

Köster Marine Proteins GmbH
Rothenbaumchaussee 58
D-20148 Hamburg



19 July 2018
Brussels, Belgium

To the attention of Mr Malte Thomsen
Managing Director of Köster Marine Protein GmbH

Re. potential import of fishmeal from occupied Western Sahara

Dear Mr Thomsen,

Western Sahara Resource Watch (WSRW) presents you with its compliments. We are writing following the arrival of the cargo vessel *Bente* at Köster Marine Protein's terminal in the port of Bremen, early this morning.

The *Bente* departed the port of El Aaiun on 10 July, reportedly after having loaded a cargo of 3000 tonnes of fishmeal on site. El Aaiun is the capital city of Western Sahara, a Non-Self-Governing Territory that is still to conclude the process of decolonization under UN auspices. As *Bente* sailed straight to the port of Bremen, and more precisely to the Köster Marine Protein terminal, we are inclined to assume that your company is importing fishmeal from Western Sahara. This comes with several ethical, but potentially also legal implications, which your company surely does not want to be associated with.

In blatant violation of the Opinion of the International Court of Justice and Resolutions of the UN Security Council, Western Sahara was invaded in 1975 by Morocco. Morocco went on to annex large parts of the territory, until the UN was able to broker a peace agreement in 1991 between the two warring parties – Morocco and the Western Sahara liberation movement Frente Polisario. To date, the territory is partitioned by a 2000 kilometer military fortified wall, surrounded by some of the world's largest minefields, erected by Morocco. Half the people of Western Sahara, the Saharawis, have fled their homeland, and survive in dire circumstances in refugee camps in the Algerian desert. The Saharawis still living in Western Sahara suffer the yoke of a brutal occupation: the grave human rights violations committed by the Moroccan authorities against Saharawis are well documented by reputable institutions and organisations such as the UN High Commissioner for Human Rights, Amnesty International, Human Rights Watch, etc. While Saharawis are relegated to the fringe of society in their own land - the UN has highlighted on several occasions that they are disproportionately affected by poverty and are not reaping the benefits from investments made in the territory - Moroccan settlers are running the profitable sectors, such as the fish sector, in the territory.

In December 2016, the Court of Justice of the European Union ruled in case C-104/16 (Council v Polisario) that the Association Agreement with Morocco cannot apply to Western Sahara, mainly because Western Sahara does not fall under the sovereignty of Morocco, hence it must be regarded as a third party to the Agreement; consequently, under international law, an agreement between the EU and Morocco cannot affect Western Sahara, unless the people of Western Sahara have expressed their consent (which has not happened). This implies that the Association Agreement, as well as the Liberalisation Agreement (as the latter is based on the scope of application of the former) cannot be applied to Western Sahara.

In February 2017, the European Commission issued a note outlining the customs implications of the judgement: “Goods imported into the EU, whose origin is Western Sahara shall be declared so (the appropriate code to be mentioned in the customs declaration is ‘EH’); tariff preferences cannot be claimed in the customs declaration and shall not be granted: the Most Favoured Nation duty rates apply.”

We’d be most grateful if Köster Marine Protein could confirm its import aboard the *Bente*, and clarify how this would fit with the CJEU judgment on trade with Western Sahara.

More specifically, we would like to hear from KMP how your company has proceeded to ascertain the consent of the representatives of the people of Western Sahara in relation to this purchase.

Finally, we would appreciate a clarification from KMP as to what year this trade from Western Sahara began, the volume and value of the imports from the territory during this period, and whether KMP today holds a purchasing agreement with partners in Western Sahara.

We furthermore think it is not in the interest of your company to be connected to an ongoing conflict that continues to come at a high human and humanitarian cost. We urge your company to refrain from all further imports from the territory, until its final status has been settled in line with international law.

Sincerely,

Sara Eyckmans
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Western Sahara Resource Watch
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