UNITED NATIONS

TD

United Nations Conference on Trade and Development

Distr.
GENERAL

TD/B/COM.2/76
6 February 2007

Original: ENGLISH

TRADE AND DEVELOPMENT BOARD
Commission on Investment, Technology and Related Financial Issues
Eleventh session
Geneva, 8–14 March 2007

INVESTMENT POLICY REVIEW OF MOROCCO

Executive summary

Note by the UNCTAD secretariat*

UNCTAD's Investment Policy Reviews are intended to help countries improve their investment policies and to familiarize Governments and the international private sector with an individual country's investment environment. The reviews are considered at the UNCTAD Commission on Investment, Technology and Related Financial Issues. Investment Policy Reviews undertake an objective evaluation of the policy, regulatory and operational framework for FDI in developing countries.

The Investment Policy Review (IPR) of Morocco was initiated at the request of the Government. The project was co-financed by France, and a first draft of the IPR was presented at a national workshop, which took place in Rabat on 6 December 2006.

* This document was submitted on the above-mentioned date as a result of processing delays.

GE.07-50191

CONTENTS

Chapter **Page**

I. TRENDS AND IMPACT OF FOREIGN DIRECT INVESTMENT

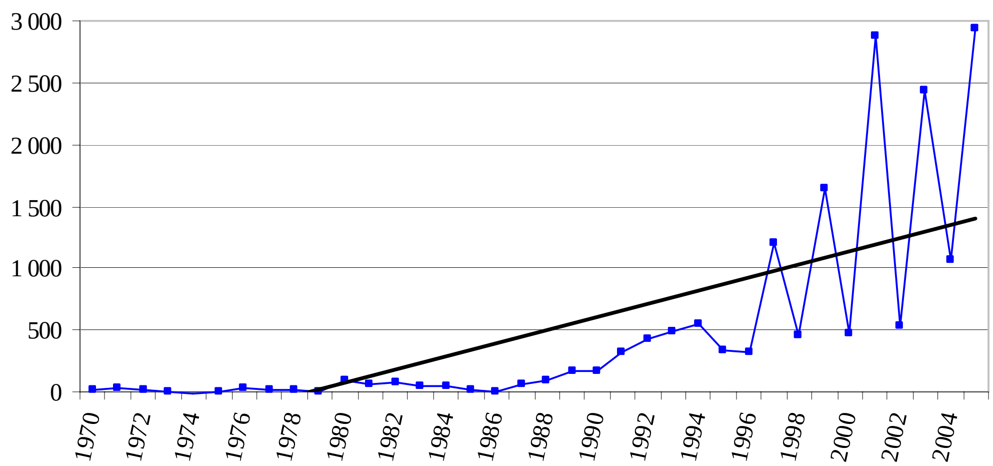
1. The point of departure of Morocco's FDI story is a series of reforms undertaken by the Government in the 1980s, which contributed to improving the country's macroeconomic prospects. These included economic liberalization, the privatization of a number of state-owned enterprises and the modernization of the financial sector. To this, one can add a number of investment-related measures implemented during the 1990s, including an investment charter, protection measures and bilateral investment treaties (BITs).

2. FDI started growing from the early 1990s. Much has been privatization-driven – $6.4 billion of the $10.7 billion of FDI inflows between 1993 and 2003. Two of the biggest operations in Morocco's successful privatization programme were the sale of Maroc Telecom to Vivendi Universal ($2.7bn) and the Régie des Tabacs to Altadis ($1.7bn). However, there has been important non-privatization FDI that has led to significant technology transfer.

3. Between 2001 and 2003 Morocco was the second most important recipient of FDI in Africa and the first in the Maghreb region. In 2002 and 2004 it reached record levels, with $1.07 billion and $2.93 billion of FDI inflows respectively. While inflows have been volatile, a look at FDI stock shows the results of Morocco's change in economic policy direction. In 1989 FDI stock accounted for 13 per cent of GDP. By 2005 it had reached 44 per cent. Over the last five years Morocco has been an important driver of FDI to Africa, and in 2005 it was the fourth most popular destination behind South Africa, Egypt and Nigeria. However, annually only 0.72 per cent of Morocco’s FDI inflows are due to reinvestment. This could indicate the presence of obstacles to investment and a lack of aftercare services.

4. Ninety per cent of FDI has been from Europe, with a significant portion from France and Spain as part of the privatization programme. However, there has recently been major growth in FDI from the Gulf, mainly for oil, tourism and property development.

FDI inflows to Morocco between 1970 and 2005
(Millions of dollars)
Black line denotes trend



Source: UNCTAD

5. In the last five years, most FDI has been to telecommunications (44 per cent), mainly due to privatization; manufacturing industry (27 per cent), with important increases in automotive manufacturing and aeronautical maintenance; banking, driven by privatization and acquisitions; services, driven by tourism; and natural resources and petrochemicals.

6. The Government is supportive of FDI. It created the Hassan II fund, financed partly from privatization receipts, to contribute to projects in which the Government has a particular interest. It has also signed two landmark trade agreements: the EU Association Agreement (in force since 2000), which will establish a free trade zone by 2010, and the free trade agreement with the United States (which entered into force in 2006).

7. In terms of impact, FDI has increased its position in relation to total investment in Morocco, passing from 6 per cent of gross fixed capital formation for the period of 1990–1995 to 12.7 per cent for the period of 1996–2004. In 2005 the figure reached 22.1 percent, which compares well with neighbours.

8. The strong flows of workers' remittances, which are estimated at 9 per cent of GNP, are seen by the Government to have investment potential. The Hassan II fund has a role to play in encouraging the diaspora to invest more.

9. In an environment of high unemployment (more than 12 per cent), TNCs have been responsible for significant job creation – 8,000 jobs in 2003. This has been accompanied by heavy expenditure on training. The textiles sector is one of Morocco's biggest employers, creating 2,500 jobs alone in 2005. FDI has stimulated positive transfers of know-how and technology. ST Microelectronics and Matra Automobile have set up research centres, and the growth of the aeronautical sector is seen as one of high potential.

Conclusions

10. The reforms undertaken by the Government contributed to relatively large inflows of FDI. The challenge is to ensure the sustainability of these flows and their contribution to the country's development objectives. Despite the sharp increase in FDI flows since the early 1990s, they remain volatile due to big privatizations. However, Morocco also receives strong greenfield investment, even though efforts to attract FDI have been reactive rather than proactive. The impact of FDI has been positive, leading to strong job creation, transfer of know-how and technology, and training of human resources. However, inflows are modest relative to the investment potential. An investor targeting strategy needs to be developed in order to respond to the sectors identified by the *Plan Emergence*.

II. THE INVESTMENT FRAMEWORK

11. Morocco considers FDI a priority. In recent years it has undertaken legal, institutional and regulatory reforms to improve the business climate. Incentives applying to both domestic and foreign investors have been put in place, and since 1995 an investment charter has replaced nine sectoral codes. However, administration is opaque and the judicial system complex.

Legislation on FDI

12. Morocco does not have an investment code. FDI is partly regulated through the investment charter, but many important measures on investment remain dispersed among

other laws, including incentives. The charter also mixes legal provisions with discretionary ones, and its unifying nature is undermined by a tendency for the Government to introduce incentives and measures specific to certain sectors. Many measures contained in the charter have not been implemented, despite a timeframe of 10 years, set in 1995, for implementing its provisions.

Entry and establishment

13. The Constitution guarantees the right to invest for all, with limitations where 'national economic and social needs so require'. The freedom to invest has been in place for a long time but has never been referred to in any legal text, including the charter. Licences, where required, are granted automatically if no reply is received from the Government 60 days after application. There is no avenue for appeal if the licence is refused.

14. The institutions in charge of investment are:

- The Department for Investment (Direction des investissements (DI)), which is part of the Economic Affairs Ministry and acts as an investment promotion agency (IPA) with a very small budget and only processes projects valued at over 200 million dirhams ($23 million);

- The Regional Investment Centres (Centres régionaux d'investissement (CRIs)), which act as regional one-stop shops under the auspices of the regional authorities;

- The Investment Commission (Commission des investissements (CI)), which approves special investment contracts and intervenes when problems arise from decisions made by the CRIs. It also rules on obstacles to investment within the administration and gathers information on general investment trends in the country;

- The Hassan II Fund, which provides financial contributions for investment projects in key sectors, usually projects with social objectives;

- Line ministries, which can directly sign contracts for investments below $200 million dirhams.

The competencies of these institutions overlap, and this issue is explored in chapter III.

15. Three types of administrative procedure exist for investors:

- Non-contractual regime: For any investment below 200 million dirhams, the CRI concerned processes the application;

- Contractual regime: This allows for an investor-state contract based on the negotiation of terms and conditions. The procedure for this is not specifically laid out. However, in practice, for any investment above 200 million dirhams or where a public contribution is sought, the first point of contact (a CRI or a line ministry working with DI) negotiates terms and then passes them on to relevant ministries for consultation and finally to the CI for approval. The application is then passed to the line ministry for signature;

- Exceptional contractual regime: For any project with social ends and seeking incentives or financial contributions, a special commission needs to approve.

Treatment and protection of foreign investment

16. The charter does not specifically refer to national treatment. However, there is no discrimination in law or in the experience of foreign investors to date. Further protection is provided by BITs, which also provide for national treatment and most favoured nation (MFN) status.

17. The constitution protects private property with the proviso that it may be expropriated by the state 'for economic and social development needs.' In theory, the state is not bound by international practice concerning public interest, non-discrimination and prompt and adequate compensation, although these conditions are provided for in BITs. In practice there has not been any abuse of the Government's powers. There is no restriction on the transfer or exchange of funds.

18. Although Morocco is a member of the International Centre for the Settlement of Investor Disputes (ICSID), access to it is only guaranteed through BITs. Otherwise, for investments under the contractual regime, the final arbiter is Rabat High Court. For matters concerning the CRIs, the Walis (regional governors) act as arbiters.

International agreements relating to FDI

19. Morocco is a member of ICSID, the Multilateral Investment Guarantee Agency (MIGA), the Inter-Arab Investment Guarantee Corporation and the Convention for the Investment of Arab Capital in Arab Countries. Morocco has negotiated 54 BITs and 46 double taxation treaties (DTTs). It is a member of the WTO. It has a free trade agreement with the United States and an association agreement with the EU, both of which afford investors in Morocco significant access to these markets. Other FTAs have been signed in the region.

Performance requirements

20. Performance requirements are imposed only where incentives are required and will be stated in the investor contract. However, it would be more transparent if the performance requirements for different incentives were stated in the charter.

Taxation

21. Morocco's fiscal system is one of the most criticized aspects of its investment environment. The method of calculation and payment of taxes is seen as complicated, with investors requiring a more stable, transparent and simple system. UNCTAD's survey reveals that Moroccan business believes the tax burden to be excessive and a hindrance to employment growth. The burden falls heavily on employees as well as employers in the domestic sector. Employers in the informal sector pay no tax, whereas employers in the export sector receive incentives.

22. The overall corporate tax burden has been reduced considerably from 44 per cent to 35 per cent through the introduction of company tax (IS), although this is still higher than that imposed in other comparable destinations for FDI. Companies can choose between the IS and income tax (IGR). The highest rate for the IGR is 44 per cent, despite a pledge in the investment charter to reduce it to 41.5 per cent, and this level is reached quickly. The standard rate for the IS is 35 per cent. Investors can deduct running costs and depreciation.

Losses can be carried forward for four periods. The DTT network is fairly wide and includes the home countries of Morocco's main investors.

23. VAT applies to all goods and services with the exception of exported goods and services. The normal rate is 20 per cent, although there are exceptions. According to investors, delays in VAT refunds go beyond the statutory period of four months. The tax authorities have recognized this and are looking to reform.

24. Over 10 local taxes exist, a reduction from 40 prior to 2005. The way the rules are applied means that 80 per cent of local taxes are generated by 20 per cent of companies. Companies also pay a trade licence tax (*impot sur patente*) which is based on the rental value of the business premises. As this acts to an extent as a tax on the value of investment, it is strongly suggested that this latter tax be removed.

Fiscal incentives

25. Morocco's incentives are less attractive for foreign investors than those provided by other developing country destinations for FDI. They are also dispersed among a number of texts and are hard to identify, although the 2006 budget makes an effort to bring them together.

- All companies exporting goods and services are totally exempt from the IS or the IGR for five years and enjoy a permanent 50 per cent reduction thereafter. The same benefit applies to companies supplying firms located in EPZs with finished goods and to hotels' foreign exchange earnings;

- Agriculture is exempt from the IS and IGR until 2011;

- Companies operating in Tangiers-Assilah province and Fahss Bani Makada enjoy a permanent 50 per cent reduction. Companies headquartered in Tangiers province for tax reasons and operating in Tangiers get a further 50 per cent reduction, leading to an effective IS rate of 8.75 per cent. However, none of these rates are specified in the charter, making them less apparent to investors;

- Incentives are also available in respect of the capital gains resulting from the sale of physical assets;

- Companies do not pay VAT on building materials or equipment;

- New companies and extensions of companies are exempt from the trading licence tax for five years. Beyond this period, companies are only taxed on the first 50 million dirhams of rental value. A permanent 50 per cent reduction is available in the provinces of Tangier Assilah and Fahss Bani Makad. Firms in EPZs and offshore financial companies enjoy a total exemption for 15 years;

- New buildings, extensions and building goods and equipment are totally exempt from urban tax for the first five years. Beyond this, the same exemptions and reductions apply as for the trading licence tax;

- However, there is a fixed charge of 25 per cent of the IS tax rate, payable by any company benefiting from IS exemptions.

Incentives in investor-state contracts

26. These are specified in the charter and are limited to the provision of land, external infrastructure and financial contributions for training.

Customs

27. Morocco's customs service has improved significantly and performs better than other countries in the region. Customs checks are now quick, targeted and efficient, and the process has been computerized.

EPZs

28. The only EPZ is in Tangiers port. Companies operating there are exempt from the IS for the first five years and then pay a rate of 8.75 per cent for the next 10 years, which matches the rates applied in the rest of the province. The EPZ lacks external infrastructure and linkages with the surrounding economy. However, investors appreciate its proximity to Europe, its fiscal regime, the removal of customs formalities and access to offshore banking facilities.

Management of capital and trade movements

29. Free transfer of dividends, disposal of assets and capital gains are allowed. Trade openness has improved considerably since WTO accession. Anyone can import or export, and all export restrictions and taxes have been removed, apart from licensing requirements relating to security or tans and hides. Export procedures have been simplified, although export and import procedures remain complex and long.

Employment

30. Legislation was considerably reformed with the introduction in 2004 of a new employment code. This was well received by investors. However, rules governing redundancy for technological, structural or economic reasons remain burdensome for investors, requiring prior authorization from the authorities in consultation with employee representatives. Investors have also complained about inadequate rules governing dismissal for gross misconduct. The employment code has no provisions for strikes, which means the right to strike is frequently abused. Maximum working hours were reduced from 48 to 44 hours a week with no reduction in wages, and the minimum wage was raised, all contributing to increased labour costs.