

Will European trade undermine the EU's move to clean biofuels?

The urgent need for EU trade policy coherence and the transition towards cleaner biofuels

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For more information, contact:

For trade matters:

Kristina Wittkopp

Legal Analyst, Better Trade and Regulation

Transport & Environment

kristina.wittkopp@transportenvironment.org

Tel: +32 (0)488 927946

For energy matters:

Laura Buffet

Manager, Clean Fuels

Transport & Environment

laura.buffett@transportenvironment.org

Tel: +32 (0)2 851 02 12

Executive summary

The EU is negotiating trade deals with Mercosur (Argentina, Brazil, Paraguay and Uruguay) Indonesia, and soon Malaysia, These trade deals represent a risk for the EU's sustainable transport plans. All mentioned countries are producers and exporters of crop-based biofuels, especially from palm and soybean oil that have higher overall emissions than fossil diesel. All ongoing negotiations include chapters on Energy and Raw Materials (ERM). One of the objectives of the planned trade agreements is to facilitate trade in these areas, which will reduce the cost of raw materials and biofuels originating from the abovementioned countries. At the same time the EU is committed to decarbonising the transport sector and to phasing out crop-based biofuels. In 2016, the Commission made a proposal to cap so-called 1st generation biofuels at 3.8% by 2030 as part of its Renewable Energy Directive (RED). Instead the EU wants to increase the supply of clean electricity as well as advanced biofuels as transport energy.

There is a risk that these two approaches - the planned trade agreements and the RED I and II initiatives - will be at odds with each other. First of all, even though the Commission is signalling its move away from crop-based biofuels, there will still remain demand for those biofuels (within the proposed crop cap of 3.8%). Once the trade deals are concluded, this demand will increasingly be met by cheap, unsustainable crop-based biofuels from South America and South East Asia. Removal of trade barriers would thus likely lead to increasing shares of unsustainable crop-based biofuels from these regions. This could lead to additional deforestation, biodiversity loss and higher overall greenhouse gas (GHG) emissions from biofuels. The EU monitors but does not account for the indirect land use change effects (ILUC) of biofuels. The ILUC impacts of palm and soybean oil are a major contributor to their negative environmental impacts. Secondly, the EU's new trade partners will put pressure on the European Commission to adopt more lenient internal policies to facilitate trade. There is an important precedent where Canadian pressure, as part of the CETA deal, helped scupper the EU's Fuel Quality Directive, which would have discouraged the use of Canada's high GHG emissions tar sands. Argentina has already raised the compatibility of the EU's biofuels sustainability criteria at the WTO. Additionally, Indonesia and Malaysia announced that they would send a delegation to "kill" the initiative, shortly after the European Parliament adopted a report calling for a phase-out of vegetable oils causing deforestation as a component for biofuels.

While the main driver for the presence of unsustainable crop-based biofuels in the EU is the RED, our report recommends four trade policy approaches to ensure that trade does not contribute to the use of unsustainable crop-based biofuels:

1. A 'public interest screen' that includes climate and environmentally friendly criteria should be employed during all FTA negotiations to determine which goods should be subject to potential tariff reductions. Goods with significant negative climate and environmental impacts should be excluded from tariff reductions.
2. A modern ERM chapter in a free trade agreement (FTA) ensuring the post-Paris mass decarbonisation in the energy and transport sector.
3. The incorporation of environmental criteria such as GHG implications, land use, water and air quality and environmental dumping during investigations for the imposition of anti-dumping duties.
4. A reform of the Harmonised System (HS) Nomenclature at the World Customs Organisation (WCO) that would make a clear distinction between sustainable advanced biofuels (e.g. from waste and residues) and unsustainable biofuels from food crops, as well as reporting a breakdown of the raw material used in blended biofuels.

Without a meaningful, effective and coherent policy alignment, the EU risks losing its credibility on effectively tackling climate change in a sustainable manner and delivering 'gold standard' trade agreements.

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1. Introduction

In late 2016, EU Commissioner for Agriculture Phil Hogan said on a trip to Indonesia that ‘there is great potential to already increase trade (in agricultural products such as palm oil) [...] without waiting for the conclusion of this agreement’.ⁱ During the second negotiating round for the EU-Indonesia free trade agreement (FTA), Indonesia signalled that it considers palm oil as a source of renewable energy for the purpose of a possible Energy and Raw Materials (ERM) Chapter.ⁱⁱ At the same time, the EU is also negotiating with Mercosur (Argentina, Brazil, Paraguay and Uruguay). Argentina and Brazil produce biofuels from soybeans and sugar cane in large quantities (see Figure 1). Trade talks with Malaysia, one of the biggest palm oil producers, will restart in 2017.ⁱⁱⁱ Crop-based biofuels (or biodiesels) used to fuel European transport have higher GHG emissions than fossil diesel.^{iv}

FTAs logically mean increased cheaper trade in raw materials, including biofuels.

This begs the following questions:

Will future trade agreements lead to inconsistent European policy development internally and externally? Could EU trade policy undermine signals to phase out food-based biofuels, as set out in the new draft RED? Could FTAs lead to an increase of biofuels, notably palm oil-based, on the European market? And what can be done to counter these negative effects?

Sustainable development has become a guiding principle in the EU’s internal and external policy. The Treaty on the Functioning of the European Union (TFEU) even explicitly states that environmental protection requirements are to be integrated into EU policy, including EU trade policy.^v The Common Commercial Policy needs to be conducted in the context of the principles and objectives of EU external action,^{vi} which require the EU to improve the environment and to promote sustainable management of global natural resources.^{vii} Internally, the EU shall ‘work for the sustainable development of Europe’.^{viii} In its relations with the wider world, the EU shall contribute to the sustainable development of the earth.^{ix}

However, European action in certain areas, although started with good intentions, at times ends up backfiring. Under the terms of the EU's RED, the EU Member States must source 10% of transport energy from renewable sources by 2020. The RED mainly led to the use of the cheapest and easiest-to-use “renewable” fuels, i.e. crop-based biofuels. The revision of the RED (or RED II) is an effort to mitigate the damage, and help deliver transport decarbonisation.

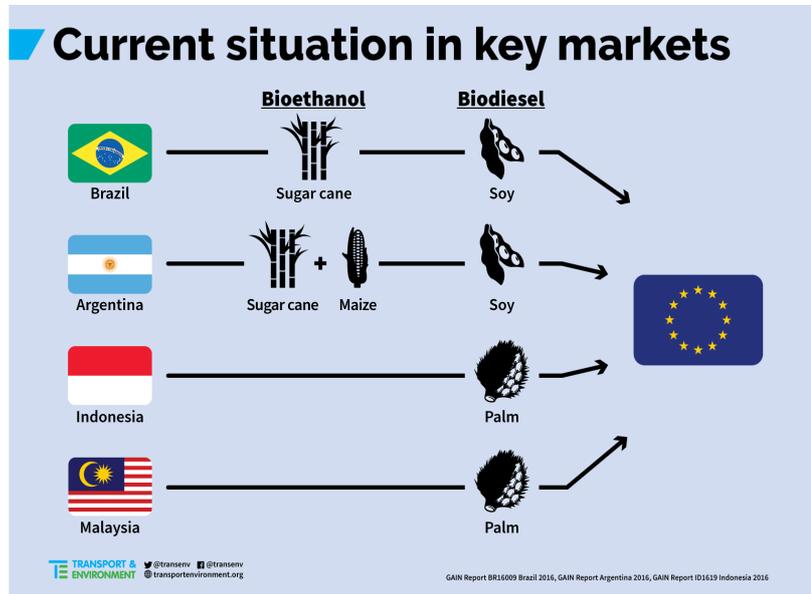


Figure 1. Current situation in key markets

There is a risk that these two approaches - the planned trade agreements and the RED I and II initiatives - will be at odds with each other. First of all, even though the Commission is signalling its move away from crop-based biofuels, there will still remain demand for those biofuels (within the proposed crop cap of 3.8%). Once the trade deals are concluded, this demand will increasingly be met by cheap, unsustainable crop-based biofuels from South America and South East Asia. Removal of trade barriers would thus likely lead to increasing shares of unsustainable crop-based biofuels from these regions. This could lead to additional deforestation, biodiversity loss and higher overall greenhouse gas (GHG) emissions from biofuels. The EU monitors but does not account for the indirect land use change effects (ILUC) of biofuels. The ILUC impacts of palm and soybean oil are a major contributor to their negative environmental impacts. Secondly, the EU's new trade partners will put pressure on the European Commission to adopt more lenient internal policies to facilitate trade. There is an important precedent where Canadian pressure, as part of the CETA deal, helped scupper the EU's Fuel Quality Directive, which would have discouraged the use of Canada's high GHG emissions tar sands.^x Argentina has already raised the compatibility of the EU's biofuels sustainability criteria at the WTO.^{xi} Additionally, Indonesia and Malaysia announced that they would send a delegation to "kill" the initiative^{xii}, shortly after the European Parliament adopted a report calling for a phase-out of vegetable oils causing deforestation as a component for biofuels.

This position paper proposes solutions to reconcile the EU's internal and trade policies on crop-based biofuels. There is a clear need for coherent trade policy that supports the rules of the EU internal market (e.g. the RED, with the goal of reducing GHG emissions in line with the Paris Agreement) rather than closing the market.

2. Biofuels 101

In 2009, the Renewable Energy Directive (RED) (2009/28)^{xiii} sought to incentivise the use of renewable fuels in the transport sector by setting the mandatory target that 10% of the total energy use in transport had to come from renewable sources by 2020. What started as a tool to stimulate a new generation of biofuels and renewable electricity actually led to the use of the cheapest and easiest-to-use 'renewable' fuels, i.e. crop-based biofuels. From the start, NGOs raised concerns about the indirect effects linked to the high demand for crop-based biofuels – or Indirect Land Use Change (ILUC).^{xiv}

The 'ILUC reform' (concluded in 2015) aimed to strengthen the sustainability safeguards to limit the negative environmental and climate impacts of crop-based biofuels. Eventually, the EU agreed a 7% cap regarding the level of crop-based biofuels that Member States could include to count towards the 10% target of renewables in transport in 2020.

The so-called Effort Sharing Decision^{xv} (ESD), which is still in co-decision, considers that all bioenergy used in the sectors covered (which includes surface transport) is carbon-neutral, i.e. its GHG emissions are treated as equal to zero until 2020. It is most likely that the next phase up to 2030 will continue this trend. This means that the climate impacts of biofuels (of whichever kind it is, including crop-based biofuels) are not correctly captured. Also, it then creates a 'necessity' for Member States to use biofuels, in order to meet their 2020 and 2030 climate targets. This therefore undermines any efforts to cap crop-based biofuels.

2.1. ILUC in a nutshell

The increased demand for crop-based biofuels leads to agricultural lands being used to grow crops for energy purposes, displacing the production of crops for food. Further land is needed to grow crops to meet both food, energy and transport demands. In many cases, the displacement occurs in high environmental value and high-carbon stock areas, such as the tropical rainforest in Indonesia or Malaysia. When these areas are converted into agricultural land, the CO₂ sequestered is liberated into the atmosphere, significantly increasing the life-cycle emissions associated with biofuels. The overall land use change emission projected to be caused by the RED biofuel demand is 952 MtCO₂eq, which roughly equates to the annual transport emissions of the EU^{xvi}. In addition to the climate impact, an increased demand for land to grow crops for biofuels also brings about environmental, biodiversity and social consequences.

While the ILUC issue is associated with all crop-based biofuels, the biggest problem lies with vegetable oil-based biodiesel, notably palm oil, which has the biggest climate impact, as shown in Figure 2. Palm oil is cheap, which explains why palm oil is used for biofuels. The EU has seen a 6-fold increase in the share of palm oil imports going to biodiesel from 8% in 2010 to 46% in 2015.^{xvii}

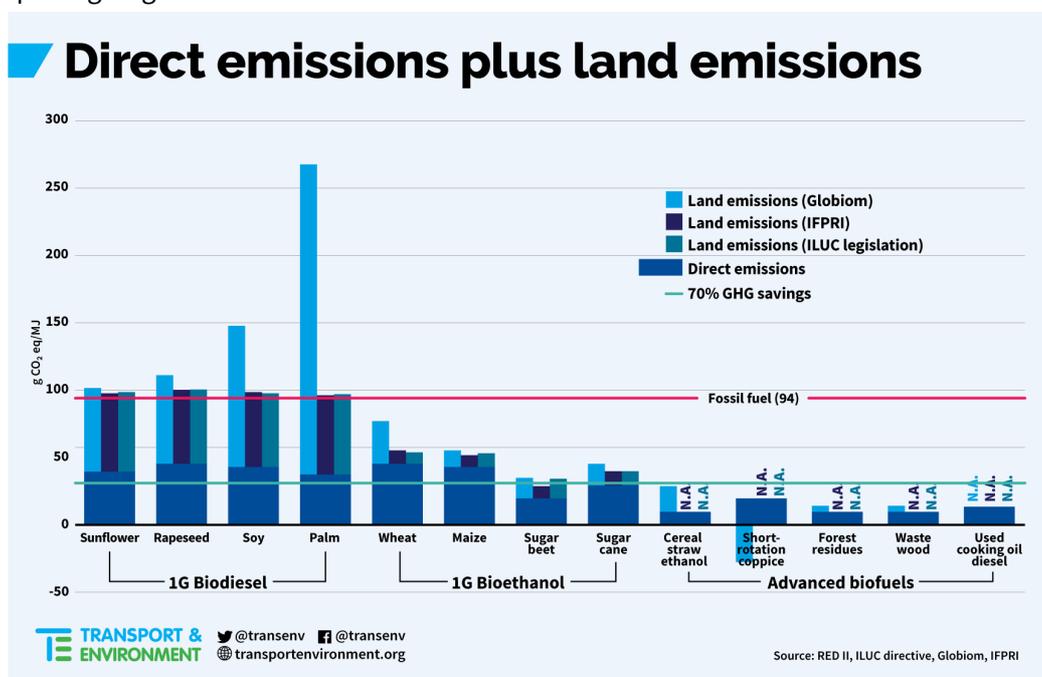


Figure 2. Direct emissions plus land emissions

3. Mapping trends

Although RED II is still being discussed in co-decision, T&E’s ideal policy scenarios can be captured looking at the European Commission proposals and the different tariff phase-outs for the Indonesia FTA. We modelled three possible scenarios (immediate, 5-year and 10-year tariff phase-out) and modelled them against the European Commission’s proposal for a 3.8% cap in the RED II. The indicative timelines^{xviii} are outlined in Figure 3 and show that Scenario 3 is the best one to ensure that trade policy does not undermine the EU’s internal efforts.

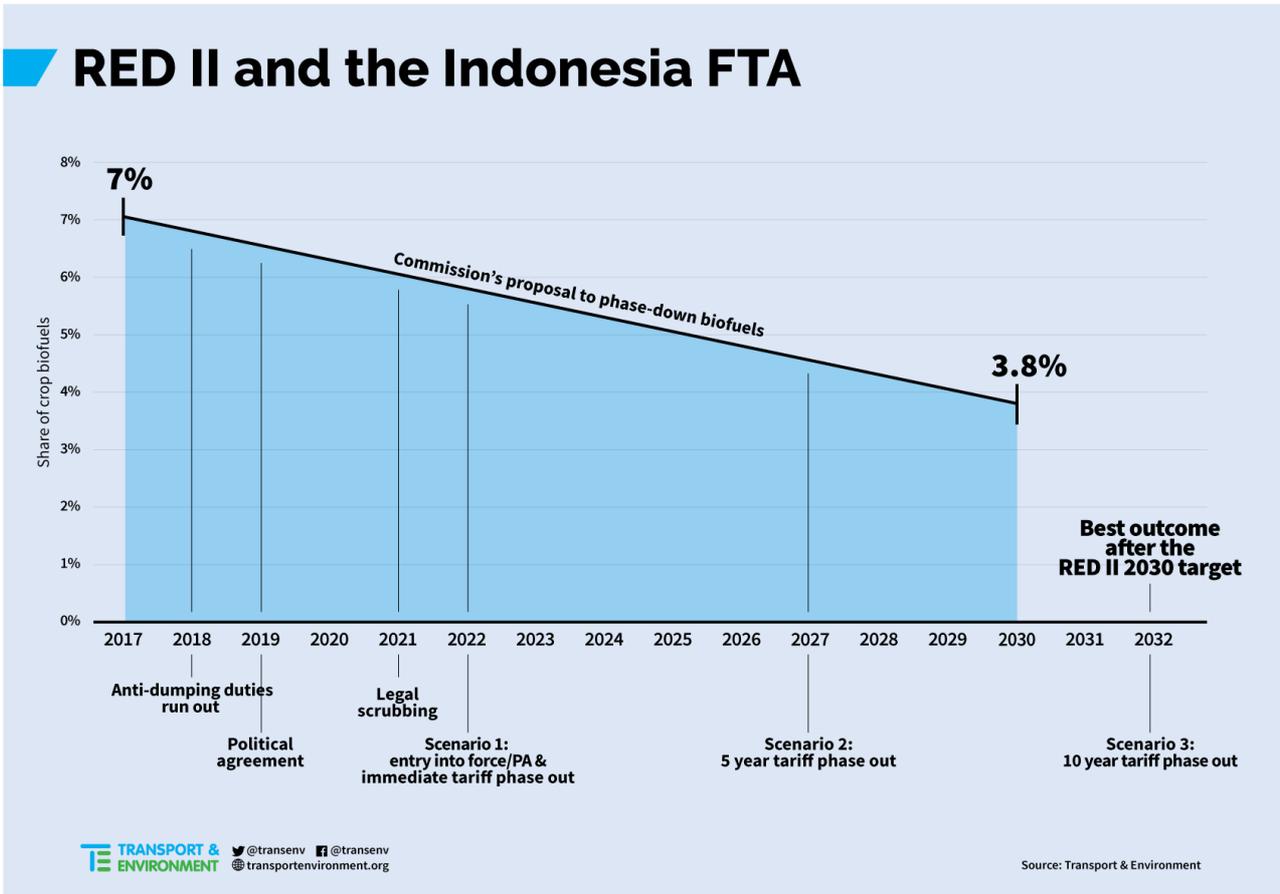


Figure 3. RED II and Indonesia FTA

3.1 Recommendation

Scenario 1 is the least favourable, that is, if biodiesel tariffs fall immediately on entry into force/provisional application. This means that even cheaper biodiesels could enter the EU market at a time where there could still be some policy drivers supporting their use at EU level. With a 5- year tariff phase-out, we would still have a gap between the tariff reduction and the 2030 target. This is undesirable as it makes the import of biofuels during this period still attractive. Scenario 3 is the most preferable, with the longest tariff phase-out of 10 years, and would mean that the slow phase-out of tariffs would run parallel to decreasing the RED share of food-based biofuels. Ideally, tariffs would only fall at the same time, as crop-based biofuels are phased out. Only Scenario 3 would both support EU internal policy and ensure policy alignment.

4. Tackling tariffs

Traditionally, FTAs aim to reduce or eliminate tariffs. The objective is to reduce costs for exporters, increasing competitiveness on the new markets, and to lower costs for consumers. The positive effects of tariff reductions are generally well known; however, the negative results are less discussed.

Under a zero-tariff regime for biofuels, the EU is likely to import more and cheaper biofuels (be they from sustainable or unsustainable sources), if a phase-out of the policy support does not take place quickly, whether it is at national or EU level.^{xix} As Figure 4 shows, the impact of the current EU import tariff rates on certain goods entering the European market will be higher for ethanol imports, as the tariff rate is higher than for biodiesel.

| EU import tariffs | | |
|---|--------------------------|--------------------------|
| Commodity | HS code | Current tariff |
|  Biodiesel | 3826 00 10 | 6.5% |
|  Ethanol | 2207 10 00 2207 20 00 | 19.20 €/hl 10.20 €/hl |
|  Maize oil | 1515 21 10 | 3.2% |
|  Rape oil | 1514 11 10 | 3.2% |
|  Sugar cane | 1212 93 00 | 4.60 €/100 kg/net |
|  Palm oil | 1511 10 10 | 0% |
|  Soy beans | 1201 10 00 | 0% |
|  Rape seeds | 1205 10 90 | 0% |


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Source: Commission Implementing Regulation (EU) 2015/1754 of 6 October 2015 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, OJ L 285, 30.10.2015

Figure 4. EU import tariffs

The climate impact of biofuels changes significantly when including indirect emissions, and vegetable oil-based biodiesel is on average worse for the climate than fossil diesel. Given that the EU's future free trade partners Argentina and Indonesia mainly produce these crop-based biofuels, appropriate action to disincentivise the trade of unsustainable biofuels is urgently needed.

4.1. Recommendation

A 'public interest screen' that includes climate and environmentally friendly criteria should be employed during all FTA negotiations, to determine which goods should be subject to potential tariff reductions. Goods whose production is found to cause significant negative climate, environmental and social impacts in a negotiating country (e.g. biodiesel from palm oil in Indonesia) should be excluded from the list of tariff reductions that could be granted to that country.^{xx}

Where that exclusion is not feasible, consideration must be given to different phase-out periods based on the environmental and climate performance of a biofuel. Biofuels with very high GHG emissions ought to have their tariffs phase out over the longest period possible, e.g. 10 years. Climate-friendly alternatives such as sustainable advanced biofuels should profit from an immediate tariff phase-out.^{xxi} This benefit does not mean that the EU should import all sustainable advanced feedstocks available. Instead, the focus should remain on what the EU can sustainably produce in its territory. If tariffs are phased out straight

away, this must be coupled with a bilateral environmental safeguard clause allowing the suspension of already reduced tariffs for vegetable oils and biofuels with high GHG emissions. The EU-Korea FTA^{xxii} could act as a model, as the safeguard clause allowed the adjustment of tariffs if car imports caused a serious injury to European car manufacturers. The European Commission, the European Parliament and stakeholders would be able to request investigations leading to the activation of such a clause. Special monitoring of import flows would be an added benefit.

5. Energy and Raw Materials

Securing access to energy and raw materials in third countries to ensure the EU's competitiveness has been a long-standing policy.^{xxiii} This aspect has also been incorporated in the 'Trade for All Strategy' in 2015.^{xxiv} In line with this, the European Commission will '*propose an energy and raw materials chapter in each trade agreement*'^{xxv}, the underlying reason being security of supply.

Negotiations for an FTA between the EU and the US, named the Transatlantic Trade and Investment Partnership (TTIP), marked the start of the introduction of ERM chapters in the negotiations. Now ERM chapters have been proposed for new FTAs, such as with Mercosur^{xxvi} and Indonesia.^{xxvii}

To date, these ERM chapters have focused on the 'old style' trade liberalisation, since the only energies that are easily traded and transported are carbon-intensive, such as coal, oil, gas, biomass and biofuels.^{xxviii} In a post-Paris world, which requires mass global decarbonisation of the energy and transport sector, trade needs to not only help to deliver this decarbonisation, but also ensure that a truly sustainable biofuels market is guaranteed.

5.1. Recommendation

Firstly, life-cycle emission assessments (LCA), including indirect-land use change (ILUC), must form part of a progressive energy and raw materials chapter. Secondly, reference to the EU's sustainability criteria must be made. If a biofuel does not meet these criteria, its import must not be allowed.^{xxix} Thirdly, a commitment to tackle climate change must be incorporated into these chapters, supported by substantive requirements. Fourthly, a clause stating that trade in ERM will in no way undermine the EU's internal renewable energy policies must be included. Finally, crop-based biofuels should not be recognised as renewable energy for the purpose of the ERM chapter. They have been oversold as climate friendly, yet – in most cases – do not achieve any major GHG savings. It is not the place for a trade agreement to determine which type of good is renewable. There is an internal public policy debate to be held for that. Only if these recommendations are taken into account, would the EMR chapter be fit for purpose.

6. Harnessing trade remedies

Although separate from FTAs themselves, the issue of anti-dumping duties on biodiesel is important. The EU imposed duties on Argentinian and Indonesian biodiesel in 2013.^{xxx} However, the measures against Argentina have been found to be WTO incompatible.^{xxxi} As such, the EU must bring the duties in line by 10 August 2017. The case lodged by Indonesia is still pending.^{xxxii} Furthermore, the General Court also annulled the anti-dumping duties against Argentina and Indonesia.^{xxxiii} Appeals before the European Court

of Justice (ECJ) are pending.^{xxxiv} Should a review lead to the conclusion that the duties are not merited, they could fall as of August 2017.^{xxxv} In any case, the anti-dumping duties run out on 27 November 2018.

Any anti-dumping measure renewal, especially in the light of future FTAs, is not a given. Pressure by negotiating partners could easily lead to a decision to remove irritants such as trade defense measures. It has been observed via the Fuel Quality Directive that heavy Canadian lobbying during the CETA negotiations watered down the final legislation significantly.^{xxxvi} Additionally, in February 2017, Argentina’s President Macri visited Spain with 200 businessmen on a biodiesel mission. The objective was to get support for re-establishing Argentina’s biodiesel export after the imposition of the 2013 anti-dumping duties in 2013.^{xxxvii} This all shows that the duties are indeed a burning topic for the negotiations.

The current anti-dumping duties (between 8.8% and 25.7%) are a sufficient deterrent for the import of unsustainable crop-based biodiesel.^{xxxviii} As shown in Figure 5, imports of biodiesel from Argentina and Indonesia have significantly decreased. The import of biodiesel from Malaysia, where no anti-dumping duties apply, has by contrast remained stable.

Should the anti-dumping duties fall, EU imports would most likely increase.^{xxxix} In the case of Argentina, Spain has recently eliminated a block on the imports of Argentine biodiesel.^{xl} It is thus likely to return to being the number one importer.

6.1. Recommendation

Using anti-dumping to further sustainable development and climate mitigating measures might initially not be the obvious solution. However, it offers opportunities to tackle the problem from a different angle decoupled from FTAs. There are essentially two alternatives: a WTO reform and regional action.

The long-term option requires a change of thinking at WTO level, which would avoid fragmentation. A reform of the WTO Anti-Dumping Agreement^{xli} is therefore necessary. For example, a climate change criterion test should be applied for anti-dumping duties on unsustainable goods with high GHG emissions, should they be challenged.^{xlii} The lesser duty rule^{xliii}, i.e. duties at a level lower than the margin of dumping, should not be applied either with regard to unsustainable products, as the deterrent effect would not be high enough. Given the stall of the Doha Round, a quick success is unlikely. Regional action must, therefore, take place the meantime, in the hope that it can propel changes at the multilateral level.

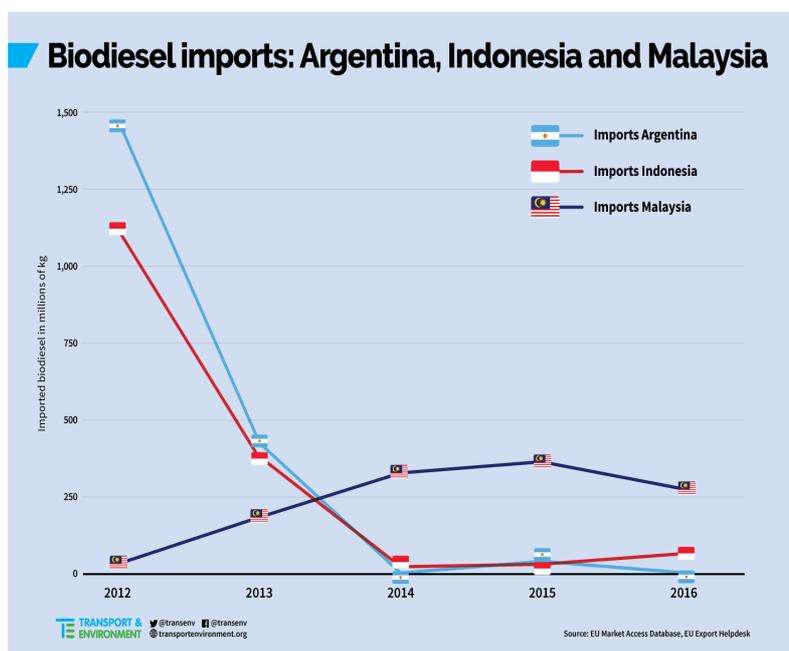


Figure 5. Biodiesel imports: Argentina, Indonesia and Malaysia

Concretely, the EU needs to incorporate environmental criteria such as GHG implications, land use, water and air quality and environmental dumping during its investigations for the imposition of anti-dumping duties. To this end, a broader group of stakeholders must be invited to voice their opinion and to give valuable expert input on environmental concerns. Higher duties could then be imposed on goods if the exporting country does not take action to protect environmental standards or mitigate climate change, as demanded under Multilateral Environmental Agreements (MEA) such as the Paris Agreement. If a trade remedies chapter is foreseen for an FTA, this approach must be clearly reiterated there.

The European Parliament has called for similar considerations in its 2014 position on the trade defence reform (2013/0103(COD)).^{xliv} Recently, the inclusion of environmental requirements for the purpose of the damage calculation method was adopted in a broad compromise by the European Parliament's Committee on International Trade (INTA).^{xlv} The file is still under negotiation in co-decision.

This action could have a spillover effect encouraging other countries to take environmental concerns into account when imposing anti-dumping duties. In the specific case of crop-based biofuels, trade would ultimately decrease due to resulting higher prices. At the same time, more sustainable advanced biofuels would benefit as, coupled with lower tariffs or a faster phase-out, they would become more attractive.

7. HS Revamp

The Harmonised Commodity Description and Coding System, also known as the Harmonised System (HS) of tariff nomenclature is an internationally standardised system to classify traded products. It is used to set tariffs and draw up trade statistics.

The current HS codes do not reflect the complexity, transparency and sustainability criteria required for crop-based biofuels or biodiesel blends. There is no specific classification for biofuels. Bioethanol is treated in the agricultural tariffs^{xlvi} chapter, whereas biodiesel from vegetable oils falls under industrial tariffs.^{xlvii} Having two tariff categories for biofuels makes a comparison difficult.

The picture becomes even more complicated when wishing to assess the raw materials used to produce biofuel. The classification 'biodiesel' does not allow for an assessment of which raw material is used. For bioethanol it is not even clear if it is used for fuel, industry or beverages. Under the Renewable Energy Directive and Fuel Quality Directive, EU Member States receive information about the type of biofuels used to meet the requirements of the directives. However, not all Member States make this information publicly available. Also, only cosmetics and food (containing, for example, palm oil) need to be labelled for consumers, but this does not apply to biofuels. It is key that we know exactly what is in the biofuel coming into the EU without relying on Member States to provide such information. Otherwise, a clear assessment of its climate and sustainability profile is not possible.

Data from 2015 shows that most biodiesel was imported into the EU under HS code 3826 00 10, and was thus denoted as 'pure', containing at least 96.5% biodiesel.^{xlviii} However, this HS code does not provide any information about the raw material used. Has it been derived from palm oil, soybean oil or something else? Therefore, it can be concluded that the HS codes are currently not suited to assess whether or not a biofuel is sustainable.

A recent overhaul of the HS Nomenclature, which entered into force on 1 January 2017, does not address the issue of the HS codes, although environmental and social concerns have played a major role in amending the nomenclature. Concretely, the new HS system allows for a better monitoring and control of trade in goods having an environmental impact.^{xlix}

7.1. Recommendation

Raw materials such as palm oil and crop-based biofuels have a significant negative impact on the environment and the climate.ⁱ HS codes must make a clear distinction between sustainable advanced biofuels (e.g. from waste and residues) and crop-based biofuels, as well as a breakdown of the raw materials used in blended biofuels. This division would allow countries to impose different tariffs on imports based on environmental characteristics, with potentially higher tariffs for high GHG emission biodiesels from vegetable oils, and lower tariffs for sustainable advanced raw materials and biofuels.

This would ultimately incentivise the use and trade of more sustainable biomass. We therefore ask the European Commission to initiate a reform of the Harmonised System (HS) Nomenclature at the World Customs Organisation (WCO) that would allow a distinction between different types of fuels, based on climate and environmental safeguards. This must then be applied to all products, especially where vegetable oil is the main component, e.g. palm oil diesel. The European Parliament has recently adopted (with a large majority) a report on palm oil and the deforestation of rainforests that goes in that direction (2016/2222(INI)).ⁱⁱ

8. Conclusions

The current trade policy is alarming, considering for the necessary decarbonisation of the transport sector. While the EU is gradually trying to move away from the crop-based biofuels, the current trend in trade policy raises concerns as to how much it is aligned with these internal policy signals. Although it is difficult to predict the market developments, it is likely that the import of climate damaging biofuels will continue, if policy support at EU level is not phased out immediately. Trade negotiations bear a risk of undermining the RED developments.

The European Commission sends mixed signals when it signs an FTA with a country that is producing unsustainable biofuels, whilst it is also trying to phase out such a commodity internally in the EU. This report is not a call to stop negotiations of such FTAs, but rather a demand for trade policy to reinforce the environmental and climate safeguards in the future RED II, as it is the first and foremost driver of the use of biofuels. Trade and internal biofuels policy are not incompatible; rather, trade policy should support the transition away from crop-based biofuels and the move towards more sustainable advanced alternatives. To achieve this, we suggest four means:

1. A 'public interest screen' that includes climate and environmentally friendly criteria should be employed during all FTA negotiations, to determine which goods should be subject to potential tariff reductions. Goods with significant negative climate and environmental impacts should be excluded from tariff reductions.

2. A modern ERM chapter, in a free trade agreement (FTA) ensuring the post-Paris mass decarbonisation in the energy and transport sector.
3. The incorporation of environmental criteria such as GHG implications, land use, water and air quality and environmental dumping during investigations for the imposition of anti-dumping duties.
4. A reform of the Harmonised System (HS) Nomenclature at the World Customs Organisation (WCO) that would make a clear distinction between sustainable advanced biofuels (e.g. from waste and residues) and unsustainable biofuels from food crops, as well as reporting a full break-down of the raw material used in blended biofuels.

A lack of policy coherence does not only run counter to well-defined obligations in the Treaties, but risks proliferating the continued use of unsustainable biofuels in transport. If the EU wishes to remain credible on effectively tackling climate change in a sustainable manner, it has to step up its game and ensure that the RED is not undermined by its trade outreach.

Endnotes

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- ⁱ ‘Unlocking potential to increase EU-RI trade’, Jakarta Post 7th November 2016, available at <http://www.thejakartapost.com/news/2016/11/07/unlocking-potential-increase-eu-ri-trade.html> (retrieved 30.5.2017)
- ⁱⁱ Report of the 2nd round of negotiations for a Free Trade Agreement between the European Union and Indonesia 24-27 January 2017, Indonesia, Bali, available at http://trade.ec.europa.eu/doclib/docs/2017/february/tradoc_155297.pdf (retrieved 30.5.2017)
- ⁱⁱⁱ EU will resume FTA talks with Malaysia this year, available at http://www.theborneopost.com/2017/06/14/eu-will-resume-fta-talks-with-malaysia-this-year/?utm_source=POLITICO.EU&utm_campaign=d731292a37-EMAIL_CAMPAIGN_2017_06_14&utm_medium=email&utm_term=0_10959edeb5-d731292a37-189166533 (retrieved 19.6.2017)
- ^{iv} Globiom: the basis for biofuel policy post-2020, available at https://www.transportenvironment.org/sites/te/files/publications/2016_04_TE_Globiom_paper_FINAL_0.pdf (retrieved 29.5.2017)
- ^v Article 11 Treaty on the Functioning of the European Union (TFEU) states: ‘Environmental protection requirements must be integrated into the definition and implementation of the Union’s policies and activities, in particular with a view to promoting sustainable development.’
- ^{vi} Article 207 (1) TFEU
- ^{vii} Article 21 (2) (d) TEU. This has also recently been confirmed in the recent European Court of Justice *Opinion 2/15* on the EU- Singapore Free Trade Agreement where the Court stated that sustainable development forms an integral part of the Common Commercial Policy.
- ^{viii} Art 3 (3) Treaty of the European Union (TEU)
- ^{ix} Art 3 (5) TEU
- ^x Long-awaited fuel quality rules will fail to halt dirty oil’ available at <https://www.transportenvironment.org/news/long-awaited-fuel-quality-rules-will-fail-halt-dirty-oil> (retrieved 1.6.2017)
- ^{xi} WT/DS459/1 Request for consultation of 23 May 2013 available at https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds459_e.htm (retrieved 30.5.2017)
- ^{xii} Indonesia and Malaysia look to ‘kill’ Parliament’s palm oil ban available at <http://www.euractiv.com/section/biofuels/news/indonesia-and-malaysia-look-to-kill-parliaments-palm-oil-ban/> (retrieved 30.5.2017); Indonesia and Malaysia look to ‘kill’ Parliament’s palm oil ban available at <http://www.euractiv.com/section/biofuels/news/indonesia-and-malaysia-look-to-kill-parliaments-palm-oil-ban/> (retrieved 17.5.2017); Letter to EP President Tajani signed by Costa Rica, Ecuador, Honduras, Indonesia, Malaysia, Colombia and Guatemala, available at http://www.politico.eu/wp-content/uploads/2017/03/Joint-Letter-Palm-oil.pdf?utm_source=POLITICO.EU&utm_campaign=567157ccb6-EMAIL_CAMPAIGN_2017_03_28&utm_medium=email&utm_term=0_10959edeb5-567157ccb6-189902969 (retrieved 17.5.2017)
- ^{xiii} Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC [2009] OJ L 140
- ^{xiv} BIOFUELS. Handle with care. An analysis of EU biofuel policy with recommendations for action, available at https://www.transportenvironment.org/sites/te/files/media/2009%2011_biofuels_handle_with_care.pdf (retrieved 22.6.2017)

- xv The ESD applies until 2020, review currently being negotiated among legislators.
- xvi The land use change impact of biofuels consumed in the EU Quantification of area and greenhouse gas impacts, available at https://ec.europa.eu/energy/sites/ener/files/documents/Final%20Report_GLOBIOM_publication.pdf (retrieved 13.6.2017)
- xvii Europe keeps burning more palm oil in its diesel cars and trucks, available at https://www.transportenvironment.org/sites/te/files/2016_11_Briefing_Palm_oil_use_continues_to_grow.pdf (retrieved 22.6.2017)
- xviii These time lines are based on previous experience with the Korea FTA and CETA.
- xix This assumes that no anti-dumping duties are in place. See also Allison Burrell, Stephan Hubertus Gay and Aikaterini Kavallari, *The Compatibility of EU Biofuel Policies with Global Sustainability and the WTO*, *The World Economy* (2012) Volume 35, Issue 6 June 2012, p. 784–798
- xx Inspired by Melendez-Ortiz, Ricardo, *Enabling the Energy Transition and Scale-up of Clean Energy Technologies: Options for the Global Trade System*, E15 Expert Group on Clean Energy Technologies and the Trade System, International Centre for Trade and Sustainable Development (ICTSD)
- xxi CETA already provided a good example of such a distinction between sustainable and unsustainable products. E-Vehicles, for example, profited from a faster phase-out compared to combustion engines. This is a great incentive to start a dynamic shift to decarbonise transport.
- xxii Free trade agreement between the European Union and its Member States, on the one part, and the Republic of Korea, on the other part [2011] OJ L 127/6
- xxiii 'Global Europe – Competing in the World', adopted by the Commission in October 2006, available at http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc_130376.pdf (retrieved 2.6.2017)
- xxiv Point 2.1.6. of securing access to energy and raw materials in 'Trade for all – Towards a more responsible trade and investment policy, adopted by the Commission in October 2015, available at http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf (retrieved 2.6.2017)
- xxv Ibid.
- xxvi Access to energy and raw materials – (trade in goods) proposal Mercosur available at http://trade.ec.europa.eu/doclib/docs/2017/april/tradoc_155479.pdf (retrieved 2.6.2017) and Mexico: Energy and Raw Materials proposal Mexico, available at http://trade.ec.europa.eu/doclib/docs/2016/december/tradoc_155172.pdf (retrieved 2.6.2017)
- xxvii Report of the 2nd round of negotiations for a Free Trade Agreement between the European Union and Indonesia 24-27 January 2017, Indonesia, Bali, available at http://trade.ec.europa.eu/doclib/docs/2017/february/tradoc_155297.pdf (retrieved 30.5.2017)
- xxviii Trade and Energy – looking beyond hydrocarbons, available at <https://www.transportenvironment.org/publications/trade-and-energy-%E2%80%93-looking-beyond-hydrocarbons> (retrieved 2.6.2017)
- xxix Currently, it can still be imported, but cannot be labelled as meeting the EU sustainability criteria.
- xxx Council Implementing Regulation (EU) No 1194/2013 of 19 November 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia, [2013] OJ L 315
- xxxi European Union – Anti-Dumping Measures on Biodiesel from Argentina, WT/DS473/16
- xxxii European Union – Anti-Dumping Measures on Biodiesel from Indonesia, WT/DS480/4
- xxxiii Case T-118-14 *LDC Argentina SA v Council*; T-112/14 to T-116/14 and T-119/14 *Molinos Río de la Plata SA and Others v Council*; T-117/14 *Cargill SACI v Council*; and T-139-14 *PT Wilmar Bioenergi Indonesia and PT Wilmar Nabati Indonesia v Council*; T-111/14 *Unitec Bio SA v Council*; T-80/14 *PT Musim Mas v Council*; T-120/14 *PT Ciliandra Perkasa v Council*; T-121/14 *PT Pelita Agung Agrindustri v Council*
- xxxiv C-602/16 P; C-603/16 P; C-602/16 P; C-604/16 P; C-605/16 P; C-606/16 P; C-607/16 P; C-608/16 P; C-609/16 P
- xxxv See deadline set in Panel report for WT/DS473/16
- xxxvi Long-awaited fuel quality rules will fail to halt dirty oil', available at <https://www.transportenvironment.org/news/long-awaited-fuel-quality-rules-will-%E2%80%98fail-halt-dirty-oil%E2%80%99> (retrieved 30.5.2017)
- xxxvii 'Macri buscará que Argentina pueda volver a exportar biodiésel a la UE', available at https://www.cronista.com/economiapolitica/Macri-buscara-que-Argentina-pueda-volver-a-exportar-biodiesel-a-la-UE-20170221-0054.html?utm_source=POLITICO.EU&utm_campaign=4d23bb9339-EMAIL_CAMPAIGN_2017_02_21&utm_medium=email&utm_term=0_10959edeb5-4d23bb9339-189902969 (retrieved 31.5.2017)
- xxxviii Council Implementing Regulation (EU) No 1194/2013 of 19 November 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia [2013], OJ L 315, 26.11.2013
- xxxix See also GAIN Report Argentina 2016
- xl 'Argentina convinces Spain to open market back up to biodiesel', available at <http://www.biofuelsdigest.com/bdigest/2016/05/12/argentina-convinces-spain-to-open-market-back-up-to-biodiesel/> (retrieved 2.6.2017)
- xli Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement)
- xliv See also Melendez-Ortiz, Ricardo, *Enabling the Energy Transition and Scale-up of Clean Energy Technologies: Options for the Global Trade System*, E15 Expert Group on Clean Energy Technologies and the Trade System, International Centre for Trade and Sustainable Development (ICTSD)
- xliv Art 9 Anti-dumping Agreement
- xliv European Parliament legislative resolution of 16 April 2014 on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries non-members of the European Community and Council Regulation (EC) No 597/2009 on protection against subsidised imports from countries non-members of the European

Community 2013/0103(COD)

^{xliv} New TDI method vote: MEPs set to push back on European Commission plans, available at <http://borderlex.eu/new-tdi-method-vote-meps-set-push-back-commission-plans/> (retrieved 20.6.2017)

^{xlvi} E.g. HS codes 2207 10 and 220720

^{xlvii} E.g. HS codes 38249092 and 3826 00 10

^{xlviii} This would be 527 million liters. 1 million liters and 10 million liters respectively were imported as blends under HS code 3826.00.90 (containing between 30 and 27 percent of biodiesel) and 2710.20.11 (containing at most 30 percent biodiesel). The latter is presumed to be B5 (95% diesel, 5% biodiesel). The majority of biodiesel imports occur through the Netherlands, Spain, and Bulgaria. Data from GAIN Report NL6021 EU- 28, available at https://gain.fas.usda.gov/Recent%20GAIN%20Publications/Biofuels%20Annual_The%20Hague_EU-28_6-29-2016.pdf (retrieved 1.6.2017)

^{xliv} HS Nomenclature 2017 edition, available at <http://www.wcoomd.org/en/topics/nomenclature/instrument-and-tools/hs-nomenclature-2017-edition.aspx> (retrieved 29.5.2017)

ⁱ See above.

^{li} See para 49. Report on palm oil and deforestation (2016/2222(INI)), available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2017-0066+0+DOC+PDF+V0//EN> (retrieved 29.5.2017) and MEPs demand phase-out of vegetable oil biofuels by 2020, available at <https://www.transportenvironment.org/press/meps-demand-phase-out-vegetable-oil-biofuels-2020> (retrieved 29.5.2017)