

Policy Coherence for Development

A practical guide

EU★COHERENCE
EU POLICY COHERENCE FOR DEVELOPMENT

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A practical guide

The Evert Vermeer Foundation (EVF) strives for international solidarity in politics and is connected to the Dutch Labour Party. In order to get development cooperation at the top of the political agenda, the EVF lobbies actively and organizes political debates and public meetings. The EVF is campaigning here, in Europe, to improve the situation of people in developing countries.

The EU Coherence Programme is a strategic alliance between the Evert Vermeer Foundation and CONCORD, the European NGO Confederation for Relief and Development Organizations. We strive to bring together a broad coalition of organizations and stakeholders to maximize the impact of the EU Coherence Programme. For further reading, please visit our website at: www.eucoherence.org

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Preface

Hundreds of millions of people live on less than a dollar a day. At the same time millions of people throughout the world contribute to the efforts of promoting the development of the world poorest. Citizens of the European Union pay taxes that contribute to achieving the Millennium Development Goals. Civil society, the private sector and national and European policy makers each in their own way work on a daily basis to improve the lives of people living in developing countries.

Politicians have a special responsibility towards their citizens to make sure that their financial contributions are effective. Furthermore politicians need a broad long-term view regarding sustainable development and our common future. This is where the importance of Policy Coherence for Development comes in. Coherent policies mean not taking with the one hand what has been given with the other. All development efforts are in vain if the objectives of other policy areas such as trade, commerce, foreign affairs and finance undermine or contradict them.

The EU has over the last decade shown a renewed interest in the promotion of Policy Coherence for Development. Endorsed by the European Treaties and the GAERC the European Commission has published its first ever report on the progress made in the field of policy coherence. Also, the emergence of the Economic Partnership Agreements between the EU and its former colonies, the ACP countries highlights the urgent need to merge the interests of development and trade.

Even though much has been done, far more still needs to be done. We cannot expect developing countries to be able to compete in the same market as European farmers, when the latter receive 40 billion euros in subsidies each year. Neither is it possible to maintain the livelihoods of local fishermen while at the same time fish stocks are being threatened by large scale fishing by European vessels.

However, designing coherent policies is not an easy task. It means balancing often conflicting interests: Will the short-term interests of Europe prevail over long-term development goals? A choice has to be made between immediate financial gains for European citizens and the sustainable economic development of the poorest peoples living in developing countries.

Ultimately it is the politicians who are in charge of these processes. It is essential that they take their responsibility to ensure that European policies work together to produce real and effective Policy Coherence for Development.

Wim Kok

*Former Prime Minister of the Netherlands,
Ambassador EU Coherence Programme*

Introduction

The concept of Policy Coherence for Development has been a hotly debated subject for a number of years now – both inside the European Union institutions and outside, both on definitions and content. However, without providing clear-cut examples of what we are talking about exactly, this debate, no matter how interesting or entertaining, risks remaining a purely abstract and academic discussion.

To identify concrete examples of how various European policies, despite efforts made in recent years, are still often contradictory is exactly what this manual aims to do. The carefully elaborated examples featuring in this book show how, most often unintentionally, policies in the field of international trade, biofuels, or fisheries undermine development objectives. Not just any development objectives, but those formulated within the framework of the European Union's own development policy.

You, a policy maker in any field of European government have managed to get hold of a copy of this Policy Coherence Manual. In a few moments, you will be discovering situations that, altogether, may not paint the most beautiful picture of European cooperation in certain policy fields. This Manual is not intended, however, to focus too much on these sore spots. What we aim for is to provide you with a practical guide to get an insight into the practice of Policy Coherence for Development. Perhaps most importantly, however, this manual suggests clear policy recommendations that will help to overcome the incoherencies exemplified in this book. You, after reading this book, will know exactly what action you can take in your work as a policy maker to remedy incoherent policies – now and in the future.

We hope this manual will serve as a work of reference for all those working in shaping European policies and Europe's role in the world. We do realize policies cannot be changed overnight. But by providing insight into the 'art' of Policy Coherence for Development, we hope policy makers will become aware of the impact each of them can make to further enhance the effectiveness of development policies.

This manual is published within the framework of the EU Coherence Programme, a project initiated by the Evert Vermeer Foundation for international solidarity, in close cooperation with CONCORD, the European NGO Confederation for Relief and Development. The EU Coherence Programme aims to enhance Policy Coherence for Development in the EU institutions and the Member States and works together with a broad coalition of non-governmental organizations, both in Europe and the developing countries.

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Part I

Policy Coherence for Development:

Concept, definitions and background

Design: Jos Collignon

EU-COMMISSIONERS PETER MANDELSON (TRADE), MARIANN FISCHER BOEL (AGRICULTURE) AND LOUIS MICHEL (DEVELOPMENT) STRIVING FOR POLICY COHERENCE FOR DEVELOPMENT. AT THE SIDELINE FORMER PRIME MINISTER OF THE NETHERLANDS, WIM KOK, ACTING AMBASSADOR OF THE EU COHERENCE PROGRAMME.

Policy Coherence for Development

The European Union's Development cooperation is a powerful tool in supporting developing countries' efforts towards poverty reduction. However, development cooperation alone is not enough to achieve the Millennium Development Goals (MDGs). Many policies other than development cooperation have a profound impact on developing countries. Policy Coherence for Development (PCD), as a concept, aims to increase the effectiveness of development cooperation, by making sure that other policies are aligned with development-policy goals. For what use would it be to spend millions of euros to enhance development if these efforts were undermined by policies in the field of, for instance, trade, agriculture or even energy?

As a global player in an increasingly interdependent world, the EU influences the process of economic and human development in many ways. It is the most important trading partner for developing countries, and sets standards and conditions under which products originating in developing countries can enter the EU market. The EU plays an important role in capacity-building, in transferring technologies, and in addressing issues of compliance with sanitary and phytosanitary standards. But by subsidizing its own fleet, the EU also impacts on artisan fisheries in West Africa. In short, the areas where EU actions can either support or undermine development efforts are numerous.

Policies that are incoherent with development policy goals are costly, to both the EU and developing countries. Considering the recent EU commitment to substantially increase development assistance, it is all the more important that the various policies

impacting on developing countries do not contradict one another, but build synergies instead.

■ Policy Coherence for Development

A Definition

The OECD defines the concept of policy coherence for development (PCD) as follows: 'Policy Coherence for Development means working to ensure that the objectives and results of a government's development policies are not undermined by other policies of that same government which impact on developing countries, and that these other policies support development objectives where feasible'.

The EU commitment towards policy coherence is not only a political commitment in the context of the MDGs. It also has a legal basis in the EC Treaty, in article 178: 'The Community shall take account of the [development policy] objectives (...) in the policies that it implements which are likely to affect developing countries.

The EU Coherence Programme has based its definition of Policy Coherence for Development on this treaty article: *"Development policy objectives must not be undermined or obstructed by actions or activities of government in that field or in other policy fields"*.

It is customary to distinguish between internal and external policy coherence. The former refers to coherence within development policy – coherence between financial instruments, cooperation agreements and coordination between European Commission and Member States' programmes. The latter, external policy coherence, refers to the coherence between

development-policy objectives and other policies that are likely to have an impact on developing countries. In this manual we focus on external policy coherence for development.

EU commitments to Policy Coherence for Development

In recognition of this, the European Commission, in 2005, identified Policy Coherence for Development as a key tool in accelerating progress towards attaining the Millennium Development goals. Other European Union institutions, increasingly aware that development cooperation alone cannot meet the needs of developing countries, have made important and impressive commitments to enhancing PCD. The Council, for example, in May 2005, has explicitly asked for a review and improvement of the EU policy-making structures, with the aim of integrating development considerations into non-aid policies. It is now of great importance that these historic commitments be translated into decisive action.

■ Policy Coherence for Development in the EU

A historical overview

The concept of policy coherence first emerged in European Union politics in the 1970s. Having been a subject under discussion, mostly informally, the concept was finally laid down in the Treaty establishing the European Community, in Maastricht in 1993.

Article 178 EC Treaty reads: “The Community shall take account of the [development] objectives referred to in Article 177 in the policies that it implements which are likely to affect developing countries.”

The European Council, in its May 2005 GAERC conclusions, has explicitly asked for a review and improvement of the EU policy making structures with the aim of integrating development considerations into non-aid policies. The Council identified 12 priority policy areas and called upon the European Commission to pay special attention to improving policy coherence in these areas (see boxed text below).

The European Commission subsequently developed a Rolling Work Programme on PCD, in which it outlined proposals and scope for action that underpin these commitments to Policy Coherence for Development. Apart from these twelve policy areas, the European Commission has focused specifically on the institutional mechanisms that have been put in place with the aim of facilitating policy-coherence processes in practice. These institutional mechanisms are described in detail in the Commission’s Rolling Work Programme on PCD. For example, the Impact Assessment Tool, applicable to all Commission legislative proposals, aims to assess the implications for developing countries of a new proposal in an early stage of the legislative process.

For the first time, in September 2007, the European Commission and the Member States together closely examined the progress that has been made in enhancing Policy Coherence for Development since 2005. The EU Report on Policy Coherence for Development elaborates extensively on how policy-coherence mechanisms have been put in place at both EU and Member State level. The report also explicitly discusses the progress that has been

made in 12 priority policy areas: Trade, Environment, Climate Change, Security, Agriculture, Fisheries, Social Dimension of Globalization (Employment, Decent work), Migration, Research and Innovation, Information Society, Transport and Energy.

Examples of incoherent policies

There is no doubt that very substantial progress has indeed been made. Nevertheless, as the present PCD Manual shows, there are still quite a few policy areas in which examples of incoherent policy actions can be found.

Access to patented medicines for developing countries is still severely limited by EU protection of intellectual-property rights, while, at the same time, it is generally agreed that people who need these medicines most should have easy access to them. The Commission's resolution to strive for 10% of all energy used in the EU to be from renewable resources, such as biofuels, severely endangers developing countries' food security. Land used for growing staple crops is increasingly used to grow crops as a basis for agrofuels. The current system of Rules of Origin seriously impedes the access of ACP countries' produce to the EU market. In contrast, illegally logged wood from vulnerable ecosystems can enter the EU market without any difficulties, undermining efforts made with European development funds to protect these areas through environmental conservation schemes. These, and four additional examples elaborated in case studies, can be found in this Manual.

Members of the European Parliament:

Tools to enhance PCD

Members of the European Parliament hold a unique position in the European Union policy framework. As the only truly democratic institution, the European Parliament can fulfil a key role in monitoring the implementation of the commitments to Policy Coherence for Development made by the Commission and the Member States.

Naturally, the Parliament's Development Committee keeps a close eye on development-policy issues. However, since almost all policy fields affect developing countries, there is a possibility here to change policies for the better for all Members of the European Parliament, no matter which policy field or Committee they are involved in.

While advising on policies or co-legislating together with the Commission and the Council, in all policy fields that are likely to affect developing countries it is of the utmost importance for Members of the European Parliament to keep developing countries' interests in the back of their minds. But it is equally important that Members of the European Parliament take action to help solve these incoherent situations. The possibilities to advance progress in the field of policy coherence for development are numerous.

In particular Members of Parliament who are *not* members of the Development Committee can make a huge difference, exactly by raising the question of policy coherence in the specific policy field they work in – be it transport, health, energy or agriculture.

Furthermore, the importance of strong and repeated political statements cannot be overestimated. Every time Members of Parliament write, or come across, a draft Resolution or Report in any of the above-mentioned 12 priority policies, a reference to policy coherence for development could be inserted. In this way, the need for Policy Coherence for Development will be stressed again, in accordance with the legislative commitment to coherence as laid down in article 178 of the EC Treaty.

Also, Members of Parliament can propose amendments to Reports or Resolutions whenever the content may potentially endanger development processes in developing countries. These could be articles that aim to reintroduce export subsidies for European produce, for example. Or an article that obliges the EU to sign fisheries-access agreements or trade agreements with developing countries only if they are in full compliance with development-policy objectives. During Committee meetings, Members of Parliament can remind their colleagues and any representatives of the Commission present that it is of the utmost importance to prevent any decisions taken in that room having a harmful effect on developing countries.

Finally, Members of Parliament are in a unique position to influence national parliamentarians of their own political party. By highlighting possible pitfalls or by stressing the implementation of European policies at the national level, they can enhance Policy Coherence for Development at the level of the Member States as well.

In the end it all comes down to balancing European against developing countries' interests. Members of European Parliament do have the opportunity to let developing countries' interests prevail, if only just this once. If all Members of the European Parliament took account of developing countries' interests every

day, then there would be no need for a second edition of this Policy Coherence Manual – because there simply would be no more examples of incoherent policies!

■ PCD Tools and mechanisms in EU Member States

Working towards better coherence between development objectives and objectives in other policy fields is not solely the responsibility of the European Commission. The Member States, traditionally, play an important role in Development Policy. Each Member State identifies its own priorities and fixes its own targets – and decides on its own tools and mechanisms to ensure that policies are coherent, either by legislation, institutional arrangements or knowledge-input and assessment tools. Some examples from Member States include the following:

Sweden is the only EU Member State to have adopted a government bill on Policy Coherence, making policy coherence an integral part of policy-making in all fields. Each year, by means of a report sent to Parliament, the government shows in what ways developing countries' interests have been taken into account.

The Development Policy Committee, appointed in 2003 in Finland, was a multi-stakeholder body to the Finnish government. The Committee's term ended in May 2007. The Committee was an advisory body, but also evaluated the quality and effectiveness of the Development Policy and was given the task of enhancing policy coherence in Finland.

The Netherlands, by establishing a Policy Coherence Unit within the Ministry for Foreign Affairs, has chosen three different methods to ensure policy coherence. Firstly, all

major EU legislative proposals and positions are meticulously screened for their impact on developing countries. As the Unit is represented in the EU Coordinating Committee, its positions are directly translated into the Dutch positions at various Council meetings. Moreover, the proactive focus on dossiers that feature on the decision-making agenda allows the Unit to keep track of developments in policy fields over longer periods of time.

The United Kingdom has chosen an altogether different approach. It has not established a dedicated institutional framework to monitor PCD. Instead, many permanent and ad hoc mechanisms are at work to facilitate cooperation between departments, on cross-cutting subjects such as aid, trade and migration.

■ Success factors

Even though the above-mentioned EU Member States differ widely in size, institutional set-up and many other ways, there are certain elements that are shared by all these different approaches to addressing policy coherence. First and foremost, political will is an essential condition. Secondly, to accumulate the necessary political weight, an all-government approach seems to be the most effective way forward. In nearly all cases, strong pressure and support from civil-society organizations are deemed very important.

SOURCE: EU COHERENCE PROGRAMME, REPORT EXPERT MEETING 'BEST PRACTICES IN ENHANCING POLICY COHERENCE FOR DEVELOPMENT', (JUNE 1, 2006, BRUSSELS). SEE: WWW.EUCOHERENCE.ORG

■ The EU Coherence Programme

Political will is essential in order to enhance Policy Coherence for Development. Sometimes however, politicians and policy makers need a wake-up call. For this purpose, the EU Coherence Programme provides a monitoring system. It scrutinizes European policies on coherence and offers practical policy recommendations on how to overcome incoherent policies that are detrimental to developing countries. By monitoring parliamentary questions, voting behaviour, speeches and publications, the Members of the European Parliament are scrutinized for their efforts to achieve Policy Coherence for Development.

Each time an MEP engages in a positive action related to the promotion of PCD, the EU Coherence Programme publishes a news item on its website eucoherence.org, and the political group to which the MEP belongs is awarded a star in our PCD-monitoring box. The homepage of www.eucoherence.org all stars are added up to rank the efforts of the political groups that are most active in advocating PCD.

Part II

Concrete examples
of incoherent policies and
Policy Recommendations
to enhance Policy Coherence
for Development



Case I

Arms-trade policy

Although the European Union (EU) has worked towards stricter arms export controls, it fails to prevent irresponsible arms flows from entering conflict zones in developing countries. This clearly leads to incoherence between the EU's trading policy and its development policy: on the one hand, as a major arms exporter, the EU exports or facilitates the transshipment of arms via its territory. On the other hand, however, the EU is a major donor for poor and (post-)conflict countries. This is clearly incoherent.

Irresponsible arms trade does not only directly affect human rights, it has a devastating effect on economic progress, often for years to come. Let's take the example of Nepal. This country spends approximately 10% of its Gross National Product on defence, which is more than on education or health. Its decade long armed conflict has seriously hampered its opportunities for development. The EU spends millions on development activities in Nepal, including funds aimed at good government, poverty reduction and human rights¹. Between 2002 and 2005 Nepal has received huge amounts of arms, not only from countries such as the US and India, but also from EU Member States, including the UK (various conventional arms including helicopters), Belgium (rifles) and France (components of helicopters)². The above example shows there is a discrepancy between EU development and EU arms trade policies.

This fact has been acknowledged by the EU itself: *The widespread availability, rapid accumulation and easy flow of small arms have led to great human suffering, losses in economic development and increased poverty around the world in recent years*³. Therefore, the EU Member States, aware of the need for more coherence between arms export and development policies, committed themselves in the European Consensus to strict control of their arms exports, including exports to developing countries⁴. Unfortunately, there is still a long way ahead of us before we can speak of coherent policy on this topic.

European development policy

The goals of the European development policy are very clear: *"Our mission is to help to reduce and ultimately to eradicate poverty in the developing countries through the promotion of sustainable development, democracy, peace and security"*⁵. The EU, through its various institutions⁶, spends approximately 7 billion euros yearly on development funds. Africa will receive approximately 10 billion by 2010. Many of the EU's priority countries are countries in (post-)conflict situations, for example the Democratic Republic of Congo, Sudan, Eritrea, Uganda, Liberia, Ethiopia, Colombia and Nepal.

Some of the EU funding directly targets issues such as the proliferation of small arms through weapon-destruction projects, improvement of national legislation or training of law-enforcement officials⁷. For example, the EU supports Operation Rachel in Mozambique and South Africa, a project that aims to collect and destroy small arms that result from the war in Mozambique and are often smuggled into South Africa.

European arms trade policy

In 1998 the EU Member States adopted the EU Code of Conduct on Arms Exports (CoC).⁸ The CoC sets the minimum standards in relation to arms exports and transshipment to and from the EU. Member States must adhere to eight criteria when deciding whether to grant an export licence. For example, arms may not be exported to countries if there is a clear risk that they will be used for internal suppression or could lead to human-rights violations. Criterion 8 mentions the need to take the economic situation of the receiving country into account⁹. In 2005 the code was reviewed and the EU now plans to adopt a *Common Position* giving the document a more legally-binding status¹⁰.

The value of the EU arms trade in terms of export amounts approximately to 360 billion euros annually. Within the world-wide top 10 of arms-exporting countries in 2006 we find several EU Member States, viz Germany (3), France (4), Netherlands (5), UK (6), Italy (7), Spain (8) and Sweden (10)¹¹. Some of these arms end up in conflict zones in developing countries.

The EU, aware that arms trade is a global issue, is working towards stricter controls at an international level including supporting an international Arms Trade Treaty that will set out stricter controls on state exports.

Incoherence: the need for a stricter arms policy

In 2002, arms deliveries to Asia, the Middle East, Latin America and Africa constituted 66.7-per-cent of the value of all arms deliveries worldwide¹². The EU was responsible for about one third of these shipments. African, Asian and Latin-American countries spend approximately 22 billion dollars on arms annually¹³. This money could provide education for all the children in those countries and, if invested in healthcare, could reduce infant

mortality by two thirds by 2015¹⁴. Countries such as Eritrea, Yemen, Burundi, Rwanda, Sierra Leone, Uganda and Nepal spend more on military needs than on health and education put together¹⁵. The World Health Organisation (WHO) has estimated the costs of attaining the Millennium Development Goals at \$135 billion. The World Bank therefore rightly concluded that there is a '*fundamental imbalance*', with the world spending US\$900bn on defence, around US\$325bn on agricultural subsidies and only US\$50bn to US\$60bn on development¹⁶.

There is a strong need for more coherence between the European Union (EU) arms export and the EU's development policies¹⁷. Although EU legislation in the area of arms trade has led to better controls, these are still insufficient when it comes to preventing EU arms from ending up in the exact same countries where the EU is promoting development. Although arms trade to developing countries is not illegal as such, the EU should make sure that this trade does not hamper sustainable development or increase tensions or conflicts.

Lack of a binding instrument

EU Member States have said that they plan to give the Code of Conduct on Arms Exports (CoC) a legally binding status, but the EU has still not taken this decisive step. As a result of this inaction, therefore, its development policy continues to be undermined. Binding legislation is necessary to prevent countries from breaching the CoC without being held accountable. In 2005, reports showed that EU members licensed arms to China, Colombia, Ethiopia, Eritrea, Indonesia, Israel, Nepal and elsewhere¹⁸. Under a binding instrument, some of these transfers might have been avoided, or at least there would have been a better level of accountability.

Lack of implementation of criterion 8 on economic development

The effect of criterion 8 of the CoC, which states that Member States should take into account ‘the least diversion for armaments of human and economic resources’ and the ‘legitimate defence needs’ of the importing country, is doubtful. The UK, for instance, has sold arms to Bangladesh and the Czech Republic. Polish surplus weapons have been shipped to Yemen¹⁹ and several European countries made a 6 billion arms-trade deal with South Africa in 2003²⁰. Pakistan receives arms from a number of European countries even though it has the highest levels of militarization in the world and spends more on its military than on health and education combined. Therefore, it seems that this criterion is not effective in denying export licences. Also, the criterion is formulated in such a way that states only need to ‘take into account’ the sustainability issue, leaving plenty of room for interpretation. Neither exporting nor receiving states need to prove that the arms transfer is a diversion of human and economic resources, or that there is a legitimate defence need.

Lack of transit controls

Neither the CoC nor the draft Common Position requires Member States to control all transit throughout their territory. This is a serious weakness, as arms are transshipped through EU-territory to developing countries regularly. Examples are the transit of arms through Slovenian territory to countries such as Iran, Zimbabwe and Angola²¹, or the continuous transit of arms to Israel through the Netherlands. Some of these arms are probably used in the Palestinian territories. The EU has spent millions on development funds in the Palestinian territories over the years.

Lack of control over Licensed Production Overseas

Licensed Production Overseas is the process whereby a company in one country allows a second company to manufacture its products under licence. By outsourcing production, controls

over arms transfers that may apply in some countries can be evaded. For example, in 2003 the Indian government was able to export helicopters to Nepal that were produced under licence from a French company²². The same goes for European companies that have subsidiaries in countries with less strict export legislation. As a result of this practice, a subsidiary of a British company, operating in South Africa, has been able to export arms to Uganda. This transfer would most likely not have been permitted had it been directly from the UK.

The Code lacks re-export controls

Neither the CoC nor the draft Common Position mentions the need for all EU Member States to require ‘no re-export without permission’ clauses in their arms shipment deals. This regularly leads to EU-produced arms ending up in countries through third countries. The lack of re-export controls is particularly relevant with regard to the production of components that are build into larger systems in other countries and shipped onwards.

Lack of controls over brokers

The same goes for the need for more control over individual brokers. Successive UN reports have implicated dozens of western companies involved in illegal profiteering and arms trade to Liberia, the Democratic Republic of Congo or Zimbabwe. Although the EU has its own common position on brokering, it has been criticized by NGOs as being insufficiently strong. Amongst others, one of its main weaknesses is that EU Member States do not have, nor are required to have, extra-territorial controls over brokers. The EU Common Position dealing with arms brokering²³ encourages Member States “to consider controlling brokering activities outside of their territory carried out by brokers of their nationality resident or established in their territory”. However, they are not obliged to do so – and most of them do not. This means that EU brokers can simply move to another country

and continue dealing in arms, in violation of EU legislation, while the EU cannot hold them accountable.

Lack of controls outside the EU

Lastly, it is important to point out that the arms trade is a global trade. Therefore, the arms-export policies of other countries can also undermine the EU's development efforts. Recent arms trade between China and Sudan, even during the conflict in Darfur, are shocking examples and undermine EU development policies in those countries. The EU should therefore step up efforts to achieve stricter controls at an international level, both for state exports and brokering.

Conclusion

Many developing countries spend huge amounts on military needs, but significantly lower amounts on development-related policies. Also, while the EU provides sustainable amounts of developing aid to developing countries, it exports arms, either directly or indirectly, to the exact same countries where they spend millions on development funds. The EU should work towards more coherence between its arms trade policy and its development policy by taking a range of measures.

Policy Recommendations

- All EU Member States should work towards an effective new Arms Trade Treaty and towards a new international instrument for the control over brokers. All EU Member States should implement extra-territorial legislation that enables them to control European brokers' operations from abroad;
- The EU should adopt a legally binding Common Position on arms trade without any further delay, thereby making the Code of Conduct (CoC) a legally binding instrument;
- The EU should strengthen the Code of Conduct so that all EU Member States are required to control all transit, are required to apply the CoC criteria for licensed production overseas or subsidiaries, and are required to demand end-user certificates and control over the re-transfer of their arms;
- The EU should guarantee a more effective use of criterion 8 of the EU-Code of Conduct that takes greater account of the economic situation in the receiving country. This criterion should be redefined in such a way that Member States will only be able to permit a transfer if it can be ensured that the transfer will not harm sustainable development and the applicant/recipient can identify a legitimate defence need for the specific transfer;
- The EU should discuss high military spending in their bilateral dialogues with those countries that receive EU development aid with the aim of lowering these expenditures and using these funds for development goals;
- The EU should work towards more coherent policies; the EU council and Commission working groups on arms control and development policies should regularly meet and discuss issues of common concern.

■ Incoherence: the example of cluster munitions

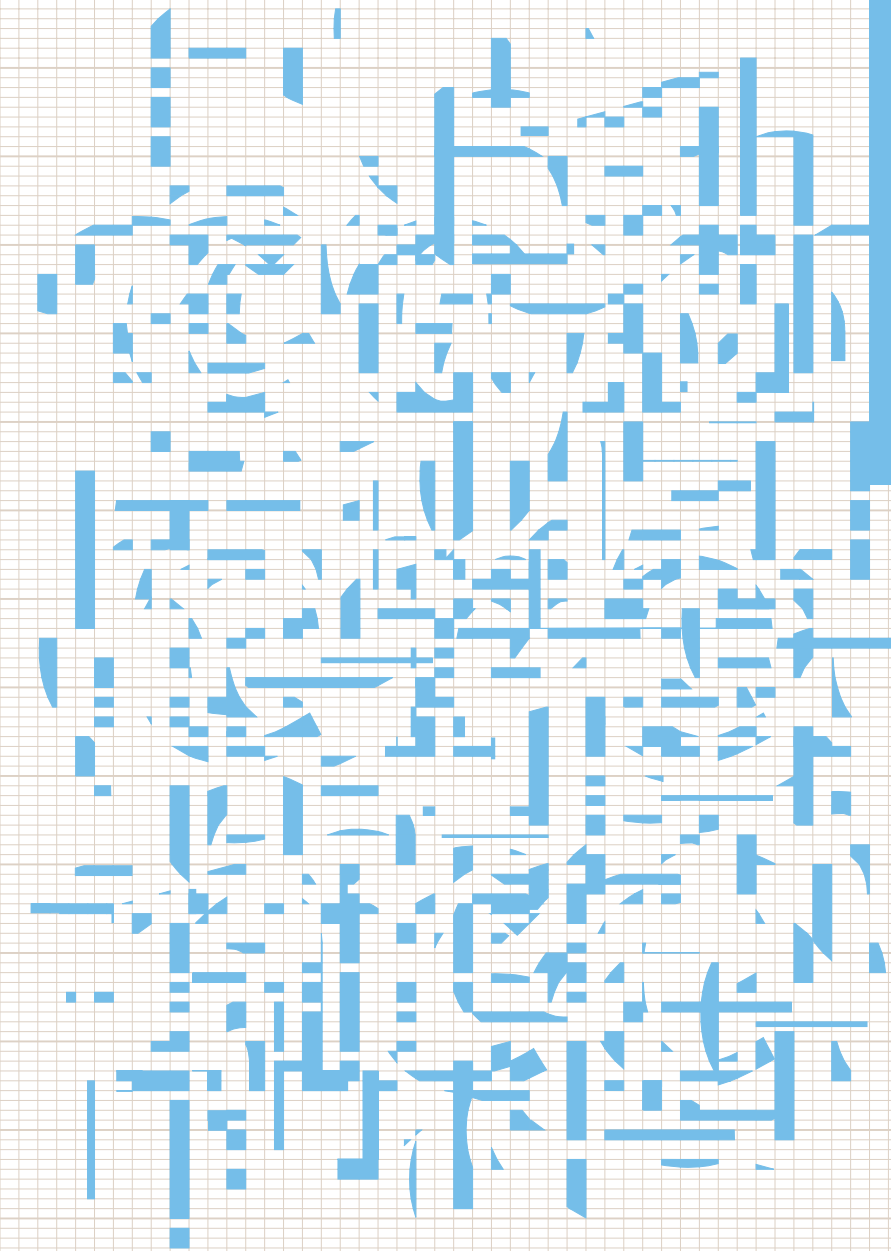
Another example of incoherence

A striking example of incoherence concerns the EU policies on cluster munitions. The effect of this weapon on human lives and the destruction of basic services are well known. Although some EU Member States seem to back a new instrument banning the use of certain types of cluster munitions, only a few Member States have taken steps to ban the use of or trade in cluster munitions.

At the same time, the European Commission and Member States spend millions on the clearance of unexploded ordnance. In 2005 the world saw the devastating effects of the use of cluster bombs in Lebanon on lives and basic services. In 2006 the EU spent approximately 525 million euros on development aid to Lebanon, including funds used for the removal of unexploded ordnance. There is, therefore, a serious incoherence between the funding aimed at mitigating the effects of cluster munitions and the lack of political will to completely prohibit the trade and use of cluster munitions.

SOURCE: EUROPEAN UNION DIRECTORATE GENERAL COMMUNICATION, INTERNATIONAL DONOR CONFERENCE FOCUSES ON LEBANON: JANUARY 2007 (DATE OF ACCESS: 1 MAY 2007)

- ¹ IN TOTAL THIS AMOUNTED TO APPROXIMATELY 70 MILLION BETWEEN 2002-2006. SEE EC WEBSITE: [HTTP://EC.EUROPA.EU/DEVELOPMENT/INDEX_EN.HTM](http://ec.europa.eu/development/index_en.htm)
- ² IN THE FRENCH CASE THIS WAS A RESULT OF PRODUCTION DEALS WITH INDIA WHERE VENTURES BETWEEN FRENCH AND INDIAN COMPANIES MADE IT POSSIBLE FOR THESE COMPONENTS TO BYPASS EU EXPORT LEGISLATION. SEE AMNESTY INTERNATIONAL REPORT UNDERMINING SECURITY 2004.
- ³ EUROPEAN COMMISSION, POLICY PAPER SMALL ARMS AND LIGHT WEAPONS; THE RESPONSE OF THE EUROPEAN UNION (2001)
- ⁴ THE EUROPEAN CONSENSUS ON DEVELOPMENT; JOINT STATEMENT BY THE COUNCIL AND MEMBER STATES 2006.
- ⁵ EUROPEAN COMMISSION WEBSITE: [HTTP://EC.EUROPA.EU/DEVELOPMENT/INDEX_EN.HTM](http://ec.europa.eu/development/index_en.htm)
- ⁶ MAINLY THROUGH THE EUROPEAN COMMISSION EUROPAID AND ECHO.
- ⁷ EUROPEAN COMMISSION, POLICY PAPER SMALL ARMS AND LIGHT WEAPONS; THE RESPONSE OF THE EUROPEAN UNION (2001).
- ⁸ [HTTP://CONSILIUM.EUROPA.EU/UEDOCS/CMSUPLOAD/08675R2EN8.PDF](http://consilium.europa.eu/uedocs/cmsupload/08675R2EN8.PDF)
- ⁹ THE CRITERION INCLUDES THE FOLLOWING TEXT: THE COMPATIBILITY OF THE ARMS EXPORTS WITH THE TECHNICAL AND ECONOMIC CAPACITY OF THE RECIPIENT COUNTRY, TAKING INTO ACCOUNT THE DESIRABILITY THAT STATES SHOULD ACHIEVE THEIR LEGITIMATE NEEDS OF SECURITY AND DEFENCE WITH THE LEAST DIVERSION FOR ARMAMENTS OF HUMAN AND ECONOMIC RESOURCES.
- ¹⁰ AT THE TIME OF WRITING THE DRAFT COMMON POSITIONS HAS NOT BEEN ADOPTED YET. THE DRAFT TEXT WILL HOWEVER MOST LIKELY NOT BE AMENDED FURTHER.
- ¹¹ STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTE YEARBOOK 2007
- ¹² CONTROL ARMS, GUNS AND GROWTH (JUNE 2004)
- ¹³ *IBIDEM*.
- ¹⁴ *IBIDEM*.
- ¹⁵ *IBIDEM*.
- ¹⁶ SPEECH WOLFENSOHN, ANNUAL WORLD BANK AND INTERNATIONAL MONETARY FUND (IMF) SPRING MEETINGS, HELD FROM 24-25 APRIL 2004.
- ¹⁷ IT SHOULD BE MENTIONED THAT THIS REPORT FOCUSES MAINLY ON THE LINK BETWEEN EU ARMS TRADE AND EU DEVELOPMENT POLICIES. HOWEVER, SOME OF THE CONCLUSIONS RELATE TO OTHER POLICY AREAS AS WELL SUCH AS EU POLICIES ON CONFLICT PREVENTION OR HUMAN RIGHTS. IN SOME OF THE COUNTRIES MENTIONED, THE EU'S FOREIGN POLICY IS AIMED AT CREATING MORE FREEDOMS, HUMAN RIGHTS ETC., SO THEREFORE IT IS ALL THE MORE REMARKABLE THAT ARMS FROM THE EU STILL FIND THEIR WAY TO THESE COUNTRIES.
- ¹⁸ SEE STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTE, FIRST AND SEVENTH ANNUAL REPORTS ON THE IMPLEMENTATION OF THE EU CODE OF CONDUCT ON ARMS EXPORTS, AVAILABLE ONLINE AT: [HTTP://WWW.SIPRI.ORG/CONTENTS/EXPCON/ANNREP.HTML](http://www.sipri.org/contents/expcon/annrep.html)
- ¹⁹ AS MENTIONED PREVIOUSLY, YEMEN AND BANGLADESH HAVE SEEN ENORMOUS LEVELS OF MILITARIZATION AND SPEND MORE ON ARMS THEN ON EDUCATION AND HEALTH.
- ²⁰ IN COMPARISON, SOUTH AFRICA SPENDS APPROXIMATELY 53 MILLION ON FIGHTING AIDS YEARLY.
- ²¹ AMNESTY INTERNATIONAL, UNDERMINING SECURITY (FEBRUARY 2004).
- ²² AMNESTY INTERNATIONAL, NEPAL: MILITARY ASSISTANCE CONTRIBUTING TO GRAVE HUMAN RIGHTS VIOLATIONS (JUNE 2005).
- ²³ EU COUNCIL, COMMON POSITION ON BROKERING (JUNE 2003).



Case 2

Biofuels

Biofuels have become a hotly-debated topic owing to the growing political and public attention to climate change. Measures to combat the effects of global warming are currently on top of the political agenda worldwide. As one of the largest economies in the world, the European Union (EU) has a key role to play in stimulating the use of alternatives to fossil fuels. While introducing measures to reduce CO₂ emissions by expanding the use of so-called biofuels, the EU should make sure that it does not harm the interests of developing countries. Their food security, biodiversity and local livelihoods could be endangered by the large-scale introduction of biofuels for the benefits of western consumers. This would be incoherent with and highly jeopardize the very same efforts the EU has taken to eradicate poverty by enhancing the economic participation of the poorest.

Biofuels are hailed by some as the solution to the dual problem of climate change and poverty, while others fear mass starvation and ecological disaster. Biofuels could represent an agricultural renaissance for Africa and supply modern energy to third-world populations, according to Jacques Diouf, Director-General of FAO¹. On the other hand, rich countries have been accused of “total hypocrisy” by Jean Ziegler, UN Special Rapporteur on the Right to Food, for their reckless drive to biofuels, for which the price will be paid by *‘hundreds of thousands of people who will die from hunger’*².

EU Energy Policy

In 1974 immediately after the global oil crisis, biofuels suddenly became an energy priority. As the turmoil on the energy markets waned, so did interest in biofuels. Nowadays a combination of high oil prices, concerns about energy security and fear of climate change has put biofuels back at the centre of the global stage. More and more, crops such as sugar cane, maize and wheat are converted into ethanol, and rapeseed and palm oil into biodiesel.

The production of biofuels in the EU is heavily subsidized. Taxation on biofuels compared with excise taxes applied to fossil fuels varies from 0% to 45% between EU Member States³. A special subsidy for agricultural land devoted to the production of energy crops was introduced under the CAP reform of 2003. In addition to this, agricultural raw materials used for biofuels benefit from subsidies of 1.1 billion euros for oil-seed producers and 10.7 billion euros for cereal producers⁴.

Development policy

The central objective of European Development Policy is poverty reduction as laid down in the first Millennium Development Goal: halving the proportion of food-insecure people in the world from 16-per-cent to 8-per-cent by 2015. There are 854 million under-nourished people – one on six – worldwide⁵. These people typically spend 50 to 80-per-cent of their budget on food. Soaring food prices caused by the sudden rush to biofuels represent a profound tragedy for these urban and rural poor. Competition between food and energy will inflate basic food prices anywhere between 20 and 50-per-cent in the next ten years, according to estimates by the FAO and the OECD⁶. This would mean that the number of food-insecure people in the world would nearly double by 2015, instead of being halved as formulated in the first Millennium Development Goal⁷.

Sustainable development and the reversal of environmental losses constitute another key objective in the Millennium Development Goals (number 7). An unregulated boost in the production of biofuels risks sacrificing biodiversity. If rainforests are cut down to make space for plantations of energy crops, biofuels will even result in a net emission of greenhouse gases. In the same time, as the European Commission rightly states, biofuels do offer a chance to developing countries who could make use of their climate advantages⁸. However, the opportunities for local use of biofuels and possible negative social and environmental consequences of the conversion of food for fuel should be monitored carefully.

Incoherence

In the European Consensus on Development (2006), the European Commission states: *'It is important that non-development policies assist developing countries' efforts in achieving the Millennium Goals. The EU shall take account of the objectives of development cooperation in all policies that it implements which are likely to affect developing countries'*⁹.

The efforts of the European Union to secure its energy supply, while subsidizing its agriculture, should not go at the expense of its environmental and development objectives. Although various Commissioners have called for the elimination of EU tariffs on biofuel import they are still considerable: biodiesel imports into the EU are subject to an ad valorem duty of 6.5%. Import duties on ethanol vary between €10 and €20/hl, which represents about 50% ad valorem.¹⁰ These barriers to trade deprive developing countries, which are environmentally and economically more efficient producers, of the potential benefits of trade in biofuels. This is clearly inconsistent with the EU's efforts to combat poverty.

Moreover, *'an increase in biofuel production in the EU [...] is particularly likely to result in substitution for food production and so is likely to drive up global food prices and, hence, increase the potential shock for developing country producers and consumers'* according to recent research¹¹. Collective efforts at poverty eradication risk being squandered by a reckless global drive to biofuels.

The recent EU Strategy for Biofuels-impact assessment is very optimistic in saying that the 10% biofuels objective for 2020 will not *'overly stretch the [EU's] land availability'*, as 15% of arable land is *'relatively modest'*¹². Its conclusions largely depend on the availability of efficient and productive *'second-generation'* biofuels, which the EU should indeed stimulate, but unfortunately does not do on a large scale. This even ignores the impact of the 2005 Biomass Action Plan¹³, which requires 8% of the EU energy mix to come from organic material, which also competes for land use. Overall, the massive production of biofuels seems incoherent with the EU's striving to stop the loss of biodiversity and might also endanger Europe's commitment to the achievement of the MDGs.

At this moment, the European Commission reviews the Biofuels Directive of 2003¹⁴ to create a binding target of a 10 % biofuels proportion in the transport sector *'subject to production being sustainable, second-generation biofuels becoming commercially available'*¹⁵. The Commission rightly wants to include criteria on sustainability, but the greenhouse-gas emission reductions as compared with fossil fuels will be meagre at best and underlying social criteria seem to be lacking. Moreover, the proposed European certification system risks becoming a farce if different sets of criteria start to proliferate in different countries, thus allowing substandard producers to move around the system, while putting an administrative burden on benevolent producers.

Enforcement will be problematic, as is shown in the case of certification of wood products. And sustainability criteria fail to address the issue of food versus fuel at all.

Conclusion

In order to realize the potential benefits for developing countries, the European Union should strike a delicate balance between liberal and interventionist policies. It should abolish its subsidies and tariffs on biofuels to enable developing countries to profit from new export opportunities. On the other hand, it should guarantee sustainable and socially responsible production methods in these countries. It should not set mandatory production targets before a global system of minimum standards is up and running. And most importantly, it should compensate those at risk of starvation owing to rising agricultural prices.

Policy Recommendations

- The European Union must ensure that its Energy Policy will not harm the food security of the urban and rural poor in developing countries, whose daily survival is threatened by substantially higher food prices. It should draw up a strategy to ensure the urban and rural poor are compensated for higher food prices before installing mandatory levels of biofuels;
- The European Union should abolish its domestic subsidies and import-tariffs for biofuels, in order to allow developing countries to profit from the (trade) opportunities biofuels offer;
- The European Union should draw up comprehensive sustainability criteria for biofuels, including more ambitious standards for greenhouse-gas reduction – a slight decrease of emissions as compared to fossil fuels is simply not enough – and the protection of biodiversity and carbon rich ecosystems;

- The European Commission should include social criteria in its review of the Biofuels Directive to guarantee that the rural populations who live off marginal lands and forests are not hurt by expanding agricultural production;
- The European Union should stimulate local processing and the use of sustainable biofuels in developing countries. Small-scale farmer cooperatives should be stimulated to prevent the benefits from biofuel production from only falling into the hands of large-plantation owners.

¹ FINANCIAL TIMES, (15 AUGUST 2007).

² REUTERS, BIOFUELS COULD LEAD TO MASS HUNGER DEATHS: UN ENVOY (16 JUNE 2007)

³ DIRECTIVE 2003/96 EC, ENERGY TAXATION DIRECTIVE.

⁴ JANK ET AL, EU AND US POLICIES ON BIOFUELS: POTENTIAL IMPACTS ON DEVELOPING COUNTRIES (2007).

⁵ UN ENERGY, SUSTAINABLE BIOENERGY: A FRAMEWORK FOR DECISION MAKERS (2007)

⁶ OECD/FAO, AGRICULTURAL OUTLOOK, 2007-2016 (2007).

⁷ C. FORD RUNGE AND B. SENAUER, "HOW BIOFUELS COULD STARVE THE POOR" FOREIGN AFFAIRS (MAY/JUNE 2007).

⁸ EU STRATEGY FOR BIOFUELS, COM 34 SETS OUT THAT "BOTH DOMESTIC PRODUCERS AND IMPORTERS SHOULD BENEFIT FROM A GROWING EU MARKET FOR BIOFUELS".

⁹ "THE EUROPEAN CONSENSUS ON DEVELOPMENT" [OFFICIAL JOURNAL C 46/01 OF 24 FEBRUARY 2006].

¹⁰ UN ENERGY, SUSTAINABLE BIOENERGY: A FRAMEWORK FOR DECISION MAKERS (2007).

¹¹ PESKETT ET AL, BIOFUELS, AGRICULTURE AND POVERTY REDUCTION (JUNE 2007).

¹² AN EU STRATEGY FOR BIOFUELS - IMPACT ASSESSMENT - SEC(2006) 142

¹³ COM(2005) 628, BIOMASS ACTION PLAN.

¹⁴ DIRECTIVE 2003/96 EC.

¹⁵ PRESIDENCY CONCLUSIONS BRUSSELS EUROPEAN COUNCIL 8/9 MARCH 2007.



Case 3

Economic Partnership Agreements

The Economic Partnership Agreements (EPAs) are meant to merge development policy and trade policy into a comprehensive framework within the Cotonou agreement. EPA negotiations between the EU and 6 regions of ACP countries are still ongoing and have now entered the final stage. EPAs are scheduled to take effect in January 2008. This case study draws attention to a number of concerns regarding the coherence of Development and Trade policies.

EPAs consist of two main objectives: 1) increased regional integration among countries in ACP sub-regions¹ and 2) the *'smooth and gradual integration of the ACP states into the world economy, with due regard for their political choices and development priorities'*². These are strategic choices made with a view to achieving the Cotonou development objectives (see above).

The objective of regional integration should lead to the formation of several regionally-integrated trade blocs amongst ACP countries, including a Pacific, a Caribbean and 4 African regions³. These free-trade areas are intended to create larger regional markets, deemed necessary for economic development and the attraction of substantial foreign investment. Also, this would give ACP regions a stronger position vis-à-vis the EU.

The integration of the ACP states into the world economy, formulated as the second main objective of the EPAs, is also deemed necessary for their economic development. In order to integrate into the world economy, compliance with the above-mentioned WTO rules is necessary. The progressive elimination of tariffs and non-tariff barriers, both between the ACP countries and between the ACP regions and the EU, will result in the establishment of these regional free-trade areas.

EU-ACP partnership for development

The key objective of the current Development policy of the European Union is to reduce poverty worldwide⁴. The EU recognises that, in order to attain this goal, the regional integration of developing countries into the world economy is of great importance. This is why, in the European Consensus for Development, the EU underlines that it will *'assist developing countries on trade and regional integration through fostering equitable and environmentally sustainable growth, smooth and gradual integration into the world economy, and linking trade and poverty reduction [...]'*⁵.

The European Union has a special relationship with the African, Caribbean and Pacific (ACP) countries, a group of former colonies of EU Member States. Through subsequent associations between the EU and the ACP over the last 50 years, the relations between these two groups of countries have gradually developed into a formalized partnership, resulting in the Cotonou agreement concluded in 2000.

The main objective of this agreement is *'to promote and expedite the economic, cultural and social development of the ACP countries, with a view to contributing to peace and security and to promoting a stable and democratic political environment'*⁶. By this agreement the EU offers its former colonies preferential trade arrangements

as well as substantial financial aid and instruments aimed at promoting democracy and sustainable development.

The Cotonou agreement is characterized by a strong emphasis on the ACP countries' trade regimes, and on efforts to make these compliant with WTO rules. Until the end of 2007, ACP countries benefit from a WTO-waiver, offering them special preferential access to EU markets. After 2007, according to WTO rules non-ACP countries should also receive the same preferential access, thereby setting some of the least developed countries of the ACP group at a loss. In an effort to replace these preferential access arrangements by WTO-compliant arrangements, Economic Partnership Agreements have been set up as the new development tool under the Cotonou agreement.

Development concerns

From a development perspective, the efforts to set up a comprehensive policy framework that – for the first time – aims to integrate trade and development should be welcomed. Also, the very existence of a multilateral platform to negotiate agreements with such promising credentials provides developing countries, in theory, with a stronger position in the area of international trade negotiations. However, there are also grounds for serious concerns regarding the development targets incorporated into the Cotonou agreement and into EPAs.

Lack of a level playing field

First of all, it remains to be seen whether developing countries grouped in ACP regions will actually be able to negotiate advantageous trade conditions with the EU. One could question whether there was a level playing field in these rounds of negotiations, especially since the stakes for ACP countries are much higher than for the EU: some 40-per-cent of ACP trade is directed to-

wards the EU, while EU trade with ACP countries is only of marginal importance and makes up some 3-per-cent of the EU total⁷.

This is also clearly demonstrated by the Common Agricultural Policy of the EU: by means of this set of subsidies European farmers are given a clear head start compared with, for example, African farmers, whose governments are – under pressure from donors such as the World Bank – no longer allowed to provide their local farmers with subsidies. Consequently, local producers often have to compete with heavily-subsidized imports from Europe or other developed economies. Even though most African agricultural products are provided with a zero-tariff access to European markets, one could therefore hardly speak of a level playing field between the EU and ACP in this process.

Composition of trade regions

The proposed formation of ACP regions may pose serious problems, since the countries grouped together in one region may differ widely in terms of the structure of their economies and in terms of their major export products. This has been rightly acknowledged by the European Commission in its very recent report on Policy Coherence for Development⁸. Therefore, the negotiations aimed at abolishing tariffs and non-tariff barriers are likely to cause severe difficulties for one or more countries within one and the same region: While one country within an ACP region might consider a product to be essential for its economic welfare and therefore be willing to earmark it as a sensitive product, another country forming part of the same region might feel otherwise and not want to categorize it as a product needing (temporary) protection.

Another complication is the overlap of the EPA regions and existing free-trade areas, especially in Africa. Critics state that if the formation of these regions in their current form is pursued,

EPAs could very well undermine rather than stimulate this process of regional economic integration⁹.

Flexibility in WTO rules: fair chances for developing countries?

Although from January 2008 WTO rules on trade preferences should apply to all ACP countries, some room for flexibility regarding trade liberalization for the least developed countries remains. As former EU Commissioners Lamy and Fischler stated in their Round for Free letter, the Least Developed Countries (LDCs) would not be obliged to *'open up their markets beyond their existing commitments'*¹⁰.

Article XXIV of the General Agreement on Trade and Tariffs (GATT) refers to flexibility in trade liberalization and to transition periods. It requires that a Free Trade Area (FTA) must cover 'substantially all trade'¹¹. In terms of the WTO, this is normally understood to be some 90-per-cent of all trade between partners. In order to obtain this 90-per-cent level, the EU proposes a complete opening-up of its own market (for 100-per-cent) while allowing developing countries to open up their markets to a limited extent of 80-per-cent. This would allow developing countries to exclude sensitive products from trade liberalization.

From a general point of view, this might sound like a very generous offer from the EU. However, the interpretation of Article XXIV would still imply a very far-reaching trade liberalization for ACP countries with serious setbacks for national industries and sensitive sectors of developing countries' economies.

It first and foremost implies a very static approach: developing countries in the process of setting up national industries might temporarily need to impose higher tariffs in order to give their infant industries a fair chance to take off. This static approach also poses problems in terms of defining what products should

be considered sensitive, since this might change over time as well as between countries forming one trade region. Defining lists of what products should be considered as sensitive therefore becomes a very tricky process. It sets ministers of finance, willing to maintain tariffs on products generating most revenues, against ministers of development keen on the protection of sensitive sectors. It also may lead to divisions between generations, as the sensitive sectors of today will probably be selected, not the infant industries of tomorrow.

Finally, if one considers regions as a whole, keeping up tariffs for 20-per-cent of all traded goods is a very low target. For examples, regions like the ESA or ECOWAS comprise over 15 countries. These include a wide variety of landlocked or small-island countries, agricultural and industrial countries, and even LDC and non-LDC. This adds to the sheer impossibility of reaching agreements on sensitivity.

The EPAs directive¹² and some of the draft EPAs clearly state that apart from the traditional trade in goods, also services and in some cases even capital arrangements will be included in the agreements. This would seriously damage the existing economies of developing countries, in terms of their sensitive local industries and production models.

When taking all these considerations into account, the 80-per-cent liberalization for ACP countries no longer seems to be such a good deal. Everything depends on the very nature of the agreements to be concluded. Earlier trade concessions the EU (and other developed states) made by means of preferential arrangements¹³ offered far more advantageous opportunities for the ACP since they were based on the concept of unilaterality. With the EPAs, developing countries need to open up their markets for the EU as well. For the sake of developing countries,

it would be best to exclude trade in sensitive areas such as capital and services.

Transition periods

Apart from flexibility regarding the extent of market liberalization, there is also concern for transitional periods. The GATT article XXIV cited above calls for a reasonable period of time, within the WTO framework mostly regarded as a 10-to-12-year period. For some developing countries however, a 12-year period seems very short. It is of the utmost interest of developing countries to make sure that European Commissioner Peter Mandelson sticks to his earlier promise: *'We are ready to give serious consideration to transition periods and in some cases very long transition periods - up to 25 years'*¹⁴.

Financial consequences for developing countries

On paper it seems as if the EU, through the EPAs, offers very advantageous trade arrangements to the ACP countries. However, developing countries are obliged to spend large sums of money for the establishment of EPAs. Several research studies indicate that the adjustment costs needed to establish EPAs will total up to an estimated 9.2 billion euros for developing countries¹⁵. Other costs developing countries have to deal with concern the abolition of their own import tariffs. Customs duties form a very important source of foreign exchange for developing countries. As a result of trade liberalization, slowly but surely these revenues will dry up. Although on several occasions, the European Commission has promised ACP countries that the benefits of EPAs will surely make up for these losses, this of course remains to be seen as well.

Incoherence

As stated above, the EPA process is still underway. Before the end of 2007, the negotiating process should be concluded. EPAs could possibly offer ACP and other developing countries opportunities to strengthen their local and regional economies, but caution is needed.

The EU has a legal obligation to take developing countries' interests into account in all policy areas which are likely to affect them¹⁶. This is called Policy Coherence for Development (PCD). The EU has on several occasions expressed its commitment to enhancing PCD. In 2005, the European Commission identified policy coherence as a key tool in accelerating progress toward attaining the Millennium Development Goals.

However, doubts have been raised whether the EPAs will prove to be consistent with some key principles of the EU Development policy. Owing to the WTO-rules and the lack of a level playing field, trade concerns seem to prevail somehow, during the actual negotiation process. This is inconsistent with the EU Development policy.

Secondly, the opening-up of 80-per-cent of ACP markets for EU products might endanger the economic position of the very fragile developing countries and provide a setback compared with the earlier trade regime. This would seriously jeopardize the EU's efforts to enhance the economic development of ACP countries, being incoherent with the EU's Development policy. Although in general Article XXIV of GATT, as stated above, is interpreted as an overall trade liberalization of 90-per-cent, this is by no means obligatory and the EU does have the opportunity to leave room for lesser liberalization demands for developing countries.

Apart from this, if development issues are to be taken seriously as the heart of the EPAs, developing countries should be enabled to change the established periods for transition when evaluations prove that the proposed periods do not suffice.

Finally, it would be contradictory to the EU's earlier commitments towards development funding if money out of the European Development Fund were to be used for the implementation of the EPAs. This would prove another example of incoherent policies regards EPAs en ACP countries.

Policy Recommendations

- Focus ought to stay on the development dimension of the EPAs as they are part of the Cotonou agreement aiming *at the economic, cultural and social development of the ACP countries*;
- The EU should make sure that ACP countries are given freedom to leave sensitive products and sectors, such as investment and services, out of the negotiating process;
- The EU should allow developing countries flexible transition periods for sensitive products and sectors;
- No EDF funding should be used for the implementation of EPAs. Additional funding is needed to ensure a swift transition period;
- If the EU and ACP countries would fail to meet the December 2007 deadline, the EU should guarantee ACP countries an interim regime such as GSP+.
- Once EPAs are established, they should be reviewed periodically so as to make sure that the development dimension of the agreements is taken care of.

■ Example: The need for an interim trade regime

Already early on in the process of negotiations, critics called on the EU to take a realistic stance regarding the deadline of the EPA negotiations. The EU is persisting with the 2007 deadline and has repeatedly argued that if the deadline fails to be met, trade preferences for ACP countries will fall back to the GSP regime. According to extensive research by NGOs such as Oxfam International and the Third World Network, the best solution would be to fall back on the GSP+ trade regime which offers almost the same trade advantages as the current ACP regime. However, not all ACP countries qualify for GSP+, so serious setbacks are still a threat.

On behalf of all countries forming the ESA group, Kenyan Trade minister Kituyi has launched an appeal to Trade Commissioner Mandelson to guarantee preferential access if the EPA negotiations are concluded in time. An alternative regime of trade preferences, such as for example GSP+, is needed. Otherwise the consequences for Kenyan horticulture would be disastrous and an entire sector that offers employment to thousands of Kenyans would be destroyed.

According to the Flower Council & Fresh Produce Exporters Association of Kenya, "If no agreement is reached by the end of the year, the horticultural export produce will be liable for duties and taxation between 5 and 11%".

- ¹ COTONOU AGREEMENT, ARTICLE 35(2).
- ² COTONOU AGREEMENT, ARTICLE 34.
- ³ THE AFRICAN REGIONS CONSIST OF: A WEST-AFRICAN REGION (ECOWAS), A CENTRAL AFRICAN REGION (CEMAC), EAST AND SOUTHERN AFRICAN REGION (ESA) AND SOUTHERN AFRICAN REGIONS (BNLS). FURTHER READING: ERO/FOS EN 11.11.11. VRAGEN EN ANTWOORDEN OVER ECONOMISCHE PARTNERSCHAP AKKOORDEN (EPAS) (23 NOVEMBER 2005) 2-4.
- ⁴ ART. 177 EC TREATY
- ⁵ EUROPEAN CONSENSUS ON DEVELOPMENT, (DECEMBER 2005) 21.
- ⁶ COTONOU AGREEMENT, ARTICLE 1.
- ⁷ [HTTP://EC.EUROPA.EU/TRADE/ISSUES/BILATERAL/REGIONS/ACP/KEYASPECTS_EN.HTM](http://ec.europa.eu/trade/issues/bilateral/regions/ACP/keyaspects_en.htm)
- ⁸ COMMISSION OF THE EUROPEAN COMMUNITIES, COMMISSION STAFF WORKING PAPER ACCOMPANYING THE COMMISSION WORKING PAPER "EU REPORT ON POLICY COHERENCE FOR DEVELOPMENT" (COM 2007 545 FINAL) 26-27.
- ⁹ ERO/FOS EN 11.11.11. VRAGEN EN ANTWOORDEN OVER ECONOMISCHE PARTNERSCHAP AKKOORDEN (EPAS) (23 NOVEMBER 2005) 9-10
- ¹⁰ EUROPEAN COMMISSION, ROUND FOR FREE LETTER, [HTTP://TRADE.EC.EUROPA.EU/DOCLIB/DOCS/2004/MAY/TRADOC_117097.PDF](http://trade.ec.europa.eu/doclib/docs/2004/may/tradoc_117097.pdf)
- ¹¹ ARTICLE XXIV GATT.
- ¹² DIRECTIVES FOR THE NEGOTIATIONS OF ECONOMIC PARTNERSHIP AGREEMENTS WITH ACP COUNTRIES AND REGIONS, CHAPTER 4 (TRADE IN SERVICES).
- ¹³ ONE OF THESE ARRANGEMENTS IS 'EVERYTHING BUT ARMS' (EBA), GIVING THE LEAST DEVELOPED COUNTRIES TARIFF- AND QUOTA-FREE ACCESS TO EU MARKETS.
- ¹⁴ EUROPEAN PARLIAMENT DEBATE ON ECONOMIC PARTNERSHIP AGREEMENTS, REMARKS BY PETER MANDELSON, STRASBOURG, 22 MAY 2007: [HTTP://EC.EUROPA.EU/COMMISSION_BARROSO/MANDELSON/SPEECHES_ARTICLES/SPPM149_EN.HTM](http://ec.europa.eu/commission_barroso/mandelson/speeches_articles/sppm149_en.htm).
- ¹⁵ OXFAM, UNEQUAL PARTNERS: HOW EU-ACP ECONOMIC PARTNERSHIP AGREEMENTS (EPAS) COULD HARM THE DEVELOPMENT PROSPECTS OF MANY OF THE WORLD'S POOREST COUNTRIES (SEPTEMBER 2006) 9.
- ¹⁶ ART. 178 EC TREATY.



Case 4

Fisheries Partnership Agreements

More than 150 million poor people in the world depend directly on fisheries. In many poor countries, fish is a fundamental part of food security. But overexploitation is threatening the livelihoods of the poorest. The European Union, with the third largest fishing fleet in the world, has a responsibility to take. More than a billion people living in 40 developing countries risk being deprived of their main source of protein because of the overexploitation of fisheries reserves associated with an increase in export demand for animal foods and oils, to the detriment of domestic consumption.¹

Development Policy Goal

The central aim of the current Development Policy of the European Union is to reduce poverty worldwide². The European Consensus on Development (2006) states: *'It is important that non-development policies assist developing countries' efforts in achieving the Millennium Goals. The EU shall take account of the objectives of development cooperation in all policies that it implements which are likely to affect developing countries'*³

Since the fisheries sector could have a significant positive effect in achieving poverty reduction, fisheries are part of one of the sectoral policies of the Development Policy. The guiding principle of development cooperation in fisheries is *'to contribute to sustain-*

*able benefits for sector stakeholders in developing countries without further degradation of the natural environment'*⁴. Therefore in its Development Policy the EU explicitly promises that it will *'pay particular attention to the development objectives of the countries with which the Community has made or will make fisheries agreements'*⁵.

European Fisheries Policy and Trade Policy

Since 1979 the European Union has concluded fisheries agreements with thirty countries, of which twenty were developing countries. These Fisheries Agreements have been fiercely criticized for various reasons ranging from overexploitation of natural resources to conflicts with local fisheries and harm to local fisheries industries. European vessels have had a detrimental effect on fish stocks in ACP countries. It is estimated that the amount of fish in West African waters has declined by 50-per-cent over the past three decades⁶.

The legal basis of fisheries agreements lies in the United Nations Convention on the Law of the Sea (UNCLOS). This convention was signed in 1982 after global fish stocks had started to decline dramatically to stop countries from simply entering other countries' waters after having depleted their own fish resources. Each coastal state got control over the waters within 200 sea miles of its coast, the so-called Exclusive Economic Zone (EEZ). This effectively put 90-per-cent of the global fishing grounds under the control of coastal States. UNCLOS insisted, however, that coastal states which did not have the capacity to exploit their resources fully would give other states access to their surplus⁷. A key objective of the Common Fisheries Policy (CFP) of the European Union is *'to maintain the European presence in distant fisheries and to protect European fisheries sector interests'*⁸. Fisheries Agreements have been a crucial means to achieve this goal: they have taken up almost 30% of the CFP budget from 1993

to 2000. European vessels got access to the aquatic resources of (mostly) developing countries, in exchange for financial compensation to their governments. Fisheries Agreements have been used to provide hidden subsidies to the EU fleet, through the sale of licences to exploit fishing grounds under the agreements at below market prices⁹. This practice hurts local fishermen, who have to compete with richer subsidized European rivals.

The original Fisheries Agreements have been heavily criticized for their lack of sustainability and negative impact on the development of local fisheries. A report commissioned by the EU concluded bluntly that “under current conditions, fisheries agreements and the activities related to them are not sustainable.”¹⁰ With the revised Common Fisheries Policy (2002) and the introduction of the Fisheries Partnership Agreements (FPAs), the EU has started to go beyond the previous Fisheries Agreements. It has taken various important development issues into account by aiming to promote the sustainability of fisheries, directly assisting local fisheries and stimulating joint ventures with local processing industry. Owing to inadequate stock assessments and the enforcement of regulations, these efforts will likely prove to be an empty shell. Although some real progress has been made, these agreements still cause overexploitation of fish stocks, which jeopardizes the livelihood of current and future generations of local fishermen. And the highest added value – which lies in the processing industry – still accrues to European countries, thereby depriving ACP countries of vital development opportunities.

The EU currently has bilateral agreements with 16 ACP countries. In March 2006 the first FPA, with the Solomon Islands, came into force. The last old-style Fisheries Agreements that are still in force, with Mauritius and Guinea, are to be replaced by FPAs by 2008. Current payments of the EU under its bilateral Fisheries Agreements (FAs) with ACP countries amount to 146

million euros per year, down from 290 million euros in 1997. The total catch value of EU vessels involved is around 2 billion euros, making up 20-per-cent of the total European catch.”

As FPAs have only recently come into force, it is impossible at this stage to evaluate their impact with any certainty. The fact remains, however, that these agreements still contain two competing goals: the implementation of sustainable fisheries and, at the same time, the protection of the interests of its distant-water fishing fleet¹². These goals are hard to reconcile but the Common Fisheries Policy indicates a priority: ‘The Community should first of all defend the legitimate objectives of its own fishing industry’¹³.

Incoherence

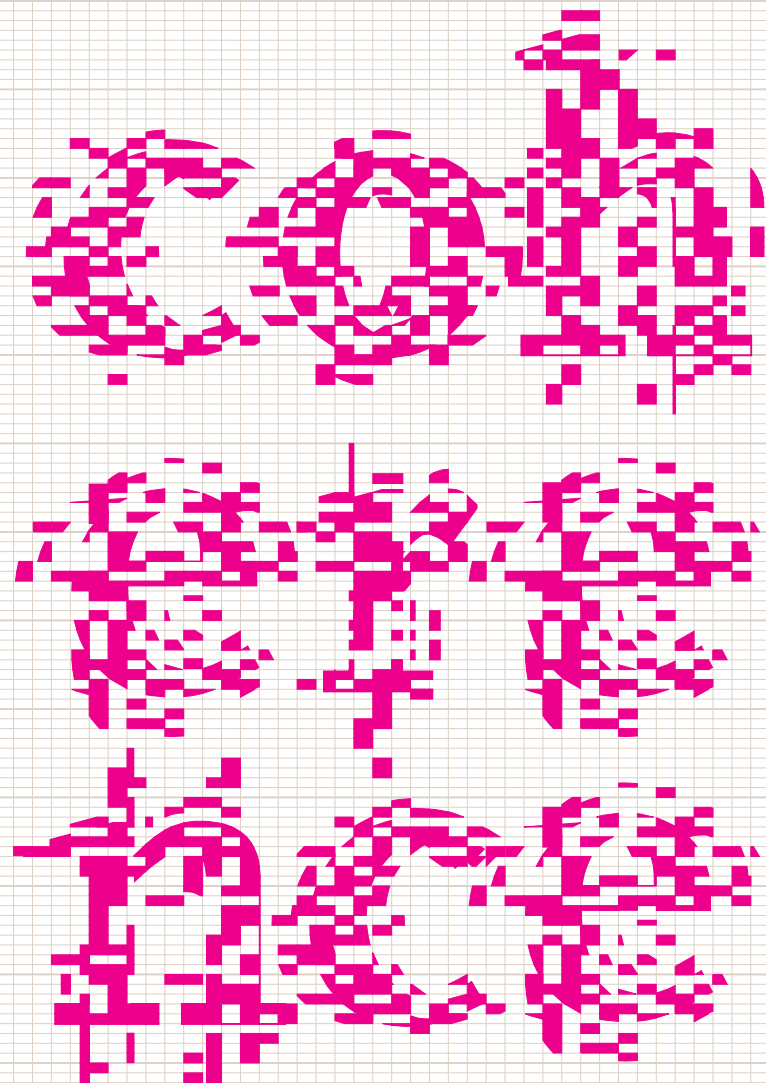
With respect to the previous Fisheries Agreements, some real progress has been made, especially concerning illegal fishing and single-species agreements, the latter being less damaging for the environment than mixed-species agreements. However, it is likely that many of the intended improvements will fail to materialize. In the end, FPAs do not differ much from the previous FAs.¹⁴ Overexploitation of fish stocks will still occur, as reliable scientific data to determine a sustainable maximum catch are often lacking. Local fishermen do not have priority access to fishing grounds and will still be harmed by subsidized competition from European vessels. And most importantly, the local processing industry, which has the highest potential added value in the production chain, receives little support. In general only 10-per-cent of the employment and added value from fisheries agreements stays in the ACP country, while 90-per-cent goes to the EU distant fleet and processing industry.¹⁵ This suggests that the EU still sees Fisheries Partnership Agreements as commercial agreements rather than as a means to achieve development goals.

It should be pointed out however, that from a development perspective, in spite of their defects, FPAs are largely preferable to private arrangements between developing countries and companies. FPAs are a better deal for development than the agreements which are offered by other nations, such as China.¹⁶

Policy Recommendations

- The EU should respect the surplus principle as concluded in the UNCLOS; the EU should not fish in countries where a surplus is not proved and the prevention of overexploitation cannot be guaranteed;
- Before an agreement is concluded or extended, there should be reliable data on the maximum sustainable amount of catch and the capacity of local fleet. No fishing should take place in the absence of scientific stock-assessment data;
- In measuring the total allowable catch (TAC), FPAs should do away with the obsolete measurement in gross registered tonnage (GRT) – the internal volume of a ship.
- The European Union has to make more of an effort to let local processing industry develop in developing countries;
- Priority access should be reserved for the national fleet of poor coastal states, especially to small scale and artisan fishermen;
- The EU should step up efforts to help ACP countries develop effective national management systems, with supporting policies and institutions, in order to prevent overexploitation. At present, effective control is often lacking in poor countries;
- The EU should raise the price of fishing licences to its fleet, in order to abort a hidden subsidy that hurts poor fishermen.

- ¹ UNDP, HUMAN DEVELOPMENT REPORT 2001. MAKING NEW TECHNOLOGIES WORK FOR HUMAN DEVELOPMENT (WASHINGTON 2001).
- ² 177 (EX 130U) COMMUNITY POLICY IN THE SPHERE OF DEVELOPMENT COOPERATION, "WHICH SHALL BE COMPLEMENTARY TO THE POLICIES PURSUED BY THE MEMBER STATES," SHALL FOSTER "THE SUSTAINABLE ECONOMIC AND SOCIAL DEVELOPMENT OF THE DEVELOPING COUNTRIES, AND MORE PARTICULARLY THE MOST DISADVANTAGED AMONG THEM; THE INTEGRATION OF THE DEVELOPING COUNTRIES INTO THE WORLD ECONOMY; THE CAMPAIGN AGAINST POVERTY..."
- ³ "THE EUROPEAN CONSENSUS ON DEVELOPMENT"
[OFFICIAL JOURNAL C 46/01 OF 24 FEBRUARY 2006].
- ⁴ FISHERIES COOPERATION WITH DEVELOPING COUNTRIES
- ⁵ "THE EUROPEAN CONSENSUS ON DEVELOPMENT"
[OFFICIAL JOURNAL C 46/01 OF 24 FEBRUARY 2006].
- ⁶ WALL STREET JOURNAL, GLOBAL FISHING TRADE DEPLETES AFRICAN WATERS (23 JULY 2007).
- ⁷ "THE COASTAL STATE SHALL DETERMINE ITS CAPACITY TO HARVEST THE LIVING RESOURCES OF THE EXCLUSIVE ECONOMIC ZONE. WHERE THE COASTAL STATE DOES NOT HAVE THE CAPACITY TO HARVEST THE ENTIRE ALLOWABLE CATCH, IT SHALL () GIVE OTHER STATES ACCESS TO THE SURPLUS OF THE ALLOWABLE CATCH, HAVING PARTICULAR REGARD TO THE PROVISIONS OF ARTICLES 69 AND 70, ESPECIALLY IN RELATION TO THE DEVELOPING STATES MENTIONED THEREIN." (UNCLOS, ARTICLE 62)
- ⁸ COM (2002) 0637 FINAL: 5
- ⁹ ADE, EVALUATION OF THE RELATIONSHIP BETWEEN COUNTRY PROGRAMMES AND FISHERIES AGREEMENTS, FINAL REPORT (2002).
- ¹⁰ IBIDEM.
- ¹¹ MRAG, COMPARATIVE STUDY OF THE IMPACT OF FISHERIES PARTNERSHIP AGREEMENTS (2007)
- ¹² "THE UNION WISHES TO IMPLEMENT SUSTAINABLE FISHERIES WHILE PROTECTING THE INTERESTS OF ITS DISTANT-WATER FISHING FLEET" FACT SHEET.
- ¹³ COM (2002) 0637 FINAL.
- ¹⁴ L. BARTELS, L. DE LA FAYETTE ET AL, POLICY COHERENCE FOR DEVELOPMENT AND THE EFFECT OF EU FISHERIES POLICIES ON DEVELOPMENT IN WEST AFRICA (2007).
- ¹⁵ MWIKYA, S. M., FISHERIES ACCESS AGREEMENTS: TRADE AND DEVELOPMENT ISSUES. (ICTSD, 2006).
- ¹⁶ MRAG, COMPARATIVE STUDY OF THE IMPACT OF FISHERIES PARTNERSHIP AGREEMENTS(2007).



Case 5

Fisheries trade

A number of manifest incoherencies can be found in the practice of processing and exporting fish and fisheries products from the ACP to the European market. These incoherencies result in impediments to trade in fisheries products for ACP countries. This case study will elaborate on incoherencies related specifically to the application of the current Rules of Origin and the EU's sanitary and phytosanitary (SPS) standards.

Fisheries trade

Fish is a highly-traded commodity. Approximately 37-per-cent of all worldwide catches are traded internationally¹. Also, nearly half originates in developing countries and 85% of the total is destined for developed countries². Fish is also a highly political commodity. Because European consumers' demands for fish exceed the stocks available in European Union (EU) waters, the EU needs to negotiate access to third countries' stocks. As these third countries are often ACP³ countries for whom the fisheries sector is of major importance, stakes in fishing trade are high.

Fisheries products are traded under the Cotonou Agreement, a special trade arrangement between the EU and the ACP countries, providing the latter with preferential access to the EU market. Fisheries trade is subject to international and WTO regulations. This is why, generally speaking, trade in fisheries products is not part of the bilateral access agreements (Fisheries Partnership Agreements – FPAs) negotiated between the EU and individual

ACP countries. Trade in fisheries products between the EU and the ACP is included in the second pillar of the EU's Common Fisheries Policy (CFP), the same pillar that regulates access of ACP fisheries products to the European market.

Development Policy

The key objective of the current Development Policy of the European Union is to reduce poverty worldwide⁴. The EU recognizes that, in order to attain this goal, the regional integration, of local ACP communities into the world economy is of great importance. This is why the EU underlines that it will '*assist developing countries on trade and regional integration through fostering equitable and environmentally sustainable growth, smooth and gradual integration into the world economy, and linking trade and poverty reduction [...]*'⁵.

The fisheries sector has the potential to play a significant positive role in reducing poverty⁶. For a great number of ACP countries, trade in fish and fisheries products constitutes a vital source of income, and provides employment in local fisheries communities.

Common Fisheries Policy

In principle, a third country can only offer access to others when its own fleet does not have the capacity to fish the total allowable catch of its fish stock. Others, such as the European Union, are then allowed to catch the available surplus of fish. These vessels have licences under the access agreements (FPAs) signed with the European Union.

Obviously, because of a lack of fishing capacity, for instance, the presence of European vessels in third countries' waters can be in itself desirable, not in the least because the financial compensation included in the access agreements are a valuable source

of income for some ACP countries. Nevertheless, there have been many instances where EU-ACP fisheries relations have resulted in situations that harm the economies of developing countries.

Incoherencies

Two types of incoherencies originate specifically from the following trade-related issues:

1. Trade liberalization

Since 1971 the EU has granted non-reciprocal trade preferences to developing countries.⁷ The current scheme of tariff preferences (under the Cotonou agreement, applicable up to 31 December 2008) includes a special incentive arrangement for sustainable development and good governance.

Under this and earlier arrangements, ACP exports to the EU have benefited from special, non-reciprocal, tariff-free access to the European market⁸. As a result, the ACP status of Kenya and Madagascar, for example, and the resultant preferential duty status enables these countries to compete as a tuna processor against low-cost operators from non-ACP countries such as Thailand⁹.

The trade arrangements under the Cotonou Agreement as a whole have given the ACP a considerable competitive advantage. However, mainly owing to the trade liberalization policies of the WTO, these advantageous tariff arrangements are subject to erosion. Consequently, soon the ACP countries will no longer be able to benefit from preferential access. The ACP countries must be compensated for this loss of competitive advantage.

2. Rules of origin

Pressure on their exports to the EU is increased even more because they have to comply with the **Rules of Origin (RoO)**

and stringent **sanitary and phytosanitary (SPS) standards**. The ACP have to comply with the rules of origin applied to fisheries products. In practice, this means that the fisheries products have to be 'wholly obtained' in the ACP country, as defined in article 3 of the Cotonou Agreement (Protocol I, Annexe V). The main criteria for 'originating products' are: registration and flag of origin, ownership and crewing arrangements onboard fishing vessels.¹⁰

The rules of origin have led to friction in ACP-EU fisheries relations, because of the way these rules are defined and applied. ACP countries often simply do not have the means to acquire and support their own industrial tuna fleets, for example. One industrial purse seiner costs at least USD20 million. ACP however, cannot afford to subsidise their fishing industry, like the EU and other distant-water fishing nations. As a consequence, the strict application of the Rules of Origin effectively forces the ACP tuna processors to purchase tuna from high-priced EU suppliers¹¹ and prevents them from purchasing fish from other countries' vessels that may be licensed to fish in their waters.

This creates an incentive for ACP countries to grant EU vessels preferential access to their Exclusive Economic Zone so as to ensure that their tuna canneries are supplied with 'originating' tuna. The tuna is caught by European vessels, and sold to local, ACP processors and factories. Subsequently, the processed and canned tuna is exported to the EU. This leads to a remarkable situation: the preferential access offered to the ACP countries for the processed and canned tuna they export to the EU can be considered as a form of upstream subsidy to EU vessels rather than a trade concession to ACP countries.¹² This is clearly an incoherent situation that harms developing countries and contradicts development-policy objectives.

3. Non-tariff barriers to trade

A third example of stringent EU standards that results in a situation which impacts negatively on developing countries is the **sanitary and phytosanitary (SPS) agreement** established by the WTO. The EU scientific committee on food has derived strict food-safety standards from this agreement. Of course, first and foremost, these stringent measures are applied with the aim of protecting European consumers from the potential health risks associated with fisheries products. In those measures, however, lies the risk of raising unintentional trade barriers to trading partners from developing countries, providing considerable constraints to market access for ACP exporters.

■ The example of the Seychelles

In 2002, for example, the maximum acceptable level of cadmium in swordfish was set at 0.05 mg/kg. For the Seychelles, this excessively low level led to a clearly incoherent situation: The EC had set levels of cadmium on certain foods such as crustaceans at 0.5 mg/kg, bivalve molluscs at 1.0 mg/kg, kidney of cattle, sheep, pigs and poultry at 1.0 mg/kg, and liver of cattle, sheep, pigs and poultry at 0.5 mg/kg etc. The level set for some of these foodstuffs is 20 times higher than the level set for swordfish, yet these items are consumed more than swordfish.

The Seychelles government highlighted the fact that the fishing agreements between the EC and several countries of the Western Indian Ocean including the Seychelles allow EU surface long liners to catch swordfish, the same swordfish which, because of the regulation concerning cadmium, the Seychelles cannot export to the EU. There are at least three EU countries whose vessels are fishing for swordfish in the Western Indian Ocean³.

In December of the year 2005, this situation was remedied by the European Commission. Soon after, Regulation 1881/2006 changed the maximum amount of cadmium in swordfish to a more reasonable level, although still well under the maximum acceptable level for other products (e.g. liver, oysters, etc.).

This development, of course, is to be applauded. In the meantime, however, over a year had passed in which the Seychelles could not export their swordfish catches to the EU. As a consequence, a large number of fishermen and small- and medium-sized firms in the Seychelles had either gone out of business or started targeting sea-cucumbers and shark fins for East Asian Markets. Thus, the EU non-trade barrier (the fixed maximum level of cadmium) acted to shift fishing effort to catch different and unsustainable marine resources. This, also, is clearly incoherent and impedes sustainable-development-policy goals.

SOURCES: BÉATRICE GOREZ, FISHERIES EXECUTIVE BRIEF 'MARKET ACCESS; TARIFF AND NON-TARIFF ASPECTS', CFFA AND POSITION PAPER BY THE SEYCHELLES ON THE LEVEL OF CADMIUM IN SWORDFISH SET BY THE EC, 2002.

It is clear that the EU needs to apply (stringent) SPS measures to protect its citizens, but compliance with this complex set of regulations presents a huge challenge to fish-exporting ACP countries. Above all, there are cost implications, in terms of investment in new technology, infrastructure and institutions. As most producers in the ACP are small- and medium-scale producers and artisan fishermen, the costs of compliance with these sets of standards are too high.

4. EU Market Access

A fourth aspect of EU ACP fisheries trade is the actual entering of the EU market of ACP catches. Third-country imports are checked at the EU's external borders. The EU regulates the

certification and identification measures. Member States are responsible for the execution of these regulations through actual border inspections. The analytical checks, meaning the checking of the actual quality of the fish in terms of contaminants or pesticides, remain a matter entirely for the Member States. What is especially striking about this is that frozen or processed fish are subject to certification and identification procedures, whereas fresh fish can be landed immediately.

Now, if one takes into consideration that catches by European fishermen *are not even considered to be imports* (meaning that the fish caught by a European vessel are *presumed* to comply with European standards) one can only conclude that there is not only a gap in the certification system. More importantly still, this practice provides direct proof of discrimination against third-country imports.

In addition, according to several tuna-industry representatives in ACP countries, the EU enforces SPS requirements regarding EU-approved vessels (e.g. compliance with SPS and related traceability regulations) far more rigorously in relation to the ACP than it does in relation to for example Thailand¹⁴.

After a safeguard or extra regulation is put into place, countries that are signatories of the SPS agreement (and a lot of ACP countries are) can report the SPS notification to the EU Food and Veterinary Office if they believe the measure is unfair and will harm their country. In reality, however, no ACP country has ever filed a complaint, as they simply do not have the money or the technical know-how to do sufficient research in order to back up any claim¹⁵. In addition, a WTO SPS dispute would lead to diplomatic problems in other areas.

Conclusion

Considering the interdependence of the EU and the ACP countries, many European Union policies have a profound impact on developing countries. EU-ACP fisheries relations are no exception. The EU is increasingly aware that development cooperation alone cannot meet the needs of developing countries.

However, the examples provided above show that there are severe restrictions on market access for developing countries' fisheries products, which are harmful to local fisheries communities and their economies in the ACP. A revision of the current system of Rules of Origin is much needed – the system should be made less complex and strict in order to function better and not to overstep the mark. Non-tariff barriers that result from the strict application of SPS standards, as the example of the Seychelles in 2004 (see box 1) illustrates very clearly, are not only unfair and harmful for local economies, but are also detrimental to vulnerable habitats and the environment.

Since DG Fisheries claims to strive for sustainable fisheries, it should live up to these commitments by providing additional funds for capacity building of local food safety authorities under the SFP programme. DG Fisheries and DG SANCO should not point at DG Development or DG EuropeAid when it comes to developing countries' interests and claim it is not their responsibility. It is time for the European Union to live up to its own commitments regarding policy coherence for development and to keep at least their end of the deal.

Policy recommendations

- The EU should compensate ACP countries for any loss of competitive advantage and loss of income from fisheries exports to the EU because of unfair application of SPS standards.
- The current practice of virtually forcing ACP tuna processors to buy from high-priced EU suppliers as a result of the current Rules of Origin system, resulting in a complete loss of comparative advantage, should end.
- Low-cost loans should be made available to small-scale fish producers in order to ensure that high EU food safety standards and other measures are not implemented in ways that undermine poverty-eradication efforts by systematically placing a disproportionate burden on small-scale producers.
- Extra effort should be put into capacity building of local food safety authorities and training the personnel of control bodies and industry, in order to meet the sanitary standards the EU requires for the import of fishery products.
- The way certification and identification procedures and regulations are carried out at Member States' national borders should be examined carefully in order to rule out any possibility of discrimination against third countries' imports.

■ Example: EU Capacity Building

The aim of the European Union, from a development as well as from a food-safety point of view, is to stimulate countries to set up their own, well-functioning food-safety authorities so as to be able to meet the EU food-safety requirements. For this purpose, a few years ago, the Project Management Unit for the Strengthening of Fishery Products (SFP) was set up. 10 million euros are invested in this five-year SFP programme, focused on institutional capacity building, knowledge building and staff-training.

By recruiting and training local inspectors, this programme aims to provide the ACP countries with technical assistance that will help them live up to SPS standards and comply with food-safety regulations. Furthermore, SFP informs local industries about the measures applicable to export products.

Although SFP's activities are much-needed and in theory appropriate, in practice SFP faces major difficulties in realizing its aims. NGOs such as the Coalition for Fair Fisheries Arrangements (CFFA) warn that the ACP fisheries sector, in particular artisan fishermen, find it difficult to approach SFP for assistance. SFP performs poorly in communicating to target ACP countries. Other ACP countries (both governments and private sector) complain about bureaucratic procedures to apply for assistance. The funding procedure is far too complex and longwinded. Also, SFP is deeply understaffed.

As a result, NGOs have pointed to weaknesses in institutional set-up of the project, a slow rate of identification, design and launch of local projects. On the other hand, SFP points to complications concerning the local competent authorities, who commit only partly to fruitful cooperation with SFP.

SOURCE: PAPER ON SANITARY MEASURES, TRADE BARRIERS AND MARKET ACCESS TO THE EU FOR FISHERY PRODUCTS, NETHERLANDS MINISTRY FOR FOREIGN AFFAIRS, APRIL 2005.

- ¹ MARC ALLAIN, TRADING AWAY OUR OCEANS - REPORT, GREENPEACE, JANUARY 2007
- ² DFID
- ³ AFRICAN, CARIBBEAN AND PACIFIC COUNTRIES, MOSTLY FORMER COLONIES OF EUROPEAN MEMBER STATES
- ⁴ ART. 177 EC TREATY
- ⁵ EUROPEAN CONSENSUS ON DEVELOPMENT, DECEMBER 2005, P.21
- ⁶ EUROPEAN CONSENSUS ON DEVELOPMENT, DECEMBER 2005
- ⁷ THIS WAS UNDER THE EU'S GSP (WHICH STARTED IN 1971 - PRIOR TO THIS, RECIPROCAL PREFERENCES WERE PROVIDED (MAINLY TO FRANCOPHONE AFRICA) UNDER THE YAOUNDE CONVENTIONS - YAOUNDE I 1963-1969 AND YAOUNDE II 1969-1975.
- ⁸ GÓREZ, BÉATRICE, FISHERIES EXECUTIVE BRIEF 'MARKET ACCESS; TARIFF AND NON-TARIFF ASPECTS, SOURCE: CFA

- ⁹ PHILIPPE MICHAUD, EXPERIENCE FROM THE BILATERAL FISHERIES ACCESS AGREEMENT, IMPACT ON THE ECONOMY AND IMPLICATIONS FOR THE SEYCHELLES OF THE OUTCOME OF THE WTO MEDIATION ON THE CASE OF TUNA BETWEEN THE EU AND THAILAND AND THE PHILIPPINES, 2003
- ¹⁰ PAPER ON SANITARY MEASURES, TRADE BARRIERS AND MARKET ACCESS TO THE EU FOR FISHERY PRODUCTS, NETHERLANDS MINISTRY FOR FOREIGN AFFAIRS, APRIL 2005, AND GÓREZ, BÉATRICE, FISHERIES EXECUTIVE BRIEF 'MARKET ACCESS; TARIFF AND NON-TARIFF ASPECTS, SOURCE: CFA
- ¹¹ BLOCK, LINDSEY AND ROMAN GRYNBERG, 'EU RULES OF ORIGIN FOR ACP TUNA PRODUCTS (HS CHAPTER 16.04)', MIMEO PREPARED FOR THE COMMONWEALTH SECRETARIAT (LONDON, 2004)
- ¹² IBIDEM.
- ¹³ POSITION PAPER BY THE SEYCHELLES ON THE LEVEL OF CADMIUM IN SWORDFISH SET BY THE EC (2002).
- ¹⁴ L. CAMPLING AND M. DOHERTY (2007), A COMPARATIVE ANALYSIS OF COST STRUCTURE AND SANITARY AND PHYTO-SANITARY (SPS) ISSUES IN CANNED TUNA PRODUCTION IN MAURITIUS/THE SEYCHELLES AND THAILAND: IS THERE A LEVEL PLAYING FIELD? PRESENTED AT THE EAST AND SOUTHERN AFRICA (ESA) DEDICATED SESSION ON FISHERIES, 23-24 JULY 2007, LE MORNE, MAURITIUS.
- ¹⁵ EVEN IN SITUATIONS WHERE TECHNICALKNOW-HOW IN THE ACP IS PRESENT, RELATIVE TO THE ARMYOF EU LAWYERSAND TRADE ECONOMISTS, THE DISPUTE WOULD NEVER BE A FAIR FIGHT.

coherence

Case 6

Illegal logging

Illegal logging and global trade in illegal timber are widely recognized as key threats to forests, biodiversity and development worldwide. The European Union (EU) is a major world consumer of illegally logged timber and therefore plays a key role in the protection of biodiversity and the fight against illegal logging. Unfortunately, up until now, EU policies in this field show a lack of coherence. International goals in terms of reducing deforestation, biodiversity loss and poverty will not be reached if the EU does not take effective action to stop illegal timber and support sustainable forest management worldwide.

Illegal logging is widespread in many timber-producing countries where governance is weak and corruption omnipresent. By logging in protected areas or outside allowed quotas, by processing the logs without acquiring licences, or by exporting timber without paying export duties, companies are able to generate much greater profits for themselves than by behaving legally.

Illegal logging results in severe environmental and social impacts. First of all, it leads to unsustainable and unfair use of forests with often irreparable effects of deforestation. Secondly, threatened forests are home to an estimated sixty million indigenous people almost wholly dependent on forests¹. Forests play an important cultural and social role in many countries. They provide important goods and services, including wood energy, food and other non-wood products, for 1.2 billion people of whom approximately 90-per-cent live below the poverty line².

According to estimates by the World Bank, illegal logging deprives governments of some of the poorest countries in the world of at least US\$ 15 billion per year in lost revenue.³ This concerns huge amounts of tax revenues desperately needed to invest in health, education and infrastructure. Illegal logging has also promoted corruption, undermined the rule of law and good governance, and created social conflict among indigenous and local populations leading to violence, crime and human-rights abuses. Although the responsibility for stopping illegal logging is primarily in the hands of wood-producing countries, major timber-consuming countries such as the EU Member States share responsibility for fighting illegal logging and its severe environmental and social impacts.

European Environment Policy - FLEGT

The EU has put sustainable development and especially deforestation prominently on its political agenda. On several occasions the EU has shown its commitment to halt the global forest crisis.⁴ For instance, at the 2002 Johannesburg World Summit on Sustainable Development, halting illegal logging was put forth as a major priority to help stop the rapid loss of the world's forests.⁵

The EU, as a major global consumer of timber and wood products, shares responsibility for illegal and unsustainable forest practices in timber producing countries. The EU has recognized the seriousness and complexity of the problem and therefore it has adopted the Forest Law Enforcement Action Plan (FLEGT, 2003) as part of the EU's response to the call for action at the World Summit on Sustainable Development⁶.

The FLEGT Action Plan focuses on improving governance in timber-producing countries, supporting legislative and regulatory reforms and establishing systems to stop illegal timber from entering EU markets. The focus on legality is not an end in itself, but FLEGT intends to work with partner countries to improve governance and aims to support sustainable forest management worldwide. The fact that the approach to defining legality taken by the EU is based on the three pillars (economic, environmental and social objectives) of sustainable forest management shows a willingness to close the gap between legality and sustainability⁷. Key elements of FLEGT are the following:

- *Negotiation of FLEGT Voluntary Partnership Agreements with producer countries*
- *Examination of EU Member States' legislation and consideration of additional legislative options to prohibit import of illegal timber*
- *Encouragement of private-sector initiatives to exclude illegal timber*
- *Promotion of public procurement policies*

Negotiation of Voluntary Partnership Agreements

At the core of the FLEGT Action Plan are negotiations of Voluntary Partnership Agreements (VPAs) between the EU and wood-producing countries. These include a licensing system designed to identify legal products and license them for import to the EU (unlicensed products from VPA countries will therefore be denied entry), combined with capacity-building assistance to help the partner country to set up the licensing scheme, to improve law enforcement and, where necessary, to reform its laws. As of mid-2007 negotiations with several major wood-producing countries such as Ghana, Indonesia and Malaysia were underway and other countries have expressed an interest.

Examination of EU Member States' legislation and additional options

Another element of FLEGT includes the examination of EU Member States' legislation that might be of value to control the illegal trade in timber and wood products. Analysis showed that although some of these laws are probably applicable, there are major practical difficulties, for instance in obtaining evidence of the original crime from the country of origin and tracking the movement of the products thereafter⁸.

Next to this, as part of the measures within FLEGT, the European Commission proposed to 'review options for, and consider the impact of, further measures to support the FLEGT Action Plan, including, in the absence of international progress, the feasibility of legislation to control imports of illegally harvested timber, and report back to the council on this work during 2004⁹'. These include a requirement for proof of legality for all timber placed on the market or an import ban on illegal timber.

Encouragement of private-sector initiatives to exclude illegal timber

Encouragement of a strong market for certified sustainable wood products is an excellent tool for creating market incentives and interesting timber producers in producing sustainable (socially and environmentally) wood. The private sector has a key role to play and can exert a direct and positive influence through its network from forests to the market. Partly in response to government regulation and sometimes as a result of direct consumer and NGO pressure, many private-sector initiatives have been taken to exclude illegal products from their supply chains.

Promotion of public procurement policies

Public Procurement can also influence the market¹⁰. It is estimated that the public authorities in the European Union spend around 1,500 billion euros annually on buying supplies, services

and works – approximately 16-per-cent of the EU's total Gross Domestic Product (GDP). In March 2004, the European Parliament and Council adopted a revision of EU procurement legislation with the objective to stimulate the demand for sustainable timber and thereby promote sustainable forest management worldwide. The revised directives offer some clear opportunities for the inclusion of social and environmental criteria in public procurement procedures¹¹. However, the European Commission cannot take binding measures; it is up to the willingness of the EU Member States to transfer the EU's guidelines into binding national measures. Until now, only a few Member States have undertaken suitable action to make their procurements sustainable.

European Development Policy

The primary and overarching objective of EU development policy is the eradication of poverty in the context of sustainable development, including the pursuit of the Millennium Development Goals (MDGs)¹². The seventh MDG, agreed by the United Nations in 2000, commits the EU to ensuring environmental sustainability and reversing the loss of environmental resources.

To promote the conservation and sustainable management of forests in developing countries the European Union gives financial support through its external cooperation policies. Efforts in this regard include substantial development cooperation programmes in Brazil, Central Africa and Indonesia, as well as in a large number of other countries. Altogether, the EC has provided more than 700 million euros to support sustainable forest management in Asia, Central Africa and South America over the past 10 years¹³.

Policy Coherence for Development

The EU has a legal obligation to take developing countries' interests into account in all policy areas which are likely to affect them¹⁴. This is known as Policy Coherence for Development (PCD). The EU has on several occasions expressed its commitment to enhancing PCD. For example, in 2005, the European Commission identified policy coherence as a key tool in accelerating progress toward attaining the Millennium Development Goals.

The EU has identified twelve priority policy areas as important for assisting developing countries in achieving the MDGs by means of improved policy coherence¹⁵. Environment is among these priority policy areas.

Incoherence

The EU has put sustainable development, deforestation, related biodiversity loss, climate change and poverty alleviation prominently on its policy agenda. The adaptation of the FLEGT Action Plan incorporates all ingredients for a coherent policy approach towards sustainable development. However, in putting these commitments into practice the EU isn't showing much progress. The current implementation of FLEGT will not make a decisive difference in tackling illegal and destructive logging. This undermines European development-cooperation investments to fight poverty in the context of sustainable development. Additional action is therefore needed to attain the objective set out by the European Council of Gothenburg (2001), namely that *'biodiversity decline should be halted by 2010'*¹⁶.

Regarding FLEGT, the first problem that needs to be tackled is the small scope of the Voluntary Partnership Agreements (VPAs): these only cover direct timber trade between partner countries

and the EU. Timber and wood products imported via high-risk third-party countries such as China and Russia are not addressed. VPAs therefore only cover around 4-per-cent of all direct timber imports into the EU¹⁷. Illegal products can simply be transshipped via non-partner countries to the EU, which creates the danger of circumvention or laundering of illegal logged timber, thus undermining investments in sustainable timber trade and management. A second limitation is the restricted product coverage of FLEGT. Processed wood products such as pulp, paper and furniture will, initially, not be covered by the voluntary scheme. Consequently, the EU is unable to combat illegal logging effectively.

The lack of acknowledgement that FLEGT in its current context and without additional measures is proving to be ineffective in excluding illegal and destructive timber from entering EU Markets is however the most important shortcoming. Although the European Commission stated that it would undertake an Additional Legislative Options Study, it has not conducted the required *Extended Impact Assessment* yet. Instead, a new round of public consultation was organized earlier this year resulting in a conclusion from the majority of the respondents that the bilateral FLEGT approach is insufficient to address the problem of illegal logging.¹⁸ This clearly contradicts the EU's very own efforts as undertaken by its development policy. Additional legislative measures and strong leadership in this matter are needed to stop the supply and trade of illegal and destructive timber on the European market.

Regarding Europe's procurement policy, part of FLEGT, the EU also lacks behind. As stated in FLEGT, a promising route is offered to the EU and Member States to support the market for verified sustainable products, creating thus a level playing field for the sustainable timber trade. The revised directives do allow EU Member States to include social and environmental

criteria. Many governments have taken up the challenge of sustainable public purchasing but up till now, with the deadline for implementation passed on 31 January 2006, less than half of the 15 original EU members have national laws, based on the revised directives, in place in September 2006¹⁹. Therefore, to enforce implementation of the revised directives and sustainable procurement within the EU Member States, leadership from the European Commission is needed²⁰.

Conclusion

The above clearly states that the EU, in its approach to the problem of illegal logging, is not taking the necessary measures to meet its aim of halting the loss in biodiversity, stopping deforestation and fighting illegal logging. This undermines European Union environmental objectives as well as development-cooperation investments to fight poverty in the context of sustainable development.

Policy Recommendations

- The European Commission should adopt legislation which requires that only legally harvested timber and timber products coming from legal sources and responsibly managed forests be placed on the European market. Legislation should be cost-effective, fair and enforceable and should include sanctions. The primary responsibility for proving legality should rest with all companies that are importing or selling products in the EU, thus creating a level playing field and being WTO-compatible.
- The European Commission should strengthen the FLEGT-process of supporting wood producing countries to improve forest law enforcement, tackle corruption and promote socially and environmentally responsible forest management.

- The EU should enlarge the number of Voluntary Partnership Agreements with producing countries. A participatory multi-stakeholder process, including local communities and indigenous peoples, should be at the core of these VPAs.
- The EU should broaden the range of products covered by VPAs to cover all timber products.
- The EU Member States should speed up the implementation of sustainable public procurement for wood products including social and environmental criteria.
- The European Commission should endeavour to bring best practices in EU countries together and give clear guidance to Member States on how they can implement sustainable procurement by developing guidelines and tools to include social and environmental criteria in public procurement.

- ¹ WORLD BANK, A REVISED FOREST STRATEGY FOR THE WORLD BANK GROUP (OCTOBER 31, 2002).
- ² FAO, TRADE AND SUSTAINABLE FOREST MANAGEMENT – IMPACT AND INTERACTIONS. MAIN ANALYTIC STUDY OF GCP/INT/775/JPN (ROME 2004).
- ³ WORLD BANK, STRENGTHENING FOREST LAW ENFORCEMENT AND GOVERNANCE (2006).
- ⁴ THE ANNUAL WORLD WIDE LOSS OF FOREST AREA BETWEEN 2000 AND 2005 WAS 7.3 MILLION HECTARES PER YEAR – AN AREA ABOUT THE SIZE OF SIERRA LEONE OR PANAMA – OR EQUIVALENT TO A LOSS OF 200 KM² OF FOREST PER DAY (WWW.FAO.ORG/FORESTRY/SITE/FRA2005/EN/).
- ⁵ PARAGRAPH 45 OF THE JOHANNESBURG PLAN OF IMPLEMENTATION, [HTTP://WWW.UN.ORG/ESA/SUSTDEV/DOCUMENTS/WSSD_POI_PD/ENGLISH/WSSD_P_LANIMPL.PDF](http://WWW.UN.ORG/ESA/SUSTDEV/DOCUMENTS/WSSD_POI_PD/ENGLISH/WSSD_P_LANIMPL.PDF).
- ⁶ COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND EUROPEAN PARLIAMENT, FOREST LAW ENFORCEMENT, GOVERNANCE AND TRADE. PROPOSAL FOR AN EU ACTION PLAN (2003).
- ⁷ FLEGT BRIEFING SHEET 2, WHAT IS LEGAL TIMBER?, [HTTP://WWW.LOGGINGOFF.INFO/MEDIA/ARTICLES/ARTICLE_358.PDF](http://WWW.LOGGINGOFF.INFO/MEDIA/ARTICLES/ARTICLE_358.PDF)
- ⁸ CHATHAM HOUSE, BRIEFING PAPER ILLEGAL LOGGING (JULY 2007).
- ⁹ COM (2003)251 FINAL.
- ¹⁰ OECD, THE SIZE OF GOVERNMENT PROCUREMENT MARKETS (2003) 30.
- ¹¹ DIRECTIVE 2004/17/EC AND DIRECTIVE 2004/18/EC.
- ¹² EUROPEAN CONSENSUS ON DEVELOPMENT, P.46/2.
- ¹³ PARLIAMENTARY QUESTIONS JOINT ANSWER GIVEN BY MR. MICHEL ON BEHALF OF THE COMMISSION, WRITTEN QUESTIONS: E-0430/07, E-0431/07, E-0432/07.
- ¹⁴ ART. 178 EC TREATY
- ¹⁵ THE COMMISSION COMMUNICATION ON POLICY COHERENCE FOR DEVELOPMENT SETS OUT DETAILED PROPOSALS FOR ACTION IN THESE AREAS WHICH SHOULD ALSO INFORM THE DISCUSSION.
- ¹⁶ EUROPEAN COUNCIL, PRESIDENCY CONCLUSIONS GÖTEBORG (15 AND 16 JUNE 2001).
- ¹⁷ AIDENVIRONMENT, FACTSHEET EFFECTIVITEIT VAN DE FLEGT VRIJWILLIGE PARTNERSCHAPPEN (VPAS) COMMISSIONED BY MILIEUDEFENSIE, GREENPEACE AND ICCO (2006).
- ¹⁸ EUROPEAN COMMISSION, ANALYSIS AND REPORT PUBLIC CONSULTATION 'ADDITIONAL OPTIONS TO COMBAT ILLEGAL LOGGING' (AUGUST 2007) [HTTP://EC.EUROPA.EU/ENVIRONMENT/FORESTS/PDF/ADDLOPTIONSSYNTHFINAL.PDF](http://EC.EUROPA.EU/ENVIRONMENT/FORESTS/PDF/ADDLOPTIONSSYNTHFINAL.PDF).
- ¹⁹ THE EUROPEAN COALITION FOR CORPORATE JUSTICE, SUSTAINABLE PROCUREMENT IN THE EUROPEAN UNION (FEBRUARY 2007)3.
- ²⁰ IBIDEM.

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Case 7

TRIPS and medicines

Every year 14 million people in developing countries unnecessarily die of poverty-related and infectious diseases, such as malaria, diarrhoea, tuberculosis and HIV/AIDS. The required medicines often exist, but patients in developing countries simply cannot afford them, largely because of patents on these drugs. There is little coherence in policy when the Directorate General for Development gives priority of access to affordable medicines for developing countries, while the Directorate General for Trade is in favour of a regulation that will not lead to increased access to affordable drugs.

The fact that medicines are prohibitively expensive for many people in developing countries is partly due to patents on drugs. More than 96-per-cent of these patents are in the hands of companies from Western countries. According to the pharmaceutical industry, patent protection is necessary to enable research into new drugs. Years of research are required to develop a medicine. The industry argues that these investments will not be made if the research costs cannot – through patents – be recouped. Thus in order to stimulate innovation, drug prices are substantially increased by an artificial temporary monopoly of twenty years.

The research agenda is largely determined by the Western pharmaceutical industry, which means that new medicines are mainly developed for Western markets. Pharmaceutical companies conduct little or no research into tropical diseases, because the profit to be made is negligible. Without a lucrative market, hardly

any investments will be done in diseases from which millions of people are suffering in developing countries.

'It is not a market failure, it is failure because there isn't a market', according to Angel Gurría, secretary general of OECD. 'While patents on medicines bring little benefit to developing countries, they do keep existing medicines out of reach of the poor and without greater clarity this situation will persist,' concludes the World Health Organization².

TRIPS Agreement

Patents on medicines have become a part of the TRIPS Agreement (Trade Related Aspects of Intellectual Property Rights) of the World Trade Organization (WTO). A company owning a patent possesses the worldwide exclusive right on the manufacture and sale of the new medicine for at least twenty years. Only when a patent expires and generic (copied) drugs can be marketed are patent-holders forced to drop their prices.

Since January 2005 all WTO members (except the least developed countries, which are allowed to wait until 2016) have been obliged to adapt their national patent legislation to the minimum standards of the TRIPS Agreement. Countries such as India, which until recently had less stringent patent legislation, are now obliged to implement the stricter TRIPS regulations. This significantly impairs the availability of cheap medicines to the poorest owing to the lack of non-brand competition.

The original TRIPS Agreement (Art. 30 and 31) contains an exception to the recognition of patents on medicines: in case of an emergency or for reasons of public health a country can issue a 'compulsory licence' to produce patented medicines domestically³. A compulsory licence can be granted by a government for

a medicine to be copied without the permission of the patent-holder. For the poorest countries, which mostly lack pharmaceutical production facilities, this exception did not represent a realistic option. They have to import medicines, but producing countries are no longer allowed to export generic medicines.

To cater for the poorest in the framework of the Doha Declaration, the WTO decided in August 2003 that cheap generic drugs may under specific conditions be exported to developing countries which cannot produce these themselves. In this way ‘compulsory licensing’ would also enable developing countries with insufficient manufacturing capacity to get access to patented drugs. To make the temporary waiver permanent, in 2005 it was added as a protocol to the TRIPS Agreement. This protocol will enter into force in December 2007 once two thirds (around a hundred) of the member countries have ratified the protocol. However, as of September 2007 only nine nations have done so. Ratification of the protocol would oblige all WTO-members to implement its provisions in their national legislation, which would increase the likelihood of its being used. In July 2007 the European Parliament adopted a resolution⁴ to delay its vote on ratification of the protocol. It rightly demanded that the EU give more political and financial support to providing medicines to the least developed countries.

Despite this, the temporary waiver is also valid if its conditions are implemented into national legislation of both the importing and the exporting country, regardless of whether the protocol gets ratified. The European Union incorporated the conditions of the waiver into European law in 2006 by adopting a regulation on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public-health problems⁵. It thereby incorporated the conditions of the protocol for TRIPS into its legislation, which could be an im-

provement in access to generic medicines for the least developed countries.

As stated above, this was important in enabling developing countries to make use of the temporary waiver, even though the EU has not yet ratified the protocol. However, the regulation is not enough: it took four years before the temporary waiver was used for the first time, which clearly shows that more real efforts have to be made to alleviate the burden of diseases on the poorest.

Until Rwanda called on the temporary waiver in July 2007, no single developing country had ever used it, although reasons of public health are abundant in developing countries. The waiver was never used before, because of its complexity and lack of clarity – e.g. a country is required to have attempted to strike a deal with a patent-holder for ‘a reasonable period’ at ‘a reasonable commercial’ price, neither of which is specified. Another crucial defect of the temporary waiver is its case-by-case, country-by-country scope, which does not allow for cheap mass production for countries with similar problems. This way the poor will still miss out on their medicines because lack of economies of scale keeps prices high. On the supply side, some impediments remain as well: European companies are holding back on producing generic medicines owing to the complicated set of rules they have to obey to when making use of the waiver.

European Development and Health Policies

Health is one of the priority areas of the Millennium Development Goals (MDGs) adopted by the United Nations in 2000. The EU is committed to “reduce by two thirds the mortality rate among children under five” (MDG₄) and “halt the spread of HIV/AIDS, malaria and other major diseases before 2015” (MDG 6). Access to essential medicines is pivotal to attaining these goals.

In its health and development policies, the European Union stresses the importance of improved healthcare for economic growth and development. The European Commission recognizes that “the price of essential medicines is one of the major obstacles to improved health and access to healthcare for the poorest people in developing countries.”

In its Action Plan to combat HIV/AIDS, malaria and tuberculosis⁶, the EU explicitly prioritizes access to essential medicines. The European Commission wants to achieve this goal by a system of tiered pricing, by which the pharmaceutical industry would *voluntarily* sell drugs at lower prices in developing countries. Experts doubt its effectiveness. An evaluation of the Action Plan shows that little progress has been made. As long as the Commission will not encourage – or at least allow – developing countries to make use of flexibilities in the TRIPS agreement there is little hope for progress in the future either.

EU Trade Policy

The European Union was one of architects of the TRIPS Agreement. By favouring ‘the highest international intellectual-property standards’ in its Trade Policy it seeks to protect domestic industry at the expense of poor countries. Until 2006, however, it did not actively and aggressively seek to strengthen international intellectual-property standards outside of WTO negotiations.

Recently the European Union seems to have joined the United States in their TRIPS-plus lobby to pressure developing countries to use “the highest intellectual property standards”. Among its trade goals the European Commission now explicitly states that *‘[t]he EU should seek to strengthen IPR [Intellectual Property Right] provisions in future bilateral agreements...’*⁷ Draft proposals for trade agreements with various groups of ACP countries (ECOWAS, CARIFORUM and SADC) that have surfaced in the last year contain more stringent clauses for intellectual property than TRIPS requires. If these proposals were to be accepted they would put a “substantial burden” on ACP countries and could have adverse consequences for public health, according to law professor Frederic Abbott⁸.

In a resolution adopted on 12 July 2007, the European Parliament rightly asked “to restrict the Commission’s mandate so as to prevent it from negotiating pharmaceutical-related TRIPS-plus provisions affecting public health and access to medicines, such as data exclusivity, patent extensions and limitation of grounds of compulsory licences, within the framework of the EPA negotiations with the ACP countries and other future bilateral and regional agreements with developing countries.”

Incoherence

In its Health and Development Policies, the EU prioritizes access to essential medicines in developing countries. In the pharmaceutical domain, however, the European Union actively promotes the interests of its industry at the expense of poor people's access to existing essential medicines. Patents on medicines do not stimulate research into diseases of the poor. For developing countries they only hamper access to already-existing drugs. The EU should advocate the use of compulsory licences for urgent public-health problems in developing countries. Moreover, in pursuing TRIPS-plus clauses in bilateral trade agreements with ACP-countries, the European Commission blatantly disregards the health issues at stake in developing countries.

Policy Recommendations

- The European Union should ratify the exception protocol in the TRIPS Agreement. After ratification it should lobby for greater clarity and a lighter administrative burden in the same protocol.
- The EU should lobby for the compulsory licence for developing countries without production facilities to be made valid for all similar countries at once, instead of using the case-by-case, country-by-country approach.
- The EU should advocate within WTO that countries – notably the United States – refrain from undermining the flexibilities in TRIPS through bilateral agreements (TRIPS-plus agreements).
- The EU should actively stand up to European pharmaceutical companies that try to limit the use of compulsory licensing in developing countries.
- The EU should encourage the transfer of technology by the pharmaceutical industry to manufacturers in developing countries.

- The European Commission should immediately cease its efforts to include clauses for strengthened intellectual-property rights (TRIPS-plus) in bilateral trade agreements with developing countries.

¹ WWW.IP-WATCH.ORG, 27-6-07; "OECD MEETING HIGHLIGHTS NEW DRUG PURCHASING MODEL DESPITE NGO DOUBTS"

² WHO, COMMISSION ON INTELLECTUAL PROPERTY RIGHTS, INNOVATION AND PUBLIC HEALTH (DECEMBER 2006)

³ TRIPS: AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL-PROPERTY RIGHTS: [HTTP://WWW.WTO.ORG/ENGLISH/TRATOP_E/TRIPS_E/T_AGM0_E.HTM](http://WWW.WTO.ORG/ENGLISH/TRATOP_E/TRIPS_E/T_AGM0_E.HTM)

⁴ EUROPEAN PARLIAMENT RESOLUTION OF 12 JULY 2007 ON THE TRIPS AGREEMENT AND ACCESS TO MEDICINES

⁵ 2006 "REGULATION ON COMPULSORY LICENSING OF PATENTS RELATING TO THE MANUFACTURE OF PHARMACEUTICAL PRODUCTS FOR EXPORT TO COUNTRIES WITH PUBLIC-HEALTH PROBLEMS." ([HTTP://EUROPA.EU/SCADPLUS/LEG/EN/LVB/L21172.HTM](http://EUROPA.EU/SCADPLUS/LEG/EN/LVB/L21172.HTM))

⁶ COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT DATED 21 FEBRUARY 2001

⁷ EUROPEAN COMMISSION, GLOBAL EUROPE: COMPETING IN THE WORLD. EC POLICY REVIEW (4 OCTOBER 2006). ([HTTP://EC.EUROPA.EU/TRADE/ISSUES/SECTORAL/COMPETITIVENESS/GLOBAL_EUROPE_EN.HTM](http://EC.EUROPA.EU/TRADE/ISSUES/SECTORAL/COMPETITIVENESS/GLOBAL_EUROPE_EN.HTM))

⁸ WWW.IPWATCH.ORG, 6 JUNE 2007



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