

# Briefing Paper for MEPs

## How EU Trade and Investment Policy is Undermining Development Policy

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### Executive Summary

According to the EU, the economic competitiveness of its companies critically depends on their ability to secure access to cheap raw materials for the future. The EU as a whole is heavily import-dependent with regards to raw materials, and with demand and competition for raw materials increasing globally, the EU is under pressure.

In response, the European Commission published the Raw Materials Initiative in 2008. It aims to secure a supply of strategically important raw materials at cheap prices, primarily by seeking to remove export restrictions on raw materials and minimise the regulation of EU companies.

However, this strategy threatens to deprive developing country governments of vital instruments to manage their own economies, protect the environment, find a path out of export dependency, and eventually reduce poverty. It also risks increasing the number of environmental and human rights abuses associated with the exploitation of resources.

### MEPs in Action

To support a Raw Materials Initiative that reflects a sustainable economic model and is coherent with EU's development and human rights goals, MEPs should:

- Ensure that Parliament's amendments to the Raw Materials Initiative include the right to use export restrictions.
- Ensure that the currently debated investment policy does not give undue power to companies.
- Ensure that Europe is moving towards a sustainable use of resources.

### What is the Raw Materials Initiative?

The European Commission's Raw Materials Initiative (2008)<sup>1</sup> has three pillars<sup>1</sup>:

- Securing access to raw materials in world markets at undistorted conditions.
- Fostering sustainable supply of raw materials from European sources.
- Reducing European consumption of raw materials.

Priority is clearly given to the first pillar, as it is the only one that includes precise measures and targets to be adopted. Furthermore, using "active raw materials diplomacy" external relations, trade, development, and security policy will all be used to secure "non-discriminatory access" to raw materials. **The European Council has even explicitly asked Member States to direct development aid towards securing access to raw materials.**<sup>2</sup>

### What's wrong with the Raw Materials Initiative?

#### The Raw Materials Initiative has the wrong objectives

Only a significant reduction in the use of the world's raw materials will guarantee all people's right to exist and preserve the natural environment.

However, instead of focusing on a reduction in the use of natural resources to form the basis of a sustainable economy in Europe, the EU prioritises access to raw materials. This reflects industry concerns but ignores the need of EU citizens and future generations to respond to environmental realities with a new sustainable economic model.

In prioritising access to raw materials, the EU Raw Materials Initiative not only perpetuates the unsustainable high consumption model in the EU and increases the risk of environmental damage both at home and abroad, but also undermines developing countries, policy choices. This could mean:

- Worldwide competition for raw materials increases and leads to conflicts within producer countries as well as internationally.

- Developing countries are deprived of important political tools which help them promote development and become more dependent on exporting unprocessed raw materials.
- Europe's dependence on raw material imports increases.

### Recommendations

- The EU must reduce its consumption of resources and dramatically increase the re-use and eco-friendliness of products.
- The EU should champion the equitable use of the world's natural resources and sustainable development for all. It should introduce a transparent process for the international community to manage raw materials in a new way, based on an overall reduction in consumption as well as knowledge transfer in relation to the sustainable use of resources.

## The Raw Materials Initiative undermines development

### Export duties

Restricting exports can take many forms, including raising taxes on exports, banning them, or requiring licensing for exports. All forms of export restrictions aim to reduce the volume of exports and have been widely used as part of successful historical and recent industrial policy.<sup>3</sup>

One of the aims of an export tax on raw materials in developing countries can be to protect a country's own processing industries and ensure that these newer, infant companies are able to compete globally. The promotion of processing and manufacturing is essential for developing countries if they stand any hope of freeing themselves from their dependence on exporting raw materials. Export duties can also generate income for public services, contribute to price stabilisation, and support the protection of the environment and natural resources. For example, an export duty on unprocessed wood can prevent forests being stripped bare.

However, the European Commission fears that export duties could limit supply to the EU and increase prices for European companies. It fears the EU economy, which depends on these imports, could be disadvantaged by local industries in producer countries that do not have to pay export duties. As such, in negotiations for new bilateral free trade agreements (FTAs) and Economic Partnership Agreements (EPAs), the EU has been exerting considerable pressure on countries to give up export duties.

### Key Concerns

Under EPAs, developing countries would only be able to

impose export duties on a limited number of products for a limited period of time; the possibility of increasing existing taxes on raw materials would equally be limited. Such moves would deprive countries that produce raw materials of a vital means to develop their economies. In Kenya, for example, the introduction of export taxes on unprocessed animal hides and skins helped create thousands of new jobs. In addition, the total annual revenue from this sector rose by more than €8m (21%) with the potential for further growth.<sup>4</sup>

The Commission itself has stated that "under certain circumstances limitations on the supply of raw materials may be justified: as a means of attaining development objectives, of protecting the environment or for promoting a sustainable exploitation of raw materials."<sup>5</sup> Indeed, many economies in the West used similar measures as they developed, but now the EU is trying to prevent developing countries doing the same.

### Recommendations

- The EU should support developing countries to diversify their economies, reduce their dependence on raw materials exports, increase the value of their domestic products through manufacturing and processing in-country, and protect their finite natural resources.

To this end, the EU must

- Respect the right of developing countries to apply export restrictions
- Stop opposing or seeking to limit export duties in all forums, including the WTO and bilateral free trade agreements.

### EU Business Lobby behind the Raw Materials Initiative

Big business in Europe has been lobbying the European Commission since the late 1990s to strategically address raw material needs. The initiative unsurprisingly reflects businesses' main interests.

Export restrictions are top of the list of trade policy measures criticised by industry. Even before the publication of the Raw Materials Initiative, Business Europe has lobbied the Commission to take a more active stance against export duties (which are legal under WTO rules). European business organisations have also long lobbied for better protection for European companies investing abroad. European industry is pressing for investor protection both at the World Trade Organisation (WTO) and in bilateral and regional free trade agreements.<sup>6</sup>



## Key Concerns:

The liberalisation of foreign investment is advanced on the basis that it stimulates economic activity and employment. However, according to UNCTAD, there is scarcely any evidence to support the view that foreign investment plays a leading role in economic growth in African or other developing countries.<sup>8</sup> Instead there are clear indications that FDI follows economic growth in a country, rather than causing it.<sup>9</sup>

Generally, of total FDI flows, only a small part reaches sectors that most benefit poor people. Downstream efforts to boost production and diversification are generally only marginal. In Africa FDI frequently flows into special economic zones directed towards export-oriented production. The necessary technologies are imported and there is generally only minimal integration with the rest of the country's economy.<sup>10</sup>

In sectors such as mining, FDI has often been associated with special tax agreements depriving the state of revenue, with little technology transfer, and with only marginal employment generation. On the other hand, human rights abuses such as land grabbing have been commonly linked to big mining projects that are frequently financed through FDI.

In order to avoid the pitfalls and reap the benefits associated with FDI, regulation is crucial. The successful industrialisation of many countries, including Japan, South Korea and Taiwan was in part based on the protection of the countries' own economies by import controls and restrictive investment policy.<sup>11</sup>

## Recommendations

- The EU must allow developing countries to regulate investment and companies in the interests of their own development.
- Investment Agreements must create a better balance between investors' rights and obligations, as well as promoting positive behaviour on the part of investors to support long-term, sustainable development.
- The EU should ensure that all investors from the EU abide by national and international standards and laws in relation the environment, human rights and good working conditions. To this end, the direct liability and duty of care on the part of EU companies, including their subsidiaries and other companies under their control, must be improved.
- The EU should not insist on regulations to liberalise investments when negotiating EPAs or other free trade agreements.
- The EU should also drop its current insistence on resorting to international arbitration forums to settle disputes between states and investors.

## EU's new Investment policy gives excessive power to foreign companies

### Investment

As a result of the Lisbon Treaty, investment policy has become an EU rather than Member State competence. It is the Commission's responsibility to exercise this. In 2010 the European Commission presented a draft of a new ordinance designed to create better conditions for EU investors across the world. The EU is pushing for a thorough liberalisation of policies related to foreign direct investment (FDI) and maximum levels of protection for European investors, based on three essential principles:<sup>7</sup>

1. "National Treatment" whereby foreign investors would be given the same or better conditions than domestic companies
  - The insistence on national treatment prevents developing countries giving preferential support to domestic companies, banning foreign investments in certain sectors, or giving preference to regional investors in order to promote regional integration or South-South cooperation.
2. "Investor protection" which would give wide-ranging protection to investors
  - "Investor protection" often gives more rights to foreign investors than to national governments or affected communities. It allows companies to resort to international arbitration forums to settle disputes between states and investors; these processes are lengthy, expensive, and conducted behind closed doors.
3. "Unrestricted flows of capital over national borders"
  - Governments will be restricted even further in their power to stop money generated from the extractive industry leaving the country.

## Overall Recommendations

To ensure that its trade and investment policy in raw materials does not undermine development, the EU must:

- Considerably reduce its consumption of natural resources
- Champion a more equitable use of raw materials globally and promote a sustainable pattern of development
- Support developing countries to diversify their economies
- Respect developing country governments' right to regulate foreign investment
- Ensure Investment Agreements achieve a fair balance between the rights and obligations of investors, host states and countries of origin
- Ensure that the new EU investment policy complies with national and international standards and law on the environment, human rights, and labour issues.

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## Endnotes

1. Now replaced with Pillar 1: Fair and sustainable supply of raw materials from global markets; Pillar 2: Fostering sustainable supply within the EU; Pillar 3: Boosting resource efficiency and promoting recycling.
2. EC, Council conclusions: An integrated approach to a competitive and sustainable industrial policy in the European Union, 28. Mai 2009, Abs. 24
3. Joanna Bonarriva et al., Export Controls: An Overview of Their Use, Economic Effects and Treatment in the Global Trading System', Office of Industries Working Paper, No. ID-23, US International Trade Commission, August 2009, S. 11
4. Mark Curtis, Die neue Jagd nach Ressourcen – Wie die EU-Handels- und Rohstoffpolitik Entwicklung bedroht, Dezember 2010, S. 19f.
5. EC, DG Trade, Raw Materials Policy, 2009 Annual Report, S. 12–13.
6. Corporate Europe Observatory, 'The Corporate Investment Agenda', in: Seattle to Brussels Network (ed.), Reclaiming Public Interest in Europe's International Investment Policy. EU Investment Agreements in the Lisbon Treaty Era: A Reader, 2010, S. 14 ff.
7. European Council, Outcome of Proceedings of the Trade Policy Committee, 22. Januar 2010, S. 3, <http://register.consilium.europa.eu/pdf/en/10/st05/st05667.en10.pdf>
8. UNCTAD, Economic Development in Africa: Rethinking the Role of Foreign Direct Investment, 2005, S. 64
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10. UNCTAD, Economic Development in Africa: Rethinking the Role of Foreign Direct Investment, 2005, S. 11
11. Ajit Singh, 'How did East Asia grow so fast?: Slow progress towards analytical consensus', UNCTAD Bulletin, Mai 1995, S. 4–14