

WSRW REPORT – DECEMBER 2020

Above

How the EU, blatantly, imports fish products from occupied Western Sahara, ignoring its own Court of Justice.

the Law



WSRW WESTERN SAHARA
RESOURCE WATCH

Back to war

Morocco's continued and illegal plunder of Western Sahara's resources has reignited war in the last colony on the continent.

For the first time in 29 years, war has re-erupted in Western Sahara. The resumption of the armed conflict in November 2020 comes as a direct result of Morocco's use of a controversial border passage that it made between the occupied territory and neighbouring Mauritania.

Western Sahara's resources have always played a key role in the conflict. The territory's phosphate reserves and its rumoured oil potential were certainly part of Morocco's political calculus to invade in 1975, in blatant violation of UN resolutions and the International Court of Justice, which had rejected Morocco's claim to Western Sahara.¹ The ensuing war ended in 1991, when the UN brokered a peace agreement between the two parties – Morocco and the Western Sahara liberation movement Polisario Front. Both parties agreed to a ceasefire and committed to holding a referendum for the Saharawi people to decide their political and territorial status. A UN mission, MINURSO, was deployed to the territory to organise the referendum in the former Spanish colony. But all efforts to that end have been thwarted by Morocco, which now repeatedly rejects the possibility of a referendum with more than one option – that of integration into the Moroccan state.

Western Sahara remains partitioned by a 2500-kilometre military fortified wall, surrounded by some of the world's largest minefields, sown by Morocco. Half the people of Western Sahara fled their homeland, and survive in dismal circumstances in refugee camps in the Algerian desert. The Saharawis living in Western Sahara suffer under the yoke of a brutal occupation: the grave human rights violations committed by Moroccan authorities against Saharawis are well documented by reputable organisations such as the UN High Commissioner for Human Rights, Amnesty International and Human Rights Watch. Due to the severity of their situation, the call for resumed armed conflict has received ever more traction, particularly among younger Saharawis losing faith in the UN. The Moroccan army's violent dispersal of a Saharawi protest against Morocco's plunder in the Guerguerat border strip – a zone where any military presence is strictly prohibited under the UN-brokered ceasefire – was the spark that reignited the war.

Morocco's claim to sovereignty over Western Sahara is not recognised by the UN, by any state or by the EU. But that has not prevented it from exploiting the territory's resources: valuable phosphate reserves for global fertilizer production, fish stocks sold off to foreign governments and companies, a growing agri-industry, exports of sand to southern Europe, and vast areas of land for the use of the Moroccan king's renewable energy company. Morocco also explores for hydrocarbons both onshore and offshore.

The fisheries products exported from the overexploited stocks offshore the territory are of particular value to Morocco. This report shows how fish oil and fishmeal end up in Germany, the Netherlands and France.

The exploitation of resources is managed by Moroccan state-owned ministries and agencies. None of the revenue from these resources is returned to the Saharawi people, and no accounting of them is publicly available. Saharawis don't tend to profit from the development – unless they have sworn allegiance to the king of Morocco.

Crucially, the Saharawi people have never consented to this exploitation. As a corollary of their right to self-determination, they hold the sovereign rights to the territory's resources. Since 2015, the UN Treaty Body on Economic, Social and Cultural Rights² and the UN Human Rights Committee³ have emphasized the need to obtain the Saharawi people's "consent" for "the realization of developmental projects and [resource] extraction operations" in Western Sahara. Courts in the European Union⁴ and beyond⁵ have all affirmed this central legal requirement. A 2002 UN Legal Opinion considered such activities a "violation of international law" if done "in disregard of the interests and wishes of the people of Western Sahara".⁶

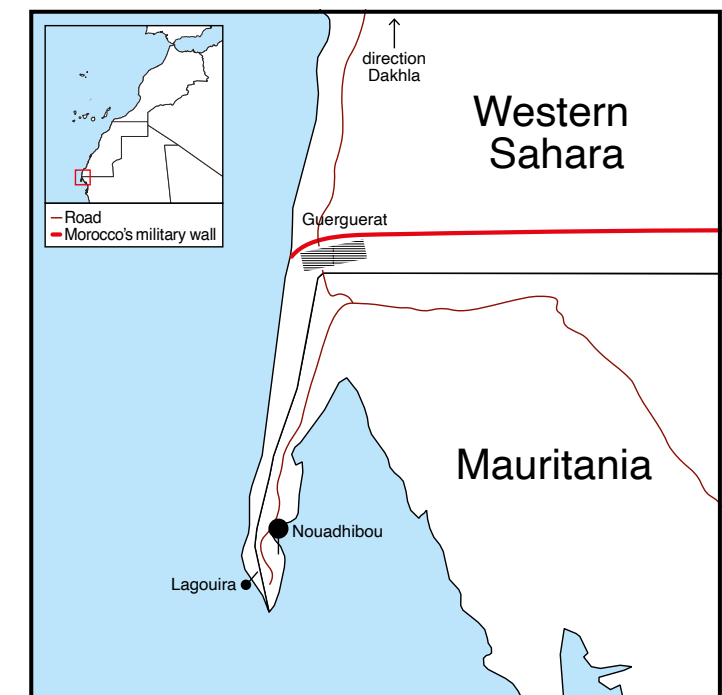
Morocco's exploitation of Western Sahara's economic potential is geared towards furthering acceptance of its illegal occupation of the territory. It is not directed towards assisting the Saharawi people in the exercise of their right to self-determination – an occupier's legal duty – but the opposite: maintaining and strengthening its untenable claim over the territory. Morocco's development of Western Sahara's resources not only enriches the kingdom, it also serves to legitimize or create an implicit yet tangible acceptance of its illegal presence in the territory, while decreasing the availability of these resources to the Saharawis, should they eventually realize self-determination.

A central tenet of this normalisation strategy is the presence of Moroccan settlers, induced to permanently or seasonally settle in land that the Moroccan government styles as its "southern provinces" by higher salaries, lower living costs and taxation.⁷ The presence of settlers takes away certain economic opportunities from Saharawis and serves as a pretext for a military force to ostensibly protect settlers and building infrastructure to extend the occupation. Different UN bodies have pointed to the disproportionate poverty rates affecting Saharawis, in contrast to Moroccans residing in Western Sahara.⁸ The Research Services of the German Bundestag concluded in a recent report that Morocco is to be considered the occupying power, and that its settlement policy in the territory – described as the transfer of its own civilians into the territory as well as indirect measures in promotion thereof – substantiates a violation of the Fourth Geneva Convention.⁹ The presence of settlers is also used to obscure the requirement of Saharawi consent to the exploitation of the territory's resources, as those profiting from the exploitation increasingly try to present consultation of Moroccan companies in the territory as a substitute for Saharawi consent.

The continued exploitation has become a tangible obstacle to the peace process, and now also a major contributing factor to the resumption of war. As Morocco is allowed to profit from its illegal presence, it is hard for Saharawis – bearing the brunt of the occupation or living in harsh conditions in desert-based refugee camps – to keep faith in the UN peacemakers. Several UN Special Envoys to the conflict have put the question of the territory's resources on the agenda of peace talks – talks in which Morocco refuses to genuinely engage.



The Guerguerat passage – a stretch of no man's land of about 5 kilometres that lies between the occupied territory and Mauritania – has often been the scene for Saharawi protests against the occupation. In late October 2020, Saharawi civilians started blockading the passage in protest of Morocco's continued export of resources, including fish, destined for the Mauritanian port of Nouadhibou.



Morocco's use of the Guerguerat passage, through which fisheries products are transported by truck, led to renewed tension and armed conflict in 2020.

Morocco’s fishing Eldorado

The rich fishing grounds off the coast of Western Sahara have become vitally important to Morocco. An increasing part of Morocco’s fishing industry takes place in the territory under occupation, making it a goldmine politically and financially.



The growing demand for fisheries products has endangered fish stocks off Morocco’s Mediterranean and Atlantic shores. As a result, fishing activity in the waters of Western Sahara has increased in importance to the Moroccan fishing sector. For 2018, the Western Saharan coastal area accounted for approximately 77.65% of the quantity of Morocco’s annual coastal and artisanal catches. In terms of value, the catch from Western Sahara’s coastal waters accounted for 63.14% of Morocco’s national total for the year.¹⁰

Under Morocco’s agreement with Japan, tuna longliners have access to Western Sahara’s waters. In addition, Morocco’s fisheries agreement with Russia has resulted in Russian vessels trawling for pelagic species exclusively in Western Sahara waters – not Morocco’s. The same vessels are active under Russia’s agreement with Mauritania: they fish that country’s waters during the first half of the year, and sail for Western Sahara in the second. The 2016-2020 agreement granted Russia 140,000 tonnes of catches per year, without obligation to land a certain percentage. In addition, the Russian trawlers are authorised to produce fishmeal and fish oil on board.¹¹

In addition to the trade agreement, Morocco has a fisheries accord with the European Union, which allows the EU fleet to operate in Western Sahara’s waters – even though the CJEU concluded that the agreement could not be applied there.¹² The agreement covers six types of fishing, including industrial pelagic trawling which is done exclusively in Western Sahara. An astounding 92% of the quantity caught under that agreement is made in this particular fishing category¹³ – referred to as category six – which bears similarities to Morocco’s fish deal with Russia, yet with a few significant differences: the European pelagic trawlers are obliged to land 25% of their catches in the nearest port (Dakhla) and are not allowed to produce fishmeal and fish oil on board. The EU pelagic fleet also has a much lower quota: from 80,000 tonnes in the first year (2019-2020) to 100,000 tonnes in the third and fourth year (2022-2023).¹⁴

According to the Moroccan Department for Maritime Fishing, 29 out of a total of 457 deep sea fishing vessels (6.34%) were active in Dakhla in 2018 yet produced 40.93% of the catch (23,450 tonnes out of a total of 57,294 tonnes) for that particular fishing category for the year. In that same year, 91 out of 2,536 coastal fishing vessels (3.6%) and 6,217 out of a total of 17,278 of artisanal boats (36%) were operating in the waters of the occupied territory. These two categories combined caught 419,755 tonnes in the Sakia El Hamra region and 587,225 tonnes in the Dakhla Oued Ed-Dahab region. Given the total volume of 1,296,757 tonnes caught in 2018, Western Sahara represented an astounding 77.65% of the total catches in these fishing categories combined.¹⁵

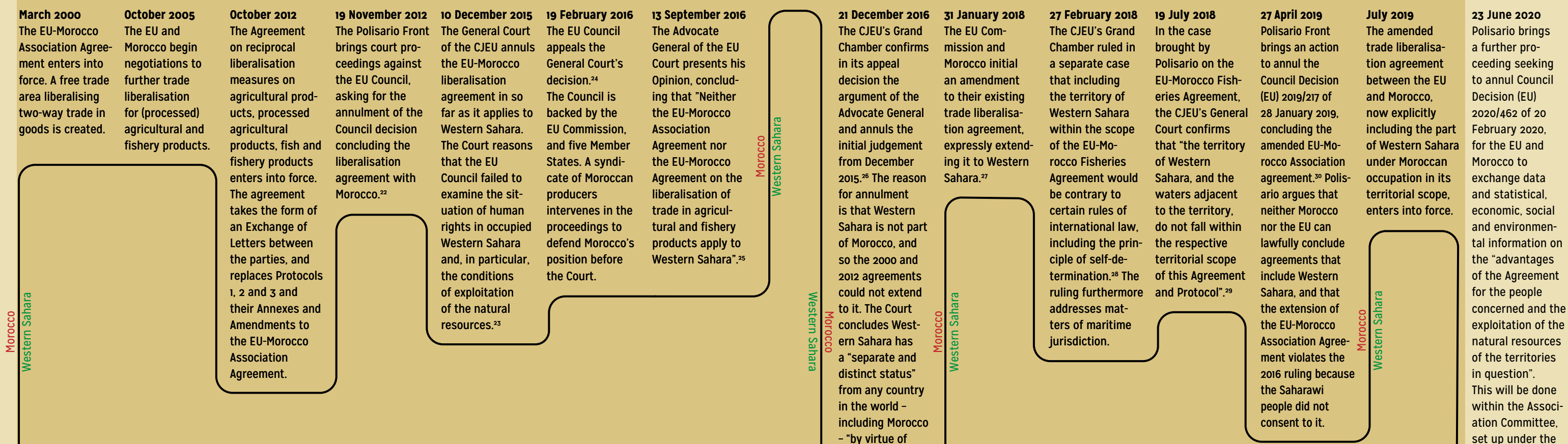
Distribution of fish processing companies

	Moroccan Mediterranean coast	Moroccan Atlantic coast	Western Sahara	Total
Canning/semi-canning	13	71	5	89
Frozen	17	76	101	194
Fresh	12	25	8	45
Fishmeal/-oil (FMFO)	1	10	10	21
Shellfish	1	11	5	17
Deshelling	10	0	0	10
Storage	5	46	3	54
Other	3	15	2	20
Total	62	254	134	450

A considerable fishing industry has been established in occupied Western Sahara. Half of all Moroccan establishments for the production of frozen fish and FMFO are located in Western Sahara. According to the Moroccan government, 134 out of 450 Moroccan fish processing companies – or 29.8% – were operative in the territory in 2018.¹⁶ Most are approved for export to Europe. Where Dakhla freezing firms used to focus on octopus, they now also freeze small pelagic fish. In fact, some of the units have been converted to exclusively freeze small pelagic species, as imposed by the Moroccan authorities in order to benefit maximally from the fishing quotas.¹⁷

A significant share of the factories specializing in the production of fishmeal and fish oil from small pelagics are located in Western Sahara. Statistics show that while production has remained stable over the last three years (2018-2020), it has in fact more than doubled over the course of the last decade – despite a stated objective of the Moroccan government’s Halieutis Strategy 2010-2020 to reduce the production of fish oil and fishmeal, and encourage the transformation of small pelagics into products with higher added value.¹⁸ The envisioned new deep-water port in Dakhla is considered the focal point for that strategy.¹⁹

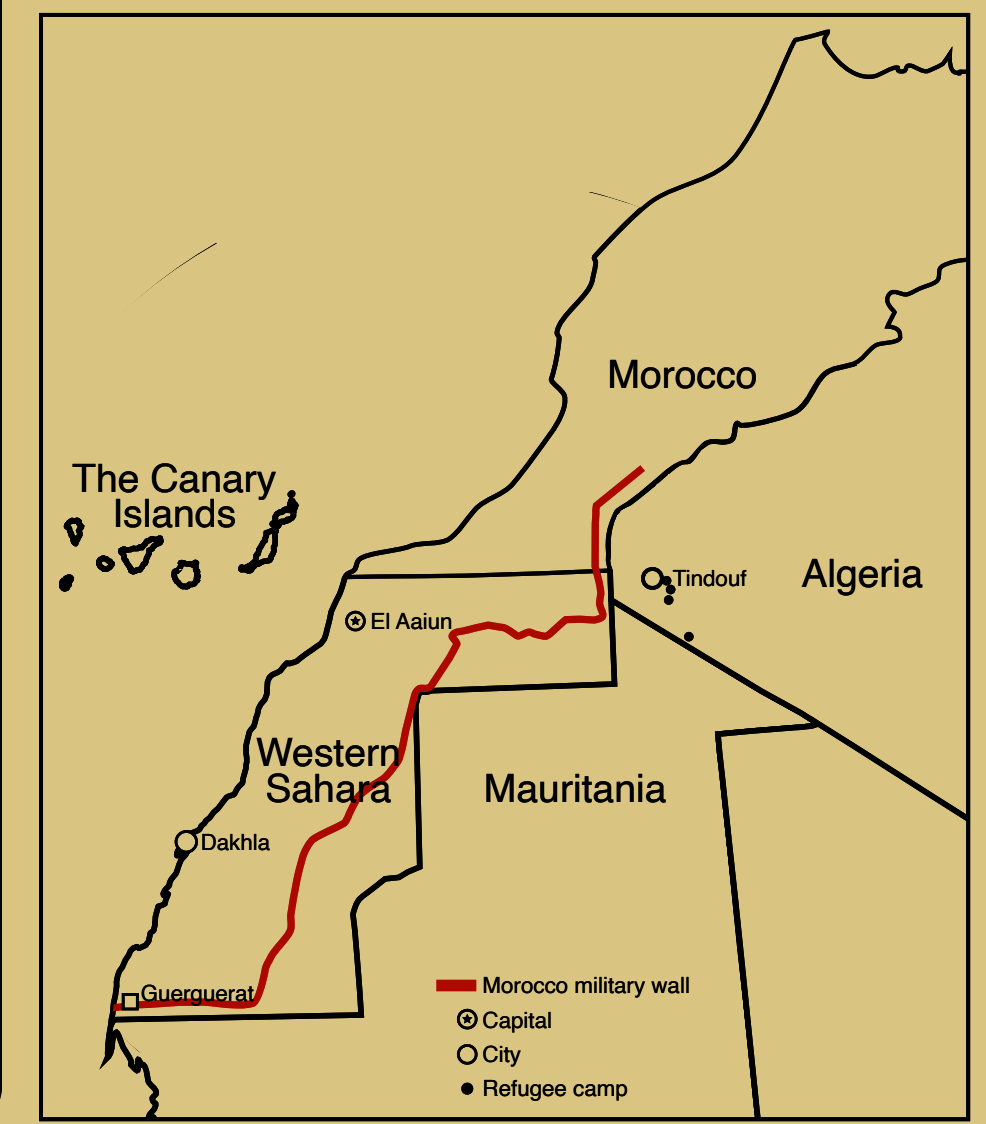
The fishing industry is a means to reward domestic political allies. Cables by US diplomats leaked in 2010 revealed that the fishing industry in Western Sahara was controlled by generals of the Moroccan army.²⁰ This was corroborated by the 2012 publication of a list of the principal license holders in independent Moroccan media, demonstrating that most licenses were granted to army generals and a few defected Polisario officials willing to pledge allegiance to the Moroccan monarchy.²¹ The agreement was seemingly renewed in late November 2020.



Court draws the line: For years, the European Union's bilateral agreements with Morocco have been applied to the part of Western Sahara that Morocco holds under military control. Since 2012, the representative organisation of the people of Western Sahara, the Polisario Front, has started to challenge that inclusion in the Court of Justice of the European Union, arguing that it is a violation of the Saharawi people's right to self-determination.



The CJEU has in four different legal processes concluded that including Western Sahara within the scope of agreements with Morocco is contrary to the principle of self-determination. Here, Saharawi refugees on 27 February 2018 thank the CJEU for clearly specifying that Western Sahara cannot be part of the EU's fisheries agreement with Morocco.



2021
It is expected that the CJEU's General Court will rule on the revised EU-Morocco Agreement.

The erroneous lists

COUNTRY
SECTION

Morocco
Processing plants

Validity date from
10/08/2007
Date of publication
06/08/2019

00037

Approval number	Name	City	Regions	Activities	Remark	Date of request
1029	CIBEL II	Agadir	Souss - Massa	CAT3		12/05/2013
1031	COIP (Consortium Industriel De Pêche)	Agadir	Souss - Massa	CAT3		12/05/2013
1148	TANTASAR S.A.R.L.	Tan Tan	Guelmim - Oued Noun	CAT3		
1980	SOVAPEC S.A.R.L.	Tan Tan	Guelmim - Oued Noun	CAT3		
2223	COPELIT S.A.R.L.	Ladyoune	Ladyoune-Sakia El Hamra	CAT3		
2258	KB FISH	Ladyoune	Ladyoune-Sakia El Hamra	CAT3		
2471	LAAYOUNE ELEVAGE	Ladyoune	Ladyoune-Sakia El Hamra	CAT3		
2633	NOUVELLE OUGALA S.A.	Tan Tan	Guelmim - Oued Noun	CAT3		
2727	SOMATRAPS S.A.R.L.	Ladyoune	Ladyoune-Sakia El Hamra	CAT3		
2830	SOTRAGEL S.A.R.L.	Ladyoune	Ladyoune-Sakia El Hamra	CAT3		
2854	LAAYOUNE PROTEINES SARL	Ladyoune	Ladyoune-Sakia El Hamra	CAT3		
2988	CIBEL I	Tan Tan	Guelmim - Oued Noun	CAT3		
3349	ALPHA ATLANTIQUE DE SAHARA MAROCAIN	Ladyoune	Ladyoune-Sakia El Hamra	CAT3		28/04/2014
3618	DELTA OCEAN	Ladyoune	Ladyoune-Sakia El Hamra	CAT3		
4335	ALIMENTS ET PROTEINES DU NORD	Tanger	Tanger - Tétouan - Al Hoceima	CAT3		

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The Moroccan government places fish processing companies in Western Sahara on the lists of approved establishments of fish products in Morocco. EU institutions don't seem to object.

“When checking imports, the Netherlands Food and Consumer Product Safety Authority (NVWA) uses a list established by the European Commission that contains companies that are authorised to export fishery products to the EU. This list is published on the website of DG SANCO [sic] and also contains companies in Western Sahara. The list is a guideline for the NVWA when checking imports. When the shipments of fish oil meet applicable EU-regulations and the fish oil is produced by companies on the EU-list, they are allowed into the EU.”

Dutch Minister for Foreign Trade and Development Cooperation, Sigrid Kaag, 26 May 2020, in response to an import of fish oil from Western Sahara into the Netherlands.³²

Western Sahara is not part of Morocco, according to the CJEU. Yet, the EU Commission’s lists of approved establishments in Morocco include companies in occupied Western Sahara.

The European Union’s Directorate General for Health and Food Safety (DG SANTE)³³ has a central role in determining which fishery products enter the EU. On a regular basis, DG SANTE publishes updated lists of establishments in non-EU countries that have been approved to export a specific category of food of animal origin. And these lists are the gatekeepers to the EU single market.

Procedurally, two cumulative conditions must be satisfied to import products of animal origin into the EU. First, the product must originate in an approved non-EU country of origin, evaluated by the EU Commission as appropriate for providing the necessary guarantees for the specific food category. Second, the product must originate from an approved establishment, i.e. appear on a list of companies drawn up by the competent authority of that third country which avows the companies’ compliance with EU Regulations. In an unrelated July 2020 decision, the EU Court of Justice again confirmed that these are the two requirements for importing into the Union.³⁴

The first condition lies entirely in the hands of the EU Commission. For a country outside the EU to obtain the approval for exporting products to the EU, a prior evaluation of the country and its competent authority will be carried out by the EU’s Health and Food Audits and Analysis Office.³⁵

A wide variety and share of fishery products from Western Sahara - including fish oil and fishmeal - enter the Union market. However, Western Sahara does not appear in any list of approved non-EU countries. The territory is neither on the list for processing plants which produce fish oil and fishmeal, nor on the list for other fishery products.³⁶

Other territories that the UN lists as non-self-governing do have their own non-EU country sheet. For the export of fishery products, the Falkland Islands, French Polynesia and New Caledonia are all listed as approved countries separately from their respective administering powers, which are all EU Member States. In stark contrast, Western Sahara has no non-EU country-sheet of its own, but is included in the country-sheets of Morocco, in violation of its separate and distinct status under international law and of the repeated CJEU rulings. Yet, the DG SANTE country-sheets of Morocco that include Western Sahara do not contain any explanation as to the reasons for this extraordinary treatment, which is even more puzzling given it is the only non-self-governing territory without an established administering power in place.³⁷

Morocco’s sanitary control system for fishery products was approved by the EU in September 1994. Under this system, Morocco’s Directorate of Livestock was appointed as the Moroccan competent

authority for control and certification of such products. Specifically, the National Office for Sanitary Safety and Food Products (ONSSA) is charged with the planning, coordination and execution of sanitary inspections of the fish products sector and their import and export.³⁸

ONSSA plays a pivotal role with regard to the second condition for importing into the EU. ONSSA must check and guarantee that companies comply with the EU’s requirements and thus can be added to – or removed from – the list of approved establishments.³⁹ To paraphrase, DG SANTE itself does not add companies to the list, nor check their compliance with relevant EU regulations. This task is outsourced to a designated authority in the approved country.

ONSSA’s website lists 10 regional offices. One of those is in El Aaiún, the capital of occupied Western Sahara, tasked with covering Western Sahara and southern Morocco.⁴⁰ This office is crucial in determining whether a company located in occupied Western Sahara is included on the lists published on the website of DG SANTE – the same lists used by the EU national authorities to determine if a product can enter the single market or not.

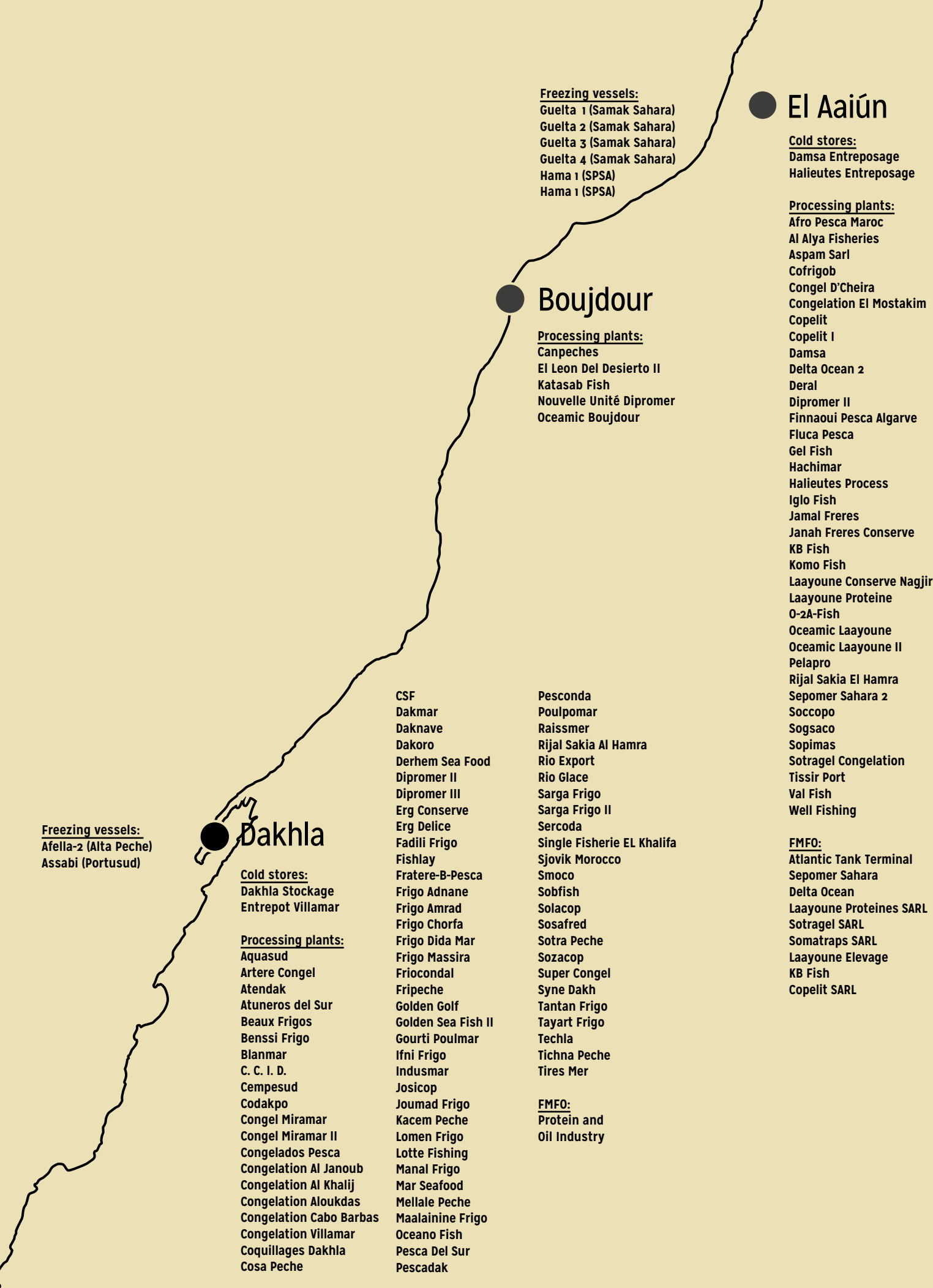
It is not surprising that a Moroccan state body would consider Western Sahara as an integral part of the national realm. What is astonishing, is that the EU Commission – while claiming not to recognise Morocco’s claim to Western Sahara – accommodates that position by accepting the inclusion of companies located in Western Sahara on the list of Morocco’s EU-approved establishments. Morocco’s lists of approved establishments for exporting fishery products, including fish meal and fish oil, to the EU currently contain 144 establishments located in Western Sahara.

As noted, in July 2020 the CJEU’s General Court pointed out that while the competent authority of a third country may draw up the list of establishments, the EU Commission is empowered to adopt an implementing act to modify those lists.⁴¹ In other words, just as it is in the power of the EU Commission to decide which countries can export a certain foodstuff to the EU, it also has the final say on which companies producing that particular foodstuff are included on the list of approved establishments.

However, while the Union’s highest court has issued consecutive rulings that all state with unambiguous clarity that Morocco has no legal title over Western Sahara, DG SANTE does not exclude companies in Western Sahara from the list of approved establishments of Morocco. In the aftermath of the 2016 CJEU ruling, DG SANTE even carried out inspection missions in Western Sahara “with a view on updating the list of companies authorised to export their products to the EU”, in clear violation of the territory’s separate and distinct status.⁴² A justification offered in 2017 not only reveals the EU Commission’s intention to ignore the Union’s own Court of Justice but also the UN, which has never recognised Morocco as a governing authority and considers Western Sahara has no administering power in place.

“The European Court of Justice ruled in December 2016 that the trade agreements between the EU and Morocco are not applicable to Western Sahara”, the EU Commission correctly stated. “However, the United Nations recognises that Morocco administers 80% of the territory as a governing authority. According to the Legal Service of the Commission, the import health requirements are not based on political criteria but on technical criteria only. This means that Morocco may continue to act as a competent authority in Western Sahara for the control and the listing of establishments approved to export goods to the EU.”⁴³

In response to inquiries by WSRW about the problematic lists, the Commission explained that the “current situation is not fully satisfactory but takes account of the de facto situation and is considered to be the best available compromise”. It furthermore stated that the EU has to “take account of the actual situation in the relevant territories” and that “the Moroccan legislation is implemented there.”⁴⁴



EU approved establishments on occupied land

The Moroccan government has ensured that a total of 144 establishments in occupied Western Sahara can export to the EU with the blessing of the EU Commission.

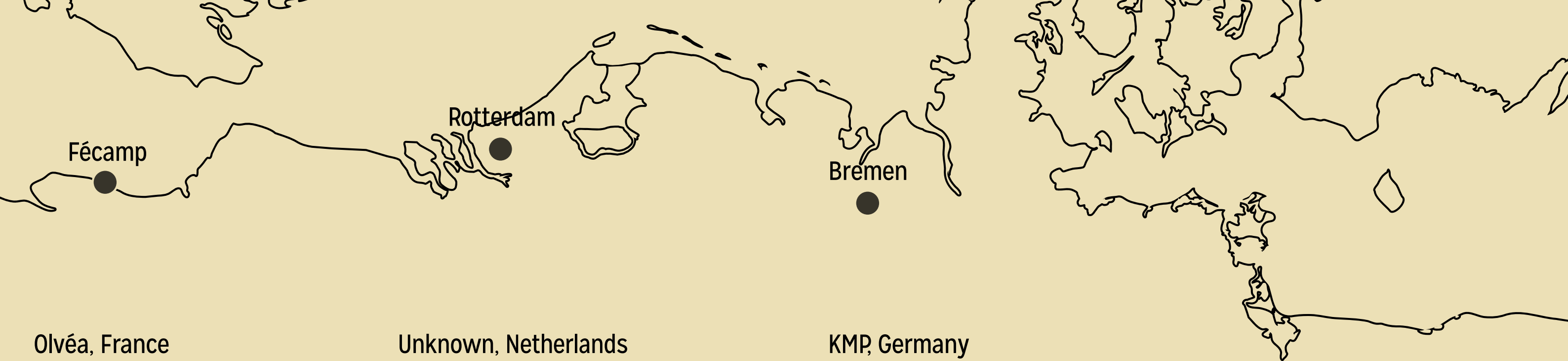
In total, the EU has agreed to the approval of 122 processing plants, 8 freezing vessels, 4 cold stores and 10 producers of FMFO for exports of fish from occupied Western Sahara to the EU. All have been rubber-stamped for approval by the sanitary authorities of the neighbouring country of Morocco.

The establishments appear in the lists of processing plants (dated 06.08.2019)⁴⁵ and of fishery products (dated 18.07.2020)⁴⁶ presented by the EU Commission's Directorate-General for Health and Food Safety (DG SANTE).

The EU Court of Justice states that the territory of Western Sahara is separate and distinct from Morocco and that Morocco has no legal mandate to operate in the territory. Yet, not only does the EU allow Morocco to certify establishments outside of Morocco, it places these firms on the list of Moroccan exporters. The EU institutions act as if the Court had not ruled on the matter.



This picture at Guerguerat was taken in August 2019, when a young Saharawi, alone, blocked the controversial export point.



Olvéa, France

The French importer of fish oil from the occupied territory is most likely Olvéa Group, whose subsidiary Olvéa Fish Oils is the only producer of fish oils with a storage facility inside the port of Fécamp, and further infrastructure in the immediate vicinity. Olvéa produces omega-3 fish oils for both human and animal consumption, for which it uses pelagic fish and anchovy sourced – according to its website – in “Morocco” and Mauritania. Since 2003, the company has owned a factory in Agadir in Morocco, and, since 2012, a sourcing and storage unit in the north of Mauritania.⁴⁸

WSRW has contacted Olvéa on several occasions, but the company refuses to respond – even inquiries by French and EU media on the occasion of the February 2017 *Key Bay* shipment have been ignored. However, ever since that heavily scrutinized shipment, WSRW has not observed any of the tankers which have loaded fish oil in El Aaiún make the voyage to Fécamp. Either the imports from the territory into France have been – temporarily – halted, or fish oil is now transported over land to be shipped from the ports of Tan Tan or Agadir in Morocco proper. In general, pelagic species used for omega-3 fish oil, caught and landed in Western Sahara, are most likely transported in trucks to production facilities in the south of Morocco.



The chemical tanker *Key Bay* has been transporting fish oil from Western Sahara to Olvéa's factory in Normandy for a decade. Here, the vessel is seen arriving at Fécamp on 22 January 2017, mere weeks after the CJEU decided on the scope of the free trade agreement with Morocco. After *Key Bay*'s arrival on 15 September 2016, the French government stated that the agreement was still valid, despite the CJEU's 2015 ruling.

Unknown, Netherlands

Since 2019, WSRW has observed two shipments of fish oil from Western Sahara to the Netherlands; each time aboard the Dutch owned vessel *Oramalia*.⁴⁹ The identity of the importer remains unclear. WSRW has asked Olvéa Groupe to clarify the potential involvement of its subsidiary Olvéa Netherlands BV, which according to the Dutch company registry is involved in the wholesale of fish oil, but the company has not responded. WSRW has also written to IQI Petfood, an important partner of Olvéa in the Netherlands, but has not received a response. The German company KMP also has operations in Rotterdam, since taking over the Dutch company Marvesa Rotterdam N.V. in 2017.⁵⁰



Oramalia arrived at the port of Vlaardingen/Rotterdam with fish oil on 15 October 2019 and 2 December 2019.⁴⁹ Here the vessel is seen in Rotterdam in 2020. In December 2020, the vessel took on another load in El Aaiún in Western Sahara. At the time of this report's publication, the destination of the cargo was not known.

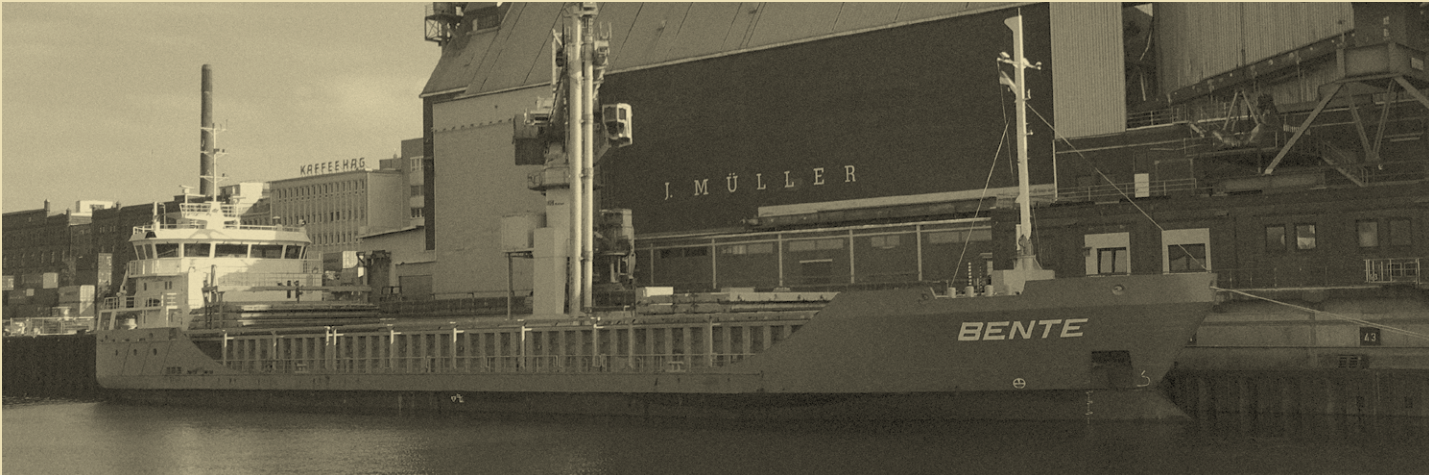
KMP, Germany

The largest importer of Western Sahara fishmeal into Europe is the Bremen-based company Köster Marine Proteins GmbH (KMP). The company owns the “Köster Terminal” in Bremen's Holzhafen port, described as the “the biggest and most modern fishmeal terminal in Europe”.⁵¹ From here, KMP organises the onward transport. After import control, the fishmeal is loaded in containers or large bags onto ships, trains or trucks at the terminal. KMP promotes itself on its homepage as Europe's leading fishmeal distributor. In 2017, KMP took over a competitor, Feed Service Bremen GmbH. Since then, all imports of fishmeal in Bremen – thus including those from Western Sahara – have been carried out exclusively by KMP. On its website KMP consistently states that the company purchases fishmeal from “Morocco”, with no mention of Western Sahara. In 2019, 76.9% of the fishmeal imported in Germany was landed and resold in Bremen, i.e. by KMP.⁵²

KMP mainly imports its fishmeal from Peru. Yet since 2015, coinciding with Peru's increasing focus on China as its main client, KMP's imports from Morocco – and therefore mainly from Western Sahara – increased, and even surpassed Peru's share in 2017.⁵³

In total, from what can be deduced from German trade statistics, KMP appears to import fishmeal from 16 countries worldwide during the last three years. This diversity of suppliers suggests it is possible for the company to use suppliers from other countries should it choose to do so.

The Polisario Front, representing the Saharawi people, has called on KMP to stop trading fishmeal from Western Sahara.⁵⁴ WSRW has repeatedly asked the company for clarifications on its continued imports, but has never received a reply.



Bente seen arriving at KMP's terminal in Bremen on 19 July 2018 with fishmeal from Western Sahara. The vessel *Naja* undertook the same type of shipment to Bremen on 30 April and 14 September 2019.

KMP's suppliers in occupied Western Sahara, 2017-2019		
Supplier in Western Sahara	Approval number	Volume of imports (t)
KB Fish	2258	16,095
Copelit SARL	2223	11,611
Laayoune Proteins	2854	5,491
Delta Ocean	3618	3,440
Somatraps SARL	2727	2,600
Protein and Oil Industry	PSP74.0180.18	983

While KMP remains silent in the face of scrutiny, Parliamentary Questions in the Bundestag and information requests to the federal state of Bremen, have led to more forthcoming answers. Not only did the state's Border Control Post clarify the volume of the imports, but they also included the approval numbers of the exporting companies.⁵⁵ Each company that is included on DG SANTE's list of approved establishments – and thus approved for exporting to the EU market – gets assigned an approval number. The numbers quickly reveal which “Moroccan” companies in occupied Western Sahara are providing KMP with fishmeal.

EU Commission misrepresented the Saharawi opinion



Mouloud is herding his livestock in the part of Western Sahara that is not under occupation by neighbouring Morocco. "I want freedom for my entire people", he said. The Saharawis have not had a say in the signing of a revised EU-Morocco trade agreement.

"Whatever we do, in the framework of this negotiation and the framework of this agreement, shall not prejudice that UN process. It shall not favour one party or the other party in the framework of the negotiations, and it shall not prejudice the outcome of the UN process."

Vincent Pilet, the EU's chief negotiator on amending the EU-Morocco trade deal to expressly apply to Western Sahara, 21 June 2018.⁵⁶

The EU Court of Justice ruled that the consent from the people of Western Sahara is required for trade with the territory. In negotiating a revised deal with Morocco, the Commission chose to ignore that requirement and subsequently misled the EU Parliament and Council about its communication with Saharawi groups.

The UN process to realise a just and lasting peace in Western Sahara is governed by a cornerstone principle fundamental to the process of decolonisation worldwide: the right to self-determination. The right to self-determination is established in Article 1 of both the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. The right is understood as the free determination of a people's political status, the free pursuit of their economic, social and cultural development and the free disposal of their natural wealth and resources. It is noted that this right in the context of colonized (i.e. non-self-governing) peoples is binding on all States; an obligation erga omnes.

Yet ever since the CJEU struck down the application of the EU-Morocco trade deal to Western Sahara - referring explicitly to the Saharawi people's right to self-determination, and consequently, the need to obtain their consent - the EU has persistently ignored that basic tenet of international law. Instead, it has consistently and exclusively favoured one party to the conflict - the one without right or legal title to administer Western Sahara: Morocco.

Arguing that it was important that the Western Sahara economy could continue to benefit from preferential tariffs, the EU turned to Morocco in 2017 to negotiate an amendment to the EU-Morocco trade deal: one that foresaw the explicit inclusion of Western Sahara into the geographic scope of the agreement. It should be recalled that the CJEU stipulated that the issue of potential benefits to the territory were irrelevant: what mattered from the legal perspective was that the people of the territory had consented to having an EU agreement with another country apply to their land. And while the Court was clear that, according to the UN, it is the Polisario Front that is to be regarded as "the representative of the people of Western Sahara"⁵⁷, not once did the EU Commission invite the Polisario Front to the negotiation table. They were simply ignored.

Then, as Morocco and the EU had agreed on extending the trade deal to Western Sahara, the deal was initialled in January 2018 by ... the EU and Morocco.⁵⁸ Again, the people of Western Sahara were not asked for their consent - they were ignored.

After having sealed the trade deal with Morocco, and well aware of the CJEU's conclusion that the consent of the people of Western Sahara was required for any deal to lawfully affect their land, the EU Commission tried to satisfy that condition by holding a round of consultations with Moroccan economic operators based in the territory and Moroccan officials elected in the territory. There were highly problematic aspects to this "consultation process" which took place from mid-February to mid-March 2018.

First, instead of applying the notion of "consent", as the Court had stressed, the Commission undertook a "consultation". These are fundamentally different concepts: whereas consent requires an expressed explicit approval, a consultation does not. Moreover, the entire concept of the "people" of the territory was replaced with

the concept of "les populations concernées", "la population" or "the people concerned". The Court never suggested any of these new concepts could apply.

Second, there seems to be little purpose in consulting stakeholders after an agreement has already been inked.

Third, recalling that consulting falls short of the requirement of obtaining consent, most Saharawi groups were not even invited to take part. The EU External Action Service (EEAS) - the EU's foreign affairs branch tasked with the consultation exercise - had stated that only groups registered by the Moroccan government were invited, immediately ruling out practically all Saharawi groups in the occupied territory - bar two who had obtained some form of registration in 2015 after the UN Human Rights Council had criticised Morocco for not registering Saharawi groups.⁵⁹ Both groups, ASVDH and Al Ghad, had already issued statements that they would not participate in a consultation process that they perceive as undermining their people's right to self-determination. Critically, the Saharawis living in the refugee camps - having fled the very areas where most fishery products are produced - were not even heard at all.

Fourth, the EU Commission has blatantly misrepresented which "stakeholders" it consulted. No less than 89 Saharawi civil society groups sent a letter to the EU Commission, rejecting the approach of negotiating a deal with Morocco for their homeland without the consent of their political representation, the Polisario Front.⁶⁰ The EEAS would then use the letter as a premise to include all 89 groups as having been consulted. A meeting with the Polisario Front on 5 February 2018 - at the initiative of the latter and not part of any consultation exercise - was referred to by the EU Commission as a consultative meeting. This was something approaching a lie, as was clear when Polisario released the email exchange that had led up to the meeting, proving they could not have known about the EEAS' true intentions.⁶¹ Not only was the false information about Polisario circulated to EU member states: it was also given to Saharawi groups. One Saharawi association against Morocco's presence in Western Sahara received an invitation from the EU Commission to a "consultation with a widest possible selection of parties [...] and it is in this sort of exchange of views whereto you are invited to take place, in the same manner as we have already undertaken discussions with Front Polisario on 5 February in Brussels". WSRW was surprised to see its own name in the list of associations that had rejected taking part in a consultation process, as our association has never been invited to such a process. WSRW was indeed invited to an "informal meeting", which was turned down for two reasons. First, WSRW does not speak for the people of Western Sahara, and second, the people of Western Sahara had not consented to the deal - a requirement set forth in the CJEU rulings.

So who was consulted?

This is a screenshot of the list of “stakeholders” that was presented by the EU Commission to the EU Council and EU Parliament on 11 June 2018 to document the “consultation” that had been undertaken to discuss benefits under a new agreement. All associations that advocate for self-determination – including Polisario – were erroneously added to the list.

3. Incorrect. Why would Polisario take part in a consultation on an EU-Morocco agreement? Does not make sense. Polisario would not have taken part if invited, but they weren't. WSRW has published Polisario's correspondence with the Commission.⁶³

12. Incorrect. Two actual Saharawi human rights groups – but neither took part in consultation.

13. Incorrect. Never taken part. UK-based.

14. Incorrect. WSRW has specifically rejected taking part, and asked to be removed from this report, no answer from the EEAS.

15. Incorrect. Never taken part.

16. Incorrect. Virtually all Saharawi civil society groups condemned the EU's plans in a letter they, themselves, took the initiative to. Yet what was a letter of protest was presented by the Commission as part of a consultation. There were 89 signatory organisations, not 85⁶⁵

The Commission's fake “consultation” list

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

1. Political actors

Presidents of two Regional Councils:

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

MPs from Western Sahara:

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

Representative of the Polisario Front:

- Mr Mohamed Sidati

2. Economic operators

2.1. Agriculture

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

2.2. Fisheries

- National Fisheries Research Institute
- Chamber of Maritime Fisheries

2.3. Miscellaneous economic actors

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

3. Human rights associations

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

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A list of consulted alleged “stakeholders” was part of the so-called Staff Working Document sent to all EU governments and Members of the European Parliament.⁶² The document outlined the EU Commission's arguments as to why EU institutions should support the agreement reached with Morocco. The main assertion was that certain areas of economic and production activity in Western Sahara would benefit greatly from enjoying the same tariff preferences as granted to Morocco – while at the same time admitting there was no accurate data to actually back up that claim.

In the end, only 18 out of the 112 groups described by the EU Commission and the EEAS as having been consulted – 16% of the listed stakeholders – were actually consulted. All 18 supported Morocco's approach to the conflict. The remaining 94 stakeholders – advocating the Saharawi side – either condemned the EU's approach, refused to take part, or had never even been invited.

Notably, the consultation exercise was not about whether an agreement could be signed or not. Those consulted were, instead, asked how a signed agreement with Morocco would be financially beneficial to the ‘population’ of Western Sahara, the majority of whom are Moroccan settlers.

1. Representatives of the Moroccan government.
2. Does the EU recognise Moroccan parliamentary elections in Western Sahara? WSRW asked the EEAS, without answer. The two parliamentarians (and their parties) are fierce supporters of Morocco. Parties that advocate for self-determination are banned.
4. These business groups do not represent the Saharawi people. The CJEU judgment of 2016 (para 106) states that the matter of the benefits of a trade agreement is irrelevant when assessing its legality.
5. The word “Moroccan” should have been added. Morocco has no right to fish in Western Sahara, as the territory is separate and distinct from Morocco.
6. The Moroccan state owned company's OCP's activities are labelled by the Norwegian Government Pension Fund as “grossly unethical”, as the company's activities “do not respect the wishes and interests of the local population”. OCP Group's exports from Western Sahara were found in a case at the South African High Court to not respect the principles of the 2016 CJEU ruling.
7. Moroccan government body for promoting Moroccan interests in the territory.
8. Established through a decree of Moroccan government. CNDH does not address issues relating to self-determination.
9. Moroccan. Its main agenda seems to be concerned with the situation outside of the Western Sahara territory itself or to promote the Moroccan government's efforts⁶⁴
10. Moroccan. Lobbies internationally for the Moroccan position on Western Sahara. No website.
11. Credible and well-respected. But does not speak for Saharawis. Moroccan.



“The consultation process carried out by the Commission and the EEAS showed that most of those interviewed were in favour of extending the tariff preferences established in the EU-Morocco Association Agreement to products from Western Sahara”.

Commission Staff Working Document, 2018, page 32, after having spoken to 18 out of 112 of the institutions referred to in its annex, 2018.

“It is clearly impossible to say that the overall economic impact of such growth would systematically and directly benefit indigenous people. It can only be assumed that they would benefit, at least directly.”

Commission Staff Working Document, 2018, page 32, after not having spoken to a single group advocating for self-determination of Western Sahara.

Dear Mr Piket,

Thank you for your email of 7 September 2018, requesting to exchange views with WSRW on the main traits of the draft EU-Morocco Sustainable Fisheries Partnership Agreement, receiving our comments thereupon and our “views as to how best to satisfy the need for a fair distribution of the benefits associated with the agreement and possibly identify some ‘benchmarks’ to this effect.”

The Court of the European Union (CJEU) concluded in February this year that Western Sahara cannot be considered part of an EU-Morocco Fisheries Agreement. We consider it a given that the EU institutions abide by the rulings of the Court. Since our organization focuses on Western Sahara, and not Morocco, we do not see the point of us providing input to the proposed EU-Morocco SFPA.

For the same reasons, we request that you remove our name from the list of consulted stakeholders on the EU-Morocco trade agreement, published on page 34 of Staff Working Document under the title “List of stakeholders consulted on the amendment to Protocols 1 and 4 of the Association Agreement”. The document is dated 15 June 2018, and is to be found on the domain eur-lex.europa.eu/. We refused to take part, as the CJEU had stated in December 2016 that the consent of the people of Western Sahara was needed in order for the territory to be lawfully affected by such a trade arrangement.

Our rejection to take part in what you refer to as a “consultation” regarding the application of the EU-Morocco trade agreement to Western Sahara was specifically spelled out in a mail from our organization to you on 5 February 2018. As no consent has been sought or obtained, Western Sahara is out of the scope of the Agreement. To present us as a “consulted stakeholder” in official documents is thus at odds with reality.

We take it for granted that this was an erratum from your side. We also take it for granted that all groups from Western Sahara that refused to be “consulted” in a process they object to, will no longer be referred to as “consulted stakeholders”. 94 of the 112 organisations and individuals mentioned on the working document have refused to be consulted or weren't invited to take part in the first place, and should as such not be mentioned as consulted.

Looking forward to a swift confirmation from the Commission regarding the removal of our good name from the mentioned document.

With kind regards,

On 21 September 2018, WSRW requested that the EEAS remove the false information that WSRW and other organisations had taken part in the so-called “consultation process” from the Staff Working Document. No answer was received. This false information has still not been corrected.

EEAS drew data from its desired conclusion

A document shared with the European Parliament's international trade committee three months before the formal presentation of the Staff Working Document shows how key data was invented by the EEAS.

This document authored by the EEAS has never before been published. It shows the status of its work as presented to the EU Parliament's Committee on International Trade (INTA) in **March 2018**. The document correctly mentions that all Saharawi and European civil society groups had refused to participate. Now, compare this file with the one that the EEAS sent to the EU institutions three months later, in **June 2018**. There, all these non-participating groups suddenly appear as having taken part in the alleged 'consultation' process.

The initial overview document was sent as response to a request issued by the INTA Committee on 9 March 2018. The Committee had asked the EEAS "to provide us as soon as possible, and prior to the final completion of the report on involvement of people in Western Sahara, with the list of organisations and stakeholders that have been consulted". The Committee had underlined that the CJEU had established "that the consent of the people of Western Sahara should be received prior to the implementation of the agreement".

There are notable differences between the list first presented to the INTA Committee in March, and the one that was formally published as an annex in the Staff Working Document in June.

Liste des parties prenantes impliquées dans le processus de consultation dans le cadre de l'amendement des protocoles 1 et 4 de l'Accord d'Association

1. Acteurs politiques concernés

Présidents des deux conseils régionaux du Sud:

- M. Yanja El Khattat, Président du Conseil régional Dakhla-Oued Eddahab
- M. Sidi Hamdi Ould Errachid, Président du Conseil régional Laâyoune-Sakia Al Hamra.

Parlementaires provenant du Sahara Occidental

- Brahim Daaif, Parlementaire PJD
- Moulay Zoubair Habbadi, Parlementaire PAM

Autres acteurs concernés:

- M. Mohamed Sidati, Représentant Frente Polisario

2. Opérateurs économiques

1. Secteur Agriculture

- Association Sahraouie pour le Développement et l'Investissement
- Chambre d'agriculture de la région Dakhla Oued-Eddahab
- Groupe d'intérêt économique Agida Dakhla
- Coopérative Ajban Dakhla
- Coopérative Halib Sakia El Hamra
- Coopérative Al Joud

2. Secteur Pêche

- Institut National de la Recherche Halieutique
- Chambre de Pêches Maritimes

3. Agents économiques divers

- OCP Group (et la Foundation Phosboucraa)
- L'Agence du Sud

3. Associations travaillant dans le domaine des Droits de l'homme.

- Conseil National des Droits de l'Homme
- L'Observatoire du Sahara pour la paix, la démocratie et les droits de l'Homme
- La Commission Indépendante pour les droits de l'homme
- Association Marocaine de Droits de l'Homme

4. Organisations qui n'ont pas accepté la proposition d'une rencontre dans le cadre de l'exercice:

- Association Sahraouie des Victimes des Violations des Droits de l'Homme
- Association Al Ghad pour les droits de l'homme
- Western Sahara Campaign
- Western Sahara Resources Watch
- Independent Diplomat
- Dans le cadre de cet exercice, et suite à une lettre signée par 85 associations sahraouies le 3 Février 2018 concernant l'amendement des protocoles, le SEAE a également proposé le 7 Février 2018 d'avoir une rencontre avec une représentation de cette société civile sahraoui signataire. Cette invitation n'a pas fait l'objet d'une réponse positive.

1 The Commission first used Moroccan terminology to describe the occupied territory. This way of referring to Western Sahara as Morocco's "regions du Sud", which is contrary to the EU's own position, was also used by the European Commission in a hearing in the Parliament on 17 May 2018.⁶⁶ This political language was redacted before final publication.

2 This is factually incorrect in both lists. Polisario would have had nothing to gain from taking part in a consultation on an agreement that they spent years fighting in court. Would Palestinian authorities take part in a consultation on how settlements can benefit from EU trade with Israel? The allegation makes no sense. Its non-participation is well documented.

3 Initially, the EEAS was transparent about the fact that not a single civil society organisation advocating for self-determination had taken part in the talks, either from Western Sahara or abroad. The list of non-participants includes, correctly, Western Sahara Resource Watch. Three months later, these were all incorrectly moved to the list of those who were "consulted".

4 The Commission first explained that the 85 Saharawi associations (or 89, to be correct) had refused to take part. Three months later, the important information that they had rejected taking part in the process was deleted. EEAS also chose to delete the word "Saharawi".



All known Saharawi groups that work for self-determination signed a letter to the EU stating they condemned the EU-Morocco plan to include their territory in a revised trade agreement. In a first briefing to the EU Parliament's International Trade committee, the Commission stated that the groups "did not accept" to take part. A few weeks later the Commission stated that all non-participating organisations had in fact joined the consultation process. In its final report to the Parliament and Council, the Commission grossly misrepresented all self-determination oriented groups on the consultation list.

"The said judgment states that an agreement with Morocco covering the territory of Western Sahara must receive the consent of the people of Western Sahara. Consequently, Sweden made clear in the national statement that we understood 'the people concerned' to be 'the people of Western Sahara', in line with the judgment.[...] In view of the rejections to the consultation process and/or the draft agreement, and particularly the objections of Polisario, the official representative of the people of Western Sahara in the UN process, Sweden is not satisfied that the outcome of the consultation process can be said to constitute the free and informed consent of the people of Western Sahara."

Government of Sweden upon abstaining on vote on EU-Morocco trade agreement, 30 July 2018.⁶⁷

"[I]t seems difficult to confirm with a high degree of certainty whether these steps meet the Court's requirement of a consent by the people of Western Sahara, also taking into consideration that the conclusion of a positive consent is reached in spite of the negative opinion expressed by the Polisario Front."

European Parliament Legal Service, 13.09.2018, relating to a new EU-Morocco trade deal.⁶⁸

Replacing words

2016: This is the EU Court of Justice ruling. It concluded that “the people of Western Sahara” must express its “consent” to a trade agreement affecting the territory and that the aspect of benefits is unnecessary to determine.

106 In the light of that information, the people of Western Sahara must be regarded as a ‘third party’ within the meaning of the principle of the relative effect of treaties, as stated in substance by the Advocate General in point 105 of his Opinion. As such, that third party may be affected by the implementation of the Association Agreement in the event that the territory of Western Sahara comes within the scope of that agreement, without it being necessary to determine whether such implementation is likely to harm it or, on the contrary, to benefit it. It is sufficient to point out that, in either case, that implementation must receive the consent of such a third party. In the present case, however, the judgment under appeal does not show that the people of Western Sahara have expressed any such consent.

1.2.1 Scope

This evaluation aims to determine the benefits for the people of Western Sahara, guided by

1.2.1 Champ de l’étude

L’objet de la présente évaluation est de déterminer les bénéfices pour les populations du Sahara occidental en se fondant sur les paramètres pertinents dans le cadre de l’article 73 de la

2018: This is from the Commission’s Staff Working Document, used to convince the EU institutions of a revised agreement. Instead of obtaining consent of “the people of Western Sahara”, the EU’s approach was to study the benefits for “the people concerned” of an agreement it had already inked with Morocco. The French version of the same study even used the terms “populations concerned”, which is different, a term that is nowhere to be found in the CJEU rulings.⁶⁹ None of these concepts meet the legal requirement set by the EU Court of Justice. The document ascribed opposition to the revised agreement to “political reasons unrelated to the amendment itself.”

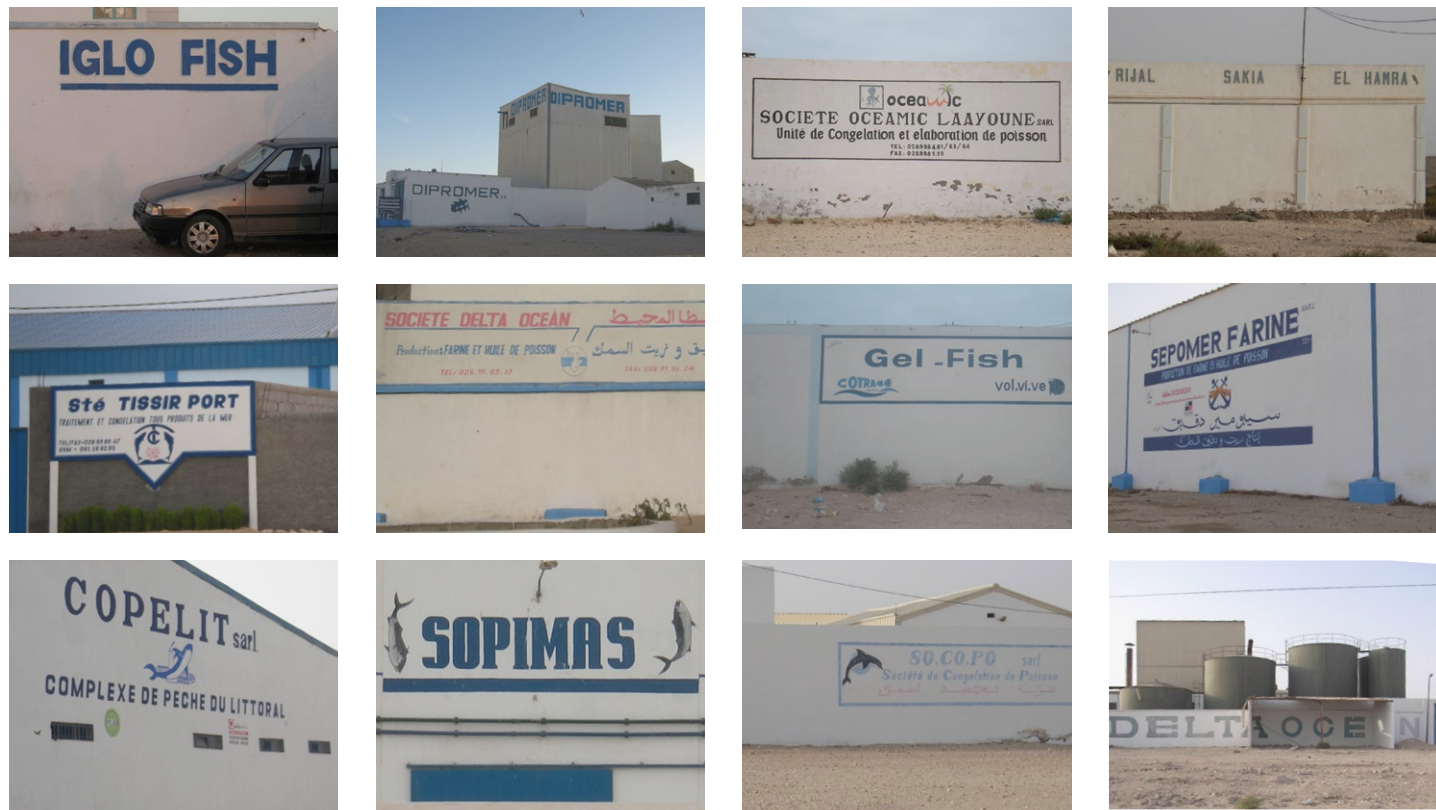
EU making an effort – on Palestine

In 2010, the CJEU ruled in the so-called *Brita* case that the 2000 EU-Israel Association Agreement does not apply to occupied Palestine.⁷⁰ Since then, the EU Commission has developed and enforced a policy of differentiation between Israel and the Syrian/Palestinian territories under Israeli occupation. In particular, it has adopted specific legislation to exclude occupied Palestine and the Golan Heights from the notion of the “territory of Israel” under EU law. An example is the certification requirements for imports of meat of farmed raptorial birds (ostrich-type birds) into the EU, where the EU Commission adopted a regulation that declares that “for the sake of market transparency and in accordance with public international law, it should be clarified that the territorial coverage of the certificates is limited to the territory of the State of Israel excluding the territories under Israeli administration since June 1967”. It even added the following clarification that the notion “Israel” is “[h]ereafter understood as the State of Israel, excluding the territories under Israeli administration since June 1967, namely the Golan Heights, the Gaza Strip, East Jerusalem and the rest of the West Bank.”⁷¹

The CJEU is clearly aware of the similarities of the occupation of Palestine and that of Western Sahara. In the cases brought before the EU Court of Justice regarding the application of EU-Morocco agreements to Western Sahara, the Court relied on the *Brita* case to rule that the Saharawi people is a third party to EU-Morocco relations that must consent to agreements applicable to Western Sahara, regardless of whether such agreements are deemed to be beneficial.

Similarly, in the case regarding the labelling of products originating in Palestine, the Court referred to its case-law on the separate and distinct status of Western Sahara, to rule that, in the light of the right to self-determination of the Palestinian people, occupied West Bank has an international status distinct from Israel.⁷²

While the EU Commission follows the CJEU’s rulings pertaining to Palestine, it does the opposite when it comes to Western Sahara, turning a blind eye to its duty of non-recognition by including the territory in that of Morocco.



12 of the 144 EU-approved establishments in occupied Western Sahara.



Saharawis have time and again spoken out against the plundering of their land’s riches. Ten years ago, the autumn of 2010, thousands of Saharawis living under Moroccan occupation erected a four-week protest camp in denunciation of socio-economic exclusion in their own land. That November, the camp was burnt to the ground by the Moroccan army and fights erupted between Moroccan police and frustrated Saharawis, with casualties on both sides. Leading human rights defenders who took part in the camp were given sentences ranging from 20 years to life, including the secretary-general of a Saharawi group that monitors foreign involvement in Morocco’s illegal plunder of the territory. In November 2020, a Moroccan court confirmed the sentences.

Bremen: the EU hub for conflict fishmeal

On 19 July 2018, the cargo vessel *Bente* unloaded a consignment of fishmeal from occupied Western Sahara in the port of Bremen in Germany. It was neither the first nor the last of such shipments to Bremen.



24 According to the German authorities, one of the suppliers of fishmeal into Germany is KB Fish in El Aaiún. The company was one of the first to export fishmeal from the territory. The picture is from approximately 2006.

It would take 16 months and several appeals to get the German federal customs services to finally admit that they did not verify the origin of fishmeal imports from “Morocco”, as no custom duties are levied on the import of fishmeal.⁷³ And because imports of fishmeal from occupied Western Sahara are imported as Moroccan goods, there is no specific information on their exact origin in foreign trade statistics. However, probing the Bremen Border Control Post (BCP) led to clarifications about the volume and value of the imports: a total of 40,220 tonnes of fishmeal were imported from plants in Western Sahara into the federal state of Bremen between the years 2017 and 2019.⁷⁴ WSRW estimates the value of these imports at around €44 million.⁷⁵

The Bremen BCP not only failed to question the origin of the fishmeal - something it had little reason to do because the exporter appeared in the DG SANTE list⁷⁶ - but neither did it question the validity of the veterinary certificates accompanying the shipments. The Bremen BCP has stated that it accepts the veterinary export documents issued by the office of ONSSA - Morocco’s national food safety authority - in El Aaiún, Western Sahara.⁷⁷ But a Moroccan authority cannot deliver such certificates because, as the CJEU has ruled, Morocco has no sovereignty over Western Sahara and thus cannot perform acts in a sovereign capacity in the territory. The EU’s kowtowing to Morocco in this matter is putting BCPs in a position where they have to accept erroneous documents and certificates on foodstuffs and feeding stuff, when EU and international law dictate the exact opposite.

Knowing the real origin of fishmeal imports that had been categorised “Moroccan” in origin sheds light on just how large Western Sahara’s share of the trade is. In 2017, fishmeal from Western Sahara accounted for 96% of imports whose origin was officially declared as “Morocco”. In 2018 a major drop was observed: the fishmeal imported from Western Sahara accounted for only 28.2% of the imports from “Morocco” to Bremen (and likewise to all of Germany). In 2019, the share of fishmeal from Western Sahara again increased to more than half (56%). It is not yet clear to WSRW why there was a decline of exports to Germany in 2018 nor if this development was related to the increased attention about the matter that began July that year.

Fishmeal exports, in tonnes, from “Morocco” to Germany, 2017-2019

	2017	2018	2019
Imports from “Morocco” into Germany	24,441	22,544	18,446
Of which effectively from Western Sahara	23,494.9 (96.1%)	6,367.1 (28.2%)	10,357.9 (56.2%)

All the fishmeal imported from Morocco into Germany, was shipped to Bremen. Western Sahara’s share remains significant in respect of Germany’s total fishmeal imports from all over the world: in 2017, 29% of Germany’s total fishmeal imports came from Western Sahara, 6% in 2018 and 11% in 2019. Source: Bremen government (see endnote 55).

Bremen’s imports from Western Sahara also turn out to be a substantial share of the EU’s fishmeal imports from “Morocco”. In 2017 , they accounted for 65% of these imports. In 2018 it was 24% and in 2019, 26%.⁷⁸ In addition, there may be imports from Western Sahara to other EU countries: Greece, Spain, Denmark, Italy, the Netherlands and Lithuania also imported fishmeal from “Morocco” in 2019.

The fishmeal trade via Bremen is important for Morocco. In 2019, 25.9% of Morocco’s fishmeal exports went to the EU.⁷⁹ Of that amount of 40,534 tonnes, 18,446 tonnes were imported via Bremen, i.e. almost half (45.5%). As such, about every eighth tonne of fishmeal exported from Morocco in 2019 was shipped to Bremen. As is now known, more than half of these shipments contained fishmeal from occupied Western Sahara.

The Bremen solidarity paradox

Bremen has a strong historic record in the fight against colonisation. As the only federal state to have opposed the German government’s South Africa policy and support independence movements in both Namibia and South Africa, it is perhaps unsurprising that Bremen’s political institutions have an expressed commitment to the Saharawi people’s struggle for self-determination. “The Bürgerschaft of Bremen will continue its commitment to the refugees from Western Sahara and their right to self-determination through an UN-led referendum”, reads a 2016 Resolution of the Bremen parliament.⁸⁰ In 2018, the then-President of the Bremen Parliament even called on the EU Parliament to

reject the proposed inclusion of Western Sahara in the trade deal with Morocco, writing that “in view of the part my city played in the history of colonialism in Germany, I cannot accept that economic activities in my city violate international law.”⁸¹

But Bremen’s political institutions appear unwilling to act when it comes to KMP’s imports. In November 2018, a parliamentary request by the biggest party in Bremen’s parliament, SPD, calling on the Bremen government to act, had no effect.⁸² The Bremen government explained that it does not have any authority to ban imports. It has not taken initiatives to clarify the imports, to ask KMP to stop importing from the territory, nor to request the German government to act at EU-level.

Morocco to decide

The EU has left it to Morocco to define which country Western Sahara products are from. This affects both EU import tariffs and trade statistics.



The EU-Morocco trade cooperation in Western Sahara not only covers fisheries products, but also agriculture. This French-owned plantation is one of a dozen of its kind in the area around Dakhla.

When a cargo of products originating in Western Sahara enters the EU single market, customs officers need to determine the applicable import measures. An important factor for assessment is the origin of the product.

Trade agreements, such as the one between Morocco and the EU, offer preferential treatment for products that would otherwise be subject to higher duties. To benefit from preferential treatment, the import has to be accompanied by a so-called EUR.1 or EUR-MED origin certificate. The condition of “origin” is that the product has been completely obtained, manufactured, processed or transformed in the exporting country. The certificate serves as proof that this condition has been met. But the burdensome administrative procedure that exporters need to go through for each and every shipment, leads frequent exporters to opt for the “approved exporter” status – granted by the national customs authorities, and allowing the “approved exporter” themselves to certify the origin.

By 1993, the EU Commission had recognised the Dakhla area as a “production zone authorised for the export of products from Morocco to the European Economic Community”.⁸³ In 1995, the EU Commission recognised the first “approved establishments” in Western Sahara – a

status that is granted for export.⁸⁴ As stated by the Commission in the Staff Working Document referred to above, imports from Western Sahara have taken place since the entry into force of the Association Agreement.

When the CJEU concluded that the trade relations with Morocco could not apply to Western Sahara due its “separate and distinct status”, a range of consequences resulted, including financial ones – as it can be argued EU importers of products from “approved establishments” in Western Sahara may have been avoiding taxation since 1995.

The EU Commission was aware of the tax consequences implied by the 2016 CJEU decision. In March 2017, the Commission notified the EU’s national customs authorities that henceforth “goods imported into the EU, whose origin is WS shall be declared so” and that “tariff preferences cannot be claimed in the customs declaration and shall not be granted”.⁸⁵ But still the fox was left to guard the hen house, as Morocco had the final say: “In case of reasonable doubt about the authenticity of the proofs or origin and the correctness of the information given in these documents, the customs authority of the Member State of import sends a request of verification to

the competent Moroccan authorities” – the very authorities which consider Western Sahara as an integral part of their national territory. Also, the EU Commission decided not to recover past duties, ignoring the retroactive effect of the CJEU ruling.

The lack of actual guidance offered to the customs unions was evidenced by the requests WSRW received from national customs authorities as to how they could distinguish between products from Western Sahara and Morocco. This was indicative of the EU Commission’s desire to keep the trade flow uninterrupted, as was the fact that the Commission did not publish a notice to warn EU importers of the change to the preferential regime as it had done in the case of occupied Palestine after the mentioned *Brita* ruling.

Since the July 2019 entry into force of an amended, albeit legally impugned⁸⁶ trade agreement with Morocco, the issue of correct taxation may be less relevant, but there is still the need for accurate statistical information on trade flows. That is not only in the EU’s self-interest, but mandatory: EU Member States are required to accurately record all imports from third countries on the basis of customs declarations.⁸⁷

Following the CJEU ruling of December 2016, WSRW has tracked several imports of Western Sahara origin into the EU. And yet the EU trade statistics for Western Sahara show that barely any goods were declared as such. The fish oil imports to France and the fishmeal imports into Germany were not recorded as imports from Western Sahara by the Member States involved.

Such a problematic absence of information is not new. The former EU High Representative, observed in 2017 that it is “difficult for the EU to accurately quantify from EU international trade databases the share of total trade actually coming from Western Sahara”.⁸⁸

The EU Commission has a major responsibility in the matter. By 2013, Member States were asking which country code should be used if preference was claimed for products coming from Western Sahara: EH (Western Sahara) or MA (Morocco). The EU Commission then replied that “the code MA should be used in that case and that the code EH was only to be used to designate non preferential origin. Eurostat is reconsidering the need to keep the code EH”.⁸⁹

To date, and despite questions on the matter in both the EU Parliament and from Member States, the EU Commission appears determined to avoid any clarity on the trade flow from Western Sahara. In February 2019 in response to a question by a Member State as to how the origin of products from Western Sahara should be indicated in customs declarations, the EU Commission responded that “Morocco will not want to indicate ‘Western Sahara’ in the certificates of origin” and that it is “also a fact that Western Sahara is part of the same customs territory as Morocco; it is a single customs territory with the same customs authorities applying the same origin rules.”⁹⁰ WSRW has not seen any explanation from the Commission clarifying the legal basis for such a claim.

In October 2019, as Member States persisted with questions on the originating status of goods from Western Sahara, the EU Commission essentially responded that they would need to sort things out for themselves: if sure that the origin of the goods is in fact Western Sahara, then “it is up to the competent authorities of the EU Member States to consider that the indication of Morocco is not in itself a reason to initiate a verification request to Morocco.”⁹¹

This is where we are now. Not only does the EU Commission allow Morocco to decide the origin of products from Western Sahara in a customs declaration, it is also undermining the uniform application of EU customs law across Member States by leaving it to them to decide which country code should be used. As if that was not enough to obfuscate the trade statistics, the EU Council Decision of February 2020 outsourced the responsibility of EU Member States to record data about trade with Western Sahara to Morocco.⁹²

Morocco content with EU deal

Morocco was emboldened in reacting to EU institutions’ inclusion of Western Sahara in the trade deal in 2019. “By no means is the Sahara issue a point of controversy between Morocco and the EU. Some ‘parties’ would like that to be the case. But to their despair, the EU clarified its positions once and for all during the last Association Council. It was a historical moment, because for the very first time, we had a common language on the Moroccan Sahara”, remarked Morocco’s Minister of Foreign Affairs.⁹³ He was referring to the joint-declaration issued by the EU and Morocco in the framework of their 14th Association Council in June 2019. It included a short reference to “the issue of Western Sahara”, in which both parties affirm their support to the UN process and the EU “welcomes the serious and

credible efforts led by Morocco to this end”.⁹⁴

Partnering with Morocco – which has no sovereignty or international administering mandate over Western Sahara – for a tax-free supply of any product from that territory is a tacit form of recognition of Morocco’s untenable claim to its southern neighbour.

The political importance of including Western Sahara in international agreements has been referred to often and explicitly by Morocco. “International agreements which do not exclude ‘the Moroccan Sahara’ from their application, prove that the area is Moroccan”, Morocco’s Minister of Communication said in 2013.⁹⁵ “The financial aspect [of the EU-Morocco Fisheries Agreement] is not necessarily the most important aspect of this agreement. The political aspect is just as important”, said Morocco’s fisheries minister in 2006.⁹⁶

Taxes avoided?

Based on a statement from the French authorities in September 2016, there is reason to believe that imports of fish oil from Western Sahara into Europe should have been subjected to a tariff, but weren't.



In September 2016, French customs was confronted with the arrival of a tanker containing fish oil from Western Sahara in Fécamp, Normandy. Customs stated that it had "decided that the shipment is not liable for tariffs, in line with the EU-Morocco trade treaties, because, the EU says, those accords remain in force despite the December 2015 ECJ ruling".⁹⁷ The EU Court of Justice had ruled on 10 December 2015 that goods from Western Sahara could not be included in the EU-Morocco trade agreement.

In other words, according to the French authorities, the CJEU decision from 10 December 2015 was not applicable when *Key Bay* anchored in Normandy. This is in itself peculiar, as the EU institutions had appealed the CJEU's decision, but they had not requested a suspension of the decision.

But not only that, the agreement must also have been relevant for this particular import. If not, it would not have been referred to by the French customs when confronted by the media. Had the fish oil been intended only for animal food, the trade agreement and the rulings would not have been relevant, as such oil is free of tariff. However, oil for human consumption is covered by the agreement.

The implication is that tariff should most probably have been paid upon import. But most likely, it was not.

Four months later, 22 January 2017, the same tanker again arrived in France with a cargo of fish oil from Western Sahara – this time about a month after the highest Court of the European Union had come to the same conclusion in December 2016. Again, this happened at a time when there was no trade agreement in place to regulate the trade. So, was a tariff paid?

When assessing how to deal with imports of fish oil for human consumption from Western Sahara, the EU could have looked to the EFTA countries.

Together with its sister vessels, the tanker *Key Bay* had for some years been transporting fish oil from Western Sahara to Norway, an EFTA country. In 2010, the transports of fish oil on these vessels to Norway were the subject of a detailed, award-winning documentary on Swedish broadcaster SVT. It not only revealed that the traders violated the Norwegian government's advice on occupied Western Sahara. The vessels also picked up Moroccan certificates of origin in the Moroccan town of Tan Tan, and the actual cargo in Western Sahara. The backlash for the importer – Norwegian company GC Rieber – was intense. Losing major clients such as German company Corgis and the partially state-owned Ewos, GC Rieber halted the imports. Subsequently, Norwegian customs forced the company to pay €1.2 million in customs duties for not having paid the correct tariff fees for years.⁹⁸ In the political debate that followed, the Norwegian government stated that such products cannot enter Norway under the EFTA-Morocco free trade pact, as Western Sahara is not Morocco. The policy of all the EFTA states was noted by the CJEU General Advocate in his 2016 opinion.⁹⁹

Were the EU institutions ready to implement the landmark ruling in the same way as EFTA? No.

Spanish police and harbour authorities who boarded the *Key Bay* in January 2017 during its short stop-over in Las Palmas confirmed the cargo aboard was indeed from Western Sahara. The Spanish government would later explain that "the CJEU judgement of 21st December 2016 only establishes that the commercial benefits granted to Morocco by the Euro-Mediterranean Agreements are not applicable to Western Sahara" and that "in order to assure that the Agreement was correctly implemented, and taking into account the CJEU judgement, we informed the custom authorities in France and Denmark, countries of destination of the shipment, of the proven facts, in the framework of mutual assistance in customs of the EU Member States."¹⁰⁰

On 16 January 2017, European Parliamentarians wrote to the EU High Representative, the EU Trade Commissioner and the EU

Commissioner for Economic and Financial Affairs, asking the French authorities to intervene before the *Key Bay* arrived in the port of Fécamp to ensure enforcement of EU legislation. A day later, Polisario Front announced it would file a complaint with the French customs authorities and the EU Commission for the law to be complied with.¹⁰¹

If the EU Commission had made an effort to enact the CJEU decisions, it would have adapted the necessary materials – such as the SANTE lists – for the French customs and veterinary BCP to do their job. The misleading origin in the documents accompanying the shipments would in that case have resulted in a denial of entry.

Catching small fish to produce bigger ones

To produce expensive fish in cages along the coast of Northern Europe, the producers depend on cheaper African or Latin American stocks that are transformed into oil or meal.



European aquaculture depends on imported proteins from other continents. Some of it originates from occupied Western Sahara.

The aquaculture industry is a peculiar one. In order to farm fish such as salmon, the industry needs to purchase massive amounts of fish feed, which generally consists of soy and FMFO.

According to the most recent annual overview of the global fish sector by the UN Food and Agriculture Organisation (FAO), production reached an estimated 179 million tonnes in 2018 – 96.4 million tonnes in capture and 82 million tonnes from aquaculture production – of which 22 million tonnes were destined for non-food uses; mainly to produce fishmeal and fish oil.¹⁰² More specifically, the FAO states that about 88% of the 2018 world fish production was used for direct human consumption. The remaining 12% was used for non-food purposes, of which 82% (18 million tonnes) was used to produce fishmeal and fish oil.¹⁰³

The average annual fishmeal and fish oil production in the last 10 years is approximately 5 million tonnes of fishmeal and 1 million tonnes of fish oil. Each year, around 20 million tonnes of raw material are used to produce fishmeal and fish oil. About 75% come from whole fish of which nearly half is landed in South America. The rest comes from by-products from the processing of wild and farmed fish.¹⁰⁴

Many species from direct fisheries are delivered as whole fish to the so-called “reduction industry”, in addition to by-products from the fish processing industry. The species dominating the raw material supply are small pelagics, such as sprat, sardinella and anchovy. In fact, when prepared from whole fish, fishmeal is made almost exclusively using small pelagic species.¹⁰⁵ Pelagic fish can generally be found from the surface to a depth of 1,000 meters. In general,

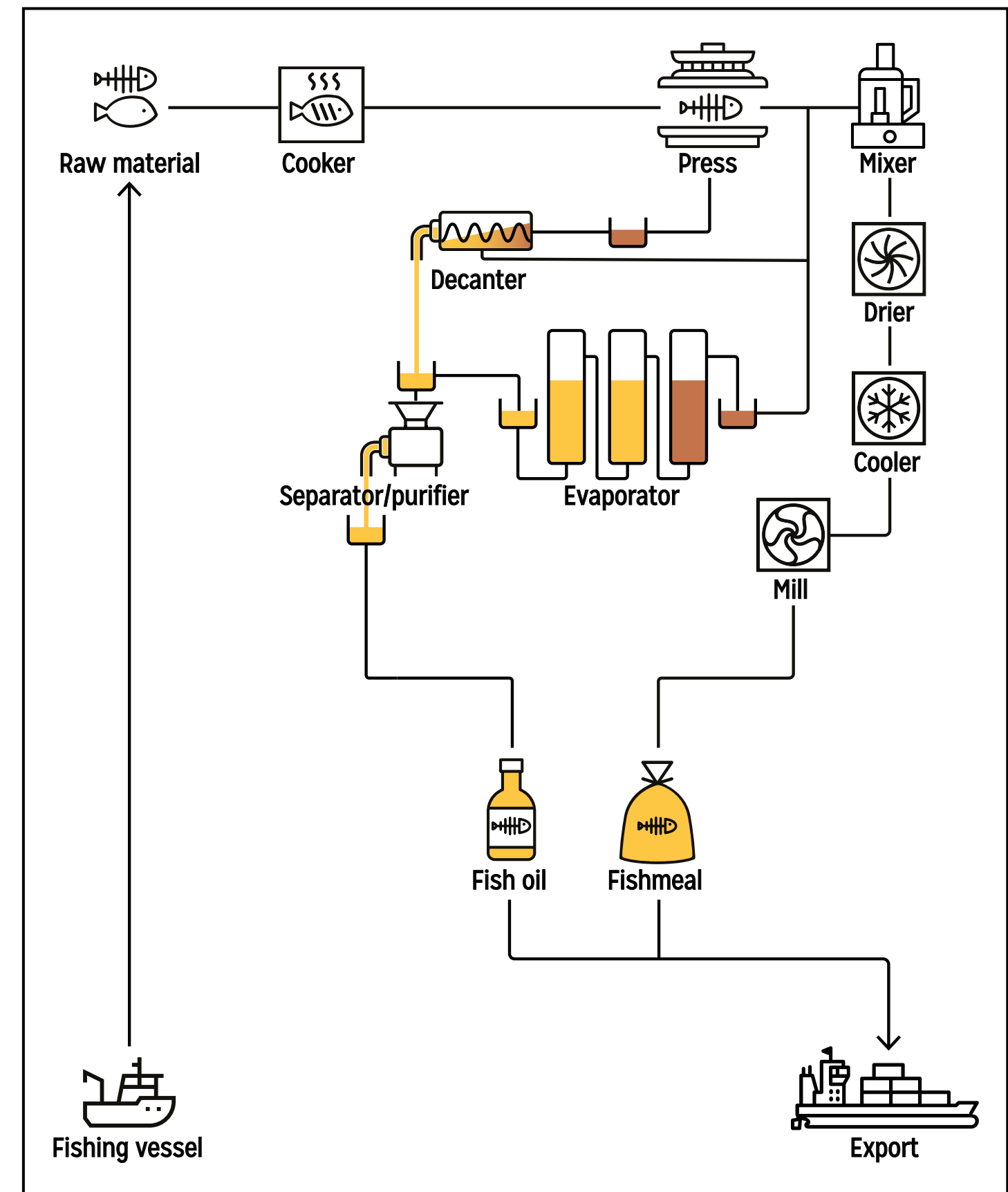
the larger species such as mackerel, herring and sardine are used for human consumption, while smaller pelagics are more commonly converted to fishmeal or fish oil for use as feed – mainly aquaculture, but also for livestock. Increasingly, however, these smaller species are being marketed for human consumption including nutritional supplements.¹⁰⁶

Although a growing share of global fishmeal and fish oil production, estimated at 25-35%, originates from by-products of fish processing that were formerly discarded or used as direct feed, nutrient-rich fish are still diverted from human consumption to farmed fish (and other animal) feeds.¹⁰⁷ The growing production of fishmeal in some countries in West Africa, mainly destined for exports, is leading to concerns about food security as fewer pelagics are available for human consumption.¹⁰⁸ For example, one single FMFO factory in Gambia receives approximately 40% of the country's total reported fish catches in a single year. Gambia is a country where the population relies on fish as a staple food.¹⁰⁹

As noted, the aquaculture sector is the main consumer of fishmeal and fish oil, taking about 70% of global consumption in 2017. Fishmeal is mainly used in aquaculture feed, and also in poultry and pig diets. Similarly, the bulk of the global fish oil production is for aquaculture feed, while the highly valued benefits of its omega-3 fatty acids ensure that a significant share is for human consumption.¹¹⁰

Prices of fish oil have been increasing since mid-2018 and are expected to increase further. An increase in fishmeal prices can also be expected, according to UNFAO.¹¹¹

How to produce fishmeal and fish oil



Infographic inspired by Matis (2019).¹¹² Fishmeal is a proteinaceous flour-type material obtained after milling and drying of fish or fish parts, while fish oil is obtained through the pressing of cooked fish and subsequent centrifugation of the liquid obtained.

North-West African stocks under pressure

The bulk of Morocco's pelagic catch is not taken in Morocco proper, but from the waters of Western Sahara. An independent evaluation ordered by the EU Commission revealed that in 2015, 85% of the EU's catches under its fisheries agreement with Morocco were landed in Dakhla, a town located on the central coast of Western Sahara. Only 12% was landed in the port of Agadir, in Morocco proper. Yet the relative value of landings in Agadir is slightly higher, given "the specialisation of the port of Dakhla in small pelagics".¹³ This is something the EU is well aware of. Access to the pelagic stocks of Western Sahara is in fact a driving factor behind the EU's successive fish deals with Morocco. In terms of sheer volume, most of the catches made by EU vessels under the 2014-2018 EU-Morocco Fisheries Protocol were made in Western Sahara. Industrial pelagic trawling on stocks "in the south" accounted for 92% of the total weight of all catches made under that Protocol.¹⁴

However, these stocks are under severe pressure. The EU's evaluation report revealed that except for sardines, all pelagic species "in the south" were either fully or overexploited, as a result of years of intense fishing by local, EU and other foreign fleets.¹⁵ This dramatic conclusion was repeated by the UNFAO Fishery Committee for the Eastern Central Atlantic late 2018.¹⁶ That is particularly worrying in light of the fact that these waters represent the core range of most of the species concerned. In this regard, the UNFAO highlighted the continued expansion of the fishmeal industry in North-West Africa as a contributing factor. Fishmeal factories can absorb much larger quantities than the consumption market, meaning that local fishers are incentivised to step-up their fishing effort in order to sell more to the factories, the UNFAO noted.

Several recent reports have questioned the sustainability of the North-West African FMFO industry, and traced the supply chains from the endangered stocks via the European aquaculture industry to the supermarket shelves.¹⁷

Over the years, WSRW has observed increasing activity of Morocco's national fleet in the occupied waters, including through the adoption of retired European pelagic fishing vessels, as documented by Greenpeace.¹⁸ At the same time, small-scale Moroccan fishers have been incentivized to relocate from Morocco to the occupied territory by the development of fishermen villages along the coast-line – an activity that is partly sponsored by the EU as part of the sectoral support under the fisheries agreement with Morocco. In fact, Morocco has spent most of the EU's fisheries sectoral support on further developing the fishing industry in occupied Western Sahara – with explicit approval of the Union.¹⁹

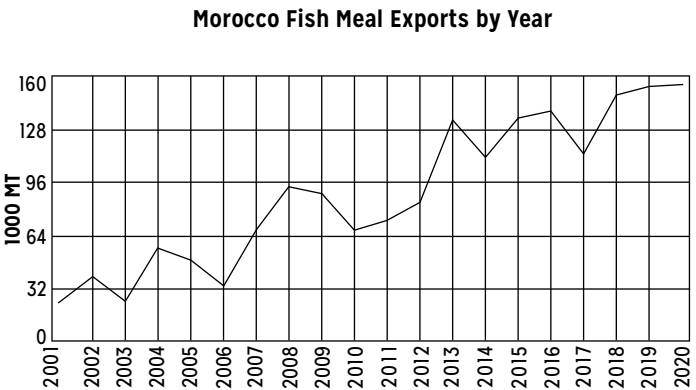


Growing sector



Trade statistics show that most of the fishmeal produced by Morocco in Western Sahara ends up in Turkey. According to the trade database ITC Trade Map²⁰, Turkey imported 90,412 tonnes in 2019. Runner-up is the EU, with an import total of 40,534 tonnes that year, of which 45.5% went to Germany. Coming in third is China, with 8,154 tonnes. If these figures are correct, it means that most of Turkey's "Moroccan" fishmeal in fact came from Western Sahara. WSRW can deduce this from its daily monitoring of bulk vessels departing El Aaiún harbour.²¹ On 6 November 2019, WSRW witnessed the arrival of the cargo vessel Derya Aytekin at the port of Güllük, Turkey. When confronted with the true origin of its purchase, importing company Gümüşdoga responded that "We only buy from EU-approved facilities".²² The power of DG SANTE's lists reaches beyond the EU's borders.

Since the turn of the century, fishmeal production has more than doubled in Morocco, from 71,000 tonnes to 170,000 tonnes in 2019.¹²³ Morocco's production total for 2019 placed it in the 10th position on the ranking of global fishmeal producers.



Morocco's exports of FMFO continue to increase. Different sources on Moroccan fishmeal exports all show the same growing trend, but with certain discrepancies in yearly figures. The graphic above is from www.indexmundi.com. WSRW considers the data in the table to the right, of the Moroccan government itself, to be more credible.

Morocco's relative importance grows when looking at global export figures. Until 2017, the country was the largest producer and exporter of fishmeal in the West Africa region. In 2018, it was second behind Mauritania. Morocco has crept up to fifth position globally, as it exports most of its fishmeal production. In 2019, it exported around 156,000 tonnes of meal, constituting an increase of 578% over the last two decades: in 2001, Morocco exported 23,000 tonnes.

The EU was the main importer of fish oil from Morocco in 2019, having taken in 14,569 tonnes, of which 6,516 tonnes went to France and 6,049 tonnes to the Netherlands. However, not all those exporters of FMFO are operating from Morocco proper.

WSRW has tracked the vessels that exported fishmeal from Western Sahara in 2019 and estimates that a volume of around 84,500 tonnes was exported from the territory. That means that over 54% of the fishmeal exported from Morocco that year (see table above) came from Western Sahara. Accordingly, Morocco is not actually the world's fifth biggest exporter, but falls to 11th position – two places behind the territory it holds under military occupation.

German federal trade statistics indicate that fishmeal imported from "Morocco" into Bremen has a value of 1,218 Euros/tonne.¹²⁵ If applying this value to the overall exports of fishmeal from Western Sahara to Germany and Turkey combined, the companies on occupied territory earned in 2019 alone an income of astonishing 102,921,000 euros.

But are the fishmeal and fish oil producers of Morocco and occupied Western Sahara as important to the EU as to Morocco? That appears not to be the case. For the period 2015-2019, the EU took in on average 6.4% of its total fishmeal imports from Morocco. The lion's share of the EU's fishmeal needs is purchased from Denmark, Norway and Peru. Between 2017 to 2019, only 4.18% of the Union's fish oil imports were imported through Morocco.

Fishmeal and fish oil exports from "Morocco", 2014-2019 (in tonnes)

	2014	2015	2016	2017	2018	2019
Fishmeal, total export	136,977	110,876	134,565	139,080	116,914	156,532
Fishmeal export to EU	-	36,187 (32.64%)	40,965 (30.44%)	36,106 (25.96%)	27,011 (23.10%)	40,534 (25.90%)
Fish oil, total export	39,686	52,577	35,409	34,505	30,762	35,796
Fish oil export to EU	-	23,622 (44.93%)	12,059 (34.06%)	10,424 (30.21%)	6,618 (21.51%)	14,569 (40.70%)

The above data does not distinguish between exports from Morocco and Western Sahara. The data originates from the Moroccan government.¹²⁴

EU putting migration before law

“Morocco is a key partner in the EU’s southern neighbourhood with whom the EU has developed a broad and deep partnership of mutual interest in economic, political, social and migration areas. The draft agreement can play an important role in relaunching the relation with Morocco.”

Sabine Henzler, DG TAXUD, 21 June 2018.¹²⁶

From an economic perspective, Morocco depends more on the EU than the reverse. The EU is Morocco’s largest source of bilateral aid and main trading partner. This is evident in the fish oil and fishmeal trade: the EU imports relatively little of its overall needs from Morocco and could easily import that amount from elsewhere. But for Morocco, the exports to Europe are considerable: in 2019, a quarter of the country’s fishmeal exports and no less than 40% of its fish oil exports went to the Union. Yet as shown in this report, a sizeable part of those exports were never Morocco’s to begin with.

The Moroccan government particularly values its relationship with France, which it perceives as its strongest ally – notably in defending the Moroccan position on Western Sahara in the UN Security Council and in EU institutions. But even those strong diplomatic ties with one of the EU’s founding States did not prevent the CJEU in first instance from nullifying the EU-Morocco trade agreement in Western Sahara in December 2015. Rabat reacted furiously and EU-Moroccan relations soured. On 25 February 2016, the Moroccan government officially announced that it would stop all communication with the EU.¹²⁷ And it did not end there. Morocco refused any further cooperation in bilateral programmes funded by EU and Member States, including on security exercises. As if its intransigence on anti-terror programs wasn’t enough to unnerve EU decision makers, playing hard-ball on the EU’s envisioned readmission agreement seemingly resulted in paralysis.¹²⁸

Morocco’s frenzy induced several EU States to go solo and broker their own bilateral readmission agreement with Morocco. Not coincidentally, these countries would officially back the EU Council’s appeal against the CJEU’s first ruling of December 2015. Germany, for instance, would convince Morocco in February 2016 to speed up procedures for identifying Moroccan citizens in return for supporting the EU Council’s appeal in relation to the trade liberalization Agreement.¹²⁹ It is to be noted that the two EU Member States, that had always interpreted the EU-Morocco trade deal as not applicable to Western Sahara, received a very different treatment. Sweden had to backtrack on its commitment to recognise Western Sahara as a State in order to agree a readmission deal.¹³⁰ The Netherlands experienced the opposite: although already having a readmission accord in place, Morocco refused to accept any of the Dutch government’s readmission requests.¹³¹

When the CJEU Grand Chamber essentially upheld the first instance judgment of the General Court in December 2016 – with stronger language on self-determination to boot – Morocco threatened the EU that if it failed to fully implement the deal, it would have severe consequences and could spur “a new flow of migration” towards Europe and place the continent “at risk”.¹³² Members of the EU Parliament who questioned the legal basis for the proposed explicit inclusion of Western Sahara in the EU-Morocco trade arrangement, received letters from Morocco’s embassy to the EU, calling their actions “hostile” and of potential influence to the EU-Moroccan relation in the “fight against terrorism, migratory flows and security issues”.¹³³ “How [does the EU] want us to do the job of blocking African and even Moroccan emigration if Europe does not want to work with us?”, the Moroccan Minister of Agriculture told Spanish media in 2017.¹³⁴

Coinciding with the CJEU’s rulings crossing Morocco’s red line of Western Sahara, the North African kingdom intensified its diversification of partnerships. This was spelled out clearly by King Mohammed VI in April 2016, in his speech at the first ever meeting between Morocco and the Gulf Cooperation Council. Mohammed VI made clear that the regime would not accept any interference in what it calls its “domestic politics”, and that while his country still valued its partnership with the EU, it was now strengthening ties with others, including Russia and China.¹³⁵ Morocco even applied for membership

of the African Union in January 2017, ending its boycott dating back to 1984 after the Saharawi Arab Democratic Republic (SADR) had been admitted as a full member.

Combined, Morocco’s more diversified partnerships, its image of a reliable ally in countering radicalisation in North Africa and its role in limiting irregular migration to Europe, have provided Morocco with leverage vis-à-vis the EU, in part offsetting the country’s dependence on financial aid and market access.

The European Court of Auditors has commented on the suspension of political dialogue with Morocco in its 2019 Evaluation Report on EU Support to Morocco, blaming the EU Commission for not having used this standstill period to develop a clear strategy for its relations with Morocco.¹³⁶ The EU’s relation with Morocco is important and preserving it is in the interest of both parties. But that preservation is being done at the expense of another people, with a legitimate right to self-determination that is severely hampered by the EU’s willingness to *de facto* bolster Morocco’s position in the conflict – even at the expense of the EU’s own legal order. The EU’s failure to abide by rulings of its own Court-system while it still has the upperhand in its relations with Morocco, could weaken the EU’s position in the long-run: Morocco will surely keep playing this card to its advantage.

At the same time, Saharawis are growing increasingly alienated due to the lack of a positive response to their peaceful resistance. For each truck that has left Western Sahara – many via the controversial Guerguerat crossing – Saharawis saw themselves deprived not only of their right to their own resources, but more fundamentally, of their right to self-determination. Over the years, the calls to resume armed conflict have increased within Saharawi society.

In November 2020, increased tension led to the end of the ceasefire.

As civilian Saharawis blocked the passage of goods in Guerguerat, interrupting the flow of trucks crossing from the occupied territory into Mauritania, Morocco launched a military intervention, severely violating the truce. The military operation was carried out “in the interest of Africa, Morocco” and Europe, Morocco’s Prime Minister stated.¹³⁷

How did the EU respond to the intervention?

“I salute Morocco’s attachment to the ceasefire. It is fundamental to guarantee free circulation of people and goods. Preserving political stability and the economic neighbourhood is primordial”, the EU Commissioner for Neighbourhood and Enlargement, Oliver Varhelyi, tweeted.¹³⁸

The EEAS proceeded to relate to the crisis without making a single reference to the Saharawi people, their self-determination, international law, or approaching their UN recognised representative.¹³⁹ As if they do not even exist.

The question is whether the EU, while still having leverage over Morocco, is ever willing to help facilitate conditions that will increase the chances of a just and peaceful solution to the conflict in Western Sahara, rather than continuing to pay lip-service to the UN peace process and self-determination while in practice undermining both.



Recommendations



To the European Union:

- To immediately **suspend the application of all EU agreements** with Morocco in relation to Western Sahara (notably in the areas of fisheries and agriculture) and to engage in exploratory talks with the Polisario Front for the development of legally compliant trade ties with the territory;
- To adopt a strict EU **policy of differentiation** between the territories of Morocco and Western Sahara across the spectrum of EU dealings that ensures EU compliance with its legislation and jurisprudence regarding the separate and distinct status of Western Sahara and the required consent of the Saharawi people;
- To publicly acknowledge and to apply the law of occupation in accordance with the **EU Guidelines on International Humanitarian Law** in its dealings with the territory of Western Sahara;
- To include a **territorial clause** in all EU agreements with Morocco, explicitly excluding Western Sahara; to adopt a legal definition of the “territory of Morocco” in all EU legal acts in accordance with the case-law of the CJEU territorial scope in all EU legal acts;
- To suspend all current and planned **funding** from the EU and Member States that directly or indirectly contributes to strengthening Morocco’s policy of annexation and demographic engineering in the territory; to request from Morocco the reimbursement of all past and current funding unlawfully granted by the EU in relation to Western Sahara;
- To seize the EU Anti-Fraud Office (OLAF) in relation to **unpaid customs duties** by EU-based importers accrued from the unlawful application of the EU-Morocco Association agreement since 2000;
- To appoint an **EU Special Representative** for Western Sahara;
- To actively support the resumption of the **UN-led conflict resolution** efforts and to insist that the UN Mission (MINURSO) is granted a human rights mandate;
- To support **Saharawi civil society organizations** and human rights defenders in the occupied territories and in the refugee camps;
- To develop **public diplomacy** towards the Moroccan public to explain its policy towards Western Sahara.

To the European Commission and European External Action Service:

- To carry out a **comprehensive mapping** of EU relations with Morocco (including diplomatic ties, trade, technical assistance and cooperation development) in order to identify areas in which EU practices conflict with EU legislation and jurisprudence with regard to Western Sahara;
- To monitor Moroccan compliance with **EU differentiation requirements** in accordance with the European Commission’s duty, as the Guardian of EU treaties, to monitor the proper implementation of EU law;
- To **exclude the certification of origin** by the Moroccan body ONSSA within its authorized lists of any establishment that is located outside of Morocco’s internationally recognised borders;
- To review and ensure **compliance** of the lists of approved establishments in Morocco and to exclude any establishment located in Western Sahara from such lists;
- To **exclude sanitary and food safety certificates** issued by Moroccan authorities for products produced in Western Sahara;
- To **allow establishments to export** from the territory of Western Sahara only if the Polisario Front has agreed to it on behalf of the Saharawi people;
- To apply **third country duties** to imports from Western Sahara into the EU and adjust the TARIC system accordingly;
- To **instruct the national authorities** in EU Member States to verify the origin of products imported from Morocco, and - if in reality originating in Western Sahara - deny entrance in these cases of false origin declarations;

- To adopt **EU-level business guidance** that informs European companies about business activities in occupied territories, including on the severe financial risk involved in relying on agreements, contracts, permissions, sanitary and phytosanitary inspections by the Moroccan occupying forces that are legally null and void.

To the Governments of EU states allowing imports from occupied Western Sahara, particularly the Netherlands, Germany, France and Spain:

- To advise its nationally registered and operating companies to stop importing products from Western Sahara and to seek alternative suppliers;
- To request the Commission to ensure that all its policy dealings with Western Sahara are compliant with EU legislation and jurisprudence, notably with regard to the DG SANTE lists in order to exclude Western Sahara establishments from Morocco’s list.

To the Government of Bremen:

- To adhere to its stated commitment to the people of Western Sahara and within its sphere of influence push the German federal government to initiate the needed measures in the EU in order to ban imports of goods from Western Sahara, without the consent of the Saharawi people, until the realisation of self-determination has been achieved.

To importing companies:

- To immediately end all purchasing of products exported from occupied Western Sahara without the consent of the Saharawi people.

To customers of importers of Western Sahara products:

- To immediately stop purchases of products exported from occupied Western Sahara without the consent of the Saharawi people, and switch to suppliers that show respect for EU law and corporate responsibility.

To the Moroccan authorities:

- To immediately suspend the application of all agreements concluded with the EU in relation to Western Sahara;
- To repatriate all national institutions and agencies, including certification bodies such as the ONSSA office, established in Western Sahara;
- To comply with international human rights and international humanitarian law in relation to Western Sahara;
- To seek the authorization of the Polisario Front in order to ensure the respect of the consent of the Saharawi people in relation to any dealings with the territory and its natural resources;
- To allow international observers, notably human rights monitors, independent media and international and regional organizations, into the territory of Western Sahara;
- To ratify the African Charter on Human and Peoples’ Rights and the Protocol establishing the African Court on Human and Peoples’ rights;
- To facilitate the fact-finding mission by the African Commission on Human and Peoples’ Rights on the human rights situation in Western Sahara, in line with decisions of the Assembly of Heads of State and government of the African Union;
- To engage in UN-led peace talks with the Polisario Front, with a view to realizing the exercise of self-determination in Western Sahara through which the people of the territory can freely choose the status of the land from all available options, including independence.

Notes



1 International Court of Justice, 1975, Western Sahara: Advisory Opinion, Par. 162, <https://www.icj-cij.org/files/case-related/61/061-19751016-ADV-01-00-EN.pdf>

2 UN Economic and Social Council, 22.10.2015, Concluding Observations on the fourth periodic report of Morocco, E/C.12/MAR/CO/4*, §6, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=E%2fC.12%2fMAR%2fCO%2f4&Lang=en

3 UN Human Rights Committee, 01.12.2016, Concluding Observations on the sixth periodic report of Morocco, §10, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CCPR/C/MAR/CO/6&Lang=En

4 The Rulings for cases T-512/12, T-180/14, C-104/16P, C-266/16 and T-275/18 can be accessed at the site of the EU Court of Justice, <http://curia.europa.eu>.

5 In May 2017, a vessel transporting phosphate rock from Western Sahara to New Zealand was detained in South Africa. On 23 February 2018, the High Court of South Africa ruled that the owner of the cargo was the Saharawi government, and not Morocco's state-owned phosphate company which was not entitled to sell the commodity. Find the decision here: 23.02.2018, SA Court confirms: Morocco has no ownership over Saharawi phosphates, <https://www.wsrw.org/a249x4098>

6 UN Legal Office, 2002, S/2002/161, Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council, <https://digitallibrary.un.org/record/458183?ln=en>

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International Court of Justice, 16 Oct 1975

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