

***Democratic Transitions and the EU 'Deep and Comprehensive FTAs' with MENA countries: a possible backlash?*¹**

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At the end of 2011, the EU Foreign Affairs Council authorized the opening of new trade negotiations with Egypt, Jordan, Morocco and Tunisia. The decision provides the European Commission (EC) with a mandate to start negotiations towards establishing 'deep and comprehensive free trade agreements' (DCFTAs). These agreements go beyond tariff reductions to cover more extensively dimensions of investment protection, public procurement, and competition policy².

As described by the EU Trade Commissioner Karel De Gucht, this represents the EU's support for the "process of democratic and economic reform"³. The trade and investment policy of the EU towards the region comes within the broader policy approach set out in the communication on "Partnership for Democracy and Shared Prosperity with the Southern Mediterranean" (March 2011), which the EU describes as its steps to "support wholeheartedly the demand for political participation, dignity, freedom and employment opportunities..."⁴.

Contesting old economic and social models in the Arab region: the need for policy space

While these decisions are pursued at the EU level, peoples of various Arab countries, including Egypt, Tunisia, Morocco, and Jordan have demonstrated their rejection of the political as well as economic and social models of governance in their countries, through revolutions and mobilizations that started at the end of 2010 and continue into 2012. For people in the Arab countries and civil society groups active across the Arab region, the revolutions will continue until economic and social models are re-established to prioritize peoples' rights to development and justice.

Reinstating the policy models drawn by previous regimes under which poverty, unemployment, and inequalities continued and deepened despite economic growth will clearly not serve the development rights and needs of the people⁵. Economic growth in the upcoming period should be rooted in support of people's choices to a revised economic model, where productive capacities, redistribution mechanisms, employment and wages take the forefront. For such purposes, trade and investment policies established by the previous regimes need to be revised in order to serve a new development vision, not the concentration of economic powers in the hands of the few.

It is fundamental for the democratic and development processes in Arab countries witnessing transition to realign their trade and investment policies with their development levels. Moreover, new negotiations and agreements should be undertaken

¹ The article reflects the position supported by more than ten civil society organizations from the Arab region, sent to the European Parliament Subcommittee on International Trade on 24th of January 2012.

² See <http://trade.ec.europa.eu/doclib/press/index.cfm?id=766> (Brussels, 14th of December 2011).

³ *Ibid.*

⁴ See:

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/918&format=HTML&aged=0&language=EN&guiLanguage=en>

⁵ Civil society letter raised to the EU officials under the title: "What Does 'More' Stand for and how to Ensure Economic Policy Conditionality is not Exercised?" Available at:

http://www.annd.org/userfiles/file/latestnews/General-%20CS%20reaction%20to%20CSF_SPRING%20initiatives-%20October%202011-%20FINAL.pdf

within a clear constitutional framework, that defines the interaction between the governments' obligations in regards to human rights and development objectives and its obligations under international economic and trade agreements.

Repackaging old proposals

It is important to note that the proposal for DCFTAs with Southern Mediterranean Arab countries is not a new one. In fact, this proposal was developed by the EC in a non-paper entitled "ENP- A Series of Deep Free Trade Agreements as a Path towards a Neighborhood Economic Community (NEC)", which was released during 2007. Back then, civil society groups had critiqued this proposal for lack of rights-based and developmental considerations, potential negative impacts on policy space, lack of addressing the political and economic contexts and priorities of Arab countries, and lack of sound partnership mechanisms⁶.

Accordingly, one could question whether the proposal of DCFTAs is designed to serve the specific economic and social needs that Arab countries are currently facing or if it is a mere repackaging of old recipes. Moreover, proposals to include negotiations on investment, government procurement, and competition policy under the multilateral process of negotiations at the World Trade Organization have for many years faced significant opposition from developing countries, including governments and peoples.

However, the EU continues to push a model of trade and investment liberalization that have proved unsupportive of the development needs of its partner countries, and that could override national democratic transition if maintained or deepened. This includes the agenda of negotiating liberalization of trade in services, as well as initiating negotiations in the areas of investment, government procurement, and competition policy.

Proceeding with enforcing the same model of trade and investment that failed to serve development objectives for years, at a time when people and governments are trying to exercise their sovereign democratic rights of drawing new constitutions and designing new development visions, hold a significant potential to negatively impact national policy space. This space has been redefined through citizens' struggles, revolutions, and continuous mobilizations.

Integrating political, social, and economic rights in trade agreements: beyond social chapters and human rights clauses

What these countries and peoples need is an urgent stop of the 'business as usual' approach to trade and investment, and re-establishment of these policies and instruments to support a nationally nurtured development and economic policy. This necessitates several structural changes in the way trade and investment policies are conceived and implemented.

First, is it important to realize that protecting development policy space of developing countries involved in these agreements cannot be achieved and guaranteed through the sole inclusion of a chapter on sustainable development or clauses addressing human rights and social and environmental responsibilities in these agreements. It is essential to adjust the rules and ensure the integration of human rights and development

⁶ See the Comments prepared by the Arab NGO Network for Development on the "ENP- A Series of Deep Free Trade Agreements as a Path towards a Neighborhood Economic Community (NEC)" (15th of May 2007), available with the organization.

considerations in decision-making throughout the policy formulation, design, and implementation, including checking and adapting the processes related to trade and investment agreements. This necessitates that these agreements be designed in full partnership between the negotiating parties and not based on a template model that one party develops and the other signs on. This is essential if trade and investment are to accommodate the development levels achieved by the different parties to the agreements.

Second, it is crucial to effectively address the interface between the wide scope of the trade and investment agreements being negotiated and the sovereign rights of governments to regulate for developmental purposes. Indeed, while the Arab countries are seeking to revise their constitutions and their development plans, they are also addressing their regulatory capacities to serve the public interest. Among these interests is the process of redressing violations of citizens' economic and social rights undertaken under previous regimes, as well as the exploitation of the countries' national resources and economic assets. The ability to regulate and re-regulate in various areas and sectors for the legitimate public interest purposes are fundamental to any prospective development process, and should not be restrained by investment and trade rules.

In this regards, the European Parliament⁷, addressing the model of investment agreements pursued by the EU, has indicated the need to secure a model of agreements in investment that respects the capacity for public intervention. It called for clarifying the definition of investor in order to redress any negative impacts on public interest and the sovereign right to regulate; avoiding protection of forms of investment that are speculative or result in abusive practices; and making the dispute settlement regime more transparent, more inclusive, including the obligation to exhaust local remedies. As long as the EC does not progress on these processes, then initiating negotiations on investment protection with Arab countries will have significant negative implications on the latter's national policy space and development prospects.

Third, it is imperative to undertake a full assessment- based on human rights and development approach- of the outcomes of existing agreements and any future ones (see Box). The UN Special Rapporteur on the Right to Food had noted on this subject that: *“human rights impact assessments can help governments determine whether new or existing trade and investment agreements will undermine their human rights obligations. Ensuring consistency between human rights obligations and trade and investment agreements is essential at the stage of negotiation of such agreements. Otherwise, because of the stronger enforcement mechanisms in trade and investment regimes, human rights obligations risk being set aside when conflicts arise”*⁸. Ex-ante and ex-poste assessments are the responsibility of the governmental parties negotiating the agreements and should be undertaken with a full participatory process that genuinely engages stakeholders, including civil society organizations from various impacted sectors⁹.

Fourth, it is important to note that the four Arab countries covered by the new mandate of the European Commission are part of a broader trade project entitled the Pan-Arab

⁷ European Parliament resolution (6 April 2011) on the future European international investment policy (2010/2203(INI)).

⁸ Statement by Olivier De Schutter -UN Special Rapporteur on the Right to Food – reflected in the Report of the Expert Seminar on Human Rights Impact Assessment for Trade and Investment Agreements (June 23-24, 2010).

⁹ See the positions of the Seattle to Brussels Network (<http://www.s2bnetwork.org/>), noting that the model of investment agreements proposed by the EU remains skewed towards the sole aim of providing unconditional maximum protection to the European investors and investments abroad, and carries significant threats to democratic processes, public policies, and public interest.

Free Trade Area, which involves free trade in goods. Within this project, they are currently negotiating a regional trade agreement in services along side other Arab countries. Besides, they are involved in the South-South Agadir agreement. In light of this context, it is important that any further bilateral negotiations between these countries and the EU do not hinder the process of achieving an added-value regional agreement, nor legally contradict or weaken the process of establishing a regional agreement on trade in services.

Both the EU and the counterpart negotiating governments hold the responsibility to address these challenges and shortcomings. They are responsible to ensure that the legal framework defining trade and investment relations – along possible frameworks in areas such as competition policy and government procurement- puts at the forefront development objectives, respects the sovereign rights of peoples and nations, and does not end up being a backlash against democratic transition processes in the Arab region.

What did we learn from the impact assessment of the Euro-Med FTAs?

It is important to recall the findings of the Sustainability Impact Assessment of the Euro-Mediterranean Free Trade Area (2007)*, which notes that, unless parallel measures are taken and implemented by the Southern MPCs, the EMFTA will result in a negative effect on employment, poverty, and development. The study identifies, among the potential social impacts, a significant rise in unemployment, particularly following the liberalization of trade in industrial products and agriculture, and a fall in wage rates associated with increased unemployment, as well as a significant loss in government revenues, reduced expenditure on health, education, and social support programs, and greater vulnerability of poor households. No revision of the existing agreements was undertaken in light of the findings, nor any mitigation measures or compensation mechanisms were set in place (for more information, see Mohamadieh, Kinda: “Euro-Mediterranean Free Trade Area 2010: Stakes, Challenges and Proposals Regarding Employment in the Southern Mediterranean Countries, at: www.fes.org.ma/common/pdf/publications_pdf/.../Policy_Brief.pdf.)

* http://trade.ec.europa.eu/doclib/docs/2006/november/tradoc_131340.pdf

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