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## Fighting land grabbing and promoting local development through trade policies

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The Trade and Development policy of the European Union (EU) is broadly conceived as aiming to boost economic growth and good governance in developing countries (DCs) and least-developed countries (LDCs), by increasing the latter's trade opportunities. This objective entails, inter alia, to help these countries harness the opportunities offered by today's global market and ensure that the poor benefit from trade-led growth.

### The issue

The Trade and Development policy of the European Union (EU) is broadly conceived as aiming to boost economic growth and good governance in developing countries (DCs) and least-developed countries (LDCs), by increasing the latter's trade opportunities. This objective entails, inter alia, to help these countries harness the opportunities offered by today's global market and ensure that the poor benefit from trade-led growth. However, in the last decades, the progressive liberalisation of trade relations with DCs and LDCs has been combined with increasing land investments, sometimes described as 'land grabs'. These usually come in

the form of large-scale land purchases, leases or concessions, whereby investors acquire large portions of land for the purposes of producing commodities (usually – food and non-food – agricultural products) to export. As such, these large-scale investments have caused much debate for their alleged negative impact on the targeted countries, and their inconsistency with the Trade and Development goal.

### The to-be-achieved objective of boosting local development

Despite the difficulty in making an accurate estimate of the total area involved, there is no doubt that large-scale land investments involve millions of hectares, and the figure appears to be still on the rise. Such investments have primarily targeted tracts of land located in DCs and LDCs, with countries in Africa, Latin America and South-East Asia being greatly affected. Although investors are usually from advanced or emerging economies, such as the Gulf States, China, the United States and the United Kingdom, their provenance is much varied: indeed, land rush has been documented to involve not only foreign economic actors, but also local elites.

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These large-scale investments are claimed to negatively affect host countries' populations, in terms of non-equitable distribution of trade benefits and human rights violations. They are also deemed to affect land's management and agricultural production's efficiency. Criticisms focus on the lack of involvement of local populations in the acquisition process, the displacement and exploitation of inhabitants, and environmental damages due to the quick shift to highly-intensive farming. The fundamental rights claimed to be breached include, inter alia, the right to food and that to access land and natural resources, together with the principle of free, prior and informed consent and participation in governmental decisions as to investments' plans and development projects. Consequently, such 'land grabs' appear to undermine the realization of the above-mentioned Trade and Development goal, aimed to foster host States' sound growth.

### **The weaknesses underpinning human rights and investment approaches**

To face the 'land grabbing' phenomenon, efforts have been so far addressed to find a new equilibrium between international human rights policies and rules governing international investments. The suggested solutions have led to a number of attempted reforms and other initiatives. On the one hand, the former generation of investment treaties is being gradually substituted by new texts, being the EU among those economic actors engaged in this process of investment treaties' revision. These new treaties aim to give weight to human rights and sustainability concerns, so as to foster responsible investments. However, the margins of improvement appear to be quite limited since investors' prerogatives remain strong. Additionally, these efforts are strictly limited to

parties that do enter and re-negotiate investment agreements, which might not be the case for certain rural economies.<sup>1</sup> Even more, these commitments are binding on states, and not on the market actors in fact involved in 'land grabs'.

On the other hand, various standards and guidelines for responsible investments have been elaborated, which the EU has endorsed and promoted. Such guidelines include, for instance, the Principles of responsible agricultural investments that respect rights, livelihood and resources (2010), UN Guiding principles for business and human rights (2011), and FAO Voluntary guidelines on the responsible governance of tenure of land, fisheries and forests (2012). Such initiatives do try to address issues like efficient land administration and land titling, the need for consultations and consent-building between various actors, as well as the promotion of responsible business conducts. However, these guidelines are 'voluntary' in nature, and thus lack both of a specific framework for official monitoring or control by stakeholders, and of a more general enforceable mechanism.

### **Acknowledging trade drivers to land investments**

Tackling the 'land grabbing' phenomenon from a human rights and/or investment standpoint does not seem to have led to fully satisfying results. This is why it is here proposed to shift to a trade approach, and thus acknowledge the importance of trade in shaping land rush, as well as the high influence that trade policies can have on market actors (i.e. investors). Indeed, trade liberalisation can increase (and has increased) pressures on land. Trade liberalisation and improved access to export markets foster large-scale investments that target those markets, since new market opportunities increase land

<sup>1</sup>See: <http://investmentpolicyhub.unctad.org/IIA/IIAsByCountry#iiainnerMenu> (accessed on 23 March 2018).

value. Therefore, trade policies do influence trends in land investments. Specifically, the phenomenon of ‘land grabbing’ here commented hides misuses of trade opportunities, whereby few investors, from either foreign economies or local elites, exploit new market venues to the detriment of host countries’ population and sound development. It is here suggested that such misuses could be corrected by trade policies that make access to the desired export markets conditional to compliance with recognised fundamental rights and sustainable development criteria. The consequent need to comply with such market access conditions would encourage virtuous economic behaviours on the part of investors, namely behaviours that are responsive to welfare and development objectives.

### Policy recommendation

From this perspective, the EU has already in place various instruments that condition access to its market to the respect of human rights and sustainable development. Provisions that set forth this type of conditionality can be found not only in the EU latest free trade agreements<sup>2</sup>, but especially in its partnership agreements currently in place with numerous DCs. Among the latter, there are the Cotonou Agreement and the other European partnership agreements<sup>3</sup> concluded with countries in the African, Caribbean and Pacific region. The EU non-reciprocal preferential schemes for DCs and LDCs are also made conditional to similar commitments: these include the Special incentive arrangement for sustainable development and good governance (the so-called GSP+), and the Special arrangement for

least developed countries (the so-called Everything But Arms, EBA). The conditions laid down in these instruments are arguably not met in respect of products proceeding from countries affected by ‘land grabs’.

Indeed, as anticipated above, ‘land grabs’ are deemed to affect, inter alia, the right to food and that to access land and natural resources, and cause displacement and exploitation of inhabitants, and instances of child labour. The International Covenant on Civil and Political Rights (1966), the International Covenant on Economic Social and Cultural Rights (1966), and the Convention on the Rights of the Child (1989) are among the instruments that protect individuals from interferences and violations of this kind. Their fulfilment is for instance included among the conditions for accessing the EU market through the GSP+ and EBA programmes<sup>4</sup>, which are currently applicable to many DCs and LDCs affected by ‘land grabs’, such as Cambodia. Consequently, the trade preferences embedded in such instruments could be suspended in respect of products proceeding from affected areas, and insofar as the failure of fulfilling human rights and sustainable development standards endures. As mentioned, the suspension of trade benefits would impact on the profitability of the business activities connected with ‘land grabs’ caused by investments made by either foreign or local economic actors, since they would not be able to export their production to the EU. To re-gain access to such relevant market, investors would be pushed to comply with such human rights and sustainable development conditionality, thereby contributing to the achievement of the Trade and Development goal.

<sup>2</sup>See: [http://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/#\\_in-place](http://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/#_in-place) (last accessed on 9 January 2018).

<sup>3</sup>See: [http://ec.europa.eu/trade/policy/countries-and-regions/development/economic-partnerships/index\\_en.htm](http://ec.europa.eu/trade/policy/countries-and-regions/development/economic-partnerships/index_en.htm) (accessed on 9 January 2018).

<sup>4</sup> Article 19 Regulation (EU) No 978/2012, supra note 9.

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