

## CDE POLICY BRIEF



## Shaping EU trade agreements to support human rights

Trade between Europe and developing countries should be shaped such that market shares are just and trade flows foster sustainable development, both in the South and in the North. But this is not always the case. While developing countries have much to gain from trade, they can also suffer serious losses. This is especially apparent with regard to food security, which often depends largely on smallholders and informal markets in poorer countries. Rapidly or indiscriminately liberalized (or protected) trade can destroy smallholder livelihoods and threaten a country's ability to feed its most vulnerable groups – a clear human rights violation. Similar harm may occur if Northern markets remain closed to products from the South. This policy brief sketches the link between trade and the right to food, and describes how integration of Human Rights Impact Assessments in EU trade policy can help ensure sustainable trade regimes that do not cause undue harm.

**Trade and the right to food**

For many Europeans, the notion of a “right to food” might seem a bit abstract. But if the seriousness of this right is lost on anyone, it can only be because we have come to enjoy such a long period of relative prosperity and stability. Many of us enjoy rights to food or shelter without a second thought, thanks partly to developments like regional in-

tegration, firm political commitments to social safety nets, and advantageously managed trade. Fading from memory are the wars and especially the many famines that ravaged Europe in recorded history. Yet as recently as 1845–55, the Irish famine killed 1 million people in Britain's backyard. Seldom remembered is that Britain continued importing Irish crops during that famine<sup>1</sup>, strictly

**KEY MESSAGES**

- Global trade has benefits but also poses risks, especially for vulnerable people in developing countries. Without adjustable, context-specific trade rules, North–South trade can actually worsen hunger and undermine people's livelihoods in Southern countries.
- Human Rights Impact Assessments (HRIAs) can ensure that trade does not unduly harm people or the planet. Indeed, the EU and its member states are obligated to vet the human rights implications of their trade agreements and policies.
- HRIA methodology can be integrated into EU policy by revising the *EU Handbook for Trade Sustainability Impact Assessment*. But revisions should enable an iterative assessment process, including amendments to trade agreements and monitoring. This would make trade Sustainability Impact Assessments (SIAs) more effective and legitimate.
- The revision process should be public and involve meaningful consultation with human rights experts and NGOs experienced in conducting HRIAs.



The research featured here is focused globally.

## Box 1. Human Rights Impact

**Assessments of trade** are structured evaluations designed to ensure that states' trade policies (e.g. pending and ongoing trade agreements) obey their pre-existing human rights obligations (United Nations 2011). Trade partners, including the EU, have failed to undertake HRIAs of their trade policies consistently so far. NGOs have tested them successfully.<sup>5,6</sup> Elaborated by an independent team of experts, key steps include:

- 1. Screening** of *who* (e.g. vulnerable groups) and *what* human rights (e.g. food, health, work) are most likely to be impacted by *which* trade provisions (e.g. tariff cuts).
- 2. Scoping** of the relevant impact indicators, research questions, methodology, time scale, etc. to be used, resulting in the assessment's terms of reference.
- 3. Gathering** evidence using quantitative (e.g. economic modelling) and qualitative (e.g. stakeholder interviews) research, making sure to include affected groups.
- 4. Analysis of evidence** to verify (possible) causal relationships between specific trade provisions and human rights impacts, with results made public.
- 5. Making recommendations**, to which the negotiating parties are accountable, on how to avoid or minimize negative impacts and maximize positive ones, by amending the agreement.
- 6. Monitoring and review** activities (e.g. *ex post* assessments) that track actual outcomes, evaluate the extent to which the recommendations have been taken into account, and mandate action (e.g. trade policy changes) if unacceptable impacts occur.

## Featured research

This brief is based on a study commissioned by the German Federal Ministry for Economic Cooperation and Development (BMZ) and carried out by Elisabeth Bürgi Bonanomi (2014) of CDE and the World Trade Institute (WTI). The study shows that it would be feasible to conduct human rights-sensitive trade SIAs by systematically including core elements of HRIA methodology. This would sharpen the contours of trade SIAs and strengthen their legitimacy ([http://www.cde.unibe.ch/News%20Files/01\\_CDE\\_Working\\_Paper\\_Buergi\\_2014.pdf](http://www.cde.unibe.ch/News%20Files/01_CDE_Working_Paper_Buergi_2014.pdf)).

adhering to nascent free market principles. Many lives might have been saved had a legally binding right to food mandated changes to trade flows and an appropriate humanitarian response.

Today, we live in an age of unprecedented global wealth, innovation, and trade. Despite this, the basic necessities of life still are not guaranteed for much of the world's population. Trade theory suggests that increasing global trade will protect people against hunger and other privations by giving them access to markets and many sources of imports. But experience shows that goods often flow to the highest bidder, for example, not to those who need them most.<sup>2</sup> This even happens when the wealthy consumers live half a world away from the production point, while the needy consumers live right next door.

## Overly optimistic trade liberalization agenda

This very real risk of harmful, inappropriate resource allocation is but one example of the flawed trade liberalization agenda that continues dominating most international trade agreements and global trade rules. This agenda primarily rests on the idea of "comparative advantage"<sup>3</sup> – a useful theory whose foundational assumptions are nevertheless conspicuously at odds with today's reality, especially regarding trade between poor and rich countries. For example, to work properly (i.e. to be mutually beneficial), comparative advantage assumes that capital and labour are relatively immobile between countries, that the costs of production are fully reflected in product prices, that countries can easily specialize and switch economic activities based on what proves profitable, and that markets are perfectly competitive (Clapp 2014).<sup>4</sup> These assumptions simply do not hold in our world: capital is highly mobile (labour somewhat less so), costs like environmental harm barely register in product prices, large-scale specialization is risky (especially in agriculture) due to market volatility, and perfectly competitive global markets appear permanently out of reach.

Nevertheless, trade certainly *can* benefit poorer countries under the right conditions. Supporters of free trade are quick to point to the rapid trade-related economic growth of countries like China and Brazil. But whether trade benefits vulnerable populations or, more to the point, does not unduly *harm* them (or the environment) greatly depends on how trade rules and markets are shaped. Opening, blocking, or placing conditions on trade can help or harm vulnerable groups, depending on the context.

What can we in Europe do to prevent trade-related violations of human rights in the poor countries we trade with? Recent work by legal experts and human rights advocates has produced a viable solution: Human Rights Impact Assessments of trade, or trade HRIAs (see Box 1), provide an urgently needed legal mechanism for creating more humane international trade regimes.

## A solution built on existing EU policy

There is no need to reinvent the wheel when it comes to adopting trade HRIAs in EU policy. They can be integrated into the trade Sustainability Impact Assessments (see Box 2), or trade SIAs, which the EU has been conducting for over a decade based on an established handbook.<sup>7</sup> The core idea behind both assessment types is to investigate the likely effects of an international trade deal under negotiation. Then, if assessors uncover significant trade-related risks to society or the environment, steps can be taken to address them. The EU has commissioned over 20 trade SIAs since 2002.<sup>8</sup> But trade HRIAs have mainly been undertaken by non-state actors (e.g. NGOs, businesses) voluntarily. Combining the two approaches in a revised handbook would likely make EU trade impact assessments much more effective and legitimate. In particular, revisions that incorporate the HRIA methodology<sup>9</sup> (United Nations 2011) could bring the following improvements:

**Clear setting of priorities:** Examining the likely "economic, social, and environmental"<sup>10</sup> impacts of trade may sound good in theory, but it implies looking at a dizzying number of indicators in practice. The reality of limited time and resources means that priorities must be set. Use of HRIA methodology would make the priority clear: focusing on the most vulnerable people (e.g. food insecure), and on the areas/sectors where threats to human rights are most intense (e.g. small-scale farming). Current procedure leaves so much scope for priority setting – mainly calling for an emphasis on the "likely significance of trade measures"<sup>11</sup> – that the resulting focuses can appear arbitrary. Smallholder farming, for example, was almost entirely left out of recent EU assessments of trade agreements with African and Caribbean countries, despite being the most vulnerable sector to market integration.<sup>12</sup>

**Consideration of a full range of options:** Impact assessments are usually intended to help identify the "optimal regulatory options"<sup>13,14</sup> – namely those that best do justice to underlying objectives (e.g. sustainability). Unfortunately, current trade SIAs focus almost exclusively on one option: that contained

in a tabled draft of a trade deal under negotiation. If other options are considered, they overwhelmingly stick to the status quo trade liberalization agenda. Adopting HRIA methodology would eliminate this constraint: assessors would be permitted to examine a wide range of credible options<sup>15</sup> – or scenarios of trade architecture – including those not specified in an existing draft. These might encompass scenarios of *partial* integration – by excluding vulnerable sectors (e.g. dairy) from liberalization – scenarios that offer trading partners greater flexibility (e.g. adjustable tariffs), or scenarios that enable preferred market access to vulnerable groups or sustainably produced goods.

### Consideration of a full range of responses:

Of course, assessing different options is really only meaningful if you may choose between them. This gets to the heart of what is weak about current EU policy: it hardly foresees significant changes to (draft) agreements based on the results of impact assessments. Instead, if possible harms are identified, the EU handbook advises responding with so-called flanking measures, or “mitigation and enhancement measures”, such as aid for trade or provision of technical assistance.<sup>16</sup>

Introduction of HRIA methodology could make the assessments much more effective: if likely harms are identified, responses could include *terminating* or *amending* a current draft. Amendments could include inserting (long- or short-term) safeguards, improving market access for vulnerable groups before others, creating sustainability incentives (e.g. preferential rules for sustainably produced goods), and specifying compensation and mitigation measures. The optimal response would be that which promises to best protect and promote human rights. Assessments would be launched early enough to actually *influence* the negotiations. And trade negotiators would be held accountable for heeding recommendations in the resulting agreement.

### Iteration, monitoring, and follow-up:

Amending, or even terminating, a trade agreement must also be possible after it enters into force, especially when unacceptable impacts arise. Current procedure ignores this need. Adoption of HRIA methodology would solve this by mandating follow-up assessments, uptake of findings, and course corrections.

**Emphasis on existing obligations:** One of the biggest strengths of HRIAs is that they rest on states’ pre-existing duties to respect, protect, and fulfil human rights, which are necessarily universal and do not end at national borders. These duties derive especially from

states’ acceptance of the United Nations General Declaration of Human Rights of 1948 and, in particular, their ratification of the International Covenant on Economic, Social, and Cultural Rights, in effect since 1976 (the right to food is specified in Article 11).<sup>17</sup> All EU Member States (and Switzerland) have ratified this covenant, as have most of their trading partners in the global South. In addition, EU states must uphold human rights in line with the Treaty on European Union (2012).<sup>18</sup> In other words, not only are trade HRIAs the right thing to do, states also bear a responsibility to implement them.

**Box 2. Trade Sustainability Impact Assessments** seek “to identify the potential economic, social and environmental impacts of a trade agreement” under negotiation. The EU has applied them to virtually all major trade negotiations for over a decade (following massive WTO protests in 1999). Switzerland lags behind and does not apply them. They aim to “integrate sustainability into trade policy” and to inform all actors about possible impacts.<sup>19</sup> But concerned observers cite big failures in assessing human rights impacts, in actually influencing negotiations or outcomes (e.g. resulting trade deals and formulation of agreements), and in facilitating meaningful follow-up. Incorporation of trade HRIA methodology (Box 1) could eliminate such shortcomings. This could occur in new revisions to the assessment handbook (<http://tinyurl.com/oojeg6q>).



Impact assessments should also examine the possible effects of trade-related plant variety protection laws. These laws may harm farmers who rely on informal exchanges of seeds as well as consumers who depend on them for food. Photo: Sunsinger/Shutterstock.com

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## Policy implications of research

### Trade agreements must not put countries in a straitjacket

Governments require flexibility to respond to societal needs and ensure a healthy environment. Trade deals should leave room for them to make adjustments (e.g. raise or restore tariffs) based on periodic reviews of trade impacts. Applying one-size-fits-all trade rules is unacceptable when it seriously jeopardizes people's livelihoods, food security, or other human rights.

### Revision of *EU Handbook for Trade Sustainability Impact Assessment*

The revision process has been opened up for the SIA handbook. It could result in better assessments if HRIA methodology were integrated. The revising team should ensure an open process and consult experts with HRIA experience. Institutional reforms are also needed to ensure that trade negotiators heed assessment findings. The new assessment procedure should be iterative, enabling identification and balancing of trade-offs, rejection of unacceptable trade-offs, consideration of different trade options, and (*ex post*) amending of agreements.

### Human rights-sensitive trade holds promise of far-reaching mutual benefits

Preventing trade from violating human rights might reduce some profit margins and the speed of global market integration in the short term, but odds are that it would prove mutually beneficial over the long term. Reductions in food price shocks, disruptive poverty/labour migration, gross inequality, and environmental harm are a few of the likely benefits. It could also improve the market viability of small-scale agriculture. And it would produce synergies between Northern countries' development aid policies and their trade policies, benefitting overall policy coherence for (sustainable) development.

### Markets, governments, and democratic institutions all stand to profit

Finally, trade that violates human rights poses a greater risk than is often acknowledged: it threatens to erode people's trust in markets and the governments tasked with managing them. We must continually re-examine the trade-offs between transnational flows of goods and capital and the enjoyment of human rights. Ultimately, making sure that trade respects human rights is about preserving international trade itself, not to mention democratic institutions and governments' ability to do what best serves healthy, sustainable societies.

### Suggested further reading

Bürgi Bonanomi E. 2014. *EU Trade Agreements and Their Impacts on Human Rights*. Study Commissioned by the German Federal Ministry for Economic Cooperation and Development (BMZ). [http://www.cde.unibe.ch/News%20Files/01\\_CDE\\_Working\\_Paper\\_Buergi\\_2014.pdf](http://www.cde.unibe.ch/News%20Files/01_CDE_Working_Paper_Buergi_2014.pdf)

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## References and notes

<sup>1</sup>Kugelmann M, Levenstein S. 2012. *The Global Farms Race: Land Grabs, Agricultural Investment, and the Scramble for Food Security*. Washington, DC, USA: Island Press.

<sup>2</sup>For other historical examples of trade flows threatening food security, see: Fraser E. 2007. Travelling in antique lands: using past famines to develop an adaptability/resilience framework to identify food systems vulnerable to climate change. *Climatic Change* 83(4):495–514 <http://dx.doi.org/10.1007/s10584-007-9240-9>

<sup>3</sup>See, for example, “The case for open trade” on the website of the World Trade Organization [retrieved 26 June 2015]: [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact3\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact3_e.htm)

<sup>4</sup>Clapp J. 2014. *Trade Liberalization and Food Security: Examining the Linkages*. Geneva, Switzerland: Quaker United Nations Office. [http://quono.org/sites/default/files/resources/QUNO\\_Food%20Security\\_Clapp.pdf](http://quono.org/sites/default/files/resources/QUNO_Food%20Security_Clapp.pdf)

<sup>5</sup>Paasch A, Chemnitz C, Sengupta R, Ramdas S, Bhutani S, Asher M, Hoffmann R. 2011. *Right to Food Impact Assessment of the EU–India Trade Agreement*. An Ecofair Trade Dialogue Discussion Paper. Aachen and Berlin, Germany, Penang, Malaysia, Andhra Pradesh, India, and Prague, Czech Republic: Misereor, Heinrich Böll Stiftung, Third World Network, Anthra, Glopolis. <http://tinyurl.com/n5taxpq>

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<sup>7</sup>European Commission, External Trade. 2006. *Handbook for Trade Sustainability Impact Assessment*. Brussels, Belgium: European Union. <http://ec.europa.eu/trade/policy/policy-making/analysis/sustainability-impact-assessments/>

<sup>8</sup>European Commission, External Trade. 2006. *op. cit.*

<sup>9</sup>United Nations. 2011. *Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements*. Report of the Special Rapporteur on the Right to Food, Olivier de Schutter. 19 December 2011. A/HRC/19/59/Add.5. [http://www.srfood.org/images/stories/pdf/officialreports/20120306\\_hria\\_en.pdf](http://www.srfood.org/images/stories/pdf/officialreports/20120306_hria_en.pdf)

<sup>10</sup>European Commission, External Trade. 2006. *op. cit.*

<sup>11</sup>European Commission, External Trade. 2006. *op. cit.*

<sup>12</sup>Bürgi Bonanomi E. 2014. *EU Trade Agreements and Their Impacts on Human Rights*. Study Commissioned by the German Federal Ministry for Economic Cooperation and Development (BMZ).

<sup>13</sup>Gehne K. 2011. *Nachhaltige Entwicklung als Rechtsprinzip, Normativer Aussagegehalt, rechtstheoretische Einordnung, Funktionen im Recht*. Tübingen, Germany: Mohr Siebeck.

<sup>14</sup>Bürgi Bonanomi E. 2013. *Sustainable Development in International Law Making: History, Concept, Institutions, Processes. The Example of Trade in Agriculture* [PhD dissertation]. Bern, Switzerland: University of Bern.

<sup>15</sup>The European Commission’s own general *Impact Assessment Guidelines* (2009) expressly state the need to assess “a wide but credible range of options” and not only the “status quo option” [p. 29]: [http://ec.europa.eu/smart-regulation/impact/commission\\_guidelines/docs/iag\\_2009\\_en.pdf](http://ec.europa.eu/smart-regulation/impact/commission_guidelines/docs/iag_2009_en.pdf)

<sup>16</sup>European Commission, External Trade. 2006. *op. cit.* [p. 22]

<sup>17</sup>Paasch A et al. 2011. *op. cit.*

<sup>18</sup>European Union. 2012. *Consolidated Version of the Treaty on European Union*. 26 October 2012. Official Journal of the European Union, C326/13.

<sup>19</sup>European Commission, External Trade. 2006. *op. cit.*