

# How to do Trade with Developing Countries

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**A normative Examination on how the European Union contributes  
to Deprivations in Developing Countries and what this entails for  
its Conduct of Trade**

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*If the misery of our poor be caused not by laws of nature,  
but by our own institutions,  
great is our sin.*

***Charles Darwin***

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# Abstract

In this thesis I examine in what way the European Union (EU) contributes to deprivations in developing countries in its conduct of trade. Based on this examination, I test the stringency of duties that follow from these contributions in order to identify what kind of trading scheme should be adopted when the EU trades with developing countries.

For the purpose of this examination, I present two distinctively different actions of trade in which the EU is involved. This is (1) the EU's Common Agriculture Policy (CAP) and (2) the EU's involvement in contributions of harm undertaken by European Multinational Enterprises in Developing Countries.

I apply Barry's and Øverland's tripartite distinction of doing-allowing-enabling harm to these actions in order to classify the EU's harm contributions. This taxonomy does not prove to be sufficient when applied to the EU. Hence, I add two more categories: *Allowing in Authority* and *Benefiting from Harm*. This further shows that Barry and Øverland are not correct in assuming that affluent actors solely contribute to deprivations in developing countries by enabling harm. This recognition is of great importance since it leads Barry and Øverland to believe that there exist less stringent moral reasons to address these hardships compared to cases in which harm was done. Although this is correct, I show that Barry and Øverland are wrong in arguing that this would allow us to adopt a trading scheme which includes subsidies and tariffs. Based on the additional categories I present, I demonstrate that there follow stringent duties for the EU to address the deprivations to which the EU contributed in its conduct of trade. This requires the EU to adopt a trading scheme that does not result in such deprivations. Moreover, I show that this further generates duties to compensate developing countries for experienced disadvantages so that a trading scheme with preferential treatment of developing countries should be considered.

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# 1 Introduction

Since the establishment of the European Union (EU) in 1950, the Union became the largest trading power in the world. Through political and economical relations the EU continuously increases its influence in world affairs and aims to expand its market access in foreign economies. Moreover, the EU is one of the largest aid donors; European enterprises are known to be the largest direct investors in developing countries. In previous years, the EU intensified its relationship with developing countries through trade agreements and diplomatic relations. Although, many of them are former colonies of the Member States, the EU's influence is spread all over the world. It engages in developing cooperation with the African Caribbean and Pacific States, the Mediterranean countries but also with Asian and Latin American countries. Among those states, 92 ranked as the least developed countries in the world.<sup>1</sup> Undeniably, the EU plays a key role when it comes to global sustainable development. Although the EU is committed to support development efforts through trade and aid, it is subject to the allegation of shaping the rules of trade according to its own interest without taking sufficiently into account the interests of those in need and distress. Moreover, insufficient reconciliation of trade policies and normative principles underlying the EU make it prone to the accusation that it is a power of double standards, by which development efforts it praises to foster are, in fact, undermined. This gives reason to the assumption that the EU imposes harm on the severely deprived by failing to structure trade in a fair and respectful way. Those allegations give reason to address this topic from a normative perspective in order to uncover in what way the EU contributes to deprivations in developing countries and to define the duties that follow from it.

Contributions to acute deprivations are of special normative relevance. They are considered to yield quite stringent duties of addressing harms which results from such contributions. The stringency of a duty defines how it constrains agents and it gives guidance with regard to the question of obligations that follow when those constraints are violated. This means, that a violation of a stringent duty cannot be excused by appealing to costs someone has to endure by fulfilling it. Moreover, stringent duties cannot be sacrificed by adhering to other valued moral ends.<sup>2</sup> Hence, the greater the degree of stringency of moral reasons, the more compelling and stronger the reason to address the harms caused by the act performed.

However, how stringent moral reasons are to address the deprivations in developing countries is questioned by Christian Barry and Gerhard Øverland. In *The Feasible Alternatives Thesis: Kicking away the livelihoods of the poor* they present a tripartite distinction of allowing-enabling-doing

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<sup>1</sup> See Gatto, *Multinational Enterprises and Human Rights Obligations under EU Law and International Law*, 191.

<sup>2</sup> See Barry and Wiens, 'Benefiting From Wrongdoing and Sustaining Wrongful Harm', 28 pp.

harm and argue that in most cases, developed countries contribute to harm by enabling it. In their view, this is distinctively different to allowing harm as well as doing harm and would yield less stringent moral reasons for affluent people to address the deprivations in developing countries.<sup>3</sup>

In this thesis, I cast doubt about this conclusion when it comes to the EU and its activities of trade. Therefore, I pose the following research question:

*How does the EU contribute to deprivations in developing countries and what are the obligations that follow from these contributions?*

This project is worthy of attention in the realm of applied ethics as a matter of international justice. This examination shall provide a clearer understating about what kind of harm contributions are present when analysed in the view of a global institution. Furthermore, it shall give answers to the question what justice requires when it comes to trade relations between the EU and those living in need and distress in developing countries.

For this purpose, I proceed as follows: I start with giving a brief overview of two distinctive trade activities in which the EU is involved. This shall make explicit how the EU can be contributor to harm in very distinctive ways. Severe deprivations constitute as harm. Those include the lack of subsistence, acute shortfalls in health, life and civic status in terms of political and social rights, as well as threats to standard of living by which ordinary needs and requirements for human life are impaired.<sup>4</sup>

I focus on two distinctive trade activities of the EU. Those include the European Common Agriculture Policy (CAP) and operations of European Multinational Enterprises (EMEs) in developing countries. CAP includes subsidies and tariffs for foodstuff. This policy is under scrutiny for reasons of giving the EU a significant market advantage in the distribution of food supplies, whereas they weaken the competitive position for those living in developing countries. In contrast, it appears as there would be no direct connection between the EU and the harm imposed on developing countries by EMEs. Here, the EU is not the harm-doer itself. However, the EU has a particular interest in the realisation in both of these activities as they are meant to increase the EU's market access in foreign countries and to strengthen the EU's relative

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<sup>3</sup> See Barry and Øverland, 'The Feasible Alternatives Thesis: Kicking away the livelihoods of the poor.'

<sup>4</sup> I refer to Christian Barry's definition of harm as defined in his paper *Applying the Contribution Principle*. See Barry, 'Applying the Contribution Principle', 210.

The reason for choosing this baseline stems from the fact that moral reasons of refraining from contributing to acute deprivations are considered to be, as described earlier in this introduction, as especially stringent. Moreover, they are binding for a broad range of agents, including individuals and collective agents such as corporations, states and institutions. Furthermore, they are considered to be broad in scope: They apply to what agents directly do to others but they also apply to practices and enforced rules which cause deprivations to others in a more indirect way. See also Barry, 'Applying the Contribution Principle', 212.



bargaining position in the world market. In this way, the EU pursues its main objective of economic growth. At the same time, they also present a major obstacle to the reduction of poverty by means of corporate tax avoidance and threaten the fulfilment of most basic rights. Since both activities seem to be substantially different in nature but are pursued for the same purpose and are subject to similar criticism, I take them as exemplary cases for demonstrating the EU's manifold ways of pursuing trade. Furthermore, this shows that the EU's contributes to deprivations in developing countries in various and distinctive ways.

In the second part of this thesis, I apply Barry's and Øverland's tripartite distinction of doing-allowing-enabling harm to the EU and the trade activities as presented. In applying this taxonomy to the EU, I show that Barry's and Øverland's tripartite distinction of allowing-enabling-doing harm is not sufficient. Moreover, this demonstrates that the contribution to harm in the case of the EU goes beyond the category of enabling harm. I argue that the EU further contributes to deprivations in developing countries by allowing harm as an authority and also sustains harm for economic benefits.<sup>5</sup> In order to show their phenomenological and structural differences I compare them to simplified examples. Those provide the foundation for the last section of this thesis in which I modify these examples in order to test our moral intuition about the stringency of moral reasons that follow from these harm contributions.

Before analysing this further, I test Thomas Pogge's Feasible Alternative Thesis (FAT) under the condition that the EU is a manifold harm contributor. According to FAT, someone can be deemed as a contributor to the poor people's suffering as long as s/he cooperates in upholding a trading scheme that results severe deprivations and fails to adopt an alternative scheme which would minimise these deficits.<sup>6</sup> Which trading scheme is permissible to adopt depends on whether it can be legitimately be argued that affluent people contribute to those shortcomings in developing countries. Whereas Barry and Øverland presume that affluent people only enable harm, they suggest that Trade – predominately defined by enabled harms through subsidies and tariffs – would be permissible to opt for. Since I do not agree that developing countries only contribute to harm by enabling it, I show that, under the conditions of manifold harm contributions, Fair Trade – under which contributions of harm are as far as possible eliminated – is the feasible alternative that requires adopting.<sup>7</sup>

Lastly, I turn to the moral obligations that follow from the harm contributions as described in the second part in this thesis. By appealing to our moral intuition, I intent to show how

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<sup>5</sup> The categories I add to Barry's and Øverland's tripartite distinction may possibly at first appear random to the reader. However, in the ongoing discussion of this paper it will become clear that they make a moral difference. Nonetheless, to foreshadow the conclusion of this paper, the reader is right to assume that the contributions of harm I present here may quite possibly be not sufficient. It is to be presumed that the EU is most likely also contributing to deprivations in developing countries via other trade activities which probably bring about further categorisations.

<sup>6</sup> See Barry and Øverland, 'The Feasible Alternatives Thesis: Kicking away the livelihoods of the poor', 98.

<sup>7</sup> A more detailed definition of these trading schemes follows in the course of this discussion.

compelling moral reasons are that are caused by enabling harm, tolerating harm as an authority and by sustaining harm for economic benefits. By using this method, I further provide reasons why Trade is not a legitimate trading scheme with regard to the EU. Instead, the examination shall show that moral reasons resulting EU's contributions to deprivations in developing countries yield stringent duties to address their shortcomings and require adopting at least Fair Trade if not even Good Trade with preferential treatment for those in need and distress.

## **2 European Union and Activities of Trade**

In previous years, the EU experienced heavy criticism from Non-Profit Organisations, developing country representatives and scholars alike for enforcing rules of trade and trade agreements which are incoherent with development objectives. Although trade is expected to spur economic growth and essential for overcoming poverty, critics cast doubt about the EU's pursuit of market liberalisation. Whereas the EU enjoys a significant advantage in greater market access, developing countries face major drawbacks in their production, struggle with increased competition and are forced to accept unfavourable working conditions. As a result, the EU was leading figure in Oxfam's 'Double Standard Index' in 2002.<sup>8</sup>

The following section demonstrates where this criticism stems from. As previously mentioned, I focus on two distinct cases. First, I explain the Common Agriculture Policy of the EU which undermines market access for development country producers through subsidies and tariffs. Second, I raise concern about actions contributing to severe deprivations which are conducted by EMEs. In this section, I discuss mechanisms of the EU by which EMEs encouraged to pursue business abroad but, at the same time, not subject to binding rules of corporate social responsibility.

### **2.1 The EU's Common Agriculture Policy: Subsidies and Tariffs**

The Common Agriculture Policy (CAP) is an instrument of the EU for the purpose of supporting European farmers and to protect agriculture industries within the EU. Although the CAP experienced several changes since its introduction in 1962, it provided throughout the years extensive support to EU farmers and still does. In *Institutionalizing Inequality: the WTO, Agriculture and Developing Countries* Carmen G. Gonzales analysis the impact of CAP mechanism of developing countries. He criticised financial support via subsidisation for domestic production and export subsidies that lead to the dumping of surpluses on world markets at an artificially

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<sup>8</sup> See Bailey, Fowler and Watkins, 'Europe's Double Standards'.

depressed price. As the market opening of developing countries allows for product inflows from the EU, they are increasingly exposed to unfair competition with products from industrialised countries. This results in a decrease in food production in developing countries since imported food is more affordable. However, it also leads to increased dependence on food imports.<sup>9</sup> Subsidisation presents a major stimulus to production irrespective of the demand within the EU. As a consequence, the EU emerged as a significant export competitor to developing country exporters. In addition, the CAP also provides for export subsidies which incentivise food exportation. Budget support for local farmers coupled with export subsidies furthers the dumping of low prices on the markets of importing developing countries of particular commodities such as milk powder, pig and poultry meat as well as for beef and eggs which were highly subsidised in recent years.<sup>10</sup> Gonzales argues that this further fosters food insecurity in developing countries and undermines their domestic production. Due to these CAP mechanisms local farmers in developing countries cannot compete with cheap products from the EU. As a result, they experience a decline in revenue which hinders them to invest in domestic agriculture.<sup>11</sup>

However, CAP subsidies do not only interfere with market mechanisms in developing countries. CAP further provides an obstacle to developing countries in gaining access to the EU market and undermines their capability to compete within it. Since they lower the price of domestically produced goods, agriculture commodities undercut the price of imported products.<sup>12</sup> In combination with EU's border protection through tariff barriers for imported goods, low-cost developing country exporters are prevented from selling their products in the EU market. The study of Boysen, Jensen and Matthews confirms that these mechanisms have in the past distorted both the level and the volatility of world market prices at the costs of farmers in developing countries.<sup>13</sup>

However, the EU reacted to previous criticism and introduced a reformation in 2013 in which export subsidies were abolished and local subsidies are minimised. The harmful impact on specific agricultural and food sectors of developing countries caused by CAP's mechanisms has now been diminished, as a substantive study by Merijerink and Achterbosch shows.<sup>14</sup> Still, they express concern about newly introduced policies such as the Generalised System of Preferences by which some countries face now restricted market access to the EU. Also, new Economic

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<sup>9</sup> See Gonzalez, 'Institutionalizing Inequality', 436.

<sup>10</sup> See Boysen, Jensen and Matthews, 'Impact of EU Agricultural Policy on Developing Countries: A Uganda Case Study', 2 and 'CAP and EU Trade Policy Reform', 27.

<sup>11</sup> See Gonzalez, 'Institutionalizing Inequality: the WTO, Agriculture and Developing Countries', 447.

<sup>12</sup> See *ibid.*, 458.

<sup>13</sup> See Boysen, Jensen and Matthews 'Impact of EU Agricultural Policy on Developing Countries: A Uganda Case Study', 17, 18 and 31.

<sup>14</sup> See Merijerink and Achterbosch, 'CAP and EU Trade Policy Reform', 15, 76.

Partnership Agreements are under scrutiny by Merijerink and Achterbosch, as they are supposed to have a damaging effect for developing countries in terms of an increased market competition due to EU imports in agriculture and service.<sup>15</sup> Likewise, in a policy simulation based on Uganda, one of the least developed countries in the world, Boysen, Jensen and Matthews in 2014 come to the conclusion that the CAP's negative effect has decreased. Nonetheless, they emphasise that farmers are still heavily subsidised, and for some products high tariffs are still existent. Their study shows that this leads to an increase of food prices on the world market which benefits surplus producers but hurts poor consumers. Moreover, increased competitiveness due to decreased tariff imports for third countries of preference adds now a negative effect to the overall consequences for developing countries.<sup>16</sup>

Although the CAP has significantly improved and the EU is now also committed to align CAP with development efforts, these studies show that CAP's mechanisms of EU's agriculture protectionism and import tariffs lead to market distortions. Therefore, it can be said that CAP as a harmful impact on developing countries in the way that it causes food insecurity, exposes them to market restrictions and increased competitiveness by which development is impaired and people are at risk to end up in absolute poverty.

It is apparent from this examination, that CAP has a harmful impact on developing countries as well as their individuals. However, further problems are caused by EMEs which operate overseas in developing countries. In the following section, I uncover the harmful impact on developing countries caused by these companies. From this it will follow, that the EU's involvement and contribution to harm will be of a much different kind than compared to CAP.

## **2.2 European Multinational Enterprises: Harm Done to Developing Countries under EU's Impunity**

EMEs are corporations with headquarters in the EU and subsidiaries abroad. In recent years, EMEs extensively outsourced their production to developing countries where they enjoy a more lenient legal framework and greater tax benefits. At the same time, developing countries face numerous problems with companies from abroad that exploit the weakness of national law enforcement.<sup>17</sup> The Permanent Peoples' Tribunal held in Vienna in 2006 and Lima 2009 documented sustained and systematic violations of human, economic, political, social, cultural and environmental rights. Moreover, it expressed serious concern about the EMEs operations by

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<sup>15</sup> See *ibid.* 30, 33 and 76f.

<sup>16</sup> See Boysen, Jensen and Matthews 'Impact of EU Agricultural Policy on Developing Countries: A Uganda Case Study', 17, 18 and 31.

<sup>17</sup> See Enzlando Alternativas 'European Union and Transnational Corporations Trading Corporate Profits for Peoples' Rights', 9.

which the environment is seriously harmed with detrimental consequences for the livelihood and welfare of indigenous people.<sup>18</sup> The following report presented by the bi-regional Latin-American network shows an extensive list of EMEs from Austria, Britain, Finland, France, Germany, Italy, the Netherlands, Spain, and Sweden that operate in Latin America and the Caribbean and are involved in harmful practices such as the exploitation of labour, the contamination of water supplies and poisoning of aquifers by which health and life of local communities are threatened. Moreover, the report shows that EME *inter alia* are involved in bribery to realise their interests which adversely affects democracy in those countries. Above all, dubious practices like occupancy of local landmasses and the general destruction of the natural environment, by, for example, mining and oil companies; deprive individuals of their life source and living space.<sup>19</sup>

Furthermore, negative impacts of this kind are exacerbated by corporate tax abuse by which local developing countries are deprived of tax revenues from corporations which operate in their country. Those tax revenues are supposed to ensure provisions of public goods, increase economic development and serve as investments for programmes of health, education and infrastructure. However, the corporate use of tax havens in *inter alia* Europe, like for instance the Netherlands or Great Britain, allows EMEs to minimise their costs and increase profits. These governments commonly offer low or zero tax rates in combination with strict bank secrecy rules and mechanisms that protect individuals from revealing their ownership. This enables EMEs to hide their profits with ease.<sup>20</sup> Whereas tax havens are, in fact, illegal, corporate tax avoidance allows EMEs to artificially but legally shift their profits to countries with low taxation. In that way, they escape taxation in countries where they are active.<sup>21</sup> At the same time, EMEs take advantage of weak institutions in developing countries, benefit from the abundance of natural resources, cheap labour, and lenient policies on social and environmental standards. While this allows EMEs to enjoy certain benefits in developing countries, they refuse to contribute to social and public provisions, including those that might be necessary for environmental remediation and poverty alleviation. The resulting lack of tax revenues and public provisions not only comes with detrimental consequences for the lives of individuals, they also further inequality between the global north and south and increase their dependence on foreign aid.<sup>22</sup> Moreover, the significant loss in revenues causes governments of developing countries to shift the tax burden to

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<sup>18</sup> See *ibid.*, 1.

<sup>19</sup> See *ibid.*, 3f.

<sup>20</sup> See Dietsch and Rixen, "Tax Competition and Global Background Justice\*", 154.

<sup>21</sup> See *ibid.*

<sup>22</sup> According to UNACT, this amounts to a revenue loss for developing countries of at least \$100bn yearly. Although, this estimate includes revenue losses as a result of tax avoidance caused by all Multinational Enterprises and is not limited to EMEs only, it shows the great extent of corporate tax avoidance and its severe impact on developing countries. However, this estimate remains quite vague. In general, it is difficult to provide a reliable number of revenue losses since multinational enterprises disclose the profits gained via these mechanisms. See "The IFC and Tax Havens | Oxfam International", 5 cit. UNCTAD.

labour and consumption, by which those, who already experience shortcoming with regard to their basic needs, are additionally burdened.<sup>23</sup>

Since the EU actively pursues a policy of free trade to gain market access to emerging economies and to foster economic growth, EMEs are of great importance to the EU. Since free trade is deemed as “[...] one of the key triggers to stimulate the European economy”<sup>24</sup>, as explicitly stated by the European Commission, the EU is keen to protect its business abroad in order to provide investors “with legal certainty and a stable, predictable, fair and properly regulated environment in which to conduct business.”<sup>25</sup> This is either ensured through the WTO General Agreement on Trade in Services (GATS) or through bilateral agreements. Where this is not possible, the EU undergoes negotiations to gain market access and tries to prevent discrimination against EMEs by enforcing a legislation within the WTO.<sup>26</sup>

This form of protectionism for the purpose of gaining a significant market advantage for EMEs is particularly evident in the realm of human rights. Alexandra Gatto argues that there is a clear accountability gap when it comes to EMEs taking advantage of lenient law enforcement in their host countries and the EU has so far not taken political or legal measures to ensure accountability of EMEs.<sup>27</sup> In fact, since the EU fears to lose its competitive advantage towards other commercial rivals in the world market, it refuses to implement measures for holding EMEs accountable for their human rights violations abroad.<sup>28</sup> Whereas the EU provides a legal framework for companies within the EU in order to ensure the respect for worker’s rights, the environment and domestic consumers, the EU is reluctant to those laws when it comes to European enterprises operating overseas.<sup>29</sup> Gatto argues that the EU is in fact in possession of relevant legal provisions to take active measures against those violations of EMEs committed in their host states, however, economic interests seems to be of greater priority.<sup>30</sup>

It becomes apparent that EU is certainly involved in the deprivations that are caused by EMEs. Firstly, it includes its refusal to undertake necessary measures to hold EMEs accountable for their business with harmful consequences to the severely deprived. Secondly, those violations would not possible if EMEs were not enabled to establish businesses in developing countries if the EU did not pursue a strategy of market liberalisation and provided market access for EMEs through trade agreements.

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<sup>23</sup> See Christensen and Murphy, ‘The Social Irresponsibility of Corporate Tax Avoidance’, 4.

<sup>24</sup> ‘EUROPA - Topics of the European Union - Trade’, 5.

<sup>25</sup> See *ibid.*, 9.

<sup>26</sup> See *ibid.*, 9, 14.

<sup>27</sup> See Gatto, *Multinational Enterprises and Human Rights Obligations under EU Law and International Law*, 103.

<sup>28</sup> See *ibid.*, 108.

<sup>29</sup> See *ibid.*, 105.

<sup>30</sup> See *ibid.*, 108.

In the following section, I turn to the question whether the EU's involvements in the resulting deprivations constitute as contributions to harm and how they can be classified.

### **3 Doing-Allowing-Enabling Harm and Benefiting from Harm: Where does the EU stand?**

The examination of CAP and the moral wrongs committed by EMEs demonstrate that the EU is involved in the imposition of harm in some way or other. Therefore, it can be argued that the EU is upholding unjust institutional arrangements by which the EU contributes to severe deprivations of the most vulnerable. This is a violation of a negative duty and a prominent argument especially brought forward by Thomas Pogge.<sup>31</sup> He might, indeed, be right that institutional arrangements, such as CAP and liberal trade policies which enable EMEs to operate abroad, impose harm on the most disadvantaged. However, it becomes apparent from these two mechanisms in place that the EU's contribution to these deprivations substantially differs. This view is presented by Christian Barry's and Gerhard Øverland's who argue that it is essential to differentiate between doing, allowing, and enabling harm. In *The Feasible Alternatives Thesis: Kicking away the livelihoods of the global poor* they come to the conclusion that in most cases (affluent) governments contribute to harm by enabling harm instead of doing harm.<sup>32</sup> Next, I test this perception and apply their tripartite distinction to the activities of trade, in which the EU is involved in, as described above.

#### **3.1 Contributing to Harm by Doing Harm**

In order to understand what constitutes a case of doing harm, it is useful to start with an example, in which the Agent is quite clearly considered as the harm-doer. Barry's and Øverland's simplified example goes as follows:

*Push.*

*A cart stands at the top of a hill. Agent pushes it. The cart rolls down the hill and injures Victim, who is sitting at the bottom of the hill.*<sup>33</sup>

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<sup>31</sup> See Pogge, 'Eradicating Systemic Poverty', 59.

<sup>32</sup> See Barry and Øverland, 'The Feasible Alternatives Thesis: Kicking away the livelihoods of the poor', 106.

<sup>33</sup> Ibid., 103.

According to Barry and Øverland, two factors constitute *Push* as a case of doing harm. First, there is a relevant action which clearly links Victim's injury to the Agent. This relevant action is 'Agent pushes cart'. Second, there is spatio-temporally continuous complete causal chain<sup>34</sup> linking this action to the injuries of the Victim. Barry and Øverland deem the transfer of energy from Agent to Victim as the casual process that connects the two.<sup>35</sup> Since the relevant Agent 'push' connects Agent and Victim and initiates a complete causal process, the Agent can be identified as the respective harm-doer of Victim.

Can the EU in the case of CAP and in the case of EMEs be identified as a harm-doer of this kind as well? Consider CAP, with the mechanisms of subsidisation for EU farmers. With regard to CAP, this is the relevant action in place. Barry's and Øverland's consider subsidies as preventing the causal process of local farmers in developing countries to engage in international trading activities.<sup>36</sup> Based on their distinction, the EU could not be considered as a harm-doer in the case of CAP since the causal process is incomplete.

Similarly, the causal process seems interrupted in the case of EMEs. If compared to the case of *Push*, it seems more intuitive to deem EMEs as the 'Agent who pushes the cart', causing deprivations to the poor with their actions. The EU, however, appears to be rather a bystander or facilitator of this action through a liberal trade policy.

If we appeal to this categorisation as proposed by Barry and Øverland, we need to come to the conclusion that the EU is not a harm-doer in the relevant sense when it comes to CAP and in its relation to EMEs.

Given that the EU cannot be deemed as doing harm in this respect, let us further consider whether the EU is contributing to harm by allowing harm.

## **3.2 Contributing to Harm by Allowing Harm: Is the EU tolerating Harm?**

### **3.2.1 Allowing Harm: Stayback**

Whereas *Push* can quite clearly be identified as doing harm because the action in question and the causal relation between Agent and Victim seems obvious, other cases lack these relevant factors and the connection between Agent and Victim takes the form of a different relation. Such in the second example, called *Stayback*, presented by Barry and Øverland:

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<sup>34</sup> Barry and Øverland do not further elaborate the concept of a causal chain linking Agent and Victim as well as the idea of a causal process. However, they are not normatively neutral. In fact, under the condition that we cast doubt about the legitimacy of this factor, the following discussion may quite possibly lose its foundation and certain arguments may become invalid. For the sake of the argument, I take this factor as given. Nonetheless, the concept of complete causal process would require further examination. However, this is project of its own which I will not address in this thesis.

<sup>35</sup> See Barry and Øverland, 'The Feasible Alternatives Thesis', 101.

<sup>36</sup> See *ibid.*, 104.



*Stayback.*

*The cart is already rolling. Agent could, but does not interpose a rock, which would stop it. The cart rolls down the hill and injures Victim, who is sitting at the bottom of the hill.*<sup>37</sup>

Barry and Øverland classify this case as allowing harm because the Victim's suffering cannot be traced back to the Agent via a spatio-temporally continuous casual chain. The casual process is incomplete. There is no action undertaken by the Agent that triggered a process which eventually resulted in the Victim's suffering. Nonetheless, there is a relevant action in place. The action which is, in fact, an inaction of the Agent – the failure to intervene.<sup>38</sup> Hence, it can be argued that the Agent was relevant to the Victim's injury because the Agent failed to interpose the rock.

Barry and Øverland do not consider cases that fall in the category of *Stayback/Allowing Harm* as contribution to harm. Does this not let the agent too easy off the hook? The action undertaken by the Agent might not be the relevant action that has caused the suffering of Victim. Nonetheless, it seems reasonable to argue that the Agent contributed the Victim's injury if the person in question was knowledgeable about the consequences of her/his inaction and if s/he was in the respective position to intervene.

### **3.2.2 Tolerating Harm: Stayback in Authority**

Consider the case of EMEs violating basic rights of those living in developing countries. Suppose Alexandra Gatto is correct and the EU knowingly refuses to take active measures that would hold EMEs accountable for environmental destruction and the violation of social, civil, and human rights although it would be in the respective position to do so. This adds the factor of knowledge to the harm done by, unlike to the previous example, another Agent. EMEs are not like the cart a non-autonomous object without a will of its own. Instead, EMEs are collective agents who can decide for themselves whether or not to impose harm on others. Under the condition that the harm-allower is aware of the harm done to the Victim and also has sufficient influence over the harm-doer so that intervening could reasonably be expected to make a substantial difference to the Victim's suffering, the bystander can be deemed as being in a position of authority. Consider the following example which includes someone doing harm and someone allowing that harm is done to the Victim:

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<sup>37</sup> See Barry and Øverland, 'The Feasible Alternatives Thesis: Kicking away the livelihoods of the poor', 103.

<sup>38</sup> See *ibid.*, 102 pp.

*Stayback in Authority.*

Bandit holds Victim at gunpoint, threatening to shoot the Victim if she would not hand over her money. A police officer is standing nearby and could intervene which would prevent the Victim from getting shot by the Bandit. However, Victim claims to have no money and the police officer does not intervene. The Victim gets shot by the Bandit.

Clearly, the police officer is in a position of authority and would also have had relevant training that would give her the power to prevent the Bandit from shooting the Victim. In this scenario, unlike to *Stayback*, the police officer's failure to intervene is quite undeniably relevant to the suffering of the victim. Moreover, it can likely be deemed as a toleration of the Victim's suffering. Transferred to the EU's failure to intervene, the situation can be formalised as following:

*Violations of Basic Rights<sup>39</sup> by EME's.*

EMEs outsource their production to Developing where they take advantage of more lenient policies with regard to environmental, social and human rights standards. EMEs undertakings involve corruptive practices, exploitation of labour and environmental destruction which lead to violations of most basic rights for those living in Developing. The EU has the relevant legal provisions to take active measures against those violations. However, whereas the EU applies those legal provisions to EMEs whenever EMEs operate within the EU, it refrains to do so when they operate EMEs in Developing.

Wettstein argues that when it comes to institutions, such as the EU, the wrong committed would then be less a question of relevant action, as Barry and Øverland suggest. In fact, it resulted in a structural and systematic toleration of the suffering caused by corporations.<sup>40</sup> Given that Wettstein is correct by saying that “[f]or institutions in positions of authority, silence is never a neutral stance but an expression of moral support,”<sup>41</sup> then the EU seems to be not just a bystander whose inaction is without relevance. Since the EU is aware of deprivations caused by EMEs and knowingly refuses to intervene for the purpose of securing its market advantage, it

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<sup>39</sup> I use the term basic rights in order to indicate that this may not solely include human rights but also social, economic and civil rights. This is due to the fact that EMEs undertake various kinds of harmful practices by which different fundamental interests and rights can be thwarted.

<sup>40</sup> See *ibid.*, 37 pp.

<sup>41</sup> *Ibid.*, 40.

seems justified to deem such a failure also as a contribution to harm. Hence, the case of EMEs violating basic rights of individuals in developing countries can be deemed as a case in which the EU is a contributor to harm by systematically tolerating harm.<sup>42</sup>

Does CAP fall in this category, too? With CAP there seems to be again a different connection between the EU and the deprivations of the poor, since the EU introduced this policy. In this case, the EU is rarely considered as only a bystander who allows harm to happen. Barry and Øverland propose to classify subsidies and tariffs as cases of enabling harm. This category shall be given a thorough examination in the following section.

### 3.3 Contributing to Harm by Enabling Harm: Is the EU knowingly enabling Harm?

#### 3.3.1 Intermediate Cases of Contributing to Harm: Remove and Interpose

Barry and Øverland argue that there are also intermediate cases, which neither constitutes as doing nor as allowing harm. In these cases there would be no complete causal process between the Agent and the Victim's suffering identifiable. Nonetheless, unlike to *Stayback*, there would be still a relevant action of the Agent that contributes to the deprivations of the Victim. According to Barry and Øverland cases of enabling harm take the form of *Interpose* and *Remove*, as described as following:

*Remove.*

*A cart is rolling towards a point where there is a rock that would bring it to a halt. Agent kicks away the rock; the cart rolls down the hill and injures Victim, who is sitting there.*

*Interpose.*

*A cart filled with water is rolling downhill. Victim, who is sitting at the bottom of the hill, will survive if the cart reaches her. Agent interposes a rock; the cart stops and Victim dies of thirst.<sup>43</sup>*

As argued by Barry and Øverland, in *Remove* there are two processes in place: one, which connects the Agent and the rock and another one, which connects the cart and whatever it hits. However, there is no complete causal process, connecting Agent and Victim's injury, because the cart was already rolling without any help of the Agent. However, the Agent's action – kicking the

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<sup>42</sup> This scenario might quite possibly also classify as a form of enabling harm. However, I term it as tolerating harm as well as allowing harm in authority. The reason for doing this will become clear in the ongoing discussion of this thesis.

<sup>43</sup> Barry and Øverland, 'The Feasible Alternatives Thesis: Kicking away the livelihoods of the poor', 104.

rock – is relevant to the Victim’s injury. If the Agent had not kicked the rock, the Victim would not have been hurt. Therefore, the Agent enabled the cart to roll towards the Victim’s by removing the rock. Barry and Øverland deem such a case as contribution to harm by enabling it because the process was enabled through the removal of an obstacle, which is, in the example given, the rock.<sup>44</sup>

The case of *Interpose* is similar. Again, there is a process between the Agent and the rock, a process between the cart filled with water and whatever it reaches, but no complete causal process between the Agent and the Victim. Nonetheless, the Agent’s action of interposing is relevant to the Victim’s death since this stops the cart that could have rescued the Victim. In this scenario, Barry and Øverland argue, no obstacle is removed. Instead, it is the creation of an obstacle which enabled the suffering of the Victim.<sup>45</sup>

### 3.3.2 CAP: Subsidies and Tariffs

According to Barry and Øverland *Remove* and *Interpose* are transferable to the case of *Subsidies* and *Tariffs*. In their view, subsidies and tariffs are considered as cases of enabling harm because, likewise to *Remove* and *Interpose* they lack the complete causal process connecting Agent and Victim’s suffering. Nonetheless, they make a contribution to the deprivations of the Victim, in the sense that they present obstacles to the farmers in developing countries to engage in international trading activities and make certain profits necessary for their survival.<sup>46</sup>

For a better understanding of these cases, let us recall the incidents of *Subsidy* and *Tariff* as described by Barry and Øverland, although slightly deviating from the actual case of CAP:

#### *Subsidy. (Remove)*

*Trade in foodstuffs between Affluent and Developing would improve the conditions of the severely deprived in Developing. Affluent subsidizes its own producers of foodstuffs, thereby making it difficult for producers in Developing to compete. Exports from Developing to Affluent decrease, and a substantial number of people in Developing end up in severe poverty.*

#### *Tariff. (Interpose)*

*Trade in foodstuffs between Affluent and Developing would improve the conditions of the severely deprived in Developing. Affluent puts tariffs on foodstuffs from Developing, thereby making it difficult for producers in Developing to sell their goods to Affluent. Trade in foodstuffs between*

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<sup>44</sup> See *ibid.*

<sup>45</sup> See *ibid.*, 104 pp.

<sup>46</sup> See *ibid.*, 104.

*Affluent and Developing is diminished, and a substantial number of people in Developing end up in severe poverty.*<sup>47</sup>

The description captures to a great extent the mechanisms of CAP. The consequences of CAP are the same, as rightly described by Barry and Øverland: Subsidisation makes it easier for EU farmers to expand their production. Hence, subsidies can be regarded as the removal of an obstacle to domestic farmers of the EU, since they face fewer restrictions to compete in the international market. As a consequence, farmers of developing countries are worse off by facing major drawbacks in international competition with detrimental effects to their food production and supply.

Whereas there is an obstacle removed with subsidisation, an obstacle is created when it comes to tariffs. In this scenario, the EU prevents farmers in developing countries to increase their exports to the EU and, in this way, to gain profits which could foster development and mitigate poverty in the long run.<sup>48</sup>

If we appeal to that comparison of creating and removing an obstacle, then Barry and Øverland are correct by saying that subsidies and tariffs are forms of enabling harm, similar to the examples of *Remove* and *Interpose*.

However, Barry's and Øverland's description of *Remove* and *Interpose* do not capture all the mechanisms which operate under CAP. Especially, the description of *Remove/Subsidy* is focused on the mechanism of decreased export for developing countries which results in a disadvantage in their international trading position. This does not take into account export subsidies, which were a commonly used instrument until 2013. Barry and Øverland may rightly argue that this, likewise, presents a market constraint to local farmers in developing countries. However, whereas subsidies in general are supposed to protect EU agriculture and expand production but hinder developing countries from exporting to the EU, export subsidies give an incentive to export local products and reap gains from a market advantage in a foreign market. In this way, they are specifically directed at developing countries. This slightly changes the formalisation of subsidy. Hence, I propose to capture the process as following:

#### *Export Subsidy.*

Trade in foodstuffs between Affluent and Developing would improve the conditions of the severely deprived in Developing. Affluent subsidizes export of

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<sup>47</sup> See *ibid.*, 103. For a better understanding, I allocated *Remove* and *Interpose*, standing in brackets, to the respective mechanism of subsidies and tariffs.

<sup>48</sup> See *ibid.*, 104.

foodstuffs to gain a market advantage in Developing. Thereby, making it difficult for producers in Developing to sell their goods to consumers of Developing. Production in Developing decreases and a substantial number of people in Developing end up in severe poverty.

Is this example still comparable with *Remove* as proposed by Barry and Øverland? Likewise to subsidies, export subsidies presented an obstacle to EU farmers to distribute their products in developing countries. Export subsidies remove this obstacle. However, unlike to *Subsidy*, in this scenario *Affluent*, here tantamount to the EU, is not entirely unaware of *Developing* and, moreover, its vulnerable position. This also makes the implementation of export subsidies less a mechanism whose harmful impact cannot be deemed as entirely unexpected. Therefore, *Affluent* (the EU) is rather a culpable enabler which adds to the original example of *Remove* the factor of knowledge. Hence, the mechanism of *Export Subsidy* is comparable to the following example, also given by Barry and Øverland:

*Remove (Knowledge).*

*A cart is rolling towards a point where there is a rock that would bring it to a halt. Agent knows that if he kicks the rock away Victim will be injured [...]. Nevertheless, he kicks the rock away; the cart rolls down the hill and injures Victim, who is sitting there.<sup>49</sup>*

Since the Agent is aware of the harmful consequences of his action and, nonetheless, kicks the rock, we are inclined to think that the Agent is actually doing harm to the Victim similar to the case of *Push*. If this is correct, then *Export Subsidies* can be deemed as case of doing harm instead of enabling harm, since there is a causal chain between Agent and Victim. Although structurally this process rather resemblances cases of enabling harm due to the removal of an obstacle, appears as there would be a fine line between knowingly enabling harm contributing to harm by doing harm.

### **3.3.3 EMEs: Free Trade Agreements**

Does the EU also enable harm when it comes to EMEs? As in the previous section about EMEs explained, the EU and EMEs are connected via free trade agreements which are pursued by the EU for expanding its market access and allow EMEs to operate overseas. Free trade agreements

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<sup>49</sup> See *ibid.*, 105.

work similarly to the scenario of *Subsidy*. They remove an obstacle and therefore, in the case of EMEs, enable harm to happen. Consider the case of EMEs shifting their profits from host countries to tax havens and low-tax countries in the EU or other countries. The scenario can be described as following:

*Free Trade Agreement.*

Trade is considered to be mutually beneficent for Affluent and Developing, spurring economic growth in Affluent and in Development. Hence, Affluent and Developing agree to free trade. Free Trade Agreements enable Affluent's companies to operate in Developing where they make use of the abundance of natural resources, human resources and public provisions. Thereby, Affluent's companies make profit in Developing but shift it to low tax countries and tax heavens inter alia in Affluent. Affluent's companies withdraw tax revenues from Developing which would improve the conditions of the severely deprived in Developing. Affluent's companies leave Developing with the burden of its operations and a substantial number of people in Developing end up in severe poverty.

Easy to see, the *Free Trade Agreement* takes the similar form of *Remove* and *Subsidy*. *Free Trade Agreement* can be deemed as the removal of an obstacle to Affluent's companies – tantamount to EME's of the EU. With regard to the EU it, again, remains the question whether the EU is entirely aware of the detrimental impact of tax avoidance undertaken by EMEs for the severely deprived.

Nonetheless, it can be legitimately said that the EU, whether knowingly or not, generates an advantage from this trade activity. CAP as well as business operations of EMEs are enabled by the EU. In general, the EU enables trade for the purpose of economic growth as well as securing its market advantages. With regard to EMEs operating abroad, the EU also takes proactive steps within the WTO to ensure that market access is not denied to EMEs in foreign countries and undergoes trade negotiations to shield their businesses from market discrimination. The fact that the EU undertakes such actions for its own gains while giving silent moral approval to the harms caused by EMEs gives reason to the assumption that there is one further category in place which classifies as harm contribution. Following, I examine whether benefiting from wrong-doing can also result in contributions to harm.

### 3.4 Contributing to Harm by Benefiting from Harm: Is the EU sustaining Harm for its own Benefit?

#### 3.4.1 Perpetuation and Initiation

Benefiting from harm sounds like morally dubious. Nonetheless, benefiting from harm cannot be deemed as something morally wrong per se. Consider the following example as originally presented by Wiens and Barry:

*Terrorist Bombing.*

*A terrorist sets off a bomb, which grievously injures several people. To avoid the explosion, Bill retreats to a nearby cafe, where he meets Susan. Their chance meeting eventually gives rise to an extremely lucrative business partnership. The terrorist cannot be found nor has he left behind assets that can be seized.<sup>50</sup>*

Obvious to see, Bill and Susan are beneficiaries of a harmful act. However, they are not related to the victims' suffering and therefore it cannot be said that they have contributed to harm. The mere fact that they are benefitting from the crime committed by accidentally meeting each other and engaging into a lucrative business partnership does not connect them to the wrong-doer that would yield questions about their participation in the wrong-doing. Therefore, similar to the previous cases of *Remove* and *Interpose*, Agent and Victim must be linked through a relevant action of the Agent which is causing Victim's suffering. Coming back to the original example in which the Victim gets hit by a cart, the scenario in which the Agent is beneficiary and relevant for the Victim's injury alike can be described in the following manner:

*Perpetuation.*

A cart is rolling down a hill every week each time hitting the Victim. Agent could stop the rolling carts for good once she interposed a rock. Nevertheless, the Agent does not interpose the rock since she is a healer and the Victim's suffering is beneficial to her business. Hence, the carts keep rolling every week causing injuries to the Victim. As a result, Agent gains profit from treating the Victim's injury in return for money whenever cart hits the Victim.

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<sup>50</sup> See Barry and Wiens, 'Benefiting From Wrongdoing and Sustaining Wrongful Harm', 2 pp.



In *Perpetuation*, the Agent neither initiates the wrongful act, nor is she complicit in initial wrongdoing. The carts are already rolling without her assistance. Similar to the incidents of *Remove* and *Interpose*, the causal process between the Victim's suffering and the Agent is incomplete. Nonetheless, the Agent's action, respectively inaction in the given scenario, is of relevance to the harm the Victim suffers. Since the Agent is a healer and, therefore, generates an obvious benefit from the harm imposed on the Victim, she chooses to sustain the repetitive process of the cart rolling towards the Victim. The scenario as described largely resembles the case of *Stayback*. In *Stayback* the Agent did not undertake an action that triggered the causal process and resulted in Victim's suffering. Instead, the Agent contributed to the Victim's injury by failing to intervene. This is also the case in *Perpetuation*. However, the scenario differs in the scene that the Agent repeatedly does allow harm which results in the continuation of the harmful process. In this scenario, the Agent's action is relevant to the Victim's injury because she knowingly sustains the process for the purpose of gaining a profit. Hence, under the condition that benefiting from harm results in sustaining harm, the Agent can be deemed as a contributor to harm.

This distinctive way of contributing to wrongful harm is initially described by Barry and Wien who argue that whenever receiving and retaining benefits sustains wrongful harm moral obligations follow for the innocent beneficiary.<sup>51</sup>

Is this the only scenario which classifies as a contribution to harm in connection to benefiting from harm? In the case of *Perpetuation* the Agent appears to be a seemingly innocent beneficiary since she simply allows harm to happen by failing to intervene. However, it is easy to think of an alternative case in which the Agent might be a beneficiary of the harmful situation but not contribute to it by sustaining but by triggering it. The following scenario illustrates this:

#### *Initiation.*

Agent A is a healer and the Victim's suffering is beneficial to her business. Agent A tells Agent B to push a cart down the hill where it injures Victim, who is sitting at the bottom of the hill. Agent A gains profit from treating the Victim's injury in return for money.

*Initiation* shares similarities with the previous case of *Push*, since the causal process between the Agent and the Victim's injury is triggered by the accomplice. Hence, the harm imposed is result of a relevant action of the accomplice with the specific purpose of gaining a benefit.

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<sup>51</sup> See *ibid.*, 3.

Whereas *Perpetuation* appear to be a subcategory or at least closely related to *Stayback/Allowing Harm*, *Initiation* may likely constitute as doing harm. Nonetheless, it is apparent that they differ in terms of structure compared to the original cases of *Stayback* and *Push*.

### 3.4.2 Continuous Systematic Toleration for EU's Benefit

Coming back to the EU, it remains the question whether the EU's action in relation to trade contributes to harm by benefiting from it. Clearly, the EU benefits from economic growth with CAP and also with EMEs that generate profit and foster the EU's economy. However, whereas CAP was subject to changes within the recent years in order to at try to minimise its harmful impact on developing countries,<sup>52</sup> EMEs still operate to a great extend under impunity as soon as they outsource their business to a foreign country. Previously, I argued that EU's implicit moral approval as an authority can be deemed as structural and systematic toleration of the suffering caused by EMEs. However, since we know that the EU knowingly refuses to intervene for the purpose of securing its market advantage, this behaviour can equally be classified as contributing to harm by sustaining it for reasons of personal gains.

The distinction in this case does not seem to be clear-cut. It seems legitimate to say that the EU contributes to harm by allowing harm to happen as an authority that is in the respective position to intervene. Likewise, it seems reasonable to argue that the EU thereby *additionally* contributes to harm since it upholds the continuous process sustains harm. Whether this, and the fact that there is also a benefit involved, generates additional or at least more stringent moral obligations remains to be analysed.

## 4 Interim Conclusion: The EU as a Manifold Harm Contributor

Barry and Øverland claim that institutional arrangements with a harmful impacts to those living in developing countries, predominantly take the form of the intermediate category of enabling.<sup>53</sup> In regards to CAP and Free Trade Agreements which are enabling EMEs to do business in developing countries, this assumption is not incorrect. Nonetheless, the examination of the EU's involvement in trade activities with potential harmful impacts for those living in need and distress shows that the EU's conduct cannot be limited to this category only. Moreover, the fact that the EU enables EMEs to gain access to foreign markets and knowingly allows the imposition of harm by these companies for gaining a competitive edge in the world market gives moral approval to the violations of most basic rights. This amounts to a structural and systematic

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<sup>52</sup> Here, I give the EU the benefit of the doubt. Nonetheless, someone might rightly argue that CAP is still in place and its adverse impact on developing country has not been fully eliminated yet. Therefore, also constitutes as a contribution to deprivations by upholding a harmful process for EU's benefit.

<sup>53</sup> See Barry and Øverland, 'The Feasible Alternatives Thesis: Kicking away the livelihoods of the poor', 106.

toleration of suffering caused by these corporations which turns the EU into a culpable harm-contributor. Moreover, the fact that this benefit is secured due to the EU's active refusal to change the status quo further constitutes this action as a contribution to harm in terms of benefiting from harm by sustaining it.

Barry and Øverland take account for the fact that there remains uncertainty about whether the affluent are entirely aware of the deprivations these mechanisms and trade arrangements cause. Also, it could not be reliably said that political leaders know about the outcomes of the implemented trade arrangements and regulations.<sup>54</sup> Whereas this may in general be true, with regard to the EU it cannot be comprehensively argued that the EU, its political leaders and the European Commission who is in charge of deciding on new regulations and reformations, lacks relevant information about shortcomings in existing policies and trade agreements. Critique about CAP, for instance, exists at least since 2002 and was widely discussed publically as well as academically analysed. Also, the public debate of multinational corporations outsourcing labour standards and taking advantage of weak law enforcement in developing countries is nothing that can be deemed as entirely new and as something that came by no means to the attention of political leaders of the EU. Furthermore, the fact that there is great hesitation of the EU to make its environmental, labour, and especially its human rights standards legally binding for EMEs once they operate outside Europe's borders casts doubt about the EU's 'innocent ignorance' in that realm. Moreover, as soon as there is reason to assume that the EU is knowledgeably involved when it comes to deprivations of those in need and distress, it invites scepticism about whether the activity in question results actually in doing harm instead of enabling harm.

Table I illustrates the classification of harm contributions with regard to the EU and demonstrates that the EU cannot be deemed as a innocent enabler only. Instead, it can be said that the ways the EU is involved in activities of trade which impact developing countries are manifold. This results into contributions to harm which are also of various kinds. Furthermore, it is apparent that the categorisation is not entirely clear-cut but also shows some overlaps and leaves room for dispute about the correct allocation. However, most importantly to see, Barry and Øverland are incorrect by saying that harm contributions predominantly appear in the form of the intermediate case of enabling harm. At least, this is not the case when analysed in view of the EU, which acts as a political institution and a global trade power alike.

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<sup>54</sup> See *ibid.*, 113.

**Table I<sup>55</sup>**

<b>The EU's Contribution to Harm</b>						
Allowing Harm in Authority/Systematic Toleration	Enabling Harm			Doing Harm	Benefiting from Harm	
Not Intervening	Relevant Action Involving the Removal of an Obstacle	Relevant Action Involving the Creation of an Obstacle	Relevant Action Involving the Creation of an Obstacle with Knowledge	Relevant Action Involving Continuous Causal Process	Relevant Action Involving Sustaining the Continuous Casual Process	Relevant Action Involving Triggering the Causal Process
Stayback in Authority	Remove	Interpose	Remove (Knowledge)	Push	Perpetuation	Initiation
Violations of Basic Rights by EME's	Subsidy Free Trade Agreements	Tariff	Export Subsidy	—	Continuous Systematic Toleration for Profit Gains and Market Advantages	—

## **5 What is the Feasible Alternative under the Condition of Manifold Harm Contributions?**

In the previous sections I demonstrated that it is unreasonable to believe that the EU's trade activities with developing countries can solely be associated with the category of enabling harm. Instead, it must be acknowledged that as manifold the EU's involvement is in these activities, as manifold are its contributions to harm. What does this imply for EU's trade relation and with

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<sup>55</sup> This is a modified version of the taxonomy as originally presented Barry and Øverland. See Barry and Øverland, 'The Feasible Alternatives Thesis: Kicking away the livelihoods of the poor', 106. Notice that the taxonomy I present here classifies the EU's contributions to harm whereas Barry's and Øverland's table is meant to explain how they think affluent people contribute to harm in developing countries in general.

regard to the question of how trade should be structured and what kind of trade scheme is permissible to adopt?

Based on the fact that Barry and Øverland classify currently existing conducts of trade and institutional arrangements as forms of enabling harm by which agents contribute to global poverty, they come to the conclusion that Free Trade – defined as being to a great extent without obstacles for developing countries in terms of subsidies and tariffs – is permissible as an alternative to Good Trade – which would prohibit subsidies and tariffs. Does this assumption still hold true under the condition that contributions to harm by an institution such as the EU are manifold? In order to answer this question, first, I briefly reconstruct Barry’s and Øverland’s argumentation. Second, I show that Fair Trade is the feasible alternative that should be chosen as a trading scheme under the current conditions of trade as described in connection with the EU.

## 5.1 Testing Pogge’s Feasible Alternative Thesis: Free Trade vs. Fair Trade

### 5.1.1 The Feasible Alternative: Free Trade

Starting point for Barry’s and Øverland’s argumentation is Pogge’s claim that people contribute to poverty and violations of human rights whenever they cooperate in instituting and upholding institutional arrangements that result in such deficits and fail to opt for feasible alternative arrangements which would minimise these deficits. This is what leads Pogge to argue that there exist stringent, contribution-based duties to address poverty and what is defined by Barry and Øverland as the Feasible Alternative Thesis (FAT).<sup>56</sup> The distinction Barry and Øverland draw between allowing, enabling and doing harm is meant to clarify whether we contribute to poverty in the sense Pogge suggests and yield obligations of addressing these harms. Hence, Barry and Øverland raise the following question:

*According to FAT, someone becomes a contributor to poverty as a result of cooperating in creating and upholding institutional schemes that are foreseeably suboptimal with respect to poverty avoidance. Is this plausible?<sup>57</sup>*

For their argument Barry and Øverland use the hypothetical parties of Venusians and Earthlings as originally presented by Pogge. Based on their taxonomy, the argument runs as follows:

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<sup>56</sup> See *ibid.*, 98.

<sup>57</sup> See *ibid.*, 116.

Venus and Earth are two planets, far apart from each other. 100 million Venusians\* live on Venus\* whereby the majority lives in severe poverty which causes 3 million to die annually. The Earthlings are not contributing to Venusian's\* poverty as long as they do not engage with Venusians\* and establish an institutional scheme under which they could cooperate with each other. However, with the anticipation of mutual benefits for both parties, Venusians\* and Earthlings agree on setting up stable institutional arrangements to ensure trade. The following trading schemes with standing rules are optional for both parties: Trade – which is comparable with the trading rules as currently set by the World Trade Organisation and allows for unilateral implementation of subsidies and tariffs in the realm of foodstuff for the benefit of the Earthlings; Free Trade – under which subsidies and tariffs would not be prohibited but would occur less; Good Trade – which would provide preferential treatment to developing countries including the prohibition of subsidies and tariffs in developed countries and an additional tax on trade for the purpose of reducing trade with generated revenues.

The order of preferences for Earthlings is Trade, No Trade, Free Trade and Good Trade whereas Venusians would choose Good Trade over Free Trade and Free Trade over No Trade. Due to the Earthlings' stronger bargaining power, both parties eventually agree on Trade which is beneficial to their economic development and reduces the number of poverty-related deaths by 1 million per year. Easy to see, Trade is better than No Trade for the Venusians\*. However, Free Trade would further reduce the number of people dying as a result of poverty by 2 million. Whereas the Earthlings did not contribute to the Venusian's\* suffering before they decided on common institutional arrangements for trade, the Earthlings do so now. Since the Earthlings do not choose to agree on Free Trade, they are under FAT guilty of upholding an institutional arrangement which causes more deaths per year than under the feasible alternative.

How would this case look like under the condition that the Earthlings agreed on Free Trade instead of Trade? In this case, the feasible alternative is considered to be Good Trade, reducing the number of poverty-related deaths by an additional 0.5 million. Again, the mere fact that Earthlings engage now in a trade relationship with Venusians\* 2, that is worse than its feasible alternative of Good Trade, makes the Earthlings contributors to the harms suffered by Venusians\* 2.<sup>58</sup>

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<sup>58</sup> See *ibid.*, 106 pp.

The Feasible Alternatives Thesis, as proposed by Pogge, suggests that the Earthlings contribute to Venusian's\* poverty in Venus\* 1 and in Venus\* 2.

However, Barry and Øverland are of the perception that this is not entirely correct. They argue that the Earthlings only contributed to harm in Venus\* 1 by selecting and imposing a trading scheme which enables harm to the Venusians\*. The Earthlings are in this respect relevant to the Venusian's\* suffering because they enforced and sustained that scheme. In Barry's and Øverland's view, this cannot be said when it comes to Venus\* 2 when the Earthlings select Free Trade over Good Trade. In this scenario, they contribute to Venusian's\* suffering only in the way that they also could have selected Good Trade which would have further reduced the number poverty-related deaths. Hence, Barry and Øverland argue, it is permissible to choose Free Trade instead of Good Trade since the failure to choose an alternative scheme that would result in even less deaths, although the existing trade is already free from obstacles for the Venusians\* 2, cannot be deemed as a contribution to harm.<sup>59</sup>

### 5.1.2 The Feasible Alternative: Fair Trade

In Barry's and Øverland's perception there are no obstacles existent, either removed or interposed by the Earthlings, that would negatively impact the Venusians\* under the condition of Free Trade.<sup>60</sup> This argumentation seems to be flawed by the assumption that Free Trade results in the removal of almost all forms of enabled harm and does not take into consideration that Free Trade also holds the possibility to create new obstacles and can enable new forms of harms that were not possible under No Trade or Trade. In particular, this may be the case of Free Trade Agreements as previously discussed which enable EMEs to outsource their production and cause *inter alia* environmental destruction. This presents a burden to the severely deprived in terms of social costs which EMEs are not willing to share by means of contributing to social provisions in terms of taxes. Instead, substantial amounts of tax revenues essential to address these shortcomings are withdrawn by means of corporate tax avoidance. Furthermore, Barry's and Øverland's distinction of doing-enabling-allowing harm does not capture harm contributions which result from systematic toleration and benefiting from harm. As it appears, they may be possible to occur in either one of these categories aside from Good Trade, which, I assume, does not allow for any contributions of harm in Barry's and Øverland's conception. Since contributions of harm still exist under Free Trade, which possibly enable new harms to happen, it can be cast doubt about whether this makes also a difference in poverty-related deaths or whether the number remains the same compared to Trade.

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<sup>59</sup> See *ibid.*, 108.

<sup>60</sup> See *ibid.*

Whereas Barry and Øverland may be correct by saying that Good Trade is not an obligation under FAT, they fail to notice, due to their classification of doing-enabling-allowing, that not all harm contributions can be assigned to enabling harm. As a result, it can also not be assumed that all contributions to harm would be abolished as soon as Free Trade was implemented. Nonetheless, it seems legitimate to argue that the Earthlings cannot be blamed for contributing to harm by simply failing to choose an alternative that would reduce even more poverty-related deaths although all other trade related harms were erased. This, I suggest, is what leads Barry and Øverland to this conclusion. The feasible alternative under the condition that harm contributions of the Earthlings – respectively speaking for the EU – are manifold, would then be Fair Trade. Fair Trade would not require beneficial treatment for the Venusians\* – respectively speaking for developing countries – in form of an additional tax for alleviating poverty combined with the implementation that improve the Venusian’s\* situation but come at costs for the Earthlings. However, it would prohibit activities of trade which would foreseeably cause harm and suffering to the Venusian\*. Further, Fair Trade would demand the omission of upholding a continuous causal harmful process as well as the systematic toleration of harm impositions.

Nonetheless, the problem with regard to the Feasible Alternative Thesis remains the same. Even if there was Fair Trade implemented, the Earthlings would still contribute to the Venusian’s\* poverty since Good Trade, as a feasible alternative, is still available. Barry and Øverland criticise that this makes the notion of contribution to harm too broad and results in treating an agent as a harm contributor although s/he neither enables nor does harm.<sup>61</sup> Moreover, Good Trade seems also to employ a notion of assistance since the Venusians\* should be granted beneficial treatment. This is not the case with Fair Trade. It simply requires refraining from contributions of harm that foreseeably cause deprivations to the Venusians\*. Hence, under the condition of Fair Trade it cannot be argued that the Earthlings are relevant for poverty-related deaths because they did not choose, enforce and uphold a scheme that contributed to their suffering.

This examination shows that under the condition of manifold harm contributions, FAT leads to a different outcome than Barry and Øverland suggest. However, it remains the question whether moral reasons based on manifold harm contributions require adopting a trading scheme as suggested under Fair Trade. Next, I examine what moral reasons follow from the different categories as presented in the earlier section of this paper.

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<sup>61</sup> See *ibid.*, 108, 114.



## 6 Moral Reasons based on Manifold Harm Contributions: Which Trading Scheme can the EU adopt?

As Barry and Øverland rightly notice, FAT is flawed by the fact that it seems to be permissible to choose No Trade instead of Free, or in my case Fair Trade, since either of the two would still lead to contributions of harm as long as Good Trade is available. No Trade, however, would cause a greater number of poverty-related deaths but the Earthlings would not be blameworthy of contributing to the deprivation in Venusians\*.<sup>62</sup> This leaves the question behind whether either No Trade or Good Trade are the only options that are legitimate to adopted? In the following section I analyse this question in light of the EU.

### 6.1 Why would Trade be permissible?

Based on the common assumption, and as prominently argued by Pogge, there are positive duties to address the deprivations of the poor which requires helping those in need and distress. Commonly, duties of assistance are perceived to be less stringent compared to contribution based duties which, in Pogge's view, result in a failure to fulfil a negative duty. According to him, this negative duty demands to refrain from upholding injustice by contributing or profiting from it.<sup>63</sup> However, Barry and Øverland deem Pogge's claim as exaggerated since it is not the case that the developed countries contribute to deprivations in developing countries by doing harm. Hence, they suggest that it would be permissible to adopt Trade, which is including subsidies and tariffs, and falls in the category of enabling harm and not doing harm.<sup>64</sup>

As previously seen, contributions of enabling harm are structurally different to contributions of harm by doing harm. This leads Barry and Øverland to argue that they are less constraining than reasons associated with doing harm which they illustrate by comparing altered cases of *Remove* with *Push*. Here, two other people are involved and while it is necessary to for the Agent to kick the rock away in order to save them from an approaching cart in *Remove*, the Agent in *Push* must push the cart herself/himself in order to stop a second approaching cart that is threatening to hurt them. In both of these cases the Victim at the bottom of the hill gets sacrificed for two other innocent people. However, only in *Push*, we would cast doubt about the Agent's action and generally perceive it as a wrong that the Agent pushed the cart. In *Remove*, however, it would be permissible to use the rock to save the other two innocent people although

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<sup>62</sup> See *ibid.*, 110.

<sup>63</sup> See Pogge, 'Eradicating Systemic Poverty', 60.

<sup>64</sup> See Barry and Øverland, 'The Feasible Alternatives Thesis: Kicking away the livelihoods of the poor', 110.

this enables that the Victim at the bottom of the hill gets hurt.<sup>65</sup> The examples are illustrated by Barry and Øverland as following:

*Remove (Two More Victims).*

*A cart is rolling towards a point where there is a rock that would bring it to a halt. Agent knows that if he kicks the rock away Victim will be injured, but Agent needs the rock to save two other people from a second approaching cart and his only way to save these two is to kick the rock away and block the second cart with it. He kicks the rock away; the first cart rolls down the hill and injures Victim, who is sitting there.*

*Push (Two More Victims).*

*A cart stands at the top of a hill. Agent knows that if he pushes the cart downhill Victim will be injured, but Agent needs the space to save two other people from a second approaching cart and his only way to save these two is to push the first cart away and hide the two from the second cart. Agent pushes the first cart. The cart rolls down the hill and injures Victim, who is sitting at the bottom of the hill.<sup>66</sup>*

Barry and Øverland see this as a justification for applying Trade instead of Fair Trade because, intuitively, we would deem it as legitimate to enable a certain number of deaths if this prevented a larger number of people from dying.<sup>67</sup>

According to Barry and Øverland, contributions of harm by enabling harm are also less constraining with regard to costs, as demonstrated as following:

*Remove (Costly Avoidance).*

*A cart is rolling towards a point where there is a rock that would bring it to a halt. Agent knows that if he kicks the rock away Victim will be injured. However, Agent is under threat from a second approaching cart and his only way to avoid a serious impact is to move the rock from his only possible escape route. He kicks the rock away; the cart rolls down the hill and injures Victim, who is sitting there.*

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<sup>65</sup> See *ibid.*

<sup>66</sup> *Ibid.*

<sup>67</sup> See *ibid.*, 111.

*Push (Costly Avoidance).*

*A cart stands at the top of a hill. Agent knows that if he pushes the cart downhill Victim will be injured. However, Agent is under threat from a second approaching cart and his only way to avoid a serious impact is to push the first cart away from his only possible escape route. Agent pushes it. The cart rolls down the hill and injures Victim, who is sitting at the bottom of the hill.<sup>68</sup>*

Barry and Øverland argue that by appealing to our intuition, we deemed *Remove (Costly Avoidance)* legitimate whereas we would have doubts about the legitimacy of *Push (Costly Avoidance)* in which the Agent hurts the Victim to save her/his own life. The upshot of these examples is that an Agent has to constrain her-/himself more in order to avoid harm to her-/himself as compared to the case of enabling harm. In the latter case, s/he would not be required to take on as much costs in order to prevent that harm to someone else was enabled whereas the appeal to cost when harm was done seems not to suffice as an adequate justification.<sup>69</sup>

Based on this examination and their assumption that harm is predominantly caused by cases of enabling instead of doing, Barry and Øverland come to the conclusion that there are less stringent moral reasons to address global poverty as suggested by Pogge and therefore allows for adopting Trade instead of Free Trade and certainly not Good Trade.<sup>70</sup>

## **6.2 Why cast doubt about the permissibility of Trade with regard to the EU?**

Barry and Øverland may be correct by saying that it is permissible to chose Trade instead of any other possibly less harmful trading scheme under the condition that all harm contributions can be assigned to cases of enabling harm. However, Trade, as described by Barry and Øverland, also includes *Exports Subsidies* which I earlier classified as a case of enabling harm with knowledge. Moreover, it needs to be taken into consideration that the adverse impact of CAP for developing countries had been widely discussed and also came to the attention of the EU. Hence, this adds the factor of knowledge which substantially changes the outcome of Barry's and Øverland's conclusion with regard to the EU. Under this condition, the EU can be deemed as a culpable enabler. This makes moral reasons to address the harms caused just as stringent as if these harms were done by the EU and not only enabled. Compare the two following cases of *Remove* and *Push* in which knowledge is involved, originally presented by Barry and Øverland:

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<sup>68</sup> Ibid.

<sup>69</sup> See *ibid.*

<sup>70</sup> See *ibid.*, 111, 113.

*Remove (Culpable Demand).*

*A cart is rolling towards a point where there is a rock that would bring it to a halt. Agent knows that if he kicks the rock away Victim will be injured, refraining from kicking the rock away is not costly to him, and the potential injury to Victim is quite severe. Nevertheless, he kicks the rock away; the cart is now rolling down the hill and will injure Victim, who is sitting there. Agent can stop the cart at some cost to himself.*

*Push (Culpable Demand).*

*A cart stands at the top of a hill. Agent is aware of Victim and knows that she will be injured if he pushes the cart, and refraining from pushing it is not costly to him. Agent pushes the cart. The cart is now rolling downhill and will injure Victim, who is sitting there. Agent can stop the cart at some cost to himself.<sup>71</sup>*

Is there a significant difference between these two cases? Barry and Øverland are right to notice that there is not with regard to the question whether the Agent should refrain from contributing to the Victim's injury.<sup>72</sup> It appears that moral reasons in *Remove* are just as much as stringent as in *Push* once the Agent is aware that the Victim will be severely injured by her/his action and avoiding this injury is within a realm of acceptable costs.

The question that remains with regard to the EU is whether the abolishment of *Export Subsidies* in particular and CAP in general is simply too costly for the EU. Moreover, what would be the baseline for these costs? Suppose EU farmers were not protected by CAP anymore, it is to be expected that the EU loses its market advantage in the realm of agriculture products. However, this may not be enough to justify food insecurities and further deprivations in developing countries. Cost can be deemed as too high under the condition that this would also cause food shortages and deprivations to citizens of the EU. The adverse impact for the EU of abolishing CAP may require further empirical investigation. Nonetheless, it is questionable whether this would lead to deprivations within the EU that are as severe as they are in developing countries. Moreover, since developing countries had better chances of distributing their products within the EU without CAP, such a food shortages seems to be quite unlikely.

Given these assumptions are correct – (1) the EU is aware of the negative impact of CAP for developing countries and (2) the abolishment of CAP does not involve significant costs to the

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<sup>71</sup> Ibid., 113.

<sup>72</sup> See *ibid.*

EU – then moral reasons are quite stringent for the EU to address deprivations in developing countries. Moreover, this casts doubt about whether Trade is a permissible trading scheme that can be adopted by the EU.

### 6.3 What Trading Scheme would be permissible?

Suppose the EU chose to depart from Trade for the reasons given above and decided to opt for Free Trade instead. Would this be permissible?

Barry and Øverland seem to suggest that contributions of harm were to a great extent not existent anymore since forms of enabling harm in terms of subsidies and tariffs are abolished under Free Trade. With regard to the EU, this is not entirely the case. As the previous examination demonstrated, the EU also contributes to harm by systematic toleration and sustaining harm for EU's benefit. Suppose these are these forms of harm contributions that are in place under Free Trade as a result of *Free Trade Agreements* which provides EMEs with the opportunity to pursue businesses in developing countries.<sup>73</sup> Hence, *Free Trade Agreements*, reached by the EU with its trading partners, enable EMEs to do harm to those living in developing countries by means of violating basic rights or withdrawing substantial tax revenues. Moral reasons based on enabled harms had already been discussed in the previous section. However, although *Free Trade Agreements* classify as a form of contribution to harm by enabling harm,<sup>74</sup> the present case slightly differs since EMEs, as collective agents with a will of their own are the actual harm-doer in these cases (and not just a process as demonstrated by the cart in the case of *Interpose and Remove*). This also seems to make a difference in terms of moral stringency and also with regard to the role the EU takes in cases where enabled harms are tolerated or allowed such as in cases classifying as *Stayback in Authority*.

#### 6.3.1 Moral reasons based on Tolerating Harm in Authority

Recall the incident of the police officer who does not intervene when the bandit threatens to shoot the Victim if s/he does not hand over her/his money. Intuitively, it seems reasonable to say that the police officer has stringent reasons to intervene. If s/he fails to do so we are even

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<sup>73</sup> This is a quite simplified scenario which results from Barry and Øverland solely focusing on subsidies and tariffs which they assign to the trading scheme Trade. However, in reality the EU pursues (at least) two trading schemes at the same time. There are subsidies and tariffs in place but also Free Trade Agreements. Therefore, I it can be suggested that Free Trade Agreements are already in place under Trade (or that subsidies and tariffs still exists although there is Free Trade). For the sake of the argument, I suggest that the EU's knowledge about CAP's impact and the fact that its abolishment would not yield high enough costs for the EU to justify Trade is already sufficient to not opt for Trade. Therefore, I move on to the next possible trading scheme which is Free Trade. However, the following discussion certainly adds to the argument that Trade is not permissible if we assume that forms of systematic toleration and benefiting from sustaining harm are also existent under Trade.

<sup>74</sup> This is, of course, only the case if *Free Trade Agreements* result in contributions to harm as they are described in this thesis. *Free Trade Agreements* are not to be considered as contributions to harm *per se*.

inclined to believe that s/he is somehow complicit in wronging the Victim because it appears as the bystander is giving implicit moral approval to the harm-doers action.<sup>75</sup> This gives reason why the EU can likely be deemed as an accomplice if it knowingly refuses to intervene when EMEs violate basic rights in developing countries. Moreover, under the condition that institutions are in a position of authority,<sup>76</sup> then, according to Wettstein, we expect them to be not merely passive in such a position. Instead, we consider them to be under the obligation to “[...] use their authority for the benefit of the disadvantaged.”<sup>77</sup> The fact that the failure to do so results in a form of complicity in wronging the Victim, makes moral reasons associated with allowing harm in the position of authority as much as stringent as moral reasons associated with doing harm.

Nonetheless, contributions of harm by failing to intervene as an authoritative figure are also sensitive to costs.<sup>78</sup> However, are they as constraining as in the case when she would actually done harm to the Victim herself? Compare the two following scenarios:

*Stayback in Authority (Costly Avoidance).*

Bandit holds Victim at gunpoint, threatening to shoot the Victim if she would not hand over her money. A police officer is standing nearby and could intervene which would prevent the Victim from getting shot by the Bandit. However, the police officer is at risk to get severely injured by the Bandit herself if she intervenes. Victim claims to have no money and the police officer does not intervene. The Victim gets shot by the Bandit.

*Doing Harm in Authority (Costly Avoidance).*

Bandit holds Victim at gunpoint, threatening to shoot the Victim if she would not hand over her money. A police officer is standing nearby and could intervene which would prevent the Victim from getting shot by the Bandit. However, the Bandit threatens to shot the police officer if the police officer does not shoot the Victim. The police officer shoots the Victim to prevent getting shot by the Bandit.

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<sup>75</sup> See Wettstein, ‘The Duty to Protect’, 40.

<sup>76</sup> This, I find permissible to assume here since, as earlier argued, the EU has sufficient influence over EMEs by means of legal provisions which could hold EMEs accountable for their misconducts. However, moral reasons would be far less stringent if the police officer in the Bandit-example (*Stayback in Authority*) would be replaced by a simple witness (*Stayback without Authority*). In this scenario moral reasons to intervene and to address the harms of the Victim would seem to be less stringent because it can be assumed that the Victim neither has the sufficient power or influence over the Bandit. Since I assume that the EU is an authority in the relevant sense, I refrain from discussing this case further.

<sup>77</sup> Wettstein, ‘The Duty to Protect’, 41.

<sup>78</sup> Here, I am not taking knowledge into consideration because authority, as earlier mentioned in this article, presupposes knowledge.

Intuitively, it seems not correct that the police officer in *Doing Harm in Authority (Costly Avoidance)* does harm the victim in order to avoid harm to herself. However, it seems also not permissible that the police officer tolerates that the victim get hurt in order to prevent her own suffering.

The fact that we deem it as part of the police officers job to take on risks for the protection of those who are particular vulnerable causes us to believe that she is under the obligation to use her authority and power to intervene even though this comes at certain costs for herself. If this intuition is correct, then the extent of which agents in authority have to constrain themselves to prevent harm done to others does not seem to differ substantially. In fact, due to the Agent's authority s/he is required to take on quite great costs in order to prevent another person's suffering.

Coming back to the EU, the question is again whether the EU's refusal to hold EMEs accountable for violations of basic rights in developing countries would be too costly that it justify that the EU does not intervene. Clearly, the EU may be in danger to lose its market advantage and economic growth is likely to be diminished. However, these costs do not seem to be comparable to the deprivations that people suffer in developing countries as a result of EMEs misconducts with regard to social and environmental standards. Hence, the EU's position of authority does provide quite stringent moral reasons for the EU to address deprivations in developing countries.

### **6.3.2 Moral reasons based on Sustaining Harm for Benefit**

As earlier noted in this discussion; the fact that the EU does not intervene when EMEs violate basic rights in developing countries furthermore constitutes as a case of benefiting from harm in the form of *Perpetuation* – sustaining a harmful process in favour of the EU's profit gains and securing its market advantages. Since this harm contribution is likewise enabled by *Free Trade Agreements*, it seems permissible to assume that *Perpetuation* also exists under the trading scheme Free Trade. However, the intriguing question is what duties follow from it. Recall the example of *Perpetuation*:

#### *Perpetuation. (Culpable Demand)*

A cart is rolling down a hill every week each time hitting the Victim. Agent could stop the rolling carts for good once she interposed a rock. Nevertheless, the Agent does not interpose the rock since she is a healer and the Victim's suffering is beneficial to her business. Hence, the carts keep rolling every week causing injuries

to the Victim. As a result, Agent gains profit from treating the Victim's injury in return for money whenever cart hits the Victim.

Since the Agent is aware of the harmful process causing the Victim's suffering, it seems not correct that s/he upholds the harmful process in order to gain a profit from the Victim's injury. In fact, since we presuppose knowledge in the given scenario, *Perpetuation (Culpable Demand)* can be deemed as a modified version of *Remove (Culpable Demand)*. The previous examination demonstrated that this yields stringent moral similar to cases in which the Agent is the harm-doer her-/himself. Hence, it seems legitimate to say that there exists a stringent duty for the Agent to give up her/his benefit and stop the continuous harmful process.

Would this also be the case if giving up this benefit came at great costs for the Agent herself? Suppose the Agent was threatened to suffer severe hunger as a result of interposing the rock and lost income. Would it be permissible to allow the Victim's suffering for the Agent's own well-being? Intuitively, appealing to costs seems not to change the case substantially. Earlier I argued, based on Barry's and Øverland's comparison of *Remove (Costly Avoidance)* and *Push (Costly Avoidance)*, that enablers of harm had to take on as much costs in order to prevent harm to someone else as it would be in the case of an Agent who does harm to a Victim in order to save her/his own life. This may apply here likewise. Nonetheless, it is important to notice that costs would seem to be especially high that sustaining the harmful process could be considered as justified.

Another intriguing question with regard to *Perpetuation* is whether the Agent would be required to hand back the wrongfully received benefit or would be obliged to compensate the Victim's losses that follow from the continuation of the harmful process. Suppose the Agent would in course of the event continuously increase her wealth whereas the Victim would end up impoverished, struggling meet basic needs of her life. The fact that the Victim is left with the burden of the Agent taking advantage of his vulnerable position, appears to be difficult to justify. Clearly, the Agent is required not only to give up the benefit but to compensate the Victim for the shortcoming s/he now encounters.<sup>79</sup>

Lastly, consider the case that the Agent was, in fact, an innocent beneficiary. Suppose the Agent never interposed the rock because she was not aware that this would prevent the Victim from getting repeatedly injured. The Victim approaches to the Agent every week in order to receive medical treatment by which the Agent becomes increasingly wealthy but simultaneously

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<sup>79</sup> I added a long-lasting negative impact to the Victim's previously experienced suffering only to emphasise the Victim's loss. However, already the original example demonstrates that the Agent receives benefits that do not rightly belong to her/him and yield duties of compensation. A more thorough examination on this subject can be found in Barry and Wiens, 'Benefiting From Wrongdoing and Sustaining Wrongful Harm', 6 pp.



causing a substantial loss to the Victim. One day the Agent becomes aware of the cart repeatedly hurting the Victim. Can the Agent be deemed as required to compensate the Victim for the previously experienced harms? The present case seems not to constitute a wrong of the Agent. She certainly cannot be accused of any misconduct since she did not know that failing to interpose the rock would cause undesirable consequences to the Victim. The fact that she received a benefit is not wrong *per se*. Nonetheless, we may be inclined to think that the Victim should possibly not be left behind with the burden of the experienced injustice entirely to her/his own, while the Agent continues to enjoy the benefits, under the condition that the costs to the Victim were severe. It can be presumed that the Agent would have a duty to at least partly compensate the Victim for her loss. This may especially be the case if the Agent still enjoys correlative benefits as a result of her previous contribution to the Victim's suffering.<sup>80</sup> Suppose, for example, that the Victim's injury resulted in irreversible health deficits. The harmful process may now be interrupted by the Agent, nonetheless, he continues to be a beneficiary. In this scenario we might cast doubt the Agent's rightful entitlement to enjoy full benefits without compensation to the Victim who remains to be burdened as a consequence of the Agent's previous wrong-doing.<sup>81</sup>

However, coming back to the EU, it is not the case that the EU is an innocent beneficiary. The misconduct of the EU constitutes a case of knowingly sustaining a harmful process for protecting its market advantage and fostering economic growth. As the examination demonstrated, this is a case of *Perpetuation (Culpable Demand)* which entails stringent moral duties to stop the harmful process that cannot be outweighed by appealing to costs. Hence, the prospectively lost benefits of the EU are unlikely to suffice as a justification for upholding this process. Moreover, since these benefits are wrongfully received, the EU has also a duty to compensate those who suffered as a consequence of the EU's harmful contribution.

### 6.3.3 Free Trade, Fair Trade or Good Trade?

With regard to the initial question, would it be permissible to adopt Free Trade under the condition that Free Trade included *Free Trade Agreements* which enables EMEs to outsource their business to developing countries and to violate basic rights in their conduct under EU's impunity? The fact, that the EU contributes to these violations by tolerating them as an authority and upholds such a continuous harmful process for its own benefit, provides stringent moral reasons

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<sup>80</sup> This is what Axel Grosserries terms the 'The Modified Ignorance Exemption' which states that an actor "should not be held morally responsible for the harmful consequences of her own act if they were unknown to her and could not reasonably have been known at the time the action took place. *However, she may still be held liable for compensation for such harmful consequences on others if once the latter were or should have been brought to light (tk), she still enjoyed correlative benefits.*" Grosserries, 'Historical Emissions and Free-Riding', 40.

<sup>81</sup> The question of previous injustice causing present injustice and correlative duties is a question of its own. Although, these are essential considerations with regard to the issue of wrongfully received benefits, this question cannot be addressed here more thoroughly due to the limited scope and space of this thesis.

to object to Free Trade. In both of these cases the examination shows that also an appeal to costs is not sufficient in order to justify a trading scheme that substantially contributes to the deprivations of those living in need and distress. Under these conditions, there would be a stringent duty to depart from Free Trade and opt for Fair Trade which eliminates such harm contributions to the greatest possible extent. However, it can be cast doubt about this conclusion since this seems to capture only the least that can be expected. In fact, since the EU also generated benefits from EME's harmful actions, there is also a duty to compensate the severely deprived for their losses. Moreover, if we assume the wrongfully maintained market advantage also came at costs of developing countries from which the EU still derives correlative benefits, moral reasons become quite stringent for the EU to address these harms and their ongoing consequences by compensating them. Under this condition, Fair Trade would most likely not be enough to address the caused deprivations. Instead, Good Trade, including beneficial treatment in form of an additional tax in favour of developing countries, may become obligatory.

#### 6.4 Possible Objections

The most common objection against the previously drawn conclusion is that those harmed are still recipient of benefits. Trade is considered as being mutually beneficial for both parties. This is correct. This incorporates the perception that imposed costs could be compensated by a benefit and another person's right to complain would become invalid.<sup>82</sup> Caney rightly criticises, that this makes us believe "[...] that harms and benefits are commensurable and the shortfall represented by a harm is erased by the allocation of a benefit."<sup>83</sup> Although Caney speak here about human rights, this also applies to severe deprivations, which *inter alia* include human rights. Although trade may be beneficial to developing countries by spurring their economic growth and providing chances for alleviating poverty, it seems not correct if this comes at high costs to their disadvantaged people. The commensurability of benefit and harm is in particular questionable when this results in acute shortfalls concerning live, health and civic status as well as threats to standards of living by which ordinary needs and requirements for human life are impaired. This argument gains further support by the fact that there exist alternative trading schemes, which are likely to still generate mutual benefit, but do not involve harm contributions to those who are less fortunate. Clearly, the adoption of such a trading scheme comes at certain costs to the EU. The fact that contributions to deprivations yield stringent duties which cannot be excused by appealing to costs or other moral values, requires justification why the EU would be entitled to a greater benefit, while others are left with significant burdens as a result of these harm

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<sup>82</sup> See Caney, 'Climate Change, Human Rights and Moral Thresholds', 88.

<sup>83</sup> Ibid.

contributions. The general objection to this claim is that the EU has stronger obligations towards its own citizens than to people beyond its borders. This claim is unlikely to hold true when we consider that the EU allows harm contributions of EMEs it would not allow within its own borders. Surya Deva rightly notices that such a different treatment of people's lives based on their geographical location requires justification.<sup>84</sup>

## 7 Conclusion

This thesis' objective was to answer the question:

*How does the EU contribute to deprivations in developing countries and what are the obligations that follow from these contributions?*

This question had been raised at the beginning of this discussion. The examination showed that the EU in its conduct of trade essentially contributes to the reinforcement and perpetuation of people's distress in developing countries in various ways. I uncovered the EU's harm contributions by comparing two distinctive trade actions. Whilst the EU is eager to protect its own agriculture sector with CAP, it adversely impacts developing countries by undermining their capability of competing on national and international trade market with the result of increased food insecurity and impaired development. Additionally, the EU seeks market advantage by protecting EMEs when they operate in developing countries. However, EMEs contribute to deprivations by taking advantage of lenient policies with regard to social and environmental standards in their host countries. This commonly comes at costs to the basic rights of most vulnerable people in these countries. Moreover, means of corporate tax avoidance further allow EMEs to withdraw substantial amounts of tax revenue from developing countries which could make a significant contribution to their economic development.

Based on the portrayed cases, I identified the EU as a manifold harm contributor. This is the most valuable result of this thesis since it challenges that Barry's and Øverland's assumption that contributions to harm by affluent actors solely constitute a form of enabling harm. For the EU, instead, there are further harm contributions involved which I classified as cases of *Allowing Harm in Authority* and *Benefiting from Harm* in terms of sustaining harm for profit gains. Hence, Barry' and Øverland's tripartite distinction of allowing-enabling-doing harm is not sufficient if applied to the EU.

Moreover, this changes the outcome with regard to the perceived stringency of moral reasons to address the harms of the severely deprived. Whereas Barry and Øverland suggested

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<sup>84</sup> See Deva, 'Corporate Human Rights Violations: A Case for Extraterritorial Regulation', 1083.

that there were less stringent reasons to address the hardships of those living in developing countries due to their perception that affluent actors solely enabled harms, the examination with regard to the EU shows that moral duties are far more stringent once further contributions are present. First, the factor of knowledge with regard to the harmful consequences of CAP and EME's misconduct exposes the EU as a culpable enabler. Second, the failure as an authority that is in possession of the legal provisions to hold EMEs accountable yield stringent moral reasons to address these harms which cannot left unmet solely by appealing to financial disadvantages. Furthermore, the fact that harm is sustained for profit gains and market advantages reinforce this stringency of the duty and further yields a duty of compensation.

This also changes the outcome of moral duties that apply to the EU in its conduct of trade. Barry and Øverland suggested that moral reasons based on harm contributions associated with enabling harm are less stringent. This led them to believe that the adoption of the trading scheme Trade, under which subsidies and tariffs apply, are permissible. I showed that we should cast serious doubt about this conclusion. I put forward that the EU is aware of the harmful impact of CAP and, therefore, can be deemed as a culpable enabler. This not only yields stringent duties to address the harms caused resulting from CAP, it also provides good reason to consider a less harmful feasible alternative. However, I suggested that the EU also contributes to deprivations of developing countries under Free Trade, the next feasible alternative. Under Free Trade, harm contributions in the form of *Enabling Harm*, *Allowing Harm in Authority* and *Benefiting from Harm* are still persistent. In particular this includes *Free Trade Agreements* which enable EMEs to withdraw substantial tax revenues from developing countries. Furthermore, the EU fails to intervene when EMEs violate basic rights. In connection with this, the EU sustains this harmful process for reasons of economic growth and maintaining its market advantage. Since this lead to stringent duties to address resulting deprivations in developing countries, I considered Fair Trade as a feasible alternative in order to adopt a trading scheme which eliminates as much as possible all contributions of harm developing countries are suffering with regard to trade. Although I made this suggestion, it appears that this is not enough to adequately address the hardships to which the EU contributed. Good Trade is the preferable trading scheme that should be pursued. Good Trade would additionally take into account the fact that the EU gains correlative benefits for systematically disadvantaging developing countries which comes at great costs for those living in need and distress. Under this condition, moral reasons are stringent to demand compensating developing countries for their losses. This could be realised by adopting the trading scheme Good Trade under which preferential treatment for developing countries applies.

The present examination illustrates EU from a quite negative angle and gives reason to believe that developing countries would almost only be burdened by trading with the EU.

Needless to say, this is clearly not the case. Despite all of this criticism, the EU is in favour of eradicating poverty and fostering development. Moreover, the EU is also eager to promote the protection of human rights in international trade relations in order to achieve better conditions for those who fall short of their full enjoyment. However, the present examination shows as well that the EU is not always as committed to these values as it prides to be. The EU is aware of this criticism and shows efforts to align aims of trade with aims of aid. This should leave hope that there are more to come.

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