

**MENA-OECD Investment Programme**

# **Workshop on Iraq National Investment Reform**

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**MENA-OECD  
INVESTMENT  
PROGRAMME**

# What is the purpose of international investment agreements?

- Primary purpose
  - Reinforcing economic co-operation between the contracting parties.
  - Creating favourable conditions for investments made by one of the contracting parties in the territory of the other contracting party.
- **Underlying purpose**
  - Promoting joint economic prosperity and development.

# Types of IIAs

- Multilateral Agreements – the most difficult to achieve
  - MAI, WTO “Singapore issues”
- Regional and/or Plurilateral Agreements
  - Free Trade Agreements
  - European Union
  - NAFTA
  - ASEAN Investment Area
  - Energy Charter Treaty
- Bilateral Investment Treaties

# Bilateral Investment Treaties (BITs)

- Admission and treatment
  - Non-discrimination (MFN and/or national treatment)
  - Fair and equitable treatment
  - Full security
- Expropriation
  - Prompt, adequate and effective compensation
- Transfers
  - Free transfers of funds
- Key personnel
- Dispute settlement
  - State-to-state and investor-to-state disputes
- Exceptions and exemptions

# Relevant OECD Instruments and Expertise

- Through its experience working with over 70 economies, the OECD has developed the following Instruments and guidelines which are relevant to the current reform process of MENA countries:
  - OECD National Treatment Instrument
  - OECD Guidelines for Multinational Enterprises
  - OECD Policy Framework for Investment
  - Investment Promotion Guidelines for the MENA region
  - OECD Checklist on public sector transparency and the international investor
  - OECD Checklist for Investment Incentive
  - OECD Tax Model Convention

# OECD Investment Instruments

- The Code of Liberalisation of Capital Movements
  - Covers direct investment and establishment
- The Declaration on International Investment and Multinational Enterprises
  - The National Treatment Instrument
  - The Guidelines for Multinational Enterprises

# OECD National Treatment Instrument

## The National Treatment instrument consists of two elements:

- A declaration of principle, which forms part of the Declaration on International Investment and Multinational Enterprises
- A procedural OECD Council Decision, which obliges adhering countries to notify their exceptions to National Treatment, and establishes follow-up procedures to deal with such exceptions in the OECD

**Content: National treatment of foreign-controlled enterprises after establishment**

# Exceptions to the National Treatment Instrument

- The number of exceptions under the NTI, including at sub-national level, totals 307.
- The number of exceptions has declined by 17% over the past 10 years.
- Only 9% of remaining exceptions concern general measures
- The remaining 91 % of the national treatment exceptions concern sectoral measures, of which 73 % affect public utilities and other services.
- Exceptions regarding the purchase of real estate and use of natural resources dominate in the non-services sector.

# Recent Trends – an Overview

The twelve largest OECD capital exporting countries have to this date contracted some 800 bilateral investment treaties (BIT) and some other 27 BIT-like provisions in free trade agreements (FTAs), close to a third of total world investment agreements.

Mexico, the United States, Australia and Canada, on the other hand, account for 90 per cent of OECD FTAs-BIT-like disciplines.

Germany, Switzerland, the United Kingdom, the Netherlands and France are responsible for half of the BITs concluded by OECD countries.

High numbers do not tell the whole story however. For any European country reviewed, the percentage of outward investment covered by BITs never significantly exceeds 10 per cent, except for Spain and Germany where this percentage culminates around 26 per cent and 13 per cent respectively.

# MENA Countries' IIAs

- Bilateral Investment Treaties
- Free Trade Agreements
- Regional Integration Agreements
- Multilateral Rules

# Preferential liberalisation

|             |  |
|-------------|--|
| FTA with EU | 8 MENA countries have entered into free trade agreements with the EU (6 in force, 2 signed); |
| GAFTA       | most are signatories to Greater Arab Free Trade Agreement (GAFTA);                           |
| FTA with US | Jordan, Bahrain, Morocco (Oman signed; UAE/Egypt negotiations);                              |
| GCC Customs | Union with common external tariff  |
| Ongoing     | negotiations EU-GCC free trade area  |
|             | Mediterranean Arab Free Trade Area (Aghadir Process – Morocco, Tunisia, Jordan, Egypt)       |
|             | Arab Maghreb Union   |

# WTO Membership

- **Members:** Bahrain, Djibouti, Egypt, Jordan, Kuwait, Morocco, Oman, Qatar, KSA, Tunisia, UAE
- **Observers:** Algeria, Lebanon
- **Application:** Libya, Yemen, Iraq
- **No application:** Palestine Authority, Syria

# WTO “investment architecture”

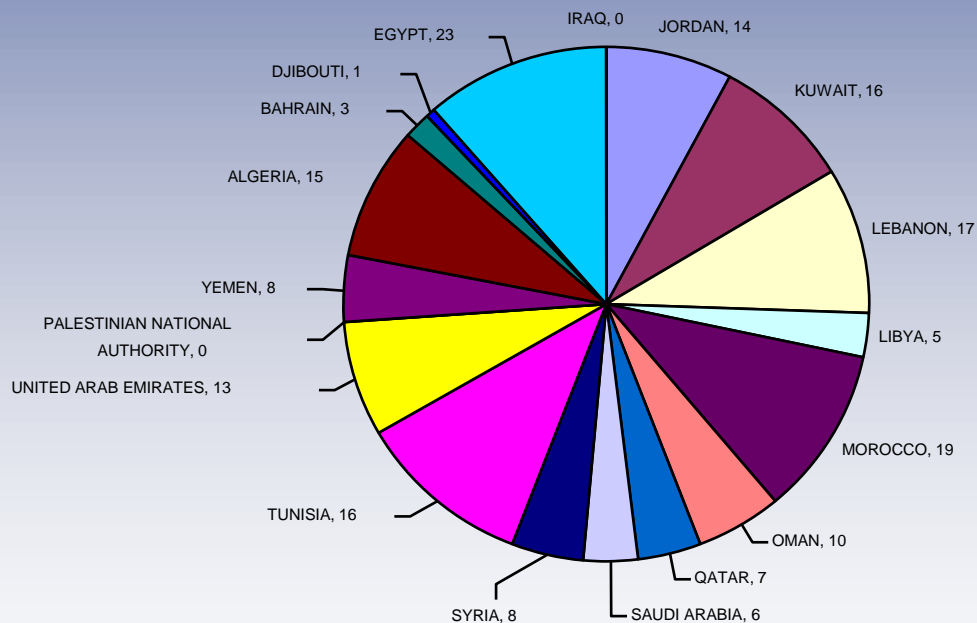
(WTO Agreements covering investment-related issues)

- GATS – General Agreement on Trade in Services
- TRIMs – Agreement on Trade-Related Investment Measures
- TRIPs – Agreement on Trade-Related Aspects of Intellectual Property
- GPA – Agreement on Government Procurement
- ASCM – Agreement on Subsidies and Countervailing Measures

# MENA Countries' IIAs

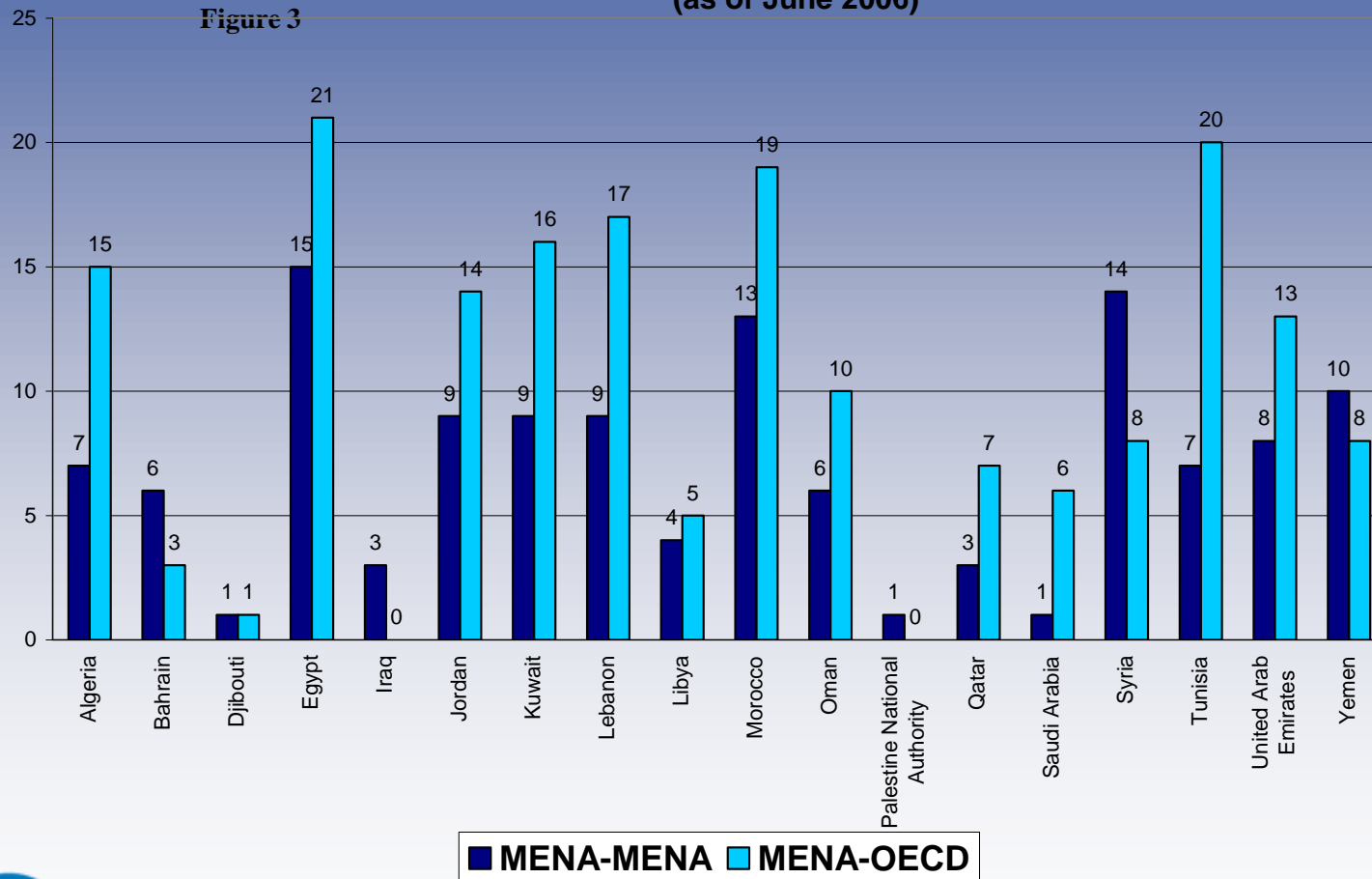
Number of BITs concluded by MENA countries with OECD countries

Total 183



# BITs

Comparison of BITs between MENA-MENA and MENA-OECD countries  
(as of June 2006)

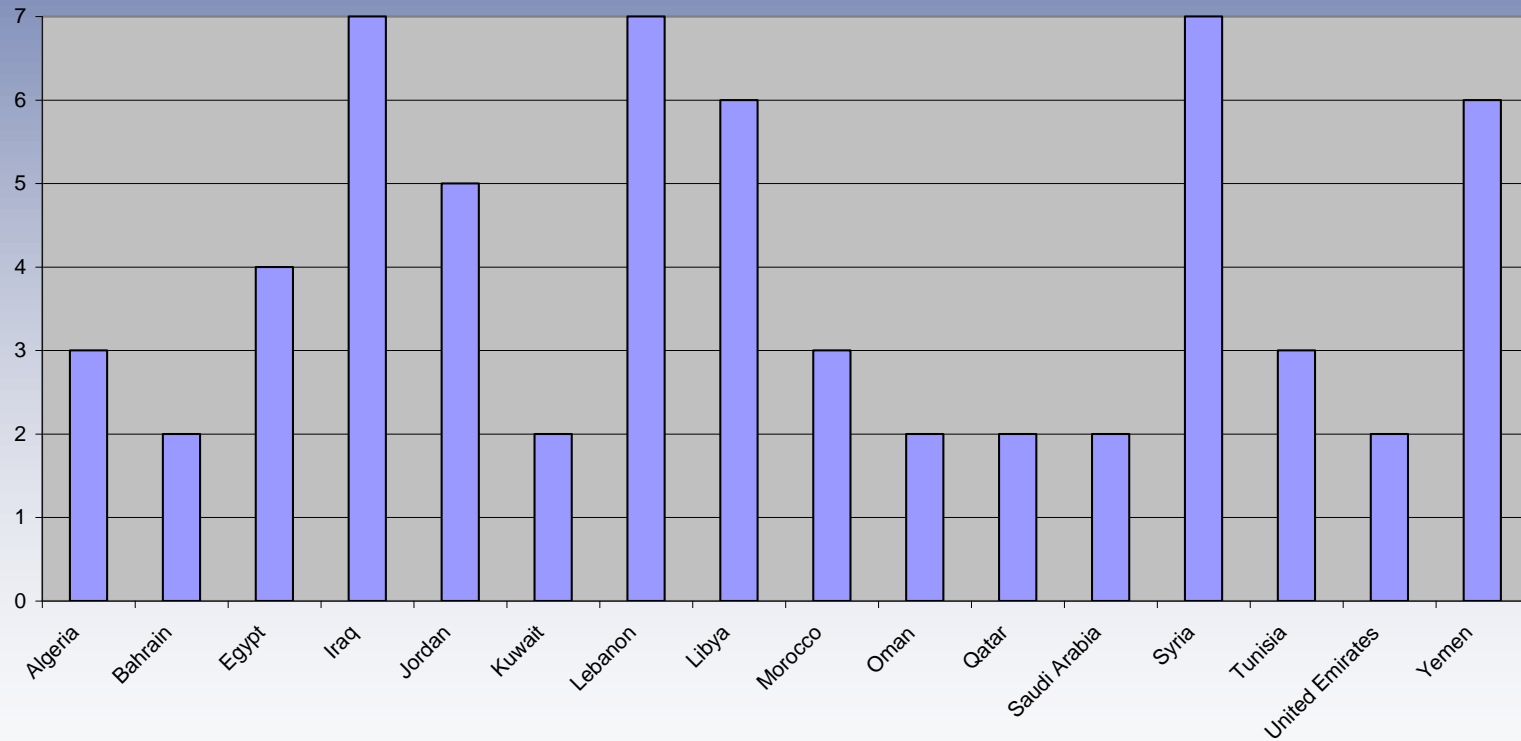


**Thank you very  
much**

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# Arrangement on Officially Supported Export Credits

The Country Risk Classification Method measures the country credit risk, i.e. the likelihood that a country will service its external debt. This method classifies countries into eight country risk categories (0-7).



Source: OECD, November 2006.

# FTAs (1/2)

## FTAs and other regional agreements signed or ratified by MENA countries

|                |           |      |   |
|----------------|-----------|------|---|
| <b>Algeria</b> | EU        | 2002 | Association Agreement   |
|                | USA       | 2001 | TIFA  |
| <b>Bahrain</b> | USA       | 2006 | FTA   |
| <b>Egypt</b>   | EU        | 2001 | Association Agreement   |
|                | Turkey    | 2005 | FTA   |
|                | EFTA      | 2007 | FTA   |
| <b>Jordan</b>  | EU        | 2002 | Association Agreement   |
|                | EFTA      | 2002 | FTA   |
|                | Singapore | 2004 | FTA   |
|                | USA       | 2000 | FTA   |
| <b>Kuwait</b>  | USA       | 2004 | Concerning the Development of Trade and Investment Relations - TIFA |
| <b>Lebanon</b> | EU        | 2002 | Association Agreement   |
|                | EFTA      | 2007 | FTA   |
| <b>Morocco</b> | EU        | 2000 | Association Agreement   |
|                | EFTA      | 1999 | FTA   |
|                | USA       | 2004 | FTA   |

# FTAs (2/2)

## FTAs and other regional agreements signed or ratified by MENA countries

|                                       |       |      |  |
|---------------------------------------|-------|------|--|
| <b>Oman</b>                           | USA   | 2006 | FTA  |
| <b>Palestinian Authority</b>          | EFTA  | 1999 | FTA  |
| <b>Qatar</b>                          | USA   | 2004 | Concerning the Development of trade and Investment Relations - TIFA  |
| <b>Saudi Arabia</b>                   | USA   | 2003 | Concerning the Development of trade and Investment Relations - TIFA  |
| <b>Syria</b>                          | EU    | 2004 | Association Agreement  |
| <b>Tunisia</b>                        | EU    | 1998 | Association Agreement  |
|                                       | EFTA  | 2006 | FTA  |
| <b>Yemen</b>                          | USA   | 2004 | Concerning the Development of trade and Investment Relations, TIFA   |
| <b>UAE</b>                            |       | 2004 | TIFA   |
| <b>Council of Arab Economic Unity</b> |       | 1970 | Agreement on Investment and Free Movement of Arab Capital Among Arab Countries   |
|                                       |       | 2000 | - Agreement on the Encouragement and Protection of Investments and Transfer of Capitals among Arab Countries<br>- Agreement on the Settlement of Investment Disputes in Arab Countries |
| <b>Gulf Cooperation Council</b>       | Syria | 2005 | FTA  |
| <b>League of Arab States</b>          |       | 1980 | Unified Agreement for the Investment of Arab Capital in the Arab States  |

# List of currently negotiated Agreements with MENA countries involving investment provisions

|           |         |   |
|-----------|---------|---|
| Bahrain   | Japan   | BIT   |
| Egypt     | USA     | FTA announced for 2005                      |
|           | Germany | current revision of old BIT                 |
| GCC       | Turkey  | FTA negotiations                            |
|           | EU      | FTA negotiations announced                  |
| Jordan    | Turkey  | FTA negotiations                            |
|           | Germany | BIT being renegotiated                      |
| Kuwait    | USA     | TIFA signed                                 |
|           | Spain   | BIT pending of signature                    |
| Libya     | Spain   | BIT   |
| Oman      | USA     | FTA signed                                  |
|           |         | TIFA signed                                 |
|           | Germany | BIT being renegotiated                      |
| Palestine | Germany | BIT   |
|           | Japan   | initially signed 2000 and under negotiation |
| Qatar     | Spain   | BIT   |
| SA        | USA     | TIFA signed                                 |
| UAE       | USA     | FTA under negotiation                       |
|           |         | TIFA signed                                 |
|           | Spain   | BIT   |
| Yemen     | USA     | TIFA signed                                 |
|           | Germany | BIT being renegotiated                      |