) Products of the sea including fish and other products taken from the sea outside the territorial waters of the Community or the partner country but by their vessels[8];
g) Products made aboard their factory ships[1] exclusively from products referred to in subparagraph (f);
h) Used articles collected there, which are fit only for the recovery of raw materials, including used tires fit only for retreading or for use as waste.
i) Waste and scrap resulting from manufacturing operations conducted there;
j) Products extracted from marine soil or subsoil outside their territorial waters, provided that they have sole rights to work that that soil or subsoil;
k) Goods produced there exclusively from the products specified in subparagraph (a) to (j).

[8] The terms "their vessels" and "their factory ships" shall apply only to vessels and factory ships:
(a) which are registered or recorded in an EC Member State or in the country;
(b) which sail under the flag of an EC Member State or of the country;
(c) which are owned to an extent of at least 50 per cent by nationals of EC Member States or of the partner country, or by a company with its head office in one of these states, of which the manager(s), Chairman of the Board of Directors or the Supervisory Board, and the majority members of such boards are nationals of EC Member States or of the partner country and of which, in addition, in the case of partnerships or limited companies, at least half the capital belongs to those States or to public bodies or nationals of the said States;
(d) of which the master and officers are nationals of EC Member States or of the country; and
(e) of which at least 75 per cent of the crew are nationals of EC Member States or of the country.

- **Sufficiently worked or processed products**

Non-originating materials can obtain an origin status by undergoing a sufficient degree of transformation or processing within the country or area concerned. The degree of transformation or processing considered sufficient is never easy to define and tends to refer to a processing operation that brings about a significant qualitative change. The form of the transformation or processing requirements varies from product to product and includes added value rules, the exclusive use of originating products (e.g. canned fish) and types of manufacturing (e.g. garments form yarn).[9]

The measures used to determine the degree of transformation or processing that are considered sufficient vary from product to product and include: added value rules, the exclusive use of originating products, and types of manufacturing. A frequent criterion for the sufficient transformation is the change of the 4-digit heading under the Harmonized System Nomenclature (HSN)—countries have access to HSN under the framework of their membership in the World Customs Organization (WCO).

The processing requirements necessary for products to be considered as originating in Jordan are listed in Annex [I] of the EU-Jordan Association Agreement, and in Protocol 4 in the Moroccan and Tunisian Agreements. The list is itemized on a more or less product-by-product basis; i.e. it may include the exact Harmonized System (HS) code of a specific product, several heading numbers grouped together, or a chapter number that includes a group of products. Below is a form that presents the structure in which the list is arranged.

HS heading No.	Description of product	Working or processing carried out on non-originating materials that confers originating status		
(1)	(2)	(3)	or	(4)
ex Chapter 62	Articles of apparel and clothing accessories, not knitted or crocheted;	Manufacture from Yarn		

[9] For products not falling within Chapters 50-63 of the HSN, the Agreement allows some degree of flexibility in obtaining products from third countries. For these products, material obtained from a third country—say Turkey—can be used in the manufacture of a product without nullifying its origin status provided that it does not exceed 10% of the ex-works price of the product and given that the imported material falls within the same 4-digit heading. However, this flexibility is only present in the EU-Israel Association Agreement.

Column 1 of the list describes the HS codes of the products. For example: Chapter 62 is a heading for the group of products included in this chapter of the HS. The second column describes the goods (as provided in the HS code). In the case of product groupings, the description of products in column two is given in general terms (e.g. Chap. 62: Articles of apparel and clothing accessories, not knitted or crocheted.). A rule is specified in columns 3 or 4 for each entry in the first two columns. In some cases, the entry in the first column is preceded by an "ex", which signifies that the rules in columns 3 or 4 apply only to the part of the heading that is described in column 2 and that for all the other goods under this heading the basic rule of the heading is otherwise sufficient. If a rule is specified for an entry in the first two columns in both columns 3 and 4, the exporter may opt as an alternative to apply either the rules set out in column 3 or those set out in column 4. If a no-origin rule is given in column 4, then the rule set out in column 3 must be applied.

To calculate the value-added for a certain product for the purpose of determining its status of origin, it is essential to understand that:

1- **The value of the material** is the customs value at the time of importation of the non-originating materials used, or, if this cannot be ascertained, the first ascertainable price paid for the materials in the EU or the country. (The customs value is the value determined in accordance with the 1994 Agreement on implementation of Article VII of the General Agreement on Tariffs and Trade—WTO Agreement on Customs Valuation.)

2- **Ex-works price** is the price paid for the product to the manufacturer in whose undertaking the last working or processing is carried out, provided that the price includes the value of all the materials used but excludes any internal taxes which are repaid when the product is exported.

For most articles of apparel and clothing accessories, not knitted or crocheted, of HS Chapter 62, the list requires manufacture from yarn. In this case yarn is allowed to be non-originating. However, non-originating fabrics are not allowed. For example, in the case of Jordan, for most fabrics of Chapter 59 only manufacture from fibers confers originating status. This means that to export to Europe with a preferential treatment, the fabric producer will be allowed to use non-originating fibers but not non-originating yarns.

HS heading No.	Description of product	Working or processing carried out on non-originating materials that confers originating status		
(1)	(2)	(3)	or	(4)
5901 to 5911		Manufacture from Yarn		

SPECIAL ADDITIONAL RULES

1. Textile products

In the case of textile products several rules apply:

- The term "Natural Fibers" refers to fibers that are not artificial or synthetic and is restricted to the stage that precedes any spinning process. It includes goods of headings 0503, 5002, 5003, 5101 to 5105, 5201 to 5203, 5301 to 5305.
- Some textile products which are marked in the list of criteria may use non-originating textile materials, other than linings and interlinings, provided that they are classified in a heading other than that of the finished product and their value does not exceed 8% or the ex-works price of the finished goods. Materials which are not classified within Chapters 50 to 63 may be used freely whether they contain textile products or not, i.e. buttons or zippers—even if the latter contains some textile components. However, their value must be taken into account in case of any percentage cumulation rule for non-originating materials.
- The term "man-made staple fibers" refers to headings 5501 to 5507.
- In the production of textiles, it is allowed to have 10% of the weight of the basic materials non-originating given that at least two or more basic materials originate in Jordan.

2. Insufficient working or processing

Under the Protocol on Rules of Origin in the Association Agreements, some working or processing operations are always considered as insufficient to confer originating status, whether or not there has been a change of tariff heading, viz.:

(a) operations to ensure the preservation of products in good condition during transport and storage (ventilation, spreading-out, drying, chilling, placing in salt, sulphur dioxide or other aqueous solutions, removal of damaged parts, and like operation s);
(b) simple operations consisting of removal of dust, sifting or screening, sorting, classifying, matching (including the making-up of sets of articles), washing, painting, cutting-up;
(c) (i) changes of packaging and breaking up and assembly of packages;
(ii) simple placing in bottles, flasks, bags, cases, boxes, fixing on cards or boards, etc., and all other simple packaging operations;
(d) affixing marks, labels and other like distinguishing signs on products or their packaging;
(e) simple mixing of products, whether or not of different kinds, where one or more components of the mixtures do not meet the conditions laid down in the protocol to enable them to be considered as originating in the Community, in Morocco or in Tunisia;
(f) simple assembly of parts to constitute a complete product;
(g) a combination of two or more operations specified in subparagraphs (a) to (f);
(h) Slaughter of animals.

Cumulation

In most cases, the rules of origin contained in a free trade agreement specifically provide for a system of cumulation so that products originating in one or more partner countries can be used in another partner country and result in a finished product originating in that country. There are basically three different types of cumulation; bilateral, diagonal and full cumulation. The different cumulation systems take into account a number of considerations, such as the political relations, the geographical situation, the development objectives, the regional cooperation possibilities and the economic interests of the countries concerned.

In the context of the Euro-Mediterranean Association Agreements that have been concluded or are in the course of negotiation, two kinds of cumulation are allowed for: bilateral cumulation and cumulation of working or processing (full cumulation). In particular, cumulation of working or processing has been granted for trade among the countries of the Maghreb (Algeria, Morocco and Tunisia), while all signatory countries and territories are granted only bilateral cumulation.

The Association Agreement with Jordan provides a system of cumulation that allows manufacturers in Jordan to count originating materials from one or several partner countries towards obtaining originating status on their finished products. It should be noted that cumulation applies only to "originating" materials (i.e. materials wholly obtained, or sufficiently processed, in the country with which Jordan will accumulate origin). The Agreement provides two types of cumulation:

1- Bilateral cumulation: This is the least developed of all systems of cumulation. It operates between two partners (e.g. EC/Jordan Agreement or EC/Egypt Agreement) and applies only to material which originate in either of the two partner countries It is applied only to materials that originate in either Jordan or the EU. Accordingly, inputs and intermediate products originating in the EU may be utilized in the manufacture of a finished product in Jordan without fulfilling processing requirements. However, products, in which EU originating materials are used, are considered originating in Jordan if they have undergone working or processing beyond that referred to in Article 6 of the Protocol. For example, EC rules of origin require that the manufacturing process for apparel not knitted or crocheted (HS 62) when imported inputs are used have to start from imported yarn.

With bilateral cumulation, a producer of apparel in Jordan may utilize fabric imported from the European Union and the finished suit will be considered an originating product; thus it will be possible to export it to the European market example from duties. This is because the imported fabric is counted under the cumulation rules as a domestic input and not as an imported input. However, this only applies when the fabric manufactured in the Community is already originating, that is it is wholly obtained (manufactured from domestic cotton fibers) or has been manufactured from imported natural fibres but not imported yarn.

2- Diagonal cumulation: This provision is simply an extension of bilateral cumulation to neighboring countries on the southern shores of the Mediterranean that have concluded similar Agreements with the EU. These countries and Jordan must harmonize their rules of origin with those of the EU. In other words, they will have to have the same, or at least extremely similar, rules of origin.

Subject to the provisions of diagonal commulation, materials originating in "Country B", "Country C", "Country D", or in "Country E" within the meaning of the agreements between the Community and "Country A" and these countries are considered as originating in "Country A" when incorporated into a product obtained there. It is not necessary for such materials to have undergone sufficient working or processing.

However, products which have acquired originating status in country "A", where materials from countries "B", "C", "D", or "E" shall only continue to be considered as products originating in Country "A" when the value added there exceeds the value of the materials used originating in any one of the other countries. Otherwise, the product is considered to be originating in the country (B,C,D, or E) which accounts for the highest value of originating materials used. For example: A Jordanian clothing manufacturer wishing to benefit from preferential conditions on the Community market can use fabric manufactured in Morocco from Yarns manufactured in Egypt, provided that Egypt and Morocco have signed free trade agreements with the EU and harmonized their rules of origin with those of the EU and that either the yarn is originating in Egypt or the fabrics are originating in Morocco. In this case clothes are considered originating in Jordan given that the value added provided in Jordan exceeds the value added in the Moroccan fabrics or Egyptian yarns.

With this partial cumulation, only the products that originate in a customs territory that is part of the arrangement can be counted as local content when utilized for further manufacturing in a partner customs territory. Thus, origin-conferring operations must be carried out in each of the countries/territories that participate in the production process.

The presently signed Agreements do not allow for diagonal cumulation--only bilateral cumulation in the case of Jordan. The European Commission is finalizing a communication on the technical steps that must be taken to grant diagonal cumulation of origin to the Mediterranean partners, including Jordan. It should be noted, however, that in both bilateral and diagonal cumulation, the cumulation provisions apply only to "originating" materials. Full cumulation is the system that represents a more advanced form of economic integration between the partner countries.

3- Full cumulation. Full cumulation providers for the cumulation of processing between two or more partner counties. Account is therefore taken of all processing or transformation of product within the trade zone without the products being used necessarily having to originate in one of the partner countries.

For example, US cotton fiber (HS heading 5201) is spun into yarn in the Community, exported to Tunisia and woven in cotton fabric (HS heading 5210). Within the context of EC-Tunisia rules of origin for textiles, a double transformation

is required on non-originating materials to obtain originating status on the goods produced. Full cumulation allows the processing in Tunisia and the Community to be counted together; the cotton fabric is therefore considered to originate in Tunisia and can benefit from preferential tariff treatment on importation into the Community. The Tunisian manufacturer although processing a non-originating yarn can include the earlier process in calculating the origin of the cotton fabric. Therefore, the difference between diagonal cumulation and full cumulation is that in the latter system, all processing operations count towards obtaining origin. The fabric would not have obtained origin under diagonal cumulation provisions.

EU rules of origin require that, when imported inputs are used, the manufacturing process has to start from imported yarn. Since under the EU rules, the Maghreb countries (Algeria, Morocco, and Tunisia) are considered a single customs territory for rules of origin purposes, it is sufficient that such requirement be fulfilled within the area. Thus, the intermediate materials imported from another member of the Maghreb do not need to be already originating. In other words, with cumulation of working or processing, all the countries of the Maghreb are considered as one single customs territory, and therefore all processing or manufacturing operations carried out in any of the three countries will be counted in calculating local content, irrespective of whether the individual operation performed in each of the countries that participate in the production process is sufficient per se to confer the originating status.

In addition to the provisions concerning the definition of the concept of originating products, administrative provisions are also included. In the Community's agreements, proofs of origin are required (i.e. the EUR.1 movement certificate).[10] The rules cover under which circumstance proofs of origin may be issued as well as arrangements for administrative cooperation between the customs authorities in the exporting and importing country. A proof of origin is therefore issued by the customs authority in the exporting country if the products are judged to be originating and submitted with the products to customs in the importing country. If there are doubts about the validity of the proof of origin, the importing country may send the proof of origin back to the authorities in the exporting country for verification.

The table below provides a summary of the provisions of the three agreements (Tunisia, Morocco, Jordan) regarding the rules of origin. As expected, the Tunisian and Moroccan agreements are identical, while the Jordanian Agreement provisions in this regard is different.

[10] See Annex 1 on Proof of Origin

Summary of the Rules of Origin in the Three Agreements*

Country	Cumulation	Sufficient Processing	Extra Territoriality	No Drawback[11]	Procedure
TUNISIA: Agreement signed 17.07.95 in force from 1.3.1998	- Bilateral - Total Euro-Maghreb	- Change of tariff heading - List rules (same list as Moroco, drawn up before HS 96) - No tolerance	No	No	- EUR.1(simplified procedure for approved exporters) - Invoice declaration for consignments up to ECU 5 110 - Supplier's declaration for cumulation
MOROCO: Agreement signed 26.02.96 Ratification under way	- Bilateral - Total Euro-Maghreb	- Change of tariff heading - List rules (same list as Tunisia, drawn up before HS 96) - No tolerance	No	No	- EUR.1 (simplified procedure for approved exporters) - Invoice declaration for consignments up to ECU 5 110 - Supplier's declaration for cumulation
JORDAN: Agreement signed in November 97	- Bilateral - Declaration cumulation and equitable treatment	- List rules (CEEC list) - Tolerance 10%	No	Yes 4 years after entry into force	- EUR.1 - Invoice declaration for: - Approved exporters - Consignments up to ECU 6 000

*Table is based on Euro-Mediterranean Cumulation of Origin (1998)

[11] See Annex 2 on The No Drawback Rule.

Specific differences in the treatment of textiles and fabrics

The rules concerning the definition of originating products and methods of administrative cooperation are presented in Protocol 4 (and its Annexes 1 and 2) of the Tunisian and Moroccan Agreements and Protocol 3 (and its Annexes 1 and 2) of the Jordanian Agreement.

At the outset, the Protocols are similar. However, the basic difference between the two Protocols is in Articles 4 and 5 in Protocol 4 of the Moroccan and Tunisian Agreements, which specifically relate to cumulation of processes among the Maghreb countries. The concept of full cumulation is completely alien to the Jordanian Agreement.

Annex 1 is basically the same in all Agreements. The Jordanian Annex 1 is somewhat more detailed in the definition of synthetic man-made staple fibers than the Moroccan and Tunisian Agreements.

Textiles and fabrics are treated in ex Chapter 50 to ex Chapter 66 in Annex 2, " List of working processing required to be carried out on non-originating materials in order that the product manufactured can obtain originating status", of the Agreement. While the descriptions of processes are identical in the Agreements for the most part, certain differences are present. The following is a list of these differences:

- HS 5907 which refers to textile fabrics other-wise impregnated, coated or covered, allows Jordan printing accompanied by at least two preparatory or finishing operations where the value of the unprinted fabric used doesn't exceed 47.5% of the ex-work price of the product. This position is not present in the Tunisian and Moroccan Agreements.

- HS 5909-5911 includes for Jordan a description of woven fabrics commonly used in papermaking or other technical use and listed the manufacturing processes required for them. This provision was not included under this heading in the Tunisian and Moroccan Agreements.

- HS 6211, this item was allowed to Jordan but not mentioned in the Tunisian and Moroccan Agreements.

- HS 6213 and 6214 allowed Jordan instead of manufacturing the product from imported yarn as a prerequisite for obtaining originating status, the possibility of originating through a printing process followed by printing accompanied by at least two preparatory or finishing operations where the value of the unprinted goods doesn't exceed 47.5% of the ex works price of the product.

Improving the Outcomes[12]

The negotiations between Jordan and the EU were held for two years and spanned six rounds of negotiations. The negotiations with Tunisia and Morocco were also lengthy and required several negotiations rounds. Each of the national teams negotiated the best agreement for its country. However, the fact remains that Morocco and Tunisia, while having full cumulation within the countries of the Maghreb, can not cumulate diagonally with the countries of the Mashreq and do not have a drawback mechanism. Additionally, Jordan can only cumulate bilaterally with the EU and has a four-year drawback allowance. These rules of origin asymmetries have an adverse effect on developing a strong manufacturing base within these countries to export to the EU and other established markets. The negotiation process could have improved considerably. Negotiating countries should address the following:

More coordination among the Arab-Med countries: Unfortunately, there was little to no coordination among the negotiating countries, to benefit from past experiences, avoid pitfalls and create synergies. Early cooperation attempts fell prey to national interests and priorities, and it was only later that a coordination mechanism came into play spearheaded by Egypt and championing the establishment of a free trade area among the Arab countries on the Mediterranean. The new coordination mechanism should be viewed as a starting point and not an end of itself.[13]

Staffing: Countries that are in the negotiation stage should ensure that they have a permanent and experienced negotiating staff. To monitor the whole process, the EU set up a Euro-Mediterranean Committee for the Barcelona Process consisting of officials from the Troika and from the twelve Mediterranean partners. The staff at the EC, consisted mainly of permanent hires with significantly more experience than that of each of the negotiating SMR countries, particularly because of their accumulated hands-on experience in negotiating separate Agreements with the different partners.

On the other hand, in some of the SMR countries a unit to support the negotiations was created to handle the issues related to the negotiation process. Some of these units in time were judged within their bureaucracy on the basis of whether they have completed the negotiations successfully or not, which created a case of a moral hazard. Thus, some of the technical support teams of the partner countries viewed the signing of the Agreement as the ultimate goal, which from a managerial perspective may have biased the support team into accepting outcomes more readily had their performance not been rated by the conclusion but rather by the success of the negotiations.

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[12] This section draws from Mansur (1999).

[13] One strategic benefit from coordination is having a point of reference so that decisions taken during negotiations are never final. The EU negotiators could always come back to the negotiation table after having gained some concession from a partner country with the excuse that one of the member states did not approve of the concession and therefore was able to reopen negotiations after having ascertained the agenda of the partner country. The partner country could not come back as easily on a negotiated outcome.

To avoid a moral hazard problem in the negotiating countries, an active and transparent partnership between the public and private sectors in each of the negotiating countries should be established. However, this can only be achieved if the public sector includes representatives from the private sector in the negotiating teams and empower them to participate full in the negotiation process. Although the partnership may prove difficult at times, the benefits both in the short and long terms will outweigh the cost.

European aid: The fund and the possibility of an EIB loan were probably the most important elements of the new partnership. The lure of the prize was used to tempt parties to speed the conclusion of negotiations in a zero-sum game among the countries of the SMR. Whether by chance or design, the fact that a lump sum amount was allocated for all the SMR countries without specificity in allocation contributed to a lack of coordination among a few of these countries. Most of the countries became competitors for the prize. As a result of the non-specificity of the allocation, many countries, hoping to garner the most funds, were pressured internally to speed up the process; albeit institutional factors in many occasions limited the ability of many of these countries to create a "problem of the commons" as some moved slower than others because of the inherent bureaucratic obstacles. The nations, each with specific needs and aspirations and painful structural reforms, became indirect competitors for the carrots. However, coordination among the countries should evolve to require from the EU that this aid be consistent with the needs of each country and that such aid be allocated from the start. After all, the fund was established to help compensate the countries for giving up a unilateral free trade agreement for a bilateral free trade agreement with the EU and for the painful adjustment, each economy may have to undergo in order to become a free trading partner with the EU.

Technical cooperation: The EU is the most important economic, financial and trading partner of the South Mediterranean Region (SMR) countries, accounting for more than 50% of the region's external trade (57.8 percent of the exports and 53.1 percent of imports)— in the Maghreb countries 60% of external trade in 1995 was with the EU (Chauffor and Stemitsioltis, 1998). Furthermore, most industrial exports of the SMR countries already received preferential customs treatment through the Generalized System of Preferences and the existing bilateral agreements. Therefore, SMR countries gain little from the EU agreements in the short run since most of their industrial exports already enter the EU with few or no restrictions, whereas they will have to dismantle the protection on their industrial goods imports from the EU, somewhat protected at present.[14]

The Agreement includes a joint declaration which states that technical and financial assistance will be provided by the EU to the Partner country industries to overcome the negative effects resulting from the implementation of the agreement, and to improve their export capacity. This should be used to train and support the development of human capital in areas that increase the value added of the textile and clothing industry, with particular emphasis on human capital. Design colleges and textile research should be encouraged and supported by the EU in order to help ensure

[14] See for example the excellent recommendations on technical ccoperation policies and suggestions in the ESCWA (1995) report.

the long run competitiveness of the textile and clothing industries of the negotiating countries not through the comparative advantage of low-cost labor but through technical excellence.

Competition policy: The agreement requires the adoption and application of the basic EU competition rules, a progressive elimination of non-tariff barriers, and harmonization of safeguard and anti-dumping provisions. GATT consistent rules with respect to the countervailing of subsidies apply during the transition period. Furthermore, WTO-consistent antidumping legislation has been introduced. Textile and clothing manufacturers have to pay special attention to these safeguards which may have an adverse effect on them if they are not ready for their implementation and are not aware of their consequences. Technical help is needed in training judges, lawyers and antitrust administrators in the area of antitrust legislation before the proposed antitrust law, which is EU consistent and stipulated in the Agreement, is implemented.

Conclusion

The view that an outward oriented trade policy leads to the predictable outcome of greater economic growth is widely accepted.[15] However, several researchers have demonstrated through examples that the effect of trade on economic growth is not straightforward, and in fact adverse in some cases.[16] Therefore, negotiating a free trade agreement should be approached with great care.

For the countries and territories of the Mashreq, the drafts of the Agreements under negotiation and the texts of those that have been concluded do not allow for cumulation of working or processing, but only for bilateral cumulation. In this respect, two considerations are in order. First, with bilateral cumulation, only inputs originating in the European Communities are counted in the determination of local content but not those originating in the neighboring countries and territories. Second, a full cumulation system may allow for bypassing one phase of the manufacturing process. Under the bilateral cumulation system, in order to comply with the same rules of origin, beneficiary countries are obliged to import materials at an earlier stage of manufacturing (cotton fiber) or fulfil the specific operations prescribed regarding manufacturing from fabric rather than from yarn. Therefore, the benefits extended to the Maghreb countries in the area of textiles are in excess of those extended to the Mashreq countries.

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[15] See for example a recent report by the OECD (1998), IMF (1997), Krueger (1998), Stiglitz (1998).

[16] Grossman and Helpman (1991) showed that the effect of open trade on innovation in a small open economy is contingent upon whether the conditions of comparative advantage push the domestic factors of production toward activities that generate long-run economic growth. The opening of trade may divert the sources of comparative advantage from creating externalities in research and development, expanding the scope of product differentiation and enhancing product quality. Grossman and Helpman (1991), Feenstra (1990), Matsuyama (1992), among others, have demonstrated through examples how a country that is behind in technological development can be driven toward specializing in traditional products, thus experiencing lower economic growth in the long run.

The extension of full and diagonal cumulation to Mashreq countries is relevant in two ways. First, it could enhance the potential for intra-regional trade among the countries of the Mashreq, thus offsetting, at least partially, the "hub-and spokes" paradigm. Second, full and diagonal cumulation may, together with diagonal cumulation, encourage vertical and horizontal linkages of domestic industry in each of these countries.[17]

Without coordination between the private and public sectors in each of the countries that are negotiating Partnership Agreements with the EU and without cooperation among the Partners, the Agreements will tend to be discriminatory, offering non-Pareto optimal outcomes to the Partners and their benefits from free trade, if any, may diminish, while the gains to the EU will increase.

The textile and clothing industry in the Southern Mediterranean region needs to target quality-enhancing measures to increase its competitiveness and decrease the impact of the restrictive effects of the EU rules of origin. Although policy has a considerable effect on the gains from trade in the case of textile, clothing is highly responsive to the other factors that affect competitiveness.[18] By taking measures aimed at enhancing the value-added of production and following competitive strategies similar to those of Italy and other successful exporters, the countries of the Southern Mediterranean can become effective Partners.

Countries that are negotiating or in the process of negotiating Association Agreements should coordinate, coordinate, and coordinate. Otherwise, long term wishes may never materialize, while the short-term could prove painful and lead to lasting adverse effects. After all, global competition is never for the meek.

[17] For an excellent treatment of this issue see Jachia (1999).

[18] Exporting alone does not necessarily promote the competitiveness of a nation. Micro economic analysis demonstrates exactly that—see for example Bernard and Jensen (1995, 1998), and Aw, Chang and Roberts (1998).

Annex 1

PROOF OF ORIGIN[19]

Applications for preferential treatment must be accompanied by "documentary evidence" concerning the origin and shipment of the particular goods. Evidence of originating status is provided by a "movement certificate", the EUR.1 certificate. (An approved exporter can submit an Invoice Declaration instead of the EUR.1 certificate.)

The customs authorities of a country issues this certificate, following submission of an application by the exporter or his authorized representative. For this purpose, the exporter must fill out the application form and the EUR.1 certificate.

The customs authorities responsible for issuing EUR.1 certificates will take all steps necessary to verify the originating status of the products. They must also verify that all forms have been completed. The forms are printed in one of the languages in which the agreement is drawn up. If they are handwritten, they must be completed in ink in printed characters. A movement certificate EUR.1 shall be issued by the customs authorities and made available to the exporter as soon as actual exportation has been effected or ensured.

The certificate is then submitted to the customs authorities of the Community as applicable to their procedures. Those authorities may request a translation of the certificate and may also require the import declaration to be accompanied by a statement from the importer stating that the goods meet the conditions required for the implementation of the agreement.

Simplified measures also exist. For example, invoice declarations are accepted in certain situations under the new rules for Jordan and also in the new agreements with other Mediterranean countries (e.g. Israel, Morocco, Tunisia). Invoice declarations are also accepted for small consignments.

In all cases, the competent authority (usually customs) in the exporting country is responsible for the issue and endorsement of evidences of origin. The importing country has the possibility of sending evidences of origin back for verification. The authorities in the exporting country carry out such verification checks though in some cases, Commission services assist in the investigations. This is a very important feature of preferential trade arrangements and is based on mutual trust. Although the impact of tariff preferences in on the importing State, it is the exporting customs administration that is responsible for ensuring the correct application of the system.

[19] This section draws from Mansur et al (1999).

Supporting Documents

Supporting documents of proof that products covered by a movement certificate EUR.1 or an invoice declaration are considered as originating in the Community or in Jordan and fulfil the other requirements of the rules of origin Protocol. These documents are of the following types:

(a) Direct evidence of the processes carried out, by the exporter or supplier contained, for example, in his accounts or internal bookkeeping, to obtain the goods concerned;

(b) Documents proving the originating status of materials used, issued or made out in the Community or Jordan where these documents are used in accordance with domestic law;

(c) Documents proving the working or processing of materials in the Community or the partner country, issued or made out in the Community or the country where these documents are used in accordance with domestic law;

(d) Movement certificates EUR.1 or invoice declarations proving the originating status of materials used, issued or made out in the Community or Jordan in accordance with this Protocol.

Other related topics:

Territorial requirements:

(a) Principle of territoriality: The principle of territoriality is a standard feature in the rules of origin contained in the Community's preferential arrangements. In the case where goods originating in Jordan were exported to another country and then returned back to Jordan, such goods are considered as non-originating, unless it can be demonstrated that the goods returned are the same goods as those exported and that they have not undergone any operation beyond that necessary to preserve them in good condition while in that country or while being exported. In other words, a manufacturer is not allowed to export semi-finished products to a third country (other than Jordan and the EU) for further processing and then consider the final product to be originating, even if the processing inside Jordan was sufficient.

However, a certain relaxation of this principle was introduced into some agreements. Currently, provisions concerning the relaxation of the territorial principle, expressed in terms of a percentage of the overall value of the final product, (10 percent by value of the ex-works price and not to be confused with the general tolerance rule) is only contained in one Mediterranean agreement, the EU-Israel Agreement.

(b) Direct Transport: As a general rule, the preferential treatment of the Agreement applies only to products satisfying the condition of direct transportation between the Community and Jordan. However, should the occasion or need arise, goods may be transported through other territories or states. In this case, goods should remain under customs surveillance in the country of transit and should not undergo any operations other than loading, reloading or any other operation designed to preserve them in good condition.

To ensure that goods shipped from Jordan will be the same as those presented at the port of entry into the EU, and that they are not manipulated or further processed during the shipment in other countries, one of the following forms of documentary evidence should be supplied to the customs authorities in the EU:

- a single transport document covering the passage from the exporting country through the country of transit; or
- a certificate issued by the customs authorities of the countries of transit that gives an exact description of the goods and states the dates of unloading and reloading of the products and, where applicable, the names of the ships, or the other means of transport used; and finally, certifies the conditions under which the products remained in the transit country; or
- failing these, any other substantial document.

(c) Exhibitions: If an exporter has sent products originating in Jordan for exhibition in another country, then, after the exhibition, these products were sold for importation to the Community, such products shall benefit from the preferential treatment, given that:

- the exporter has consigned these products from Jordan to the country in which the exhibition is held and has exhibited them there;
- the products have been sold, or otherwise disposed of, by that exporter to a person in the Community;
- the products were consigned during the exhibition or immediately thereafter in the state in which they were sent for exhibition; and
- the products have not, since they were consigned for exhibition, been used for any purpose other than demonstration at the exhibition.

In this case a proof of origin must be issued in the normal manner, however it must indicate the name and address of the exhibition, and where necessary, additional documentary evidence of the conditions under which the products were exhibited may be required. This does not apply to exhibitions organized for private purposes in shops or business premises with a view to the sale of foreign products

Annex 2

THE NO DRAWBACK RULE

As a policy to encourage export industries, Jordan, Tunisia and Morocco provide manufacturers with an incentive in the form of a reimbursement of customs duties levied on imported materials used to manufacture products which are later exported to another country.

However, within the Rules of Origin context, this exemption from customs duties is prohibited. This rule is called the no-draw back rule, and states that non-originating material imported from countries other than the Partner country and the Community should be charged with the appropriate customs duties before they can, after sufficient processing, enjoy the tariff preferences provided for in the Agreement.

An example of how the rule works is the production of carpets in Jordan, in which artificial yarns originating in the US are used. Without the no-drawback, if the carpets are manufactured for export to the Community, the exporter will be refunded the customs duties he paid when he imported the artificial yarns, and no duty is collected in the Community if the carpet has a proof of origin and accordingly enjoys a preferential treatment. The US artificial yarns would therefore enter the community market, duty free. Thus, to avoid such consequences, the Jordanian customs would collect the applicable duties on artificial yarns as if they had been imported into Jordan for home use, before the final product could be considered to have Jordanian origin.

The exporter of a product covered by a proof of origin shall be prepared to submit at any time, upon request from the customs authorities, all appropriate documents proving that no-draw back was obtained in respect of the non-originating materials used in the product's manufacture, and that all customs duties or charges applicable to such materials have actually been paid.

It is worth noting that a grace period of four years following the entry into force of the agreement was granted to Jordan to continue to apply the no-draw back rule. On the other hand, Tunisia and Morocco do not have a drawback allowance.

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