

Sweden and the Plunder of Western Sahara



What does Sweden do to prevent Swedish commercial activity in occupied Western Sahara?

Published

27 September 2017,
Stockholm

ISBN

978-82-93425-20-5

Design

Lars Høie

Photos

Juan Obregon (p. 1),
Trygve Utstumo (p. 2, 7),
Creative Commons/
Holger Ellgaard (p. 4),
Rick Vince (p. 5),
Greenpeace (p. 6),
Saharawi Campaign
Against the Plunder (p. 9),
Equipe Media (p. 11),
Axfood (p. 16)

The report can be freely
reused, in print or online.
For comments and questions
on this report, contact
coordinator@wsrw.org

Western Sahara Resource Watch (WSRW) works in solidarity with the people of Western Sahara, researching and campaigning against Morocco's resource plundering of the territory. WSRW is a wholly independent, international non governmental organization, based in Brussels.

www.wsrw.org

www.twitter.com/wsrw

www.facebook.com/wsrw.org

www.instagram.com/wsrw_org

To strengthen our research and intensify our international campaigns, WSRW needs your help. Learn how to make donations on www.wsrw.org

This report is made in
partnership with, and
funded by:

EMMAUS
STOCKHOLM

Swedish businesses
interests are active
in Western Sahara in
several sectors, from
assisting the Moroccan
plunder of the territory's
non-renewable resources,
to kite surfing tours.
This tourist was seen
in Dakhla, south in
the occupied territory.
But do the involved
Swedish companies ask
permission from the UN
recognized representa-
tives of the territory?





Executive Summary

Is the Swedish government doing enough to defend the right to self-determination for the people of Western Sahara? Does Sweden fulfil its international obligations? This report outlines the position of the Swedish business sector and of the Swedish government regarding commercial activity in or in relation to Western Sahara, Africa's last colony.

On 21 December 2016, the Court of Justice of the EU (CJEU) concluded that EU-Moroccan trade and association agreements cannot cover Western Sahara unless the people of the territory have consented thereto. Neither Morocco, nor the EU, does anything to seek such consent.

Yet, Swedish companies are today involved in Western Sahara: through supplying key components to the Moroccan phosphate plunder, operating Moroccan fishing vessels, attracting international tourists to "South Morocco" and through feeding the entire occupation economy with petroleum products. The operations have been going on for years, despite of critique from civil society and media exposure.

So how does the Swedish government relate to such engagement?

Swedish government bodies that facilitate trade are ostensibly not advised by the Ministry of Foreign Affairs at all on Western Sahara or on how to relate to the CJEU judgment. The consequence of that apparent lack of clear guidance from the government, as this report documents, is that Swedish institutions are left to their own devices in interpreting international law with regard to Western Sahara. Laudably, an institution such as the Swedish Export Credit Agency (EKN) clearly states that it cannot offer support to companies wanting to operate in the territory. But most other institutions are vague and convey the impression that it is a hypothetical issue.

The Swedish Ministry of Foreign Affairs has seemingly never expressed any advice as to how companies should relate to the territory or the judgment.

It is neither sufficient nor responsible of the Swedish government to leave it to the business community and to the government-owned funding mechanisms to interpret the application of principles of international law on their own. There is a need to express how that ought to be done. This would provide much needed clarity to Swedish businesses, and to bring into effect Sweden's international commitments.

The Swedish interests in Western Sahara

Atlas Copco AB



Atlas Copco plays a key role in the Moroccan plunder of Western Sahara's conflict minerals. Morocco earns approximately 200 million USD a year from the illegal export of phosphate rock from the territory it holds under occupation. Clients of this commodity have been blacklisted by Swedish banks and pension funds. However, one of the companies enabling the trade, is Atlas Copco.

The involvement of Atlas Copco began in 2008, when the Swedish company sold two drill rigs to the Moroccan state phosphate company OCP for use in the Bou Craa mine in occupied Western Sahara. As the delivery was uncovered in 2013, the company established that Atlas Copco has "enhanced efforts to detect and ensure that no future indirect or direct sales in these regions go to projects that may violate international law". What this means, however, remains unclear. Interpretations of international law posted on Atlas Copco's website are erroneous.

The company does not reply to questions about its role in the maintenance of the equipment which it had already sold back in 2008. It also dodges questions regarding its potential exit. From 2013 to 2017, the firm's website displayed false information about a planned stakeholder meeting. The company rejects meeting organisations one-on-one, and does not respond as to whether it would meet with Saharawis or whether it is planning to do so.

According to an email from Atlas Copco of 10 April 2017, "Atlas Copco's sells products to a Moroccan customer who also has one mine located in Western Sahara." This implies that the company is still supplying OCP's venture in the territory.

"Atlas Copco always complies fully with all trade laws, regulations and sanctions. There is no new information that we can share about the concerned business or the customer", Atlas Copco succinctly responded to 15 detailed questions it had received from WSRW. The firm has repeated in two emails that it cannot release any more information.¹

Wisby Tankers AB



The Swedish shipping company Wisby Tankers has become a key supplier of petroleum products to the occupied territory since 2010.

A report published by WSRW in partnership with Emmaus Stockholm in 2014 showed that two chemical tankers of the company shuttled between refineries in Spain and the occupied territory.² Every day, the Lidköping firm ships half a million litres of petroleum products into Western Sahara. The products are used by the Moroccan army, administration and businesses.

A new calculation carried out by WSRW in May 2017 demonstrates that the involvement of Wisby Tankers has remained constant ever since.³ A third vessel entered into operation in 2017.

The company underlines that there are no UN or EU sanctions in place. "It would be problematic for a company engaged in petroleum transports worldwide to halt operations in areas where opposite political interests exist", Wisby Tankers stated to WSRW in 2014. WSRW wrote to Wisby in 2017, requesting whether it had obtained the consent from the Saharawis, and is awaiting reply.⁴



The Gothenburg fisheries community

Activists from Greenpeace tried to stop the illegal Swedish fisheries in the harbour of Gothenburg in 2008.

Fishing crews and vessels from the Gothenburg area have been carrying out fishing activities in the waters of Western Sahara for decades.

Two of the fishing companies in Fiskebäck, a fisheries community in Gothenburg, were in 2015 convicted for having carried out illegal fishing in the waters offshore the territory.

They had to pay 4 million Swedish crowns (about 420,000 euro) in fines. The profit had been made from 13 months of fishing with two vessels between April 2007 and May 2008, at a value of at least 20 million Swedish crowns.

The companies were sentenced because they did not possess the required permits from Swedish/EU authorities in the spring of 2007. The EU-Moroccan Fisheries Partnership Agreement (FPA) had just come into force and the Swedish Fisheries Authorities were immediately contacted by the European Commission. Moreover, Sweden had voted against the Agreement in 2006 since it considered fishing activities in Western Sahara to be in breach of international law.

The two accused fishermen claimed that they had private agreements with a Moroccan fish factory owner and holder of fishing licences in order to facilitate the development of a modern fishing fleet off Dakhla and that the vessels had only been rented.

"During the last 20 years, I have never experienced illegal fisheries at these volumes, and for such a value", state prosecutor James von Reis said. The judicial process took almost eight years.

Several Swedish fishing vessels have been sold to Morocco, and Swedes travel to Dakhla in shifts to work as crew on board these vessels.

Many of the 'Swedish' vessels, such as Mist, Miftah, Polar, Zander and Midsjo, are still active offshore Dakhla, but have been reflagged or sold to Moroccan interests. Fishermen from the Gothenburg area continue to crew the vessels in the Dakhla area to this date. The Swedish exports of old fishing vessels to Western Sahara were highlighted in a Greenpeace report in 2013.⁵



The Swedish surfers

The Swedish kite surfing tour operator kite.se has in recent years sold tours to the town of Dakhla, in occupied Western Sahara.

WSRW in 2017 sent three mails to kite.se enquiring as to who has permitted the companies to organise and sell tours to the territory, why they refer to Dakhla as being located in "Morocco" in its information material and how the firm assesses its contribution to legitimizing and normalizing the Moroccan claims to the territory through its marketing and operations.⁶ The company has not responded, but has corrected the terminology on its information channels.

Stockholm Kiteboardcenter similarly invites to kite-camps in Dakhla. WSRW has three times asked whether Stockholm Kiteboardcenter is the one organising these camps, but is yet to receive an answer.⁷

No consent has seemingly been obtained from the people of the territory.



Wisby Tankers AB

Transports petroleum products into Western Sahara, central to the occupation, into terminals in El Aaiun and Dakhla.



Atlas Copco AB

Delivers and maintains key equipment to the Bou Craa phosphate mine, controlled by the occupying power. The phosphate exports from the mine in the occupied territory provide Morocco with more than 200 million USD income annually.



The Gothenburg fishermen

Operates vessels from the town of Dakhla.



Kite.se

Promotes and sells kiting trips to Dakhla.



Swedish problematic pensions

The Swedish government pension funds AP-Fonderna invests heavily in Western Sahara.

The government's investments are made via separate units. The First, Second, Fourth and Seventh AP Fund have placed money in companies operating in the territory. These companies are Atlas Copco, Siemens and Continental, all providing key elements to Morocco's illegal phosphate industry; Enel, which builds energy infrastructure in the territory; and Glencore, operating an offshore petroleum exploration licence.

The latest figures from the AP holdings show that the total equities and bond investments in these companies are 11,5 billion Swedish crowns (SEK).⁸ The biggest investment, by far, is the one in Atlas Copco, at 9,2 billion SEK. The others are 1,1 billion in Siemens, 441 million in Enel, 648 million in Glencore, 64 million in Continental.

In addition, the AP-Fonderna has invested in Moroccan government bonds; at present the country holds 1,9 million bonds, at a value of 16,8 million SEK. The first investment in Moroccan government bonds was made during 2013, when 900.000 bonds were acquired for an amount of 5,3 million SEK. In 2014, this was increased to 7,1 million bonds, worth 56,7 million SEK. All this was relinquished in 2015. However, in the spring of 2016, new investments were made in the bond, more or less at today's level.

The Swedish government AP Funds have placed more than 10 billion Swedish crowns in companies that facilitate infrastructure, energy supplies or drilling equipment to Morocco's illegal plunder of phosphate rock in Western Sahara. One of them is the German company Siemens. The photo above shows Saharawi refugees protesting Siemens support to the occupation of their land.



Africa's last colony

2017

The UN calls for the parties to meet to negotiate. Morocco still occupies the larger part of the territory and refuses to take part in talks which could provide for the right to self-determination to be exercised. Morocco and EU ignores the CJEU judgment, negotiating a new agreement of inclusion of Western Sahara. A court in South Africa makes a landmark decision, giving Polisario the ownership of a phosphate cargo that Morocco tried to export to New Zealand, and which had stopped over in South Africa.¹⁷

2016

The CJEU rules that Western Sahara cannot be part of EU-Morocco trade agreements without the consent of the representative of the territory, referring to the UN resolutions defining Polisario as the representative.

2007

Negotiations start between the parties. Morocco first hampers the talks, and from 2012 outright refuses to engage in negotiations.

2002

UN Legal Counsel, Swedish Hans Corell, issues an opinion for the UN Security Council stating that any further exploration of oil in Western Sahara must be done in accordance with the wishes and interests of the people of the territory.

1960

The UN adopts resolutions 1514 (XV) and 1541 (XV) on the independence for colonial countries and peoples.

1966

The UN urges the colonial power Spain, under UN supervision, to hold a referendum in Western Sahara in accordance with the right to self-determination.

1975

A UN investigation commission that had visited Western Sahara finds full support for independence. No factions supporting the territorial demands of neighboring countries been encountered.

The International Court of Justice states that the territory belonged to neither Morocco nor Mauritania prior to Spanish colonization.

Morocco and Mauritania invades the territory. Half of population was forced to flee in the coming months. Condemnation by the Security Council.

Western Sahara is not part of Morocco. The UN considers it a Non-Self-Governing Territory - a territory that is yet to complete the process of decolonization.

It is a basic requirement of international law that development in a Non-Self-Governing Territory such as Western Sahara cannot be undertaken unless there is consent from the people of the territory and the benefits are directed towards them. A legal opinion issued by the UN Legal Office in 2002 specifically addressed these issues.⁹ In October 2015, the UN Committee overseeing States' implementation of the Covenant on Economic, Social and Cultural Rights expressed its concerns that the Saharawis are indeed particularly affected by poverty. The Committee urged Morocco to respect the Saharawis' right to prior, free and informed consent with regard to the exploitation of their resources.¹⁰ A year later, the UN Human Rights Committee confirmed the requirement of "obtaining their prior, free and informed consent to the realization of developmental projects and [resource] extraction operations".¹¹

The African Union issued in 2015 a Legal Opinion concluding that "the people of Western Sahara and their legitimate representatives must not only be consulted but they must consent and effectively participate in reaching any agreement that involves the exploitation of natural resources in the territory of Western Sahara".¹² The AU Peace and Security Council has condemned the exploitation of Western Sahara's natural resources, calling it "a hostile act likely to perpetuate the conflict and colonialism in Western Sahara".¹³ It indicated that companies working in Western Sahara will not be welcome in other AU Member States.¹⁴

At present, no state in the world recognizes the Moroccan claims on the territory. Spain's highest court concluded in 2014 that Spain is still formally the administering power of Western Sahara, as the territory has never been properly decolonized.¹⁵ The Court of Justice of the European Union has echoed that statement in its December 2016 judgment, asserting that Western Sahara is "separate and distinct" from Morocco. As a consequence it ordered the application of the EU-Morocco agriculture agreement in Western Sahara to be annulled.¹⁶

1976

Spain formally withdraws, without having fulfilled its obligations. The liberation movement Polisario declares the Sahrawi Arab Democratic Republic (SADR).

1979

Mauritania withdraws and Morocco invades the area previously under Mauritanian control. The UN condemns the extension of the Moroccan occupation.

1991

Ceasefire. The parties agree to organize a referendum on independence and the UN Mission for The Referendum in Western Sahara (MINURSO) is sent to the territory.

2000

MINURSO's lists of eligible voters are concluded. After 8 years of delays, Morocco states it does not want referendum after all.



The human rights situation in Western Sahara is critical. The worst recent incident happened in July 2017, when a Moroccan court upheld the severe sentences issued by a military tribunal against a group of 25 Saharawi activists.

International observers qualify the verdict as extremely harsh and decry the lack of evidence against the convicted Saharawis. The so-called Gdeim Izik group had been arrested and previously convicted in relation to the Moroccan army's dismantling of the Gdeim Izik camp - a mass protest camp denouncing the Saharawi people's social and economic marginalization in their occupied homeland. On 8 November 2010, the Moroccan security forces destroyed the camp, resulting in violent clashes between the security forces and Saharawi protesters.

The 25 men have been arrested and tried on charges of inciting or participating in violence against security forces "leading to death with intent," and participation in a criminal organization. All of them are however known for their activism for Saharawi rights or independence.

The entire group had been originally condemned in February 2013 by a military tribunal, based on testimonies obtained under torture. Most were given harsh sentences ranging from 20 years to life imprisonment. On 27 July 2016, Morocco's court of cassation ruled that the Gdeim Izik prisoners would be granted a civilian re-trial before the Salé court of appeals. Most of the group have already served more than six years in prison.

Saharawis protesting in front of the court of Salé, Morocco, during the trial against leading Saharawi activists, 2017.

What does the CJEU judgment say?

In December 2016, the Court of Justice of the European Union (CJEU) issued a landmark judgment, concluding that no EU Trade or Association Agreement with Morocco could be applied to Western Sahara. The judgment had been years in the making. In November 2012, Frente Polisario had brought action before the Court, seeking the annulment of the EU's decision to extend its existing Free Trade Agreement (FTA) with Morocco, so as to include reciprocal liberalisation measures for agricultural products, processed agricultural products and fishery products.¹⁸ Failing to explicitly exclude Western Sahara from the scope of the arrangement, mentioned products that originated in Africa's last colony had commenced entering the Union under preferential terms granted to Morocco, following the deal's entry into force in October 2012.¹⁹

In December 2015, the General Court ruled the partial annulment of the FTA insofar as it was applied to Western Sahara. Morocco – a strategically important ally to the Union in terms of migration and combatting terror – reacted furiously and went on to freeze its relations with the EU; for weeks, there was no communication or cooperation in multi-million Euro programs, including on anti-terror measures. Council was thus quick to announce that it would appeal the judgment, effectively doing so in February 2016. Several EU Member States – France, Portugal, Spain, Belgium and Germany – even chose to intervene in the legal proceedings alongside Council, expressing their stance in favour of maintaining the trade flow from Western Sahara through the trade deal with Morocco.²⁰ Both Belgium and Germany had managed to obtain a bilateral readmission agreement with Morocco, whilst Morocco was refusing to play ball on a much-envisioned, similar deal on an EU-level – leading to speculation that some EU government had offered support in the court's proceedings if they could send back Moroccan nationals unlawfully staying in their country. The Swedish government obtained a repatriation deal with Morocco within days of announcing it would renege on its campaign promise to recognise an independent Western Sahara republic, and within a month after supporting Council's decision to appeal.²¹

In September 2016, the CJEU's Advocate General – a legal advisor appointed by the Court to present an opinion on the matter – concluded that “neither the EU-Morocco Association Agreement nor the EU-Morocco Agreement on the liberalization of trade in agriculture and fishery products apply to Western Sahara”.²² Three months later, in December 2016, the Grand Chamber of the Court of Justice of the EU confirmed the Advocate General's argumentation in its final verdict, stating that the Association and Liberalisation Agreements concluded between the EU and Morocco are not applicable to Western Sahara.²³ The Court stipulated that Western Sahara is a “distinct and separate territory” from Morocco and that “the people of Western Sahara must be regarded as a ‘third party’” to EU-Morocco arrangements. As such, their consent is required in order for the implementation of the EU-Morocco Association Agreement to affect them. It is therefore not necessary, the Court argues, to determine whether such implementation is to benefit the people of Western Sahara – what matters is that they consent to it. “In the present case, however, the judgment under appeal does not show that the people of Western Sahara have expressed any such consent”, the Court argued.²⁴

In practical terms, the ruling means that products from Western Sahara cannot benefit the same preferential treatment as products from Morocco. While the commercial repercussions might appear limited at first, the political implications have turned the EU-Morocco relations sour. Hitting the Union where it hurts – the migration crisis – Morocco's Ministry of Agriculture and Fisheries announced in February 2017 that “any obstacle in the application of this agreement ... risks the resumption of migratory flows, which Morocco has succeeded in containing through a deliberate, sustained effort.”²⁵

Again unanimous, the EU Member States decided to order the EU Commission to negotiate a revised trade deal with Morocco that would allow for the EU to continue importing products from Western Sahara. Talks have already commenced, but Council and Commission are keeping the process far from public scrutiny. On Western Sahara, the EU seems keen to maintain business as usual. The EU's list of approved exporters from Morocco, as well as the list of approved processing plants in Morocco, have been updated during the summer of 2017, and both still include entities located in Western Sahara.²⁶ The critical challenge of securing the consent of the people of Western Sahara, will be met – according to sources close to the Council – through including, for instance, the Royal Advisory Council for Saharan Affairs (CORCAS) in the negotiation process. CORCAS is an advisory committee to the Moroccan government on Western Sahara, created by royal decree in March 2006.²⁷

Polisario, on the other side, is recognised by the UN as the representative of the Saharawis, and as one of the two parties to the conflict. Polisario is kept out of the EU-Morocco trade talks.



The CJEU ruling seen from Stockholm

Among EU Member States, Sweden has been one of the few to speak out on the conflict of Western Sahara. In 2012, the country opposed the EU's proposed fisheries agreement with Morocco, arguing that "since Western Sahara is not part of Moroccan territory, international law requires that its fishery resources should be used for the benefit of the Sahrawi people in Western Sahara and in accordance with their interests and wishes."²⁸ Together with the Netherlands, Sweden opposed the inclusion of Western Sahara in the EU-Morocco agricultural trade deal. "Neither Sweden nor any other EU state has recognised Western Sahara as being part of Morocco. The government therefore do not consider that the EU trade agreements with Morocco are applicable for produce from Western Sahara. This has on numerous occasions been stated by representatives of the Swedish government in EU contexts", stated Trade Minister Ewa Björling in February 2013.²⁹

That Sweden, of all Member States, and in particular under its current government, should side with a geopolitically motivated EU Council after the EU Court's had confirmed what was Sweden's position all along, baffled many. In opting to support the Council's decision to appeal the initial CJEU ruling, the government argued that a final verdict on the matter would settle things once and for all. But when that verdict came, in all its clarity again confirming Sweden's long-held position on Western

Sahara, Sweden joined the rest of the EU Member States in mandating the EU Commission to negotiate a revised trade deal with Rabat that would allow for the sustained influx of Western Sahara products.

Upon accepting the mandate, the Swedish government posted an article on its website explaining that it requires transparency for the EU member states in the EU-Morocco trade talks.³⁰ The government also stressed that the people of the territory need to give its consent, something which the French government and the EU Commission is frenetically trying to avoid in the talks.

"If Sweden is to support a future agreement between the EU and Morocco, a precondition will be that it respects international law, including the judgement from the CJEU", the Minister of Foreign Affairs stated in parliament. Again, there are no indications as to how international law be operationalised in Western Sahara.³¹

The position does not clarify how Sweden came to the conclusion that the EU and Morocco has the right, in the first place, to negotiate deals covering Western Sahara. After all, the court had stated that the territory has nothing to do with Morocco, and that the people of the territory has to decide such matters. It seems clear that the transparency aspect is already not respected, as the people of Western Sahara, who are to give its consent, are not included in the talks between Morocco and the EU.

One of several Swedish linked vessels in occupied Western Sahara, 'Zander' is here seen just off the port of Dakhla.

Silent Swedish institutions

What do Swedish institutions say about business engagement in the territory of Western Sahara? Very little.

The Government of Sweden has seemingly not issued any instructions or advice on how Swedish business sector should relate to the territory. Correctly, the judgment does not decide on the matter. But what it does, in its argumentation, is to clearly outline the principles of international law that must apply: the representative of the territory must consent.

WSRW asked in 2017 how the Swedish Ministry for Foreign Affairs advises companies that want to trade or invest in Western Sahara, and what advice is given to Sweden government owned/partly-owned institutions, such as the ones mentioned above. The Ministry responded the following:

"The Swedish government expects companies that operate in Sweden or abroad to respect human rights in all their activities. In August 2015, the Swedish government launched a national action plan for business and human rights. It aims to translate the UN Guiding Principles on Business and Human Rights into practical action at a national level. The action plan has been widely spread and promoted by the government in the business community, and would also serve as guidelines for Swedish companies who want to trade or invest in Western Sahara.

*Any support from the Swedish government owned or partly-owned institutions [...] must be in line with Swedish law and international law. The government's position more generally is that, according to international law, any potential exploration and exploitation of natural resources in Western Sahara must be in accordance with the needs, interests and wishes of the people of Western Sahara, including that potential income must be to the benefit, and according to the will of the people of Western Sahara."*³²

When confronted on Western Sahara business activities in 2014, the Swedish Minister of Trade stated that the government encourages Swedish companies to adopt international ethical guidelines on human rights.³³ Similar vague formulations have appeared from the Swedish government since then, with no information as to how international law must be applied.³⁴

- Western Sahara Resource Watch contacted eight Swedish (fully or partially owned) government bodies promoting business abroad – and private business associations – during the summer of 2017.
- Two bodies gave a clear position on Western Sahara.
- One clarified it has no mandate to work on Western Sahara.
- The rest has either no position or answered that the issue is hypothetical and that they will look at it if the topic arises.
- The survey indicates that the Swedish governmental bodies that facilitate trade are not advised by the Ministry of Foreign Affairs at all on how to relate to the CJEU judgment. The consequence of an apparent lack of clear guidance from the Government is that both Swedish institutions and the companies themselves are left to their own devices in interpreting international law in Western Sahara.



Swedish Export Credit Agency (EKN)

What: An authority which promotes Swedish exports by insuring the companies' risk of not being paid in export transactions.

Position: "EKN is closed for cover on Western Sahara and does therefore not issue any guarantees for export transactions to this territory. [...] Normal cover applies for guarantees on Morocco. However, should the purpose of the transaction involve Western Sahara, no cover applies."³⁵

Website: www.ekn.se

Nordic Investment Bank (NIB)

What: An international financial institution jointly owned by all the Nordic (including Baltic) governments, with lending operations both in and outside its member countries. It signed a cooperation agreement with Morocco in 2002, which has been used on only one project.

Position: NIB confirms that it has policies in place that prevent the bank from supporting projects in Western Sahara "based on the current circumstances existing in that region."³⁶

Website: www.nib.int



National Board of Trade Sweden

What: In an international context, the National Board of Trade is a rather unique construction. The institution is a government agency responsible for issues relating to foreign trade, the EU's internal market and trade policy. One of its roles is to provide services to companies.

Position: "The National Board of Trade Sweden has no governmental assignment or mandate to act or perform within the stated areas. Thus, we do not have a position in relation to business activities in Western Sahara, nor is it within our directions to assist companies from Sweden in their business activities in Western Sahara."³⁷

Website: www.kommers.se



Swedish Export Credit Corporation (SEK)

What: A state-owned corporation that serves as an export credit agency.

Position: "We are looking on all the business requests that comes to SEK, based on different criteria, including the country or company in question, subject to sanctions. We have sustainability screening in all our lending and human rights is one parameter. Unfortunately, we cannot provide a prior notice, either by country or by business".³⁸

Website: www.sek.se

International Council of Swedish Industry (NIR)

What: A membership organisation consisting of large exporting companies, organisations, authorities and banks that support export and trade. NIR offers advice and services to Swedish companies operating in complex markets/environments.

Position: "We have not had specific focus on this question and therefore see no point in going into discussions on future potential questions."³⁹

Website: www.nir.se

Swedfund

What: The Swedish government's development finance institution.

Position: "Morocco is listed as a country qualifying for development assistance according to OECD DAC. If Swedfund would receive a proposal for an investment in Western Sahara or any other disputed territory, the first step of Swedfund's Due Diligence would be to analyse if this is a territory that qualify for development assistance according to OECD/DAC. We would contact the Ministry of Foreign Affairs to ask for their guidance in this regard."⁴⁰

Website: www.swedfund.se

Business Sweden

What: An organisation jointly owned by the Government of Sweden and representatives of the Swedish business community, with a mission to promote Swedish exports.

Position: "We have not received any inquiries from Swedish companies to take stance at the issue at hand. Business Sweden acts in accordance and abides by all rules, laws, and regulations set by the Swedish government". WSRW is asked to "...contact the responsible authorities regarding their stance on the issue instead of asking us to discuss a matter that has not yet occurred and is currently only hypothetical."⁴¹

Website: www.business-sweden.se

The Swedish Shipowners' Association

What: An industry association representing 60 Swedish shipping companies. One of them is Wisby Tankers.

Position: "The Swedish Shipowners' Association does not take a position regarding countries political system or discussion but follow the recommendations given by the International Chamber of Shipping (ICS) / International Maritime Organisation (IMO) regarding areas to avoid etc for whatever reason it might be. Hence, the Swedish Shipowners' Association does, as the vast majority of national and international shipowners' associations, not have a position to discourage our members from shipping activities in the area.

[...] Shipowners operating in the area should be aware that they are operating in a politically sensitive area. The risk of operating there is higher than average. This includes the risk for the ship, the cargo but also for the employees. Our advice is to closely follow the national and international development and make sure the shipping activities follow high international standards concerning safety, security and sustainability. It is important that official international UN recommendations for trade/transportations are followed."⁴²

Website: www.sweship.se

Doing it the right way

The four major Swedish food chains Axfood, Coop, ICA and Bergendahls/ City Gross in 2013 signed a joint declaration stating that they do not wish to sell products from Western Sahara.⁴³ Together, the four competing companies control over 90 percent of the grocery market in Sweden.

The statement underlines that such sales are “inconsistent” with the ethical commitments of the chains. Since then, the companies have joined efforts in steering away from imports from the territory.

“Importing from Western Sahara would be problematic in terms of international law, and we wish to make our stance clear to our consumers, retailers, buyers and other intermediaries in our supply chain”, Mr. Håkan Björklund, public affairs Axfood stated.

“A formal indication of origin, such as ‘produced in Western Sahara’, that would positively identify the unwanted goods, is still lacking today. This puts demands onto the chains to pay due attention to identify and avoid products coming from Western Sahara all throughout the supply chain”, Björklund stated.

He underlines that the tomatoes of Moroccan origin are unproblematic and of high quality, but that they have undertaken steps to assure that the tomatoes from Morocco do not include products from Western Sahara.

“We use precaution in cases of insufficient or incorrect labelling. We all want to meet our consumers’ demands and sell the goods that they want. Hopefully the rest of the Swedish business community follow our example”, Björklund said.

In 2010, Swedish national TV documented how fish oil originating in Western Sahara ended up in Omega 3 products for the Swedish consumers. As a result, most of the products were banned by Swedish health stores and supermarkets, until it was assured that the products did not contain Western Sahara fish oil. The Omega 3 currently available on the Swedish market does most probably not contain fish oil from the territory.

While the Swedish government is on the fence, not providing business advice on Western Sahara, Swedish supermarket chains are taking the lead. “We shall be proud of the products that we are selling”. Håkan Björklund, public affairs Axfood.





Other governments say no to businesses in Western Sahara

Other North European governments are consistent in requesting companies to stay away from the occupied territory.

"The position of the Norwegian government, to ask companies not to trade or invest in Western Sahara, spreads to other government institutions which want or need to be aligned with the Ministry of Foreign Affairs", stated Magnhild Bøgseth, chair of the Norwegian Support Committee for Western Sahara.

She told that the Norwegian government underlines that there are no embargos in place, and that its position is an advice to the companies to voluntarily commit to responsible business by not undertaking such activities.

"It means that funding mechanisms or even business associations like the Norwegian Shipowners' Association also ask their companies or members to not engage in such practice. It has cost the government very little to issue such advice, and it is surprising that Sweden does not do the same, particularly in view of the UN Guiding Principles on Business and Human Rights", Ms. Bøgseth stated.

"The Dutch government warns about investment or business activities in the territory of Western Sahara under the 27th parallel", the government of the Netherlands writes on its website.⁴⁴

It notably warns against deals that "turn out to have been granted unfairly and the related reputational damage" and risks that "relate in particular to the correct labelling and certification of origin of products from Western Sahara".

Also the Danish and Faroese governments have issued particular advice to companies, advising about the risk involved.

Recommendations

To the Government of Sweden:

- To comply with the CJEU ruling on Western Sahara of 21 December 2016, notably by treating Morocco and Western Sahara as separate and distinct territories and ensuring that any economic activity in or related to the latter has the consent of the UN-recognized representative body of the people of Western Sahara, the Frente Polisario.
- To reject any EU trade agreements covering the territory of Western Sahara without the specific consent from the representative of the people of Western Sahara, Frente Polisario.
- In line with the Swedish government's stated request to the EU of transparency in the trade negotiations, to raise the question why the people of Western Sahara have not yet been included in the talks, as they are the ones who ought to consent to the envisioned trade deal.
- In the spirit of the Swedish government's stated request for transparency in relation to the EU-Morocco trade talks, to publish an official statement expressing this need for transparency.
- In view of its obligations stemming from the CJEU judgment and the UN Guiding Principles for Business and Human Rights, to issue a general recommendation to the Swedish business community not to engage in or trade with products from Western Sahara.
- To clearly instruct the Swedish institutions that facilitate foreign trade and investment to decline assistance to projects in Western Sahara.
- To ensure that all goods coming from Western Sahara are imported under the ISO code "EH" and not "MA".
- To monitor and report the volume of goods originating in Western Sahara that enter its territory and to establish a database of all Swedish companies involved in trade with or in that territory, in order to allow statistical data to be available at EU-wide level.
- To step up its support to the Sahrawi population in the refugee camps in Algeria and to provide support to Sahrawi civil society organizations and human rights defenders in the occupied territories.

To the companies involved:

- To immediately halt all involvement in Western Sahara unless it has first secured the consent from the representative body of the Saharawi people, the Frente Polisario.

To the Swedish government institutions facilitating trade:

- To issue a clear policy renouncing facilitation of trade with Western Sahara.

To Swedish Shipowners' Association:

- To recommend members not to engage in transport to or from Western Sahara.

To the European Commission

- To immediately suspend its trade negotiations with Morocco in relation to Western Sahara and to engage with the Frente Polisario in order to establish a framework for bilateral relations with that territory.
- To monitor and report the volume of goods originating in Western Sahara that enters EU territory.
- To issue an EU-wide business advisory warning companies about the reputational, financial and legal risks involved in doing business with or in Western Sahara.
- To revise drastically its aid assistance to the Sahrawi population, notably by stepping up its humanitarian assistance to the refugee camps in Algeria, developing a resilience programme to build the capacity of the Sahrawi institutions and civil society and by supporting human rights defenders and civil society organisations in the occupied territories.

Notes

- 1 WSRW.org, 06.06.2017, 15 questions that Atlas Copco does not want to answer, <http://www.wsrw.org/a105x3891>
- 2 WSRW, 20.06.2014, Fuelling the Occupation, <http://www.wsrw.org/a228x2917>
- 3 WSRW.org, 12.06.2017, Wisby Tankers continues fuelling the occupation, <http://www.wsrw.org/a105x3910>
- 4 Ibid.
- 5 Greenpeace, 02.12.2013, Exporting Exploitation, <http://www.greenpeace.org/eu-unit/en/Publications/2013/Exporting-Exploitation/>
- 6 Letter from WSRW to Kite.se, 30.04.2017, http://www.wsrw.org/files/dated/2017-08-28/2017.04.30_wsrw-kite.se.pdf
- 7 Letter from WSRW to Stockholm Kiteboardcenter, 30.04.2017, http://www.wsrw.org/files/dated/2017-08-28/2017.04.30_wsrw-kiteboardcenter.pdf
- 8 The calculations are based on the latest available reports: 2Q2017 reports from API, AP2, AP4, and 4Q2016 report from AP7.
- 9 UN Security Council, 12.02.2002, Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council, S/2002/161, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2002/161
- 10 WSRW.org, 2015-10-16, UN Treaty Body urges Morocco to respect Saharawis' right to resources, <http://www.wsrw.org/a105x3627>
- 11 WSRW.org, 04.11.2016, UN committee concerned of lack of Saharawi consent over resources, <http://www.wsrw.org/a105x3627>
- 12 WSRW.org, 19.10.2015, African Union publishes Legal Opinion on Western Sahara plunder, <http://www.wsrw.org/a105x3281>
- 13 Press Statement of 575th PSC Meeting on Natural Resources and Conflicts in Africa, http://www.peaceau.org/en/article/press-statement-of-575th-psc-meeting-on-natural-resources-and-conflicts-in-africa?utm_source=Email_marketing&utm_campaign=Wednesday_February_17_2016_-_1&utm_medium=HTMLEmail
- 14 Communiqué of the Peace and Security Council of the African Union at its 496th meeting held on 27 March 2015, on the situation in Western Sahara, S/11, <http://www.peaceau.org/en/article/communique-of-the-peace-and-security-council-of-the-african-union-au-at-its-496th-meeting-held-on-27-march-2015-on-the-situation-in-western-sahara>
- 15 Auto núm. 40/2014 de la Sala de lo Penal de la Audiencia Nacional. See e.g. here: http://www.wsrw.org/files/dated/2016-04-19/audiencia_nacional_4.7.2014_-_gdeim_jzik.pdf
- 16 Court of Justice, 21.12.2016, Council v Front Polisario, ECLI:EU:C:2016:973, Judgment of the Court, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=186489&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=65790>
- 17 WSRW.org, 16.06.2017, Carriers of Conflict http://wsrw.org/files/dated/2017-06-16/carriersofconflict_16.06.2017_web.pdf
- 18 WSRW.org, 27.02.2013, Frente Polisario tries EU trade deal in court, <http://www.wsrw.org/a217x2531>
- 19 WSRW.org, 27.06.2012, EU-Morocco agri-deal to enter into force in October, <http://www.wsrw.org/a214x2337>
- 20 InfoCuria, 09.06.2016, Ordonnance du Président de la Cour, Pourvoi – Intervention – Association professionnelle représentative – Intérêt à la solution du litige –

- Admission, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=180421&pageIndex=0&doclang=fr&mode=req&dir=&occ=first&part=1&cid=1248270>
- 21 WSRW.org, 17.03.2016, Trading Saharawi rights for Moroccan migrants, <http://www.wsrw.org/a243x3418>
 - 22 WSRW.org, 13.09.2016, EU Court Advocate: Western Sahara is not part of EU-Morocco trade deal, <http://www.wsrw.org/a106x3567>
 - 23 Court of Justice of the European Union, 21.12.2016, Press Release N° 146/16, The Association and Liberalisation Agreements concluded between the EU and Morocco are not applicable to Western Sahara, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2016-12/cpl60146en.pdf>
 - 24 InfoCuria, 21.12.2016, Judgment of the Court (Grand Chamber), C-104/16 P, §106, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=186489&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=65790>
 - 25 France24, 22.02.2017, Morocco uses migrant crisis as leverage in EU free trade dispute, <http://www.france24.com/en/20170222-morocco-hundreds-migrants-storm-spain-ceuta-amid-eu-trade-tensions>
 - 26 EU Directorate General for Health and Food Safety, Third Country Establishments; List per Country, https://webgate.ec.europa.eu/sanco/traces/output/non_eu_listsPerCountry_en.htm#.
 - 27 Royal Advisory Council for Saharan Affairs, CORCAS Chairman statement concerning 2009 first ordinary session, <http://www.corcas.com/SearchResults/RoyalDecree/tabid/495/Default.aspx>
 - 28 Council of the European Union, 14.11.2013, "A" Item Note, <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2015723%202013%20ADD%201>
 - 29 Sveriges Riksdag, Jordbruksprodukter från Västsahara, http://www.riksdagen.se/sv/dokument-lagar/dokument/svar-pa-skriftlig-fraga/jordbruksprodukter-fran-vastsahara_H012276
 - 30 Swedish Government, 29.05.2017, Västsahariska folkets självbestämmanderätt avgörande i framtida handelsavtal, <http://www.regeringen.se/artiklar/2017/05/vastsahariska-folkets-sjלבbestammanderatt-avgorande-i-framtida-handelsavtal/>
 - 31 Swedish Minister of Foreign Affairs, Answer to written question 2016/17:1480, 07.06.2017, http://www.riksdagen.se/sv/dokument-lagar/dokument/skriftlig-fraga/omforhandling-av-eus-handelsavtal-med-marocko_H4111480
 - 32 Letter, Government of Sweden to WSRW, 05.09.2017, http://wsrw.org/files/dated/2017-09-05/2017.09.05_sweden-wsrw.jpg
Letter, WSRW to Government of Sweden, 28.06.2017, http://www.wsrw.org/files/dated/2017-08-28/2017.06.28_wsrw-sweden_mfa.pdf.
 - 33 SVT, 20.06.2014, Oljetransporter till Västsahara kritiseras, <https://www.svt.se/nyheter/inrikes/oljetransporter-till-vastsahara-kritiseras>
 - 34 "When it comes to Swedish business, I expect them to follow relevant laws and take into account their obligation for a sustainable development", deputy Minister for Finance, Per Bolund. Riksdagen.se, 29.11.2016, AP-fondernas investeringar i det ockuperade Västsahara, Interpellation 2016/17:119, http://www.riksdagen.se/sv/webb-tv/video/interpellationsdebatt/ap-fondernas-investeringar-i-det-ockuperade_H410119
"International law applies between states. It is of the opinion of the Swedish government, however, that Swedish businesses should operate responsibly wherever they operate. Many Swedish businesses are also leading in combining businesses with a wider social responsibility", Minister of Foreign Affairs, Margot Wallström. OmVärlden, 01.04.2015, Svensk finansman vänder Västsahara ryggen, <http://www.omvarlden.se/Opinion/debattartiklar/svensk-finansman-vander-vastsahara-ryggen/>
"The decision of the Court of Justice of the EU does not cover the question of particular EU Member States' support or guarantees to businesses. The judgement does, thus, not affect what is applicable for the support of Swedish businesses operating in Western Sahara. If financial support or guarantees to Swedish companies were to take place, it would have to be within the framework of Swedish and international law," Minister for EU Affairs and Trade, Ann Linde.
Minister of EU Affairs and Trade, Answer to written question 2016/17:1182, 12.07.2017, http://www.riksdagen.se/sv/dokument-lagar/dokument/skriftlig-fraga/handel-med-vastsahariska-produkter_H4111182
 - 35 Correspondence WSRW-EKN, 2017, http://www.wsrw.org/files/dated/2017-08-28/correspondence_wsrw-ekn_2017.pdf
 - 36 Correspondence WSRW-NIB, 2017, http://www.wsrw.org/files/dated/2017-08-28/correspondence_wsrw-nib_2017.pdf
 - 37 Correspondence WSRW-National Board of Trade, 2017, http://www.wsrw.org/files/dated/2017-08-28/correspondence_wsrw-nationalboardoftrade_2017.pdf
 - 38 Correspondence WSRW-SEK, 2017, http://www.wsrw.org/files/dated/2017-08-28/correspondence_wsrw-sek_2017.pdf
 - 39 Correspondence WSRW-NIR, 2017, http://www.wsrw.org/files/dated/2017-08-28/correspondence_wsrw-nir_2017.pdf
 - 40 Correspondence WSRW-Swedfund, 2017, http://www.wsrw.org/files/dated/2017-08-28/correspondence_wsrw-swedfund_2017.pdf
 - 41 Correspondence WSRW-Business Sweden, 2017, http://www.wsrw.org/files/dated/2017-08-28/correspondence_wsrw-businesssweden_2017.pdf
 - 42 Correspondence WSRW-Swedship, 2017, http://www.wsrw.org/files/dated/2017-08-28/correspondence_wsrw-sweship_2017.pdf
 - 43 WSRW.org, 22.01.2013, 4 Swedish chains unite in avoiding Western Sahara goods, <http://www.wsrw.org/a217x2493>
On 1 December 2015, the grocery chains associated under the business association Swedish Food Traders, which corresponds to a large extent to the same group of companies, furthermore adopted a generic statement on imports from occupied lands. https://www.svenskdagligvaruhandel.se/wp-content/uploads/SvDH_Branschoverenskommelse_ockuperad-mark.pdf
 - 44 Netherlands Enterprise Agency, Western Sahara, <https://www.rvo.nl/onderwerpen/internationaal-ondernemen/landenoverzicht/marokko/westelijke-sahara>

“The Court’s conclusion is that the materials and information presented to it do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. Thus the Court has not found legal ties of such a nature as might affect the application of General Assembly resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory.”

International Court of Justice, 16 Oct 1975