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on the conclusion of an agreement in the form of an exchange of letters between the European Union and the Kingdom of Morocco on amending Protocols 1 and 4 of the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part

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REPORT ON BENEFITS FOR THE PEOPLE OF WESTERN SAHARA AND PUBLIC CONSULTATION ON EXTENDING TARIFF PREFERENCES TO PRODUCTS FROM WESTERN SAHARA

Joint report by the Commission and the European External Action Service

Summary

1. The Western Saharan economy

Though encouraging, recent growth in Western Sahara remains fragile. The economy is based on a limited number of industries: fishing and processing of fishery products, phosphate mining, agriculture (especially fruit and vegetables and pastoral nomadism) and, to some extent, trade and craft industries. Tourism and renewable energy are nascent but potentially promising sectors. The Saharan economy is landlocked and still largely subsidised.

2. Tariff preferences as a lifeline for exports

Diversifying the economic potential of Western Sahara means encouraging foreign investment. This means offering traders legal certainty, especially by clarifying the tariff conditions for current and future exports from Western Sahara to the EU. Though available data is often fragmentary, this study concludes that **certain areas of the economy and production in Western Sahara deserve the same tariff preferences** as those granted to the Kingdom of Morocco, which they enjoyed de facto until 21 December 2016. Extending EU tariff preferences to such products would ensure the continuity of exports. It **should also play a major role in boosting the Saharan economy, by stimulating current and planned investment** liable to generate jobs (in particular in some phosphates, such as phosphoric acid or agricultural fertilisers, and in agriculture and fishing).

Conversely, **not granting tariff preferences would diminish Western Saharan exports, especially exports of fishery and agricultural products**, and would further narrow its already limited range of production. Without tariff preferences, Western Saharan products would be subject to normal customs tariffs (as applicable in the EU under the most-favoured nation clause), without privileged access to the EU market. Industrial products (such as phosphates) would scarcely be affected, but exports of fishery and agricultural products to the EU would suffer greatly, with many jobs lost.

In the longer term, boosting free private enterprise should reduce dependence on central government subsidies, while opening up the economy to greater trade and other types of exchange should gradually lead to discernible socio-economic and cultural growth.

3. Involving people

On the one hand, the Moroccan authorities have consulted all national, regional and local institutions concerned, to raise awareness and obtain their approval and input. This has led to broad support for the planned amendment and to some recommendations to maximise its effect.

On the other hand, the European Commission and the European External Action Service (EEAS) have consulted elected officials and public opinion in Western Sahara, where a large majority are in favour of tariff preferences being extended to products from Western Sahara.

Most of those interviewed said this would help everyone, stressing the key role such preferences would play in spurring private investment. They felt that privileged access to EU markets would encourage business and EU direct investment, promoting Western Sahara's new participatory and sustainable development model. Conversely, continuing legal uncertainty surrounding trade with Western Sahara would seriously hamper socio-economic development, as already evidenced by the slowdown in trade between the territory and some Member States and in certain sectors. Restricting access for Western Sahara to foreign markets and investment would put a brake on its economy and thwart socio-economic and political growth, just when development in the territory finally seems ready to take off.

This was a general feeling, despite varying opinions as to the status of the territory, which everyone agreed could be settled only through the UN-led process. Some also felt that the EU should be more involved in supporting the UN-led process.

Technical discussions with the Polisario Front, which is an interlocutor with the UN and a party to the UN-led peace process for Western Sahara, highlighted the Front's opposition in principle to amendment of the Agreement, largely for general political reasons unrelated to the amendment itself.

4. Results by sector

Consideration of the three main sectors potentially affected by the extension of EU tariff preferences to products from Western Sahara leads to the following conclusions:

(a) Agriculture

The study shows that **crops are grown in Western Sahara, especially early-growing crops (tomatoes and melons), for which there is a big market in the EU. An estimated 64 000 tonnes of such crops were grown in 2016, accounting for some 14 000 direct jobs.** Those crops would have an import value of some **EUR 65 million**. Without tariff preferences, such exports would be subject to EUR 6.6 million in customs duties.

Those economic benefits could grow if Western Sahara increases production and exports more to the EU under projects currently being planned. That would also increase the number of jobs, which some forecasts say could grow fivefold.

Although more farming means using more natural resources, especially water, there seem to be few other ways at present for the territory's economy to grow. Though questioned by some, Moroccan estimates suggest that the impact on groundwater reserves would be limited.

(b) Fishery products

The report shows that there is a major fish processing industry in Western Sahara. **Exports of fishery products from the territory amounted to EUR 100-200 million in 2015 and 2016,** according to different sources. **Some 45 000 jobs depended** directly or indirectly **on those exports.** As in agriculture, extending tariff preferences to those imports would have a major impact on the economy and thus on jobs in the territory. Conversely, not granting preferences would harm exports and jobs and encourage a shift in processing to other places, such as Morocco. That would jeopardise investment in Western Saharan fish processing plants cofinanced by the EU.

(c) *Phosphates*

Phosphate production is a major industry in Western Sahara. However, as most of the raw phosphate produced in Western Sahara and imported to the EU is not subject to customs duties, **not applying tariff preferences to current Western Saharan phosphate production would have little or no impact. The proposed agreement could have a real impact only for certain phosphate derivatives** (phosphoric acid and fertilisers) not currently produced in Western Sahara (and subject to duties of 4.8 to 6.5 %). The OCP Group (former Office Chérifien des Phosphates), which is the main employer in the territory, plans to develop an industrial complex producing fertilisers (phosphoric acid and fertilisers) in Laâyoune and to build a new quay in the port of Laâyoune. Those projects would be threatened without preferential treatment for the products in question, which could cost local jobs.

5. Conclusion

Though the Western Saharan population cannot be neatly divided into groups with specific backgrounds, there are signs that **economic activity generated by exports to the EU creates local jobs and thus helps all parts of the population, regardless of background, to a greater or lesser extent.** These benefits would be compromised if exports to the EU did not enjoy the same tariff preferences as those granted to Morocco.

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1 INTRODUCTION

1.1 Background

Western Sahara is a territory in northwestern Africa bordering Morocco, Algeria and Mauritania. It was under Spanish administration until 1976. On 14 December 1960, the UN General Assembly adopted Resolution 1514 (XV) on the Granting of Independence to Colonial Countries and Peoples. In 1963, at the request of the Kingdom of Morocco and in response to information sent by the Kingdom of Spain under Article 73(e) of the UN Charter, the UN added Western Sahara to its list of non-self-governing territories. It remains on that list today.

Both the Kingdom of Morocco and the Popular Front for the Liberation of Saguía el-Hamra and Río de Oro (the Polisario Front) claim the territory; the UN has long been working towards a peaceful resolution of the dispute. The EU and its Member States have refrained from intervening or taking sides in the dispute and will, as appropriate, accept any solution decided in accordance with international law, under the auspices of the UN. They do not recognise Moroccan sovereignty over Western Sahara, but support efforts by the UN Secretary-General to bring about a just, lasting and mutually acceptable solution which will allow self-determination for the people of Western Sahara.

Ever since Spain left in 1976, no statistics have been sent to the UN on economic, social or education conditions in the territory.

Most of the territory is currently controlled by the Kingdom of Morocco, with the Polisario Front controlling a smaller, sparsely populated area in the east. The area controlled by the Polisario Front and the area controlled by the Kingdom of Morocco are divided by a wall of sand, built by Morocco and guarded by the Moroccan military. Many refugees from Western Sahara live in camps run by the Polisario Front in Algeria, near Western Sahara¹.

Ever since Spain ended its presence and Mauritania withdrew, the Kingdom of Morocco has exercised sole de facto administration over the part of Western Sahara under its control. The Kingdom of Morocco regards Western Sahara as part of its territory. The EU regards Morocco as administering the non-self-governing territory.

This report uses the term ‘Western Sahara’ to refer to the part of the territory administered de facto by Morocco.

After the entry into force of the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part² (the ‘EU-Morocco Association Agreement’), products from Western Sahara benefited de facto from the tariff preferences established in the Association Agreement, as they were certified by Morocco as being of Moroccan preferential origin. However, in its judgment of 21 December 2016 in case C-104/16 P³, the European Court of Justice (ECJ) ruled that the Agreement applied only to the territory of the

¹ The EU supports the Sahrawi people through the European Instrument for Democracy and Human Rights and by providing humanitarian aid for refugees. See Report on EU-Algeria Cooperation – 2016 Edition: https://eeas.europa.eu/sites/eeas/files/rapport_de_cooperation_2016_v.numerique.pdf

² OJ L 70, 18.3.2000, p. 2.

³ ECJ Judgment of 21 December 2016, *Council v Front Polisario*, C-104/16 P, ECLI:EU:C:2016:973.

Kingdom of Morocco and not to the non-self-governing territory of Western Sahara⁴. After that judgment, the EU immediately stopped granting the above tariff preferences; those preferences can be restored only if the relevant provisions of Protocol 1 (access to the EU market for agricultural products, processed agricultural products and fish and fishery products) and Protocol 4 (rules of origin) are amended, clearly establishing the principle that products from Western Sahara may enjoy the same treatment as products from Morocco.

Therefore, on 29 May 2017, the Council authorised the Commission, in the form of an Exchange of Letters, to negotiate an international agreement on behalf of the EU to amend the Association Agreement as necessary. But the Council attached two conditions to that authorisation: First, before the new Agreement is signed, the Commission must have evaluated its potential impact on sustainable growth in Western Sahara, considering in particular its advantages for local people and the impact of natural resource use on the areas in question. Second, the people concerned by the Agreement must have been adequately involved.

As the people of Western Sahara have the right to self-determination, it is not for the EU to carry out a local census or decide who to count as part of the population⁵; at the same time, UN documents on economic activity in non-self-governing territories also refer to socio-economic benefits for their inhabitants⁶. Keeping in mind these differences and the difficulty of assessing the impact of the amendment on a people which has yet to be defined, this analysis focuses on the benefits for the population of Western Sahara, as preferences are granted to products from a given territory, with advantages associated mainly with that territory.

This report aims to respond to those requests from the Council. It is based on:

- all available statistical data;
- information exchanged between the EU and Morocco;
- consultations with a wide range of socio-economic and political actors in Western Sahara, especially through interviews with civil society organisations, Western Saharan MPs, economic operators and representatives of the Polisario Front;
- observations submitted by the Polisario Front in action T-512/12 and by the Western Sahara Campaign in the national dispute which led to case C-266/16;
- annual reports by the UN Secretary-General on the situation in Western Sahara and the website of the UN Mission for the Referendum in Western Sahara⁷;
- information in the public domain.

The Commission and the EEAS have also maintained regular contact with the team of the Personal Envoy of the UN Secretary-General for Western Sahara. The aim has been to ensure

⁴ According to the above judgment of 21 December 2016, the territory of Western Sahara has a 'separate and distinct status', by virtue of the principle of self-determination (par. 92). In its judgment of 27 February 2018 (C-266/16, *Western Sahara Campaign*) on the EU-Morocco Fisheries Agreement, the ECJ states: 'the territory of Western Sahara is not covered by the concept of "territory of Morocco"' (par. 64), and 'the waters adjacent to the territory of Western Sahara are not part of the Moroccan fishing zone' (par. 69).

⁵ See point 1.2.2, third paragraph.

⁶ General Assembly Resolution of 7 December 2017 on Economic and other activities which affect the interests of the peoples of the Non-Self-Governing Territories (document A/RES/72/94 of 14 December 2017).

⁷ <https://minurso.unmissions.org/>
<https://minurso.unmissions.org/secretary-general-reports>

that the proposed agreement will support efforts by the UN Secretary-General to achieve a solution providing for self-determination for the people of Western Sahara in accordance with the principles and objectives of the UN Charter.

1.2 Scope and method

1.2.1 Scope

This evaluation aims to determine the benefits for the people of Western Sahara, guided by the parameters in Article 73 of the UN Charter. It will analyse the potential impact of the agreement on sustainable growth in Western Sahara, especially in terms of advantages for the people concerned and the impact of using natural resources in the areas in question. Of course, the real impact on sustainable growth and local people can be assessed only if the granting of tariff preferences has an effect on trade between the EU and Western Sahara. The first aspect to consider is the impact of tariff preferences on trade from Western Sahara to the EU.

Only later can the real impact on sustainable growth and local people be considered or assessed, as this question arises only if the granting of tariff preferences has an effect on trade between the EU and Western Sahara.

Tariff preferences provide for preferential customs duties (zero for most products) to be applied to goods entering the EU, subject to certain conditions. The duty applied to goods is determined by three factors: their tariff position in the customs nomenclature⁸; their origin, i.e. their purported country of origin; and, in some cases, their value. Those concepts are examined in detail later in this report.

1.2.2 Methodological constraints

There are various types of methodological constraints, involving:

- the quality of available information;
- practice following the Court judgment of 21 December 2016;
- the defined scope of the study;
- the difficulty for the EU as a third party to assess the impact of the agreement, in particular its benefits for the people concerned.

Information available Statistics on Western Sahara generally remain patchy and disparate, due to the territory's unique political situation. For example, though much information can be found on the websites of various Moroccan institutions (including the Economic, Social and Environmental Council and the High Planning Commission), the territory of Western Sahara does not correspond exactly to the 'southern provinces' referred to by the Moroccan authorities in their publications or in information exchanged with the Commission (the regions of Laâyoune-Sakia el Hamra, Dakhla-Oued ed Dahab and Guelmim-Oued Noun). But that obstacle can be overcome, as this report considers economic activity in the regions of

⁸ Reference is to the nomenclature governed by the Convention on the Harmonised Commodity Description and Coding System (the 'Harmonised System').

Laâyoune-Sakia el Hamra and Dakhla-Oued ed Dahab.

Practice following the Court judgment of 21 December 2016 The methodological limits on data available to the EU institutions are linked to the practice which was in place until the ECJ judgment of 21 December 2016. As goods from Western Sahara imported to the EU de facto enjoyed the same preferences as goods from Morocco, it is generally impossible to distinguish Moroccan imports from Western Saharan imports using EU statistics on foreign trade (such as the Eurostat Comext database) and therefore to estimate what portion of those imports is from Western Sahara. It is only for fishery products that data from the Commission's Trade Control and Expert System (Traces) make it possible to estimate what portion is processed in the territory and imported to the EU.

Defining the scope of the study The term 'people concerned' is liable to different or even divergent interpretations⁹. It can be understood as referring to people living in the territory; this is Morocco's interpretation, which does not distinguish between inhabitants on the basis of ethnicity or community. It can also be understood as referring to a specific set of inhabitants, in particular on the basis of ethnicity or community (Sahrawis); in that case, at least some of the people concerned may be living outside of Western Sahara (as refugees), while some newer inhabitants may not be included. This is the interpretation preferred by the Polisario Front. If the people concerned are to be defined on the basis of ethnicity or community, three things should be kept in mind: (1) The UN Mission for the Referendum in Western Sahara (MINURSO) worked for 13 years, from 1991 to 2004, to determine which people would be allowed to exercise the right to self-determination for the people of Western Sahara, without arriving at a conclusive result. (2) People identifying as Sahrawi inhabit an area much larger than Western Sahara including southern Morocco, Mauritania, part of Algeria and sizeable groups in Europe and North America; (3) Sahrawi people, traditionally nomadic, have family ties extending beyond the borders of the region. This shows how great the challenge is for the Commission, which has no precise, reliable way of deciding who to include in the (Sahrawi) 'people concerned'.

Also, the effect of tariff advantages on natural resources, employment and human rights is indirect and therefore quite hard to gauge.

Though this report has been prepared as objectively as possible, it is limited by natural constraints: On the one hand, the parties to the dispute on Western Sahara and its status have radically diverging positions; on the other hand, there is no independent UN-commissioned analysis of the benefits of international trade agreements for Western Sahara. Moreover, the EU has no competence for or direct means of investigating the territory of Western Sahara.

In any event, we decided to start by assessing whether the agreement helped trade between Western Sahara and the EU. If so, we wished to gauge its impact on jobs and the use of natural resources. Where possible, we sought to determine whether that impact could be associated with differences in the background (indigenous or not) of the people.

So all available data have been used in preparing this study. Though incomplete, that information allows for an approximate estimate of the impact of extending the trade

⁹ For example, the French language version of the negotiating directives uses the word 'populations', while the English version uses the word 'people'. This shows a varying use of words even in UN documents. For example, the conclusion to the ICJ opinion of 16 October 2074 says 'populations' in the French version and 'people' in the English version.

preferences established in the Association Agreement to exports from Western Sahara or, conversely, the impact of not granting such preferences on the territory's economy, sustainable growth and the people concerned.

An examination of economic activity in Western Sahara shows that the sectors with the largest volume of exports to the EU are fisheries and agriculture. The potential impact of the Agreement on those sectors is analysed below. Because of its potential, the phosphates sector is analysed as well.

1.3 Consulting the people concerned

One of the aims of the negotiation was to fulfil the condition that 'the people concerned by the agreement have been adequately involved' in preparing to amend Protocols 1 and 4 of the Association Agreement. With no other way of directly consulting people in Western Sahara, the Commission and the EEAS consulted a broad range of Sahrawi civil society organisations, MPs, economic operators and other organisations, including the Polisario Front. Most of those organisations and associations, including the Polisario Front, shared their views with us; a few declined to do so. The main aim of the consultation was to exchange views and comments on the potential benefits for the people and the economy of Western Sahara of extending the preferential treatment granted to Moroccan products to products imported from Western Sahara to the EU.

2 HUMAN RIGHTS IN WESTERN SAHARA

2.1 The human rights situation in Western Sahara

The human rights situation in Western Sahara is generally similar to that in Morocco. Mechanisms and laws ensuring protection are the same. However, there are some differences in Western Sahara because of the political dispute, especially in freedom of expression, freedom of demonstration and freedom of association. Any 'threat to territorial integrity', including advocating independence as the Polisario Front does, is punishable by fine or imprisonment.

In case T-512/12, the Polisario Front claims that Morocco has violated the human rights of Sahrawi civilians during protest demonstrations. According to some NGOs¹⁰, violations of socio-economic as well as civil and political rights are more common in Western Sahara than in Morocco. This is confirmed in the UN Secretary-General's latest report on Western Sahara¹¹. Given the nature of the dispute, some Sahrawi organisations report violations of freedom of expression, freedom of demonstration and freedom of association. They report difficulties in operating as they have no legal recognition. Despite an encouraging

¹⁰ See reports by Amnesty International and Human Rights Watch:
<https://www.amnesty.org/fr/countries/middle-east-and-north-africa/morocco/report-morocco/> (viewed on 23/4/2018)

<https://www.hrw.org/fr/middle-east/n-africa/morocco/western-sahara> (viewed on 23/4/2018).

¹¹ Secretary-General's report on the situation in Western Sahara. UN Security Council Document No S/2018/277. See points 65-73.

climate of reform in recent years, repressive practices remain and NGOs continue to face daily obstacles.

The authorities have made efforts in recent years to respond to concerns of the international community and civil society, but the means of measuring those efforts and verifying their impact on the human rights situation need to be improved. One major step forward is Morocco's recent recognition of the Sahrawi Association of Victims of Serious Human Rights Violations, the first registered Sahrawi association. The regional commissions of Morocco's National Human Rights Council, operating in Dakhla et Laâyoune, have also been strengthened, making it easier to monitor the human rights situation in the territory.

Morocco underwent its third Universal Periodic Review by the UN Human Rights Council in September 2017, receiving 244 recommendations. Those focused mainly on abolishing the death penalty, stopping violence against women, gender equality, ending discrimination against children born out of wedlock and decriminalising sexual relations between consenting adults of the same sex. The Review highlighted challenges in respecting the prevalence of international over national human rights law.

2.2 Framework for EU-Morocco cooperation in the fields of human rights and democracy

Western Sahara has long been the subject of dialogue between the EU and Morocco in the fields of human rights and democracy under the Association Agreement, Article 2 of which states: 'Respect for the democratic principles and fundamental human rights established by the Universal Declaration of Human Rights shall inspire the domestic and external policies of the Community and of Morocco and shall constitute an essential element of this Agreement.'

EU-Morocco relations in the field of human rights have been accompanied by regular dialogue – both political, at high-level meetings of the Association Council and official visits by senior officials, and technical, in the Sub-Committee on Human Rights, Democracy and Governance¹², which has met annually since its creation.

Though informal contacts on the matter have continued in recent years, the difficulties in bilateral relations since the Court judgment of 10 December 2015 (Case T-512/12) have made it impossible to hold such meetings officially. As part of the process of normalisation and with a view to restoring bilateral ties, the EU is planning to relaunch the dialogue before the end of 2018.

Discussions have dealt with progress in implementing reform for various individual and collective rights, as well as EU-financed human rights and governance programmes. They have also touched on individual cases of alleged human rights violations – a matter of particular relevance to Western Sahara.

As part of the political dialogue, the EU regularly underscores the importance of upholding the rule of law, in particular in the field of justice. This dialogue accompanies major EU support for reform of the Moroccan judicial system, aiming to improve access to justice,

¹² Decision No 1/2006 of the EU-Morocco Association Council of 26 September 2006 creating the Sub-Committee on Human Rights, Democracy and Governance (OJ L 276 of 7.10.2006, p. 73).

to ensure better legal protection for public rights and freedoms, and to make the judicial system more effective. Institutional dialogue on political and technical issues goes hand in hand with dialogue with civil society.

The EU Delegation to Morocco holds frequent contacts with Morocco's National Human Rights Council. That independent institution plays a major role in monitoring the human rights situation in Morocco, in particular through its regional commissions in Western Sahara. The EU supports the Council through a programme dedicated to strengthening its institutional capacity, including that of its regional commissions in Dakhla and Laâyoune.

The EU is also in regular contact with other bodies, in particular international organisations and third countries with a presence in Western Sahara, which provide detailed information on the situation there. The EU Delegation also travelled to Western Sahara in 2015, before the break in bilateral ties.

Finally, the EU consults reports by UN human rights agencies which visit Western Sahara, including the UN High Commissioner for Human Rights and the UN Special Rapporteur on torture.

2.3 Consequences of amending Protocols 1 and 4 of the Association Agreement on the human rights situation in Western Sahara

Amending Protocols 1 and 4 of the EU-Morocco Association Agreement will improve access to the EU market and spur foreign investment in Western Sahara, driving economic development, which should help promote socio-economic rights such as access to employment and social benefits. In the longer term, opening up the economy to the outside world and increasing trade and other types of exchange should stimulate socio-economic and cultural growth, helping to enlarge and consolidate the middle class and to promote social mobility. Boosting free private enterprise and entrepreneurship should reduce dependence on central power, which poses a threat to the territory's long-term socio-political growth.

EU-Morocco ties weakened after the Court judgment of 10 December 2015 (case T-512/12), making it harder to hold a regular human rights dialogue; the spirit of increased engagement brought about by the normalisation of contractual relations will now help restore that dialogue. The reference framework for amending the Protocols (Article 2 of the Association Agreement, which guarantees respect for democratic principles and fundamental rights) should make it easier to monitor respect for human rights, in particular socio-economic rights, in Western Sahara. Establishing a regular mechanism for exchanging information on the sustainable use of natural resources under the amendment to the Agreement will also favour a more equitable distribution of the dividends of growth. That will make it easier to target cooperation projects for those benefiting least from the amended Agreement (such as nomads).

In general, extending tariff preferences to products from Western Sahara should have a comparable effect on human rights in the territory to the effect of the EU-Morocco Association Agreement on human rights in Morocco. By promoting a convergence of rules with EU standards in various fields, the Agreement will lead to indirect improvements in areas such as working conditions (including safety), labour legislation (including child labour), plant health measures and consumer protection.

3 THE WESTERN SAHARAN ECONOMY – ECONOMIC BENEFITS FOR THE PEOPLE CONCERNED

3.1 Overview of the Western Saharan economy and the need to diversify it

Still suffering from a historical development deficit and long left outside the international economic and commercial mainstream, Western Sahara is a territory of 266 000 km², mostly covered by desert, with a population of some 584 000¹³.

According to available information, Western Sahara is a small market economy based mainly on fishing and fish processing, phosphate mining, agriculture (especially early-growing fruit and vegetables and pastoral nomadism), trade and craft industries. Other sectors, such as tourism and renewable energy, are still nascent.

Under a development model based on close ties between centre and periphery, the central Moroccan government is the main shaper of development policy for the Western Saharan economy and plays a major role in employment, infrastructure and social redistribution in the territory. This leading role played by the central government has grown in the last ten years, allowing Western Sahara to catch up to some extent with the more developed parts of Morocco. According to the Department of Studies and Financial Forecasts of the Moroccan Ministry of Economy and Finance, growth in the regions of Dakhla-Oued ed Dahab and Laâyoune-Sakia el Hamra was 5.6 points higher than national growth between 2007 and 2010, and 4.9 points higher between 2011 and 2014. They explain that this is due to public investment in the southern regions to make them competitive nationally¹⁴.

A March 2013 report by the Economic, Social and Environmental Council¹⁵ also states: ‘GDP in the three southern regions in 2017 was MAD 21.7 billion, or 3.5 % of annually produced wealth.’ It goes on to say: ‘Unemployment there [according to a 2007-2011 survey by the High Planning Commission] affects 15.2 % of the active population, compared to 8.9 % nationally (35.1 % for women, compared to 10.2 % nationally); the regions of Laâyoune and Dakhla are among the least poor in the country (with respective poverty rates of 2.2 % and 2.6 %, compared to 8.9 % nationally).’ Finally, the report states that ‘the private sector there is weak’, while ‘the State, as sovereign power and supported by public investment, administrative spending and payment of social benefits, has been the driving force behind this transformation’.

No commercially viable source of oil has yet been found in Western Sahara; some prospecting operations continue, though less intensely than before. Given the small size of the domestic market in Western Sahara and the fact that production focuses on a very limited range of products, the major challenge for the territory’s economy is to diversify, extending to other sectors liable to create jobs and revenue for the territory and its people as a whole, which is the key to ending its commercial isolation.

¹³ <http://www.un.org/en/decolonization/pdf/Western-Sahara2017.pdf> (viewed on 23/4/2018)

¹⁴ Department of Studies and Financial Forecasts. Studies, June 2017: Economic Growth Profile of Regions (viewed on 23/4/2018).

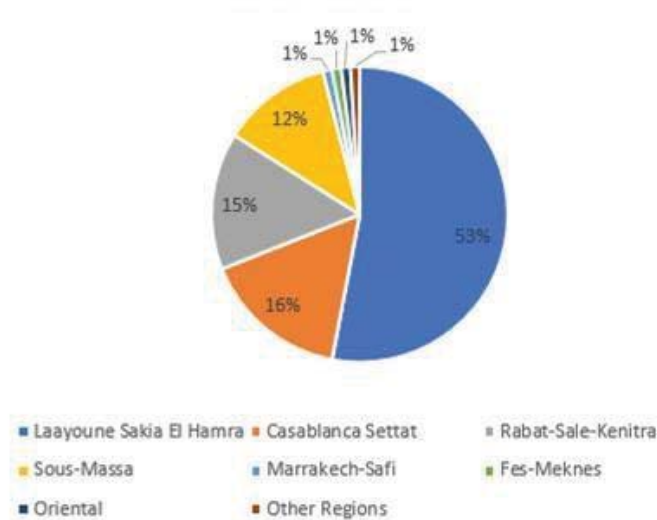
https://www.finances.gov.ma/depf/SitePages/publications/en_catalogue/etudes/2017/croissance_des_regions.pdf

¹⁵ Economic, Social and Environmental Council – Regional Development Model for the Southern Provinces – Evaluation of Respect for Fundamental Human Rights in the Southern Provinces (viewed on 23/4/2018) <http://www.cese.ma/Documents/PDF/Web%20Rapport%20Effectivite%20des%20droits%20VF%2011042013.pdf>

Diversifying the economy by opening it up to the world is all the more important given the general economic stagnation of the Maghrebi region, which is suffering from very weak intraregional trade, a lack of cross-border cooperation and the continued closure of some borders.

In November 2015, the Moroccan government announced a series of investments aimed at diversifying activity, while the Moroccan Confederation of Industry planned an investment initiative of some 609 million dollars in the region in March 2015. According to figures announced by Morocco’s National Investment Commission at its January 2018 meeting under the authority of the Prime Minister, government investment planning for 2018 would focus on Western Sahara, involving some EUR 1.5 billion and hoping to create nearly 3 000 jobs.

Government investment in 2018



Past and future investment by Morocco in the territory stands in sharp contrast to the shortage of international investment and the wait-and-see attitude which seems to be blocking its expansion.

A major argument by those opposed to extending the Association Agreement to cover Western Sahara is the fact that Morocco will be increasing structural investment in the territory many times over, with a political view to annexing it by changing its identity. It has allegedly implemented an overall administrative and economic policy to this end¹⁶. The Polisario Front describes the exploitation of natural resources in Western Sahara under Moroccan control as ‘economic plunder aimed at altering the structure of Sahrawi society’¹⁷.

Similarly, it is claimed that Morocco has pursued a policy of using various incentives to alter the population of Western Sahara by bringing in new inhabitants from Morocco. Since 1975, thousands of Moroccans have allegedly been brought to live in Western Sahara, making the Sahrawi people a minority in their own land. Whether or not these new inhabitants are counted as part of the ‘people of Western Sahara’ or the ‘local population’ will of course have major consequences for a future referendum on the territory’s status¹⁸.

¹⁶ See in particular the report prepared by the Polisario Front in case T-512/12: Western Sahara – Status and Economic Exploitation – Legal study commissioned by the Polisario Front – May 2012.

¹⁷ See point 242 of judgment in case T-512/12.

¹⁸ See Second Witness Statement by John Gurr in the national dispute which led to case C-266/16.

The first argument does not concern the subject of this report: it deals with an aspect of general policy, but not directly with the question of extending tariff preferences established in the EU-Morocco Association Agreement to products from Western Sahara. Of course, all production involves using natural resources; still, this cannot mean banning all economic activity a priori, as that would make economic growth impossible. Several of those interviewed in the consultation of Western Saharan economic operators in February 2018 said that the people had a right to development and that it was not reasonable to make growth contingent on a UN-brokered solution to the dispute. They felt that such an approach would in practice stop all activity in the territory and amount to punishing the local population.

As for the second argument, it is true that the impasse in the dispute has resulted in an intermingling of Moroccans and indigenous Western Saharans, which has of course altered the structure of the territory's population. Yet that does not justify drawing conclusions as to which people could be consulted in a referendum on the territory's status. Moreover, while a sizeable portion of the Sahrawi population lives outside the territory of Western Sahara¹⁹, a major portion does live in the territory. Those people are entitled to participate in the process of economic growth.

Because of the small population, the territory's economic growth model is based largely on production of a limited range of exports. Assessing the benefits of the proposed Agreement for the people concerned means analysing its impact on the main current and potential export sectors for products from Western Sahara.

3.2 Potential benefits for the main export sectors of the economy

3.2.1 Agriculture

3.2.1.1 Introduction

Because of the region's topography, Western Saharan agricultural production focuses on a very narrow range of sectors. Due to its desert climate, the region's main activity is animal (mainly camel, goat and sheep) herding, which is helped by the presence of range land and the local demand for bred animal products. Animal products from Western Sahara do not yet comply with health standards for access to the EU market, so no such products are exported to the EU²⁰.

Moreover, the area of Dakhla enjoys a temperate climate (18-25° C year-round), constant sunshine and slightly sulphurous water, all of which favour the growing of above-ground greenhouse crops, which are high in value and slightly ahead of Moroccan production²¹.

¹⁹ This part of the population could not be quantified as there are no census records for the refugee camps in Tindouf (Algeria). According to various sources, this is between 20 % (according to 'pro-Moroccan' Sahrawis) and 50 % (according to the Polisario Front) of the total Sahrawi population.

²⁰ The consultations in February 2018 found that animal – especially camel – herding is particularly common. Several of those interviewed said that Sahrawis were traditionally nomadic herders and engaged largely in herding. This shows that a limited study assessing the direct impact of the Agreement cannot grasp the full complexity of Western Saharan society.

²¹ To place Western Saharan agricultural production in a broader context, note that Morocco is traditionally a nation of farmers. In 2016, the share of agriculture in the economy was an estimated 12 % of GDP for the country as a whole. The utilised agricultural area (UAA) is 8.7 million hectares, of which 52 % is used for cereals and 3 % for early-growing crops. The main agricultural exports from Morocco to the EU are vegetables (EUR 951 million in 2016), followed by non-citrus fruit (EUR 347 million) and citrus fruit (EUR 175 million). The

According to Morocco, there were 6 847 farms in the region (including all types of activity and products) in 2016. Agricultural activity seems to be a major source of employment, generating the equivalent of 35 000 jobs, in a region with 584 000 inhabitants and an unemployment of some 15 %, far above the national average (9 %).

3.2.1.2 Agricultural production, trade with the EU and socio-economic impact

Early-growing fruit and vegetables are one of the main sectors of exports from Western Sahara to the EU. According to information received by the Commission, **64 000 tonnes of early-growing crops were harvested in the territory in 2016, covering an area of some 900 hectares**²². According to available data, these are high-added-value crops, 78 % of which are tomatoes (50 000 tonnes of various types and varieties) and 22 % melons (14 000 tonnes). These crops are apparently grown for export to the EU, Russia, African countries and the local market. As harvested crops are sent to sorting and packaging sites in the region of Agadir, it is hard to obtain precise figures for their final destination, but fruit and vegetables grown in Western Sahara are assumed to be included in exports to the EU, which is a profitable market.

Under the EU-Morocco Association Agreement, Moroccan agricultural products enjoy preferential conditions for access to the EU market. Those conditions include unlimited exemption from customs duties for most products²³, with some fruit and vegetables subject to specific provisions such as limits on quantity (tariff quotas).

Based on data available for 2016 and assuming that all crops grown in Western Sahara are exported to the EU, applying the preferences stated in the Association Agreement **to 14 000 tonnes of melons would mean savings of some EUR 1.3 million in customs duties. For tomatoes, if preferences were granted for all production (50 000 tonnes), the savings in customs duties would be some EUR 5.3 million**, as long as the specific duty did not apply²⁴. Note that the volume of tomatoes exported would be subject to the tariff conditions established in the Agreement and thus included in the quota for Morocco. Tomato and melon exports would have represented 12.7 % and 31.09 % of the total export volume in 2016 respectively. Fruit and vegetable imports from Morocco in 2016 totalled 1.2 billion tonnes in volume and were worth EUR 1.4 billion.

In socio-economic terms, early-growing crops are a major source of jobs. High-added-value early-growing crops are labour-intensive, often grown in greenhouses and above ground. In 2016, they accounted for **some 14 000 direct jobs** (with an average of 15 workers per hectare). That represents some 40 % of all agricultural jobs in the region.

portion of the active population employed in agriculture is 39 % nationally, and as much as twice that in rural areas.

²² The area used for early-growing crops in Western Sahara is less than 0.4 % of the total for Morocco.

²³ No preference is granted for 'sugar' (products falling within CN codes 1701 and 1702, with the exception of some tariff subheadings).

²⁴ For this calculation, the unit price for 2016 was set at EUR 1 066 per tonne for melons (45 million tonnes imported, at a customs value of EUR 48 million), with a regular customs duty (applicable in the EU under the most-favoured nation clause) of 8.8 %. For tomatoes, the unit price is set at EUR 1 059 per tonne (417.14 million tonnes imported, at a customs value of EUR 393.75 million), with a regular customs duty of 8.8 to 14.4 % depending on the time of year, with some 80 % of exports taking place between early November and late April (8.8 % duty).

It has been claimed that this activity would not benefit the local population. That argument was put forward in the national dispute which led to case C-266/16, with 4 000 seasonal workers said to be on 10-month contracts, coming from Morocco for the harvesting season and then returning home, and some 200 permanent workers employed in agriculture around Dakhla in 2008. According to Western Sahara Resource Watch, agriculture is seen by Morocco as a means of populating the territory and is on the rise.

Morocco has not provided job figures for the early-growing crops sector broken down between Sahrawi and other workers. This has been the subject of discussions with the Moroccan authorities, who say that establishing statistics on an ‘ethnic’ basis would violate the principle of non-discrimination. However, those interviewed in the consultations in February 2018, most of whom identified as Sahrawi, felt that growth of the sector would benefit the local (Sahrawi) population. Note that all local elected officials (MPs and governors of regions) and economic operators (including presidents of chambers of commerce, agriculture and fishing) who participated in the consultations identified as Sahrawis coming from the territory. But recall that the EU has no investigation powers in a non-EU country to determine whether people in a specific sector of activity belong to a given segment of the population²⁵.

3.2.1.3 Use of resources

Any agricultural activity involves using natural resources, especially land and water. The primary constraint in Western Sahara is water, due to the type of terrain and the lack of rainfall. Research shows that there is groundwater in the region, though it is hard to put an exact figure to the level of reserves and their rate of replenishment.

According to Morocco, groundwater is present in a large area (90 000 km²), is deep (up to 1 800 m) and contains an estimated 3 billion m³ of permanent reserves. The General Monograph of the Region of Dakhla-Oued ed Dahab, produced by the Directorate-General for Local Authorities of the Moroccan Ministry of the Interior, says: ‘[There is a] sedimentary basin (called Laâyoune-Dakhla) extending along the Atlantic coast in the west and covering an area of some 110 000 km² on the continent. It is relatively rich in extensive underground water reserves, but not enough is known about them and they are quite varied in depth, lithology, productivity and water quality. In hydrogeological terms, however, there are signs that the basin includes several layers of groundwater, containing a potentially major but non-renewable water source.’

Irrigation water for early-growing crops has so far come from groundwater (also used for drinking water). According to Morocco, less than 3 million m³, or some 0.1 % of available volume, is currently used for agriculture. Western Sahara Resource Watch claims that

²⁵ The same application stated that 6 480 people were employed in the Moroccan agriculture industry in Western Sahara in 2010. According to the Moroccan Ministry of Agriculture, that figure is set to triple by 2020; 2 000 hectares is expected to be under cultivation by then and production for export is expected to grow to 160 000 tonnes. The application also stated that 95 % of agricultural production, including tomatoes, melons and cucumbers, was exported, but that the savings from the preferential arrangements were not invested in infrastructure benefiting the Sahrawi people (see national dispute which led to case C-266/16: Second Witness Statement of John Gurr – pp. C-74-75). It would be very restrictive to assess whether an agreement was beneficial for a given population by determining whether all profits from products sold returned to that population. It is more appropriate to consider whether people receive benefits in general or suffer discrimination in hiring. Again, the consultations in February 2018 found no indication of current discrimination in hiring. This was confirmed by several of those interviewed, including Sahrawis.

Western Saharan underground water reserves are currently over-used by agro-industry in the territory, especially in Dakhla. The Moroccan authorities are aware of the problems and have taken corrective action. Similar comments have also been made by various Moroccan institutions, underscoring the fact that ‘intensive farming of some crops (melons or tomatoes) for export is especially detrimental, as irrigation in the region uses fossil groundwater, with potential consequences that have not been clearly assessed.’²⁶ In 2013, the Moroccan High Planning Commission also commented on the use of groundwater, saying: ‘Consideration of environmental constraints in the southern regions is clearly insufficient. The government’s means of oversight and prevention of coastal pollution, though improving, remain limited. The over-pumping of water resources poses a serious threat.’²⁷ Page 26 of the report adds: ‘Intensive farming of some crops (melons or tomatoes) for export is especially detrimental, as irrigation in the region uses fossil groundwater, with potential consequences that have not been clearly assessed.’

The exact volume and characteristics of the groundwater are still unknown, as is the risk of depleting it, which would be detrimental to natural resources in Western Sahara.

Still, to optimise the use of groundwater today, local (drip) irrigation systems have been introduced for early-growing crops. For a number of years, the Moroccan authorities have also been developing measures to limit water use and raise awareness among users in the form of ‘groundwater contracts’ (work on the contract for Western Sahara is currently ongoing).

They have also published a call for projects to build seawater desalination plants, mainly to provide drinking water but also for irrigation, in Dakhla and Boujdour. According to the timetable, the plant in Dakhla should be operational as of 2020. Such infrastructure would make it possible to increase the cultivated surface area to 5 000 hectares, as part of a PPP irrigation project. Actual investment and the timetable for it remain to be confirmed.

3.2.1.4 Looking ahead

The Green Morocco Plan includes a regional agricultural plan to increase the area of farmland (from 900 to some 5 000 hectares), which could mean increasing production to some 500 000 tonnes of early-growing crops. If that happens, the increase in farmland and production could create 60 000 new jobs (depending on task, production techniques and a possible diversification of crops); those jobs would remain in the region, generating revenue. Such high-added-value production would have major export potential. To be sustainable, this growth will need to involve responsible use of natural resources, especially water.

Jobs and benefits could also grow when animal products meet the health criteria for access to the EU market. Yet it is hard to tell exactly what the economic and social impact of such exports would be.

It is clearly impossible to say that the overall economic impact of such growth would systematically and directly benefit indigenous people. It can only be assumed that they would benefit, at least indirectly. Several of those interviewed in February 2018 stressed the importance of agriculture for regional growth, suggesting that a lack of tariff preferences

²⁶ See General Monograph of the Region of Dakhla-Oued ed Dahab, produced by the Directorate-General for Local Authorities of the Moroccan Ministry of the Interior – 2015, pp. 25-26.

²⁷ <http://www.cese.ma/Documents/PDF/Web%20Rapport%20Effectivite%20des%20droits%20VF%2011042013.pdf> (viewed on 23/4/2018)

would end agricultural development in the territory.

3.2.1.5 Conclusion

Crops are grown in Western Sahara, especially early-growing crops (tomatoes and melons), for which there is a big market in the EU. An estimated 64 000 tonnes of such crops are grown, accounting for some 14 000 direct jobs. They have an import value of some EUR 65 million. Without tariff preferences, such exports would be subject to EUR 6.6 million in customs duties.

Those economic benefits could grow if Western Sahara increases production and exports more to the EU under projects currently being planned. That would also increase the number of jobs, which some forecasts say could grow fivefold.

Though agricultural production has an impact on water resources, that impact is mitigated by various measures. Overall, there currently seem to be few other viable ways to help the Western Saharan economy grow, while the disadvantages linked to the use of water resources are offset by the economic benefits for the territory.

3.2.2 Fishery products

3.2.2.1 Introduction

Before looking more closely at the fisheries sector in Western Sahara, recall that the aim of this report is to assess the impact of the Agreement on sustainable development, considering in particular the advantages for local people and the impact of natural resource use on the territory. This means assessing the potential effect of the Agreement on exports from the territory to the EU. A key part of that is determining the origin of the products in question. Products of maritime fishing outside territorial waters (12 nautical miles) acquire the origin of the fishing vessel which caught them. The conditions on the origin of fishery products, laid down in Article 5 of Protocol 4 of the Association Agreement, state that fish caught by a vessel of a party to the Agreement are regarded as being of preferential origin.

Fish caught outside territorial waters acquire preferential origin on the basis of vessel ownership, flag, crew and registration (criteria laid down in Protocol 4 of the Association Agreement). As no fishing fleet flies a Western Saharan flag, fish caught (outside territorial waters) never acquire Western Saharan preferential origin. It is only at the processing stage that a processed product may acquire Western Saharan origin and enjoy tariff preferences, through cumulation of origin²⁸.

Therefore, to assess the impact of the Agreement, this study must focus on the processing of fishery products in the territory of Western Sahara and the impact which granting or refusing preferences would have on that production. This does not include fishing activity or the location (waters) where it takes place, which are of limited relevance to the aim of this analysis.

²⁸ Products sufficiently processed from originating material are regarded as being of preferential origin under Protocol 4 of the Association Agreement.

Processed products are generally from fish caught along the coast of Western Sahara, within territorial waters (12 miles) or in the adjacent EEZ (200 miles), but may also be from fish caught outside that zone (Moroccan territorial waters or EEZ).

3.2.2.2 Fisheries in Western Sahara

Most of the fisheries sector is in Laâyoune, Boujdour and Dakhla. According to Morocco, those towns have 141 fish processing companies, directly or indirectly employing some 90 000 people and processing products worth an estimated MAD 4.9 billion (some EUR 450 million), of which MAD 2.6 billion (around EUR 240 million) are for export (some 60 % of those being for the EU).

The fisheries and fish processing sector is the main sector providing employment in the territory, as well as the main export sector²⁹. Still, most fish are not processed, as there are not enough processing plants for products to be better utilised³⁰. So this is one of the sectors with the greatest potential for growth and jobs in Western Sahara.

The EU has helped develop the processing of fishery products in Western Sahara. Under the sectoral support provisions of the Protocol to the Fisheries Partnership Agreement between the EU and Morocco, the EU has also financed a large number of actions, including infrastructure and equipment, to improve competitiveness and create jobs in the fish processing sector.

3.2.2.3 Exports of fishery products to the EU

According to Morocco, **exports of fishery products³¹ from Western Sahara to the EU** and duties not paid because of the preferences established in the EU-Morocco Association Agreement are as follows:

	2015			2016		
	Value of imports € 1 000	Amount of import duties € 1 000	Average duty	Value of imports € 1 000	Amount of import duties € 1 000	Average duty
Morocco and Western Sahara	1 087 952	133 356	12.3 %	1 171 854	136 562	11.7 %
Western Sahara %	121 823 11.2 %	9 093 6.8 %	7.5 %	134 010 11.4 %	9 477 6.9 %	7.1 %

€/MAD exchange rate used: 10.819 (2015) and 10.836 (2016)

²⁹ In 2012, the territory provided 78 % of catches in the combined area of Morocco and Western Sahara in terms of volume and 79 % in terms of value.

³⁰ See Economic, Social and Environmental Council report: New Development Model for the Southern Provinces – October 2013, p. 44.

<http://www.ces.ma/Documents/PDF/Web-Rapport-NMDPSR-FR.pdf> (viewed on 23/4/2018)

³¹ The fishery products included here are those mentioned in Chapter 3 of the Tariff Nomenclature (fish and crustaceans, molluscs and other aquatic invertebrates) and under headings 1504 (fats and oils and their fractions, of fish or marine mammals, whether or not refined, but not chemically modified), 1603 (extracts and juices of meat, fish or crustaceans, molluscs or other aquatic invertebrates), 1604 (prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs) and 2301 (flours, meals and pellets, of meat or meat offal, of fish or of crustaceans, molluscs or other aquatic invertebrates, unfit for human consumption; greaves).

According to Morocco, **exports from Western Sahara amounted to 44 891 tonnes in 2015 and 54 637 tonnes in 2016**^{32,33}. **Imports from Western Sahara amounted to EUR 121 million in 2015 and EUR 134 million in 2016**, representing just over 11 % of the total value of imports from Morocco and Western Sahara³⁴.

Thus, the Moroccan figures for the value of exports of fishery products from Western Sahara to the EU are lower than the EU figures for imports, while the Moroccan figures for total exports from Morocco and Western Sahara to the EU (EUR 1.01 billion in 2015 and EUR 1.14 billion in 2016) are comparable to the EU figures. In terms of preferential concessions, the following table shows the amount of duties not collected because of application of the tariff preferences established in the EU-Morocco Association Agreement as being between EUR 9 and 9.5 million per year.

As regards fish processing sites in Western Sahara, exports to the EU must come from ‘authorised’ sites or processing/storage companies. The list of authorised sites is publicly available on the website of the Directorate-General for Health and Food Safety of the European Commission (DG SANTE)³⁵.

That list shows the authorised sites for processing fishery and aquaculture products in the territory as being in the three coastal towns of Dakhla (in the south), Laâyoune (in the north) and Boujdour (in the centre).

According to Morocco, the numbers of **direct jobs** in sites exporting to the EU, including some factory ships, are as follows:

Town	Number of sites	Number of workers			
		Permanent		Temporary	
		2015	2016	2015	2016
Dakhla	89	1 908	1 994	5 723	5 983
Laâyoune	48	1 197	1 248	3 591	3 743
Boujdour	4	118	124	354	371
Total	141	3 223	3 366	9 668	10 097

According to Morocco, some 50 % of production in those sites is for the EU. This suggests that **half of those jobs (more than 6 500 people in 2016) depend directly on exports to the EU.**

³² All these imports entered the EU with tariff preferences (zero duty) under the rules on origin in Protocol 4 of the EU-Morocco Association Agreement.

³³ According to EU figures (estimates from Traces database and Eurostat), imports to the EU of fishery products from approved sites in Western Sahara amounted to an estimated 69 350 tonnes in 2015 and 58 436 tonnes in 2016. These figures represent 30.9 % and 23.9 % respectively of the total volume of imports of fishery products from Morocco (and Western Sahara) for the years in question. Differences between these figures and Moroccan data may be due to the method of calculating exports of products from Western Sahara.

³⁴ According to Commission estimates, imports from Western Sahara amounted to 21.2 % of the total value of imports from Morocco and Western Sahara in 2015, and 10.6 % in 2016: imports of fishery products from Western Sahara to the EU amounted to EUR 215 million in 2015 and EUR 122 million in 2016 (corresponding official Eurostat figures for total exports from Morocco and Western Sahara amounted to EUR 1.01 billion in 2015 and EUR 1.14 billion in 2016). According to Morocco, exports of fishery products from Western Sahara amounted to EUR 121 million in 2015 and EUR 134 million in 2016. These differences may be due to the fact that the EU figures refer to imports to the EU and are expressed in EUR, while those from Morocco refer to exports and are expressed in MAD converted to EUR.

³⁵ https://webgate.ec.europa.eu/sanco/traces/output/MA/FFP_MA_en.pdf

The list of sites provided by Morocco matches the list of sites authorised in accordance with EU law.

3.2.2.4 Impact of applying trade preferences

Extending the preferences established in the EU-Morocco Association Agreement to products from Western Sahara would allow EUR 100-200 million worth of fishery products from Western Sahara to be imported duty-free to the EU. Extending tariff preferences to those exports would mean the EU foregoing EUR 9-9.5 million in duties per year.

The following table shows the main species of fish and seafood exported from the territory in 2015 and 2016 in terms of duties not collected:

Species	Rate of duty (*)	2015 € 1 000	2016 € 1 000
Octopus, frozen	8 %	5 412.73	5 348.19
Sardines, frozen	23 %	1 137.41	1 198.29
Mackerel, preserved	25 %	417.14	608.01
Sardines, preserved	25 %	452.67	378.55
Cuttlefish, frozen	6 %	255.02	370.30
Squid, frozen	6 %	188.32	325.16
Mackerel, frozen	20 %	128.39	292.70

(*) Customs duty applicable in the EU under the most-favoured nation clause (no preference applied)

Finally, the following table shows the numbers of **jobs created directly or indirectly** in Western Sahara by fish production and processing on board fishing vessels, at fish processing sites or in industries linked to fishery production³⁶:

Town	Number of workers		2015	2016
Dakhla	On land	Temporary	22 915	23 931
		Permanent	7 638	7 977
	At sea	Temporary	-	-
		Permanent	15 082	15 082
Laâyoune	On land	Temporary	14 338	14 973
		Permanent	4 779	4 991
	At sea	Temporary	-	-
		Permanent	15 633	15 633
Boujdour	On land	Temporary	1 419	1 482
		Permanent	473	494
	At sea	Temporary	-	-
		Permanent	5 528	5 528
TOTAL	On land	Temporary	38 672	40 386
		Permanent	12 891	13 462
	At sea	Temporary	-	-
		Permanent	36 243	36 243

³⁶ Includes jobs mentioned in the preceding table.

According to Morocco, some 50 % of production in those sites is for the EU, suggesting that some **45 000 jobs depend directly or indirectly on exports to the EU**.

As duties on fishery products are high, especially in some cases (e.g. 25 % for preserved sardines), tariff preferences (zero duty) may play a major role in sourcing decisions by EU importers. For Western Sahara, a decision not to grant preferences may cause processing currently taking place in Western Sahara to move elsewhere – in particular to Morocco – to benefit from preferences, to the detriment of local people³⁷.

It has been claimed that this activity would not benefit the local population. Reference has been made to demonstrations in 2012 by graduates of the Technical Institute for Maritime Fisheries protesting against exclusion from the fisheries job market, as hiring interviews for jobs in the sector were held in Morocco, and demanding that such interviews be held in Laâyoune. Similar claims were made in 2011 and 2013 (see various reports by Western Sahara Resource Watch^{38 39 40}). Yet there is no publicly available information indicating that such practices continued afterwards or that similar demonstrations took place after early 2013. In any event, those claims are not proof that Sahrawis are actually excluded from working in the fisheries sector. Moreover, many of those interviewed in February 2018 stressed the benefits of extending preferences for agriculture as well as for fisheries. Some said that Sahrawis were likelier to work in agriculture, a traditional activity, than in fisheries, an activity generally less familiar to nomadic herders.

3.2.2.5 Conclusion

Western Sahara has a sizeable fish processing industry, including 141 sites authorised to export to the EU. **Exports of fishery products from the territory amounted to EUR 100-200 million in 2015 and 2016. Some 45 000 jobs depended directly or indirectly on those exports to the EU.** Extending tariff preferences to those imports would thus have a major impact on the economy and on jobs in the territory. It would also be consistent with the EU practice of providing financial support to Western Sahara to make the sector more competitive, create jobs, improve the lives of fishers and promote the sustainable use of natural resources. Refusing to grant preferences would harm exports and jobs and encourage a shift in processing to other places, such as Morocco. It would also go against the EU objective of supporting the growth of the sector in Western Sahara.

European importers of fishery products from Western Sahara say that buying such products would be much less advantageous if no preferential treatment was granted, given the high level of the (non-preferential) common external tariff.

³⁷ Under current legislation and the terms of the EU-Morocco Association Agreement, fish processed in Morocco receive preferential treatment in the EU as long as they have been caught outside Western Saharan territorial waters (12 miles) by a vessel of either party.

³⁸ <http://www.wsrw.org/a214x2342> (viewed on 23/4/2018).

³⁹ <http://www.wsrw.org/a204x2048> (viewed on 23/4/2018).

⁴⁰ <http://www.wsrw.org/a217x2479> (viewed on 23/4/2018). Those demonstrations seem to have mainly involved Russian vessels.

3.2.3 Phosphates

3.2.3.1 Introduction

Phosphates are ores used in making phosphate fertilisers for agriculture. More than 80 % of world production is used in agriculture; there is no substitute and demand is rising. The largest deposits are currently in Morocco⁴¹.

The leading phosphate exporter in the world is the OCP group (former Office Chérifien des Phosphates)⁴², which controls the entire industry in Morocco and Western Sahara.

The largest phosphate mines are in Morocco (Khouribga and Gantour), with only one mining site currently in Western Sahara, in Boucraa⁴³. Annual reports from the OCP group show production in Morocco and Western Sahara, without distinguishing between the two.

The Boucraa site is operated by the company Phosboucraa. It currently produces 2.6 million tonnes of phosphate ore⁴⁴ and has some 300 years' worth of minable phosphate reserves (estimated at 1.1 billion m³). Investment planned between 2014 and 2020 amounts to MAD 17 billion (some EUR 1.6 billion)⁴⁵.

With nearly 2 200 workers, Phosboucraa is the largest private employer in the territory. According to OCP, 76 % of the workers were local in 2017, compared to only 4 % in the 1970s, with nearly 100 % of new employees now hired locally. The number of workers in managerial positions has risen from 1 in 2003 to 27 in 2017, or 55 % of the 49 managerial positions. This economic activity benefits the entire region (50 local businesses accounting for 450 indirect jobs, social benefits paid to families and retired workers, medical services, etc.). OCP also notes that there is a seawater desalination plant, that 13 000 trees have been replanted, and that the beach at Laâyoune has had a blue flag rating since 2008 thanks to the Clean Beaches project. Between 2013 and 2022, the Phosboucraa Management Board earmarked USD 250 million for social development in the region and USD 140 million for building projects, for a total of some USD 2.2 billion.

Others paint a less rosy picture. For example, Western Sahara Resource Watch maintains that there were 1 600 Sahrawis employed in the phosphate industry in 1968, in what is now Western Sahara.⁴⁶ Today, most of those workers have been replaced by Moroccan settlers. The industry, it is said, now employs only 200 Sahrawis, out of a total workforce of 1 900. Sahrawi workers are said to suffer discrimination compared to their Moroccan colleagues. Also, very few Sahrawis are said to have been promoted since 1975; most are said to have been dismissed⁴⁷.

⁴¹ https://minerals.usgs.gov/minerals/pubs/commodity/phosphate_rock/mcs-2017-phosp.pdf (viewed on 23/4/2018).

⁴² <http://www.ocpgroup.ma/>

⁴³ The OCP site in Phosboucraa has a website: <http://www.phosboucraa.ma/> (viewed on 23/4/2018)

⁴⁴ According to Western Sahara Resource Watch, phosphate production at the Boucraa site amounts to some 3 million tonnes per year, accounting for 10 % of total Moroccan production. <http://www.wsrw.org/a117x521> (viewed on 23/4/2018)

⁴⁵ <http://www.phosboucraa.ma/company/key-figures> (viewed on 23/4/2018).

⁴⁶ Relevant figures are sometimes contradictory: see report by French Association of Friendship and Solidarity with the Peoples of Africa on challenges to contractual rights of Phosboucraa workers in Western Sahara: http://www.afaspa.com/IMG/pdf/RAPPORT_PHOSBOUCRAA.pdf (viewed on 14/5/2018)

⁴⁷ <http://www.wsrw.org/a112x576> (viewed on 23/4/2018).

The first point to make in this respect is that it is impossible to compare the current situation to a time when Western Sahara was still a Spanish colony. Also, the figures provided by OCP refer to workers recruited locally, not workers of Sahrawi origin. The Commission has no way of checking locally to see which workers are Sahrawi; and again, it is not for the EU to decide who should be counted as a part of the indigenous population. Moreover, none of those interviewed in February 2018 reported ethnic discrimination in hiring. This is consistent with other published information⁴⁸.

As regards the sustainable use of natural resources, Phosboucraa has taken major steps to maximise energy efficiency by switching to renewable sources. Since July 2013, 99.8 % of the energy used by Phosboucraa has been from the wind farm in Fom El Oued.

3.2.3.2 Production, trade with the EU and socio-economic impact

Phosphate production is a major industry in Western Sahara. So it is important to explore the potential of phosphates to promote Saharan industrial growth and benefit the population. But this requires more than trade statistics. Here too, overall figures (available only from Morocco) do not list Western Sahara separately. We know that 34 % of phosphate imported to the EU in 2015 was from Morocco, but there is no way of knowing what portion was from Western Sahara.

Still, an analysis of specific reports on the sector does make it possible to assess the effect of not applying tariff preferences to various phosphate products imported to the EU.

With respect to mineral or chemical phosphate fertilisers, the customs nomenclature applied by the EU distinguishes between ‘superphosphates’⁴⁹ and other types of phosphate fertiliser. Most raw phosphate⁵⁰ imported to the EU is not subject to customs duty, with or without preferential arrangements. So for those products, extending the EU-Morocco Association Agreement to products from Western Sahara would have no effect. Only ‘superphosphates’⁵¹ are subject to customs duty (4.8 %) when imported to the EU. So the question of the impact of the Agreement is relevant only to those products.

Between 2014 and 2016, relevant customs duties ranged from EUR 1.13 to 1.83 million. It is fair to assume that only a tiny portion of those imports to the EU was from Western Sahara. Indeed, the Phosboucraa site has relatively low production capacity compared to Moroccan sites; also, according to Morocco, exports from that site are not for the EU⁵².

⁴⁸ See: <https://www.amnesty.org/fr/countries/middle-east-and-north-africa/morocco/report-morocco/> (viewed on 14 May 2018)

⁴⁹ Superphosphates are mineral phosphate fertilisers.

⁵⁰ These are largely ‘natural calcium phosphates, natural aluminium calcium phosphates and phosphatic chalk’, coming under heading 25.10 in the Harmonised Commodity Description and Coding System (the Harmonised System).

⁵¹ They come under heading 28.35 in the Harmonised System.

⁵² Contradictory observations by the NGO Western Sahara Resource Watch (2014 report ‘P for Plunder’ <http://www.wsrw.org/a105x3185>) mention some 400 000 tonnes of exports to Lithuania in 2014 (company AB LIFOSA). As available EU statistics show no similar imports, it is unlikely that the commodity in question is classified as a phosphate under HS 31.03 or is for the EU market in that form; it is also possible that the commodity was only in transit to a destination outside the EU. In any event, a more recent report by Western Sahara Resource Watch no longer mentions any exports to the EU (<http://www.wsrw.org/a111x4160>, dated 24 April 2018 and viewed on 13/5/2018).

This suggests that **not applying tariff preferences would have little or no effect on current phosphate production in Western Sahara and relevant customs duties** – or, conversely, that granting the tariff preferences established in the EU-Morocco Association Agreement would have no impact on current superphosphate imports from Western Sahara.

However, **there are certain phosphate products⁵³ not currently produced in Western Sahara** because there is no phosphate processing site in the territory, **but which could be produced and would then enjoy preferences, as imports of such products to the EU is currently subject to customs duties** of 4.8 % to 6.5 % when coming from countries with which the EU has no preferential agreement. So we need to assess the impact of excluding Saharan products from the tariff preference established in the EU-Morocco Association Agreement; to do so, we need to analyse whether the processing of material from Western Sahara at other sites, in Morocco, has an effect on determining preferential origin.

The rule of origin applied to these products under the Association Agreement is key to determining whether there would be a potential effect. This involves phosphoric acid and certain fertilisers:

Phosphoric acid (HS 29.19)

29.19 - Phosphoric esters and their salts, including lactophosphates; their halogenated, sulphonated, nitrated or nitrosated derivatives.

The regular customs duty (under the most-favoured nation clause) is 6.5 %.

The preferential duty under the Association Agreement is zero.

The rule of origin for preferential treatment is: change in tariff heading or value added rule (maximum 40 % non-originating materials).

The rule of origin for this product is a change in tariff heading. Phosphates (potentially from Western Sahara) come under Chapter 31 of the Harmonised System, so the production of phosphoric acid, which comes under Chapter 29, involves a change in chapter and thus in tariff heading. Therefore, processing is sufficient and *the preferential origin of phosphoric acid does not depend on the origin of the unprocessed phosphate*. The origin, which is key to setting the applicable rate of customs duty, depends on the country where the phosphate was processed into phosphoric acid. So, regardless of the origin of the unprocessed phosphate, *phosphoric acid produced in Morocco may enjoy preferential treatment when imported to the EU*.

Fertilisers (HS 31.05)

Mineral or chemical fertilisers containing two or three of the fertilising elements nitrogen, phosphorus and potassium; other fertilisers; products mentioned in this chapter, presented in tablets or similar forms or in packages of a gross weight not exceeding 10 kg.

The regular customs duty (under the most-favoured nation clause) is 6.5 %.

The preferential duty under the Association Agreement is zero.

The rule of origin for preferential treatment is: change in tariff heading with a maximum of

⁵³ Statistics on EU-Morocco trade (in particular data from the Moroccan Exchange Office) include: natural and chemical fertilisers, phosphoric acid and phosphates, and in particular the following tariff headings:

- Phosphoric acid – HS 29.19

- Mineral or chemical phosphate fertilisers (including superphosphates) – HS 31.03

- Mineral or chemical fertilisers containing two or three of the fertilising elements nitrogen, phosphorus and potassium; other fertilisers – HS 31.05.

50 % non-originating materials, or value added rule (maximum 40 % non-originating materials).

If tariff preferences were applied to products from Western Sahara, phosphoric acid produced at Laâyoune would enjoy preferential treatment; so would fertilisers, where there would be a double gain, as recognition of preferential origin would require at least 50 % originating raw material, which would benefit Phosboucraa. Plans by the OCP Group to develop an industrial complex producing fertilisers in Laâyoune (phosphoric acid and fertilisers), and to build a new quay in the port of Laâyoune, could thus be affected by non-preferential treatment for those products.

In fact, there have been announcements of future investment in producing a wider range of fertilisers as part of a development plan. The plan involves creating an integrated chemical complex in Phosboucraa, which would also make it possible to respond more flexibly to changes in market rates for raw phosphate ore (the investment is an estimated USD 1.2 billion).

The details of the investment plan presented by OCP show a total (including other, longer-term investment) of more than USD 2 billion⁵⁴. Those projects would be compromised if preferential treatment was not granted to products from Western Sahara, with a knock-on effect on local employment.

3.2.3.3 Conclusion

Given its current state, **the Western Saharan phosphate industry** – and therefore economic activity in the sector as well as employment and other socio-economic aspects – **is not immediately and directly affected by the exclusion of Western Sahara from the Association Agreement**. There are three main reasons for this: 1. Some (raw phosphate) products are subject to zero duty (under the most-favoured nation clause). 2. There is no EU market for phosphate production. 3. Processing in Morocco (or in another country which has signed a preferential agreement with the EU) of some phosphates produced in Western Sahara would be sufficient for recognition of Moroccan preferential origin, so preferential treatment for those processed products does not depend on the origin of the ores.

At the same time, it seems that **granting preferences to products originating in Western Sahara would have an impact on future increases in the production of some phosphates**. In fact, **major announced investment** (more than USD 2 billion) in the production of phosphate derivatives in Western Sahara (especially phosphoric acid and fertilisers) **would be compromised if exports of those products to the EU did not enjoy preferential treatment**. Without preferential treatment, investment in other places where production would have preferential treatment (such as Morocco) would be more attractive than in Western Sahara. Halting investment in Western Sahara could affect production capacity, product diversity and thus jobs in the region's phosphate sector.

⁵⁴ The investment is planned in several stages. http://www.ocpgroup.ma/sites/default/files/filiales/document/presentation_phosboucraa_fr.pdf (viewed on 23/4/2018).

4 CONSULTATION OF THE PEOPLE CONCERNED BY THE AMENDMENTS TO PROTOCOLS 1 AND 4 OF THE ASSOCIATION AGREEMENT

4.1 Aim and scope of consultation

One of the aims of the negotiation was to fulfil the condition that ‘the people concerned by the EU-Morocco Association Agreement have been adequately involved’ in preparing to amend Protocols 1 and 4 of the Agreement. To that end, the Commission and the EEAS endeavoured to ensure that their approach to designing the amendments and to consulting the people concerned respected the ECJ judgment of 21 December 2016, without in any way preempting the outcome or standing in the way of the UN-led process. Therefore, the fact that the process of self-determination for Western Sahara was still unresolved was a major consideration for the Commission and the EEAS. Moreover, and parallel to consultations in a highly complex and sensitive political context, **the question was not so much the territory’s final status, as whether the EU should apply tariff preferences under the EU-Morocco Association Agreement to products from Western Sahara.** This perspective adopted by the Commission and the EEAS was based on the essentially economic nature of the Agreement, as well as the EU’s desire to avoid weakening traditional trade flows.

4.2 Main results

In this context, the consultation carried out by the Commission and the EEAS was threefold in nature. As a party to the negotiation, the Government of Morocco carried out a broad consultation of regional elected officials, under its own institutional rules, sharing its conclusions with the Commission and the EEAS. In addition, the Commission and the EEAS wished to consult as broad a range as possible of political, socio-economic and civil society organisations likely to represent Western Sahara's local and regional interests. Finally, there were discussions with the Polisario Front, which is one of the parties to the UN-led peace process.

Results of Moroccan consultations with elected representatives in national, regional and local constitutional bodies in Western Sahara

On 5 and 6 March 2018, the Moroccan authorities consulted elected representatives in national, regional and local constitutional bodies. Those consultations involved the four regional councils most directly concerned⁵⁵, their respective regional professional Chambers of Agriculture and the Foreign Affairs Committee of the upper house of the Moroccan Parliament (the House of Representatives). Representatives of regional councils were elected in 2015, in the first regional elections with direct universal suffrage held in Morocco⁵⁶. As regards the origin of the representatives, the report by the Moroccan authorities states that all representatives of the regions of Laâyoune Sakia el Hamra and Dakhla-Oued ed Dahab, which together cover nearly all of Western Sahara, as well as the members of their regional Chambers of Agriculture, came from local Sahrawi tribes. Half the members of the Foreign Affairs Committee are also of Sahrawi origin, including its Chair.

⁵⁵ Laâyoune Sakia el Hamra, Dakhla Oued Eddahab, Souss-Massa and L'Oriental.

⁵⁶ 57.66 % turnout in the region of Laâyoune and 52.14 % in the region of Dakhla, higher than the national average.

The official Moroccan report on the results from consulting Moroccan legal institutions stresses that local, regional and national representatives are all committed to the EU-Morocco agriculture and fisheries partnership, which they regard as completely consistent with national socio-economic development policy in those areas. The representatives were happy that negotiations had succeeded and stressed the socio-economic benefits that would result, especially in terms of promoting exports. For example, one member of a regional council mentioned citrus fruit and vegetable oils as promising export products to be encouraged, while one regional chamber of agriculture stressed the potential market for camel products and the need to work with the EU to bring Moroccan products into line with EU sanitary and phytosanitary standards. The representatives also expressed interest in developing appropriate facilitating mechanisms to ensure the exchange of information and follow-up needed to maximise the benefits of the EU-Morocco Association Agreement.

Results of Commission and EEAS consultations with political, socio-economic and civil society organisations

The second level of consultations, carried out directly by the Commission and the EEAS, involved the broadest possible range of stakeholders from Western Sahara. The aim was to gauge support for the EU-Morocco Association Agreement among organisations working in the field, in addition to institutional bodies.

To that end, an invitation was sent to a broad regional range of local political actors, key economic players and civil society organisations, especially in the field of human rights. Meetings were held from mid-February to mid-March 2018. A full list of the organisations consulted is attached.

Five of the civil society organisations consulted by the Commission and the EEAS declined the invitation⁵⁷. Differing in terms of closeness to or sympathy for the Polisario Front, those organisations essentially argued that the Front should be consulted instead of them, that the consultation was incompatible with international law or the ECJ judgment of 21 December 2016, and that no consultation on a trade agreement could take place in the presence of an ‘armed occupation’. In response, the Commission and the EEAS repeated their invitation to each organisation and their willingness for a dialogue with an open-ended agenda.

The other civil society organisations and a number of local political representatives accepted the invitation to express their views on the proposed amendment (cf. annex). In addition to reflecting the polarised political debate on Western Sahara, the consultations showed general recognition of socio-economic progress made in Western Sahara in recent years. In this light, agreements with the EU are seen as a powerful lever for further progress towards sustainable growth.

Most of the political representatives consulted, all of whom were of Sahrawi origin, welcomed the pursuit of trade relations between the EU and the region in the context of EU-Morocco relations. While strongly attached to their Sahrawi identity and culture, they also acknowledged that prosperity and socio-economic growth in the region remained closely tied to Morocco’s development efforts and access to foreign markets. To show that they represented the people, local and regional representatives from Western Sahara pointed out

⁵⁷ Sahrawi Association of Victims of Human Rights Violations, Al Ghad Human Rights Association, Western Sahara Campaign, Western Sahara Resource Watch, Independent Diplomat.

that they had been elected in the first regional and local elections ever held with direct suffrage, international observation and regional turnouts higher than the national average. They considered the promotion of trade relations with the EU an essential complement to the new development model pursued by Morocco in Western Sahara since 2015. That model aims to move the country from a statist-inspired economy overly reliant on state subsidies to a model more open to the outside world and economically more operational, encouraging private investment through public-private partnerships. The possibility of trade relations with the EU, Morocco's main trading partner, is thus seen as an lifeline. Without that, efforts at diversifying the economy beyond the traditional use of raw materials (such as phosphates) to agriculture and fisheries would soon stop.

While recognising that the Moroccan government has invested heavily in developing regional infrastructure, benefiting the population as a whole, Sahrawi political leaders stress that tariff preferences with the EU are equally necessary to ensure that such investment is fully effective. They expect such preferences to encourage business and EU direct investment, promoting the region's new participatory and sustainable growth model. Continued legal uncertainty surrounding trade between the EU and Western Sahara would have a heavy socio-economic cost, as already evidenced by the slowdown in trade between Western Sahara and certain European countries and in certain sectors. Cutting off access for Western Sahara to certain markets or investments would only increase its economic dependence on an outmoded system of 'centre-periphery' relations. That would hamper socio-economic and political growth, just when economic growth in Western Sahara is finally taking off.

The Commission and the EEAS also consulted more than fifteen key socio-economic players, exporters, entrepreneurs, and environmental and human rights organisations. Almost all said they were in favour of maintaining preferential trading relations with the EU. Such relations would be key to stable trading ties and investment, both of which were crucial for generating local employment. Yet some commented that benefits granted by the EU to Western Sahara should be more equitably distributed among the local population, especially given the lack of diversity of the regional economy. So they felt that the impact of tariff preferences on different parts of the population should be monitored and accompanying measures considered, to maximise the benefits for disadvantaged groups, such as nomads. Shared values between the EU and Morocco would help cooperation towards establishing such monitoring and guidance mechanisms.

Some concerns expressed by civil society stakeholders on socio-economic and political rights in Western Sahara were similar to concerns on the general human rights situation in Morocco. Mention was made of restrictions on freedom of expression, instances of corruption and lack of public accountability. But some of the gravest concerns in Western Sahara involved civil and political rights. Some organisations have trouble registering with the authorities; some human rights advocates face restrictions on their activity; and some foreigners such as journalists, lawyers or human rights advocates are barred from entering Western Sahara. Though no policy of systematic ethnic discrimination in hiring or social benefits was reported, individual cases of administrative abuse or denial of rights were mentioned. While most of those interviewed agreed that the UN should continue to lead the political process in Western Sahara, many stressed that the people had a 'right to development' while that process moved forward. One person interviewed summed up this feeling by saying that Sahrawi people were already penalised by being denied the right to develop; denying them access to EU markets because of disagreement on an EU-Morocco agreement would penalise them doubly. Many of those interviewed also stressed that human rights included economic growth and that access to decent health care and education could not be ensured without economic resources. They said that resources from fishing and agriculture were essential for

Western Sahara, requiring an urgent solution to the question of the territory's status. Pending a political solution, immediate socio-economic needs still required a quick response, and resources needed to be used to ensure that people had decent lives.

Interconnections and solidarity among regions were also a prime concern. For example, mention was made of the town of Smara, where the consequences of isolation in the event of a break in trade ties with Tan-Tan would be disastrous.

Regarding the equitable distribution of resources, the role of many Sahrawis in the economy was often mentioned, though no transparent monitoring system had been established to ensure that resources benefited the population as a whole. The role of civil society and associations was therefore essential to ensuring proper management of resources and public accountability.

Another issue mentioned was the diaspora and the rights of people who had decided to return to Western Sahara. There were no restrictions on Sahrawis returning from Tindouf (Algeria) to Western Sahara. But Morocco had established a policy of positive discrimination, offering jobs (sometimes in higher positions) and housing to 'repatriates'. Still, some of those interviewed said that people in camps were living under tight control and that anyone able to leave had already done so.

Result of consultations with the Polisario Front

The EEAS also carried out consultations with the Polisario Front, which is one of the parties to the UN-led peace process. Recalling that such consultations were technical in nature, the EEAS pointed out that they did not compromise the EU policy of Member States not giving the Polisario Front diplomatic recognition.

Without wishing to discuss anything directly relating to amendment of the Protocols to the Association Agreement, the Polisario Front regretted the fact that they had not been involved in the negotiation although they were entitled to representation under international law. For the Polisario Front, the EU approach amounted to circumventing the ECJ judgment of 21 December 2016 by adopting Morocco's 'fait accompli' policy, thus undermining the peace process. The Polisario Front thus rejected the amendment, both in content (all benefits would be for Morocco) and in terms of the consultation procedure followed, and say they would challenge it in court if it was adopted. In any event, all consultations had become invalid as the draft Agreement had already been signed. By making repeated concessions to Morocco, the EU ran the risk, according to the Polisario Front, of jeopardising the UN process.

Under the circumstances, the question of whether the amendment to the Protocols of the Association Agreement was beneficial for the Sahrawi people had become secondary. These arguments are summarised in a press release published shortly afterwards by the Polisario Front (9 February 2018).

4.3 Conclusion

The consultation process carried out by the Commission and the EEAS shows that most people now living in Western Sahara are very much in favour of the extension of tariff preferences to products from Western Sahara under the EU-Morocco Association Agreement. A positive opinion was also expressed by Western Saharan elected representatives to national, regional and local bodies following the awareness and consultation exercise carried out by the authorities among Moroccan institutions. That opinion is shared by a large majority of

grass-roots socio-economic organisations in the region. EU tariff preferences and, more generally, a stable legal framework for trade with the EU are considered essential to ensuring sustainable growth in the territory and improving socio-economic conditions for its inhabitants. Despite some human rights concerns, extension of the EU-Morocco Association Agreement or other agreements to cover products from Western Sahara is seen as a lever for improving socio-economic and human rights standards in the region. This was a general perception, despite varying opinions as to the status of the territory, which everyone agreed could be settled only via the UN.

The Polisario Front rejects the amendment to the EU-Morocco Association Agreement extending tariff preferences to products from Western Sahara, not because doing so would hamper development for people living there, but essentially because including Western Sahara in the Agreement is seen as consolidating Moroccan sovereignty over the territory.

In sum, the consultation process carried out by the Commission and the EEAS showed that most of those interviewed were in favour of extending the tariff preferences established in the EU-Morocco Association Agreement to products from Western Sahara. Most felt that the Agreement should be amended in such a way as to avoid jeopardising the UN-led process and that care should be taken to ensure that the amendment was not seen as an implicit recognition of Morocco's claim to sovereignty over the territory of Western Sahara. There were also recommendations that the amendment should be accompanied by greater EU support for the UN-led process, as only a lasting and mutually acceptable peace agreement would be capable of bolstering the Agreement politically and legally. Finally, most felt that mechanisms should be created to ensure that the benefits from tariff preferences were more equitably distributed, especially among parts of the population living from traditional activities.

5 GENERAL CONCLUSION

Western Sahara is a small market economy based on a limited number of activities: fishing and processing of fishery products, phosphate mining, agriculture (especially fruit and vegetables and pastoral nomadism), trade and craft industries. Other sectors, such as tourism and renewable energy, are still nascent.

For Western Sahara's economic potential to diversify, foreign investment needs to be encouraged, which requires greater legal certainty, including clarification of the tariff conditions applicable to current and future exports from Western Sahara to the EU. **Extension of the benefits of tariff preferences to products from Western Sahara can provide security for investment and spur significant and rapid growth liable to generate local jobs,** given the territory's untapped economic potential and the current low level of foreign direct investment.

Though accurate data can be hard to obtain, this study concludes that **certain areas of economic and production activity in Western Sahara would benefit greatly from enjoying the same tariff preferences** as those granted to the Kingdom of Morocco. Indeed, some production enjoyed such preferential treatment until 21 December 2016, boosting economic activity and creating jobs in Western Sahara: this is especially true for fisheries and certain agricultural products. Extending EU tariff preferences to those products would make it possible to ensure the continuity of exports.

Conversely, **not granting tariff preferences would seriously jeopardise Western Saharan**

exports, especially exports of fishery and agricultural products. Its already limited production would thus be likely to shrink further, creating a great handicap for the region. In fact, without tariff preferences, Western Saharan products would be subject to normal customs tariffs (as applicable in the EU under the most-favoured nation clause), without privileged access to the EU market. Those products would not be competitive on the EU market without preferential tariffs. Industrial products (phosphates) would scarcely be affected, but exports of fishery and agricultural products to the EU would suffer greatly.

More generally, **granting tariff preferences should play a major role in boosting the Saharan economy, by stimulating investment** in those sectors. This is true for certain phosphates (such as phosphoric acid and agricultural fertilisers), where investment has already been planned; for agriculture, where there are also development projects; and for fisheries. Conversely, if such preferences are not granted, investment, growth, diversification of economic activity and employment could suffer.

The Moroccan authorities have consulted all national, regional and local institutions concerned, to raise awareness and obtain their approval and input. This has led to broad support for the planned amendment and to certain recommendations to maximise its effect. Following the involvement of the territory's elected representatives, the consultation of public opinion carried out by the European Commission and the EEAS shows that a large majority is in favour of amending the EU-Morocco Association Agreement to extend tariff preferences to products from Western Sahara. Most of those interviewed said this would help everyone, stressing the key role such preferences would play in spurring private investment. They said privileged access to EU markets would encourage business and EU direct investment, promoting Western Sahara's new participatory and sustainable development model. By contrast, continuing legal uncertainty surrounding trade with Western Sahara would seriously hamper socio-economic development, as already evidenced by the slowdown in trade between the territory and some Member States and in certain sectors. Restricting access for Western Sahara to foreign markets and investment would put a brake on its economy and thwart socio-economic and political growth, just when development in the territory finally seems ready to take off.

Technical discussions with the Polisario Front showed that they were opposed in principle to amending the agreement, largely for general political reasons unrelated to the amendment itself.

The amendment to Protocols 1 and 4 of the Association Agreement as suggested by the Commission thus aims to consolidate and facilitate Western Saharan exports to the EU, promoting economic growth and diversification in the region.

* * *

Annex

List of stakeholders consulted on the amendment to Protocols 1 and 4 of the Association Agreement

1. Political actors

Presidents of two Regional Councils:

- President of the Regional Council of Dakhla-Oued ed Dahab: Mr Yanja El Khattat
- President of the Regional Council of Laâyoune-Sakia el Hamra: Mr Sidi Hamdi Ould Errachid

MPs from Western Sahara:

- Justice and Development Party (PJD): Mr Brahim Daaif
- Authenticity and Modernity Party (PAM): Mr Moulay Zoubeir Habbadi

Representative of the Polisario Front:

- Mr Mohamed Sidati

2. Economic operators

2.1. Agriculture

- Sahrawi Development and Investment Association
- Chamber of Agriculture of the region of Dakhla-Oued ed Dahab
- EIG Agida Dakhla
- Ajban Dakhla Cooperative
- Halib Sakia El Hamra Cooperative
- Al Joud Cooperative

2.2. Fisheries

- National Fisheries Research Institute
- Chamber of Maritime Fisheries

2.3. Miscellaneous economic actors

- OCP Group (and Phosboucraa Foundation)
- Agency for the Development of the Southern Provinces (Agence du Sud)

3. Human rights associations

- National Human Rights Council
- Sahara Observatory for Peace, Democracy and Human Rights
- Independent Human Rights Commission
- Moroccan Human Rights Association
- Sahrawi Association of Victims of Serious Human Rights Violations
- Al Ghad Human Rights Association
- Western Sahara Campaign
- Western Sahara Resource Watch
- Independent Diplomat
- Delegation of 85 associations jointly signing a letter to the European Commission and the EEAS on 3 February 2018 on amending the Protocols