

Consultation response

Evaluation of the EU's FTAs with six Euro-Med countries

AmCham EU response to the European Commission Online Public Consultation:
Ex post evaluation of the impact of the trade chapters of the EU's Association
Agreements with six Euro-Med countries

AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €2 trillion in 2018, directly supports more than 4.8 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

Executive summary

We would like to take the opportunity to respond to the European Commission public consultation on the ex post evaluation of the impact of the trade chapters of the EU's Association Agreements with six Euro-Med countries: Algeria, Egypt, Jordan, Lebanon, Morocco and Tunisia.

Upgrading the EU's agreements with Euro-Med countries could yield significant benefits for both regions. The Euro-Med region remains one of the least economically integrated in the world, representing only about five percent of total global trade flows.¹ Moreover, the EU's agreements with the six Euro-Med countries identified in this consultation date back to the 1990s. The international trade landscape has since changed beyond recognition.

There are opportunities across all areas of the EU's Association Agreements to improve economic cooperation. These include upgrading market access commitments and taking advantage of the latest developments in trade facilitation. Given the importance of digitally enabled trade in goods and services which permeates all sectors of activity, AmCham EU also encourages the EU to work towards the introduction of a Digital Trade chapter in discussions with the partner countries on supplementary or future agreements to support trade and investment flows.

AmCham EU members would like to make a few general comments which fall under question 72 of the questionnaire:

72 - If there are any additional issues you would like to comment on regarding trade relations between the EU and the Southern Mediterranean region, please elaborate below

Digitally-Enabled Trade

Digitally-enabled trade represents huge potential for all sectors of the economy and depends on the ability for businesses to transfer data across borders. In the same way, poorly designed policies that increase data processing costs can have a severe economic impact. EU trade policy needs to take into account the realities of market access restrictions in the area of digitally-enabled trade. In this regard, AmCham members believe it would be beneficial for the EU Association Agreements to include comprehensive chapters on digitally-enabled trade. The negotiations on a Deep and Comprehensive Free Trade Agreement (DCFTA) between the European Union and Tunisia in which the EU has put forward proposals for a Digital Trade chapter are a step in the right direction.

As two of the six countries (Algeria and Lebanon) are currently at different stages in negotiating WTO accession and given the ongoing WTO discussions on eCommerce, a Digital Trade chapter is a pre-requisite in any future trade relationship.

¹ EuroMed Trade and Investment Facilitation Mechanism, International Trade Centre, <http://www.intracen.org/euromed/>, accessed 8 November 2019.

Key issues

EU trade agreements are a key instrument to enhance the cross-border flow of services and to cut costs and administrative barriers. Exporters increasingly face protectionist data localisation requirements and other market access restrictions in order to compete in foreign markets. Restrictions on data flows impose a substantial economic burden on small and medium-sized enterprises (SMEs) that provide goods and services with the help of foreign infrastructure such as cloud computing. Newly negotiated trade agreements between the EU and its trade partners must reflect these new economic realities. Therefore, chapters related to cross-border trade in services should include provisions to:

- Support the free flow of data and strengthen the digital economy: Data flows are critically important to the international competitiveness of European companies – both large and small – not only in the technology sector, but also in manufacturing, logistics, health, financial services and others;
- Restrict localisation requirements for computer infrastructure, manufacturing or service facilities. This will support innovation and make it easier for start-ups to scale up and for companies across sectors to benefit from new technologies that enable efficient and cost-effective data storage;
- Prohibit requirements that companies transfer technology, source code, algorithms, or encryption keys, to ensure that companies can export with the certainty that their intellectual property – and their customers' data – is secure;
- Protect intellectual property: It is critical that any trade agreement includes protection of important rights and obligations with respect to intellectual property rights (IPR), including on coverage, trade secrets, copyright, and remedies;
- Reinforce cybersecurity cooperation. The cyber resilience of the Digital Single Market depends on the ability of the EU to work effectively with foreign partners to adopt common approaches to detecting, mitigating, and managing cyber risks at international level;
- Prohibit quantitative restrictions for service providers;
- Promote the use of global technology standards: supporting the development and use of global standards to ensure a global scale in cybersecurity, smart grids, smart cities, intelligent transportation, Internet of Things (IoT), advanced manufacturing and 5G; and
- Ensure license-free export of dual-use items.

Customs and Trade Facilitation

In recent years, international trade has been transformed by technological developments that have enabled the provision of new, modern customs procedures and facilitated the rapid expansion of global commerce. The EU has been at the forefront of these efforts, negotiating ambitious trade facilitation chapters in its recent FTAs with countries such as Canada and Japan. At the global level, the WTO Trade Facilitation Agreement (TFA) established provisions which should reduce trade costs, notably for least developed- or developing countries.

Trade between the EU and the Euro-Med region holds significant potential, in part because of the significant opportunities that exist to upgrade the Euro-Med region's economic infrastructure to meet the demands of global commerce. The provisions proposed by the EU and Tunisia provide a good basis for upgraded relations with the identified Euro-Med countries. Nevertheless, the EU's latest proposal dates back to 2016, since which time the international trading environment has continued to evolve. Moreover, the TFA has also entered into force in the intervening period, which the EU and the Euro-Med countries have the opportunity to build upon and set best practices.

Chapters on customs and trade facilitation should prioritise the following:

- Maintaining commercially meaningful *de minimis* levels, generating economic benefits by refocusing public revenue collection on more efficient revenue sources and reducing complicated procedures;
- Separating the physical release of goods from duty and tax collection to improve the processing times at the border and allow customs authorities to focus on safety and security;
- Simplifying documentation, harmonising data requirements and providing for paperless customs procedures to reduce costs for business and authorities;
- Establishing binding rules on expedited shipments;
- Developing a Single Window portal to facilitate the submission and processing of electronic documentation;
- Continuing to develop the Euro-Med Trade Helpdesk [online portal](#), to ensure the availability and transparency of information for traders; and
- Supporting capacity-building and training to enhance the customs infrastructure and capabilities in the region.

Intellectual Property and Data Exclusivity

Article 44 of the Euro-Mediterranean Agreement provides that '*1. The Parties shall ensure an appropriate and effective protection of the intellectual, industrial and commercial property rights in conformity with the highest international standards, including the effective means of asserting such rights*'.

- With regard to the EU consultation, data exclusivity needs to be transposed from the Euro-Mediterranean agreement to national legislation in Algeria, Tunisia, Egypt, Jordan and Morocco.

Additional country-specific issues

Algeria

According to Article 2 of the Euro-Mediterranean-Algeria Agreement, one of its objectives is to '*promote the cooperation in the economic, social, cultural and financial fields*'.

- We would like to note that this agreement has not been denounced in accordance with the provisions of Article 107 of said Agreement.

Article 53 of the Euro-Mediterranean Agreement on industrial co-operation provides that: '*The co-operation aims to: (a) encourage or support actions aiming at promoting in Algeria direct investment and industrial partnership; (...) (e) encourage the development of an environment favourable to the private initiative with a view to stimulating and diversifying the productions destined to local and export markets (...) (h) contribute to the development of exports of Algerian manufactured products.*'

- Both articles should be added to the EU consultation with regard to European treaties' enforcement and transposition into Algerian law.

Tunisia

The President of the European Patent Office (**EPO**) and the Tunisian Minister for Industry, Energy and Mines signed an agreement on validation of European patents (validation agreement). Validation of European patents in Tunisia, effective from 1 December 2017, is subject to the following procedures: (1) it occurs at the applicant's request and (2) it is deemed requested for any European or international application filed on or after 1 December 2017. It is not available for applications filed prior to that date, or for any European patents resulting from such applications.

- We encourage the European Commission to add this issue to the consultation with regard to European treaties' enforcement and encourage its transposition into Tunisian law.

Conclusion

The EU Digital Single Market needs to find ways to better cooperate with global trading partners in the digital sphere. While important negotiations are currently ongoing in a multilateral setting at the WTO, bilateral FTAs can also bring enormous benefits for businesses, consumers and governments by encouraging innovation and supporting efficient rules for digital trade. The EU and its trading partners need to find a balance between protectionist approaches which might damage trade and economic growth, and could hamper market access, while at the same time avoiding a scenario of a lack of proper rules and frameworks to ensure critical protections such as consumer protection and an adequate and equivalent level of privacy protection.

AmCham EU welcomes the opportunity to offer input on key issues such as digital trade and customs facilitation as per above, which – if approached appropriately – can foster economic growth at national level for all parties involved and bring a wealth of benefits for consumers and businesses. The FTAs under consultation comprise many more aspects which are crucial for AmCham EU membership and we will continue to provide input on other relevant areas in the future.