

## Rules of origin in preferential agreements: favorable factor or constraint to trade? Case of the agreement between the United-States and Morocco

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**ABSTRACT:** The rules of origin are justified by the need to regulate trade between two or a group of countries (trade policy mechanism). This paper proposes to study the impact of rules of origin on the implementation of the preferential trade agreement between Morocco and the United States of America. Following this study, the results showed that the rules of origin diminish substantially the efficiency of this Agreement and deprive Moroccan companies of the tax benefits in terms of access to the U.S. market. Therefore, they reflect protectionist practices in term of non tariff barriers. They take the form of manufacturing conditions hard to be met by the operators. The analysis of the relationship between preferential Moroccan exports to the United States of America, on one hand, and the presence of tariff preferences and the Rules of Origin, on the other hand, suggest that if the tariff preferences have indeed the effect of encouraging exports, the Rules of Origin have the reverse effect.

**KEYWORDS:** Rules of origin, tariff preferences, trade policy, international integration, Moroccan economy, trade agreement.

### 1 INTRODUCTION

Morocco has signed preferential agreements with powerful European and American commercial partners. The agreement with the United States is an example of other existing agreements with other trading partners. This agreement fits perfectly in the context of an overall policy of openness and internationalization undertaken by Morocco since the eighties in order to boost and strengthen the competitiveness of its economy.

By signing this agreement, Morocco has set two objectives:

- i. Attracting foreign investment in Morocco which is a dynamic vector of Moroccan industry and employment. Morocco plans to position itself as a multi-pronged platform for production and export to Europe, the Middle East and or Africa.
- ii. Developing Moroccan exports to the United States.

The preferential agreement concluded with the United States of America covers all sectors of economic activity and aims to develop trade between the two countries. In effect, it concerns the trade of goods (agricultural products, industrial products including clothing made ...) and trade of services (financial services, telecommunications ...). It also focuses on aspects of industrial and commercial property, on social and environmental issues as well as the original conditions that a product must meet to qualify for tariff preferences in the two countries.

Today, the issue of rules of origin is important for all countries having concluded preferential trade agreements as Morocco. Technical progress, which leads to a fragmentation of production processes and marketing, makes the determination of the origin of goods difficult. In this context, it is almost impossible to find a product made entirely in one country. Most goods are composed of several components manufactured in several countries.

In this research we will try to provide answers to the following question: to what extent the rules of origin in preferential agreement signed with the United States of America have impacted the exports of textiles to the U.S. market?

The aim of this paper is: firstly, to recall the main issues of the preferential agreement for both Morocco and the United States of America and introduce an initial assessment of trade relations between the two countries. Secondly, “to show the nature of the effects of rules of origin on Moroccan companies, particularly on textile and clothing industry that is the main industrial activity in Morocco. This research is largely qualitative.

## 2 STAKES OF THE PREFERENTIAL AGREEMENT CONCLUDED BETWEEN THE UNITED STATES AND MOROCCO

This section emphasizes on the stakes of this agreement for both the Moroccan and the U.S. of America.

### 2.1 STAKES FOR MOROCCO

Within the signature of such an agreement with the United States of America, the Moroccan authorities aim at numerous economic objectives. However, these objectives remain difficult to assess for the Moroccan side.

The first objective is the diversification of trade relations primarily focused on Europe, especially France.

The second objective is to make Morocco a platform for investment, manufacture and export to the United States, Europe, the Middle East and Africa.

The third objective is to provide more export opportunities for enterprises in Morocco, especially for those which have adapted products to the specificities of the U.S. market.

These objectives seem to have been set by the Moroccan side, but without taking into account the disparities in terms of industrial capacity and the economic power of both parties. The trades' data between the United States and Morocco are very revealing.

### 2.2 TRADE BETWEEN MOROCCO AND THE UNITED STATES OF AMERICA

United States of America has 5.9% in the total trade of Morocco. The trade deficit with the country continues to worsen. It is estimated at 4.1% in 2010. Imports from that country amounted to 20 980.5 million dirhams<sup>1</sup>.

*Table 1. Commercial exchanges between Morocco and the United States*

	2006	2007	2008	2009	2010
<i>Imports</i>	9 492,1	15 442,5	16 624,4	18 289,3	20 980,5
<i>Exports</i>	2 253,7	2 994,4	6 085,2	3 560,1	5 640,4
<i>Balance</i>	-7 238,4	-12 448,1	-10 539,2	-14 729,2	-15 340,1
<i>Coverage rate</i>	23,7	19,4	36,6	19,5	26,9

Source: Moroccan Office Exchange, Foreign Trade (2010)

This table stresses that the development of trade between the two countries is not in favor of Morocco. Thus, since the entry into force of the Agreement in 2006, the United States has tripled their exports to the Kingdom of Morocco: 20.9 billion dirhams in 2010 against 6.1 billion in 2005<sup>2</sup>, i.e. one year before the implementation of the agreement.

The Sales by U.S. companies under the preferential arrangements totaled 11 billion dirhams. These are agricultural products such as corn, seeds and nuts, crude vegetable oils, which have largely benefited from the provisions of the agreement. This explains why Americans are categorically opposed to the principle of agricultural exception defended by Morocco during the negotiations for the conclusion of the preferential agreement. In fact, Morocco asked to exclude this

<sup>1</sup> Exchange Office (2010). External trade statistics of Morocco. Viewed at: [http // www.oc.gov.ma](http://www.oc.gov.ma)

<sup>2</sup> Moroccan Exchange Office (2010), Trade Balances of Morocco 2005-2010. Viewed at: [http // www.oc.gov.ma](http://www.oc.gov.ma)

sector of provisions from the agreement because of its sensitive nature, and this pending the achievement of reforms that will upgrade this sector.

At the same time, as shown in the second table, Moroccan exports to the United States rose but slowly. They rose from 2.5 billion dirhams in 2005 to 5.6 billion, including 3.5 billion dirhams conducted under the preferential agreement in 2010<sup>3</sup>.

**Table 2. Main products exported to the United States of America 2007 - 2009**

Products	Free Trade Agreement				Total exports				Share			
	2007	2008	2009	2010	2007	2008	2009	2010	2007	2008	2009	2010
	MDH	MDH	MDH	MDH	MDH	MDH	MDH	MDH				
Phosphates	-	2 650,2	1 469,3	2 226,5	1 115,2	3 172,3	1 469,3	2 226,5	-	83,5	-	-
Canned vegetables	15,5	18,5	248,1	327,3	108,1	368,2	311,4	368,7	14,3	5,0	79,7	89,6
Agar (food additive)	-	-	68,2	-	90,8	215,0	269,5	-	-	-	25,3	-
Canned Fish	-	-	30,7	60,2	57,6	28,9	47,0	273,1	-	-	65,3	22,0
Hosiery items	5,2	1,5	29,8	22,6	47,5	55,5	30,0	38,7	10,9	2,7	99,3	58,4
Olive Oil, crude and refined	1,4	8,8	23,3	203,8	60,9	69,9	29,5	276,7	2,3	12,6	79,0	73,7
Garments	3,7	1,9	22,4	27,5	203,1	216,6	142,1	158,2	1,8	0,9	15,8	17,4
Other	99,0	114,5	180,3	179,1	1311,2	1958,8	1261,3	1580,4	7,6	5,8	14,3	11,3
<b>Total</b>	<b>124,8</b>	<b>2795,4</b>	<b>2072,1</b>	<b>3552,8</b>	<b>2994,4</b>	<b>6085,2</b>	<b>3560,1</b>	<b>5640,4</b>	<b>4,2</b>	<b>45,9</b>	<b>58,2</b>	<b>63,0</b>

Source: Moroccan Office Exchange, Foreign Trade (2010)

MDH: Million MAD

Concerning the analysis by product, Morocco has been able to increase its exports of phosphates to the United States under the preferential agreement taking advantage of the rise of prices in the world. Sales of phosphates to the U.S. are estimated at 2.2 billion dirhams in 2010<sup>4</sup>. Textile products have little crossed U.S. borders. These products are not adapted to meet U.S. standards and American tastes. Added to that the size of firms unable to meet orders for large quantities coming from the U.S. market.

### 2.3 STAKES FOR THE UNITED STATES

The GDP of the United States is estimated at ¼ of world GDP with 13.7 trillion dollars<sup>5</sup>. The U.S. market has 316 million consumers in 2012<sup>6</sup>. The main industries are oil, steel, car industry, aeronautics sector, telecommunications, food processing and chemistry.

Engaging with Morocco in the framework of a preferential agreement, "the United States of America plans to establish a free trade zone that would allow them access to a number of markets, including oil and weapons"<sup>7</sup>. In addition, several other

<sup>3</sup> Ditto.

<sup>4</sup> Ditto.

<sup>5</sup> General Confederation of Enterprises of Morocco (2009).

<sup>6</sup> Wikipedia (2012).

<sup>7</sup> Akeshbi, N. (2008). Free Trade Agreement Morocco-USA. Review: Critical of economic No. 21., P4.

sectors may justify the interest of the United States to enter the Moroccan market as for example: services (Information Technology and Communication, broadcasting, financial services ...), agricultural products (nuts, frozen potatoes, pistachios, cheese pizza ...). These products can enter the Moroccan free market of customs duties since the entry into force of the preferential agreement.

The agreement resulted in the increase of imports from the United States (cereals, fuel, machinery), which have almost tripled since 2005. The increase in world grain prices and poor harvests in Morocco partly explain this increase.

This gap, which is in favor of the United States, is explained by some export barriers faced by Moroccan operators, in particular:

- Risk of exchanging rate (sensitivity of exports to the U.S. dollar).
- Moroccan productions are still unknown in the United States.
- Logistical problems: lack of direct shipping line to the U.S. and the delivery time of products are relatively long.
- U.S. technical and health Standards are sometimes binding.

### **3 EFFECTS OF THE U.S. RULES OF ORIGIN ON THE MOROCCAN ECONOMY: THE CASE OF THE TEXTILE AND CLOTHING INDUSTRY**

Determining the origin of products is essential for any preferential trade. Without holding a certificate of origin, it is totally impossible to benefit from any advantage withdrawn from preferential agreements. This agreement achieved between the United States and Morocco has devoted a great part of its research to a chapter entitled rules of origin. In addition to the presence of general applied rules and specific ones related to certain agricultural and industrial products, the agreement stated particular rules of origin designed for textile and clothing industry.

The specific approach of rules of origin is clearly witnessed by the presence of a number of manufacturing conditions that must be realized so that a product will be considered as originating by one country and benefiting from preferential tariffs during import procedures within the other country.

#### **3.1 GENERAL PRESENTATION OF THE RULES OF ORIGIN MENTIONED IN THE AGREEMENT WITH THE UNITED STATES OF AMERICA**

Concerning the rules of origin, the United States and Morocco agreed upon two criteria. The first one is related to products wholly obtained from the first or second country. The second criteria refer to products made from raw material that belong to neither of the two countries.

As far as products totally obtained from one of the two countries; Morocco and the United States have stated the condition of products made wholly in one or both countries, without using any other raw material imported from a third party.

On the other hand, the agreement did not state conditions related to raw material originating from one country and, used in making manufactured products in the other country. So, in this case, it is neither necessary to meet certain percentage of the added value, nor realize specific manufacturing operations.

Using the following example, we can grasp the concept of originating products: Moroccan couscous prepared with meat and vegetables and meant for export to the United States contains; beef wholly obtained from the United States; semolina obtained from Moroccan wheat and vegetables and spices are totally Moroccan. Under the bilateral cumulation, we can affirm that this couscous has a Moroccan origin because of:

- 1) Meat imported from the United States is considered as Moroccan (cumulation of ingredients).
- 2) The rest of the used ingredients are totally Moroccan.

However, as far as products made from imported raw material, and in order to specify the origin of these products, both countries have chosen two different approaches; The first one is called specific approach for certain sensitive products. The last is called general approach.

#### **3.2 THE SPECIFIC APPROACH OF THE AGREEMENT: VERY COMPLEX CRITERIA OF ORIGIN**

The specific approach of the preferential agreement with the United States covers the sensitive products that are grouped in an annex and subject to specific rules based on the criteria of change of tariff heading or specific manufacturing processes, according to the situation. The specific approach shall include two categories of products; agricultural and agri-foods on the one hand, and textiles and clothing on the other hand.

For the first category of products, it is clear that the Protocol on the origin of goods adopts a cocktail of rules, based on the rule of products wholly obtained; sometimes see the specific process of production or value added.

This is the case for example of the Moroccan cheeses (Harmonized System "HS" 0406 30) that is made from fat, industrial cheese of E.U and milk powder imported from New-Zealand. It is obvious that the cheeses are not wholly obtained because materials from other sources are used in the manufacture of products: industrial cheeses, milk powder.... In this case, the agreement requires "substantial transformation."

In order to verify if the operation is substantial, it must first be checked if the product is in harmony with the specific rules before submitting it to test the global approach, that's what the Agreement requires. Indeed, this global approach is a combination of a New and Different Product of Trade NDPT plus a total value of 35%<sup>8</sup>.

In this case, the agreement provides for all HS Chapter 4 a specific rule which requires that "any dairy product that contains more than 10% by weight of cow's solid milk must be made originally from cow's milk (of Morocco or the United States)"<sup>9</sup>. Therefore, we can conclude that the cheese is not originated in Morocco and therefore cannot be eligible for preferential tariffs.

Regarding the textile and clothing, specific rules of origin generally based on a triple transformation are applied to these products. The principle of triple transformation implies that, with few exceptions, all textile products must be obtained "from the wire". The wire must be native to the preferential trade area. A practical example is required; this is the case of costumes made by a Moroccan company from fibers of third countries for export to the United States.

Under the Protocol on Rules of Origin, costumes exported to the U.S. market cannot benefit from reduced preferential tariff if Moroccan manufacturer does not fulfill the three conditions of manufacture: i) the non-originating textile fibers must be spun (first transformation), ii) the thread must be woven (second transformation) and iii) tissues must be turned into costumes (third transformation).

However, some exceptions are provided in the agreement for some textile products: it is the case, among others, of bras the production of which can begin from fabrics originating, provided that the value of the fabrics made in the area preferably is at least equal to 75% of the total value of the finished product (with the exception of the accessories).

Also, the preferential agreement between Morocco and the United States provides some flexibility in the rules of origin related to the textile and clothing industry. Indeed, in derogation from the rule of triple transformation, the agreement provides for a quota equivalent to 30 million square meters of textile products for export, made from yarn and fabric outside the zone of preferential trade between Morocco and the United States.

This quota remains stable during the first four years after the entry into force of the Agreement. Then it will be reduced linearly during the next six years. The regime of this quota is illustrated by the following table<sup>10</sup>:

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<sup>8</sup> See § 2.3 below.

<sup>9</sup> See Chapter 4 of the preferential agreement concluded between the United States and Morocco. Viewed at <http://www.maec.gov.ma>

<sup>10</sup> See Section 4.3 of Chapter 4 on the textiles and clothing. Preferential agreement Morocco United States. Viewed at <http://www.maec.gov.ma>

**Table 3. Division of quota of 30 million square meters of textile products that can be exported on the U.S. market, without obligation to respect the rule of triple transformation<sup>11</sup>**

Year following the entry into force of the Agreement	Annual quantities, combined in equivalent of square meters
<i>First year</i>	30 000 000
<i>Second year</i>	30 000 000
<i>Third year</i>	30 000 000
<i>Fourth year</i>	30 000 000
<i>Fifth year</i>	25 714 000
<i>Sixth year</i>	21 428 000
<i>Seventh year</i>	17 142 000
<i>Eighth year</i>	12 856 000
<i>Ninth year</i>	8 571 000
<i>Tenth year</i>	4 285 000

Source: Chapter 4 of agreement Morocco - United States. Viewed at: <http://www.maec.gov.ma>

In addition, the agreement provides for the possibility of revising the rules of origin for textile-clothing products described in the HS (6207<sup>12</sup>, 6208<sup>13</sup> and 6212<sup>14</sup>), and this depending on the development of trade between two sides.

In addition, the agreement allows the use of fibers and non-originating son at 7% of total product weight.

Finally, the agreement also provides for a quota of 1,000 tons son and fabrics made from cotton fibers (HS 520100) from African Countries "Least Developed" mentioned in Article 6 of the Official Bulletin No 4861bis-6 Shawwal 1421 (01 January 2001)<sup>15</sup>.

These quotas are allocated by the Ministry of Industry, after a notice of an Advisory committee within this Ministry, composed of representatives of the Ministry of Foreign Trade, the Ministry of Foreign Affairs and Cooperation, Administration Customs and Indirect Taxes and Moroccan Association of Textile and Clothing Industry.

### 3.3 THE GENERAL APPROACH OF THE PREFERENTIAL AGREEMENT

The second approach, so-called general, focuses on the products not listed in the Annex of specific rules and not wholly obtained in one of the two parties. These products are considered as originating if the processing carried out in the territory of one or both parties:

- Gives the finished product the character of "New and Different Product Trade"
- The value added in one or two parts is greater than or equal to 35% of the estimated value<sup>16</sup>, to the importation of the product.

<sup>11</sup> Table crafted by us from the database of the Ministry of Industry, Trade and New Technologies. Quota Management : 2006 - 2011. "Free trade agreement between Morocco and the United States, part concerning market access".

<sup>12</sup> This code means: vests, underpants, briefs, nightshirts, pajamas, bathrobes, dressing gowns and similar articles, for Men's or boys.

<sup>13</sup> This code means: vests and shirts day, combinations or petticoats, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, women's or girls.

<sup>14</sup> Designation for this code is: Brassieres, girdles, corsets, braces, suspenders, garters, and similar articles and parts thereof, of hosiery.

<sup>15</sup> See General Secretariat of Government: [www.sgg.gov.ma](http://www.sgg.gov.ma).

<sup>16</sup> The estimated value consists of the value of inputs and direct costs of treatment.

The new concept of "New and Different Product of Trade" introduced by the Agreement means as originating: any product which has undergone a substantial transformation which enables it to acquire a new name, new features and a different use of materials used in its manufacture<sup>17</sup>. The transformation must result from a process of manufacturing operations resulting in a change in the use of the product or its properties. This is a process that generates a change in the physical properties of the product significantly.

Thus, a product may have this quality of "New and Different Product of Trade" if the operation undergone by the latter is complex in terms of process, time and level of expertise required so that the product loses its original identity.

Consider the following example: sausages of chapter 16 HS, manufactured by an American company, based in the United States, from meat imported from Australia and some other ingredients of which are native to the United States and others originating from Morocco.

Can the sausages be considered as originates of the U.S.? After passing the test "specific", we perceive that the sausages are not on the list of products subject to specific rules. So the product falls under the general approach. Accordingly, it's necessary to pass the test of "New and Different Product of Trade ", with 35% of value added.

Under the terms of the Agreement, these products have the character of "new and different products" because it is indeed a new feature (frozen meat block, turned into sausages, spiced and prepared), a new name (frozen meat become the sausage) and a new use (frozen meat, transformed into a single-use product).

Then the required value (35%) must be checked. If this condition is satisfied, the product is originating in the United States. Otherwise, the product is not native from this country.

It should be noted that: some simple operations of packaging, assembly of parts, or mere dilution in water or another substance which do alter not enough the characteristics of a product shall in no case confer the status of "trade item new or different".

Furthermore, in order to ensure uniform application of the concept of "New and Different Product of Trade", the United States and Morocco have agreed by exchange of letters, to refer to the specific rules of the tariff classification specified in section 102.20 of the regulation of American customs. Under the terms of the preferential agreement, both parties may consult prior to any revision of these rules by the United States, to examine concerns and possible proposals of Moroccan firms.

Besides all these conditions on the origin, the goods exchanged under the agreement must be imported *directly* from the territory of one Party to the territory of the other Party. In case of transit through a third country, the goods should not undergo operation other than unloading, reloading or any other operation necessary to preserve them in good condition or to transport them to the territory of the other party. This is the direct transport rule.

### **3.4 EFFECTS OF RULES OF ORIGIN ON EXPORTS OF TEXTILES AND CLOTHING**

Generally, the agreement has many exporting opportunities for industrial products "non-textile" insofar as it allows free access to almost all of the Moroccan industrial products in the U.S. market.

"Morocco has obtained an exemption for 98.78% of the positions in the American tariff upon entry into force of the Agreement"<sup>18</sup>. However, the Moroccan industrial supply remains poorly adapted to the U.S. market.

In the textile sector, dismantling patterns fixed both in terms of reduction of tariffs and the access quota, provide some opportunities for Moroccan textile industry. Thus, in terms of market access, it must be noted that "The agreement provides for the dismantling of tariffs over 6 years for most products. Quota offered in Morocco is 1.2 billion of USD the first year of

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<sup>17</sup> For example, pasta products are products new and different because they are made from wheat.

<sup>18</sup> The products covered by the exemption are: footwear, canned fish, glassware and ceramics, leather goods, costume jewelry and lighting fixtures. It should be noted that these products are heavily taxed in the American tariff, which gives a comparative advantage for Morocco, noting that Morocco is the producer of the raw material used to manufacture these products. Ministry of Foreign Affairs and Cooperation (2005). "The free trade agreement between Morocco and the United States" on page 1. Viewed: [www.maec.gov.ma](http://www.maec.gov.ma)

the agreement and 2.4 billion USD in 2010, which represents 25 times the amount of current exports from Morocco to the United States<sup>19</sup>.

Concerning rules of origin, it should be reminded that the agreement provides flexibility in terms of exports in the form of a quota of 30 million square meters of textile products which may be made from thread and tissues imported outside the zone of preferential trade. However, it is quite clear that the utilization rate of the quota by Moroccan companies is very low. The table below shows easily this situation.

**Table 4. Balance sheet of granting flexibility on rules of origin for textile products, made in Morocco and exported to the United States since the implementation of the agreement (2006-2011)<sup>20</sup>**

	2006	2007	2008	2009	2010	June 2011*
Number of requests	200	102	127	84	103	82
Number of companies	40	32	35	34	30	34
Export turnover (in USD)	33 335 617	16394431	18 370 807	15 321 745	19 002 576,5	8 286 765,32
Equivalent square meters (X)	6 483 521	2 651919	2 869 616	1 838 537	1 814 093,52	1 307 880,5
Quota (Y)	30 000 000	30 000 000	30 000 000	30 000 000	25 714 000	21 428 000
Utilization rate quota (X / Y) in%	<b>21,6</b>	<b>8,8</b>	<b>9,5</b>	<b>6,1</b>	<b>7</b>	-

Source: Processing of the author, data from the Ministry of Industry, Trade and New Technologies (2006 - 2011)

\* Note: in 2011, the figures were arrested in late June.

According to this data, we can see that the utilization rate fell from 21.6%, the first year of the agreement (2006) to about 7% in 2010.

Naturally, this opportunity would be limited by the rule of the triple transformation which may eliminate, after the completion of the quota period, a large part of the Moroccan exports textile and clothing from preferential arrangements. Indeed, the state of the textile industry, as it is today, does not allow companies to meet the rule of the triple transformation.

For the United States, the textile and clothing industry is considered as sensitive, thus U.S. negotiators therefore imposed a specific rule of origin binding. This rule has the effect of increasing transaction costs for operators Moroccan and, thereby, reduces the chances of complying with rules of origin.

In any case, in the future the benefits of the agreement in the field of textiles depend undeniably of Morocco's ability to develop an integrated industry and invest in upstream. Policy of attractiveness of foreign direct investment in the upstream is now necessary to ease procurement opportunities and improve competitiveness.

It should be noted that today the investment in raw materials to Morocco by foreign private groups is increasingly strengthened. This is partly motivated by the implementation of the preferential agreement between Morocco and USA.

For example, "the Spanish textile group" Tavex ", specialized in the manufacture of jeans and sportswear has invested 630 million MAD in the expansion of its subsidiary" Settavex "located in Settat"<sup>21</sup>. The installation of these foreign firms aims to

<sup>19</sup> Economic Missions, Embassy of France in Morocco (2006). "The free trade agreement between the United States and Morocco", May.

<sup>20</sup> Table crafted by us from the database of the Ministry of Industry, Trade and New Technologies. Quota Management: 2006 - 2011. "Free trade agreement between Morocco and the United States, market access aspect."

strengthen the productive fabric of Moroccan companies in inputs. These tissues and thread should, in future, allow Moroccan operators maintain their market share gains and improved preferential exports to the U.S. market.

Currently, the rules of origin are an important parameter that has certainly negative effects on the expansion of Moroccan exports, especially textiles, to the U.S. market. However, beyond the issue of rules of origin, there are other structural reasons related to "defects of competitiveness" of the Moroccan economy to explain the difficulties faced by Moroccan exporters to break into the U.S. market.

Several key factors can be identified:

First, a big problem in terms of price-competitiveness due to the exchange rate of dirham / dollar that is unfavorable. It should be noted that "the question of exchange, compounded in recent years by the depreciation of the U.S. currency, tends to penalize the Moroccan product positioning, particularly in the textile industry. Unlike the Chinese, for example, which are favored by the direct alignment of their currency (Yuan) vis-à-vis the dollar<sup>22</sup>. Also, during the period from 2002 to 2008, the currency of Tunisia has not known a remarkable appreciation, this has better positioned Tunisia, in term of exchange rate compared to the case of Morocco<sup>23</sup>.

Then, a high cost of factors of production (labor, energy ...) in comparison with competing countries and a low production capacity. This results in an inability of Moroccan small and medium companies in serving the raising commands of the U.S. customers that are often more important than what they are accustomed to dealing with the European market.

The third factor explaining the weakness of Moroccan exports is the poor image of Morocco in the United States mainly due to the lack of means of promotion.

Also, the standards required by U.S. regulations, sanitary and phytosanitary measures, among others, are the fourth factor that complicates the task of Moroccan operators.

Finally, the weakness of the local logistics is also blamed. Indeed, direct sea links between the United States and Morocco are absent.

#### **4 CUMULATION OF ORIGIN**

The preferential agreement signed between Morocco and the United States provides bilateral cumulation of materials embedded in goods traded between the two parties. To benefit from cumulation, materials must be originate, that is to say, wholly obtained or sufficiently processed. Thus, the direct costs of processing operations performed in Morocco or the United States as well as the value of materials produced in one or both parties are taken into account in the calculation of local value added. Similarly, inputs from the other party, incorporated into the manufacture of a product are considered as originating in the country. Similarly, inputs from the other party, incorporated into the manufacture of a finished product are considered as originating in the country which granted to the manufacturing and export of this product.

In addition, both parties agreed to define later, the outlook for the cumulation, in the context of a much wider regional integration.

Thus, Morocco has already integrated the concept of cumulation in the Association Agreement with the European Union. The principle of the Euro-Mediterranean area includes a regional approach to long-term, for the establishment of a system of diagonal cumulation "pan-Euro-Mediterranean". This can only be achieved if identical rules of origin are applied between all partners in the Mediterranean region.

It should be noted in this regard that, contrary to the bilateral approach adopted within the framework of the preferential agreement with the United States, the implementation of the system of pan Euro-Mediterranean requires, on the one hand, a taken up by the partners of the E.U, of rules of origin pan-euro-Med contained in the association agreements, and secondly, a conclusion of the free trade agreements among many of these countries.

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<sup>21</sup> Department of Trade and Industry (2008). Interview conducted by us with the department head textile-clothing.

<sup>22</sup> The manufacture of jeans costs 22 dollars in Casablanca and only 12 dollars in Shanghai.

<sup>23</sup> CGEM (2009), les accords de libre-échange entre le Maroc et les Etats-Unis et les pays arabes. Study of the firm "Roland Berger". Viewed at: <http://www.cgem.ma>.

It goes without saying that the signing of the Agadir Agreement between Morocco, Tunisia, Egypt and Jordan in March 2004, aims to accelerate the implementation of the Pan-Euro-Med rules of origin. In addition, the agreement signed with Turkey in April 2004 and which incorporates the rules of origin pan-euro-Med is also in the same direction. Industries that would normally benefit from this opportunity of cumulation are textiles, clothing and cars.

However, "the daily reality is that companies find it difficult to benefit from this opportunity. The reason is that "the four signatories of the Agadir Agreement have similar economic structures and little-complementary"<sup>24</sup>.

## 5 CERTIFICATION OF ORIGIN: THE RESPONSIBILITY OF THE IMPORTER

Given the complexity of the provisions on rules of origin, Morocco and the United States agreed in the framework of the preferential agreement to simplify the procedures concerning proof of origin products.

Thus, contrary to the procedure agreed with the European Union as well as that provided in the framework of other agreements, eligibility of goods for preferential treatment is determined to importation and not to exportation. Indeed, it is the importer who must prove the origin of imported goods. As part of the agreement with the EU, it should be remembered that the procedure in vogue is quite different. The origin is proven by a certificate of origin issued and certified by the competent authorities of the exporting country (usually the Customs Administration).

The system agreed with the United States does not require the issuance of a formalized certificate of origin. In fact, it is the importer who is responsible for the preparation of procedures for the certification of origin of goods. It must be able to submit to the customs authorities, upon request, a statement containing all the information relating to the manufacture of imported goods to enable them to appreciate the declared origin. This declaration is based on the documents provided by the supplier. It must contain at least the following:

A description of the product;

A description of the operations performed for the production of the property;

An identification of the direct costs of processing;

A description of all the originate materials used for the production of the good;

A declaration of the origin and value of all the non-originating materials used in the manufacture of the good, which are declared to have been sufficiently processed in one or both parties;

And a description of the origin and value of all the non-originating materials which have not been sufficiently processed in one or both parties.

For this purpose, the importer must keep the information necessary for the preparation of the declaration for a period of at least 5 years.

Moreover, the preferential tariff treatment is normally given to any request, unless available information indicates that the request does not meet the required conditions.

Obviously, when a customs authority of both parties rejects the claim for preferential treatment, it is necessary to issue a written decision that contains the elements of form and content that motivate the decision.

## 6 CONCLUSION

Finally, it should be noted that the implementation of the preferential agreement with the United States contributes to the enrichment of the arsenal of rules of origin with different trading partners of Morocco.

The agreement with the United States brings a new approach to rules of origin namely the concept of new and different product which includes both the change of name of the product, its features and its use. In addition to this approach, specific rules are provided for certain sensitive products of the textile industry. Concerning the textile sector, the rule of the triple

<sup>24</sup> Limantour, J. F., and Ben Amor, T. (2008). Study on opportunities for cumulation of origin and complementarities in the textile and clothing in the Member States of the Agadir Agreement. Cabinet Max – Welle Stamp. March 2008.

transformation, planned for almost all textile products, has been derogated for a period of 10 years from the entry into force of the Agreement.

Regarding customs procedures, the agreement provides for a relaxing outstanding compared to other agreements concluded by Morocco. Indeed, at the time of import, only a declaration of the importer certifying the origin of the goods is required by customs. It is not required to produce a formula of certificate specially designed for the proof of origin.

The agreement provides certain opportunities (up to 2016) for Moroccan companies of the industry textile and clothing. It gives these companies, within the limits of a quota, the ability to import inputs from third, transform them in Morocco and export them to the United States, without the need to respect the rule of sufficient transformation.

However, these opportunities are under-exploited by Moroccan companies for several structural reasons sometimes going beyond the restrictive rules of origin and inconsistencies of preferential agreements: firm size, disability of language, the importance of informal, logistical problems and difficulties in obtaining raw materials at competitive prices, are all factors that explain the weakness of Moroccan exports to the U.S. market.

In short, since Moroccan capacities of export cannot adapt because of the need for heavy investments in basic infrastructure and equipment in order to be consistent with the constraint of rules of origin, the effect of these rules on trade can only be that negative in short term.

To adapt to these rules, the government must bear the adjustment costs to upgrade the Moroccan companies. If they pass this policy of adjustment and of upgrade, the logical impact on the expansion of export flows to foreign markets will only be that positive in the long term.

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