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## On Camels and the Making of EU Biofuels Policy

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**A camel, it is said, is a horse designed by a committee. It is certainly tempting to draw a parallel to the European Union's biofuels policy and the astonishingly odd ways it has been crafted in the past years. Now the EU has a chance to rectify the profound flaws in its policy as the European Commission has set in motion a series of proposals to overhaul Europe's approach to increasing its use of biofuels. Yet again its committee-style approach is about to repeat past mistakes – and to espouse policies that will only make matters worse.**

The Renewable Energy Directive (RED) from 2009, and the Fuels Quality Directive preceding RED, ushered Europe into the era of biofuels. These directives set ambitious targets for the share of energy consumption in Europe that by 2020 should come from renewable sources. Policymakers behind these moves heralded green ambitions and principles – yet its particular design of policy could not hide that other purposes than reducing the amount of carbon emitted from energy and fuels consumption had taken equally prominent, if not bigger, roles.

RED professed to encourage a rapid switch from fossil fuels to biofuels, but deliberately distorted the market to keep prices artificially high to support domestic producers of biodiesel. The general ambition was that domestic producers would take up the vast part of the increase in biofuels consumption, a policy we now know contradicted a swift substitution of fossil fuels with renewable alternatives (the latest progress report by the Commission show many countries to be far away from reaching their targets). RED wanted to support an economically rational sourcing and production of biofuels, but maintained high tariffs on ethanol and introduced a criteria for measuring greenhouse gas emissions from the production of biofuels that stacked the market in favour of domestically produced rapeseed biodiesel. Indeed, the EU continued to support its domestic industry through direct subsidies. It wanted to avoid a substitution of food production by production of biofuels, but designed other sustainability conditions in a way that made it difficult for many countries to expand production of food and energy crops simultaneously (much arable land in Europe, however, could be converted into growing fuel crops). And it cherished the notion of increased investment in biofuels research to support new and advanced biofuels, but wanted to prevent these firms to source their feedstock more cheaply from abroad to allow for more resources being spent on research and development.

This policy has been costly. An estimate in 2009 suggested that for the same amount spent on biofuels subsidies to reduce greenhouse gas emission, the EU could buy carbon offsets twenty times the size of the emission reduction from increased used of biofuels. The policy has also fractured the single market in Europe; EU member states have introduced or been allowed to maintain various systems for market access that blatantly discriminate against production from other EU countries. Furthermore, RED has introduced discrimination against produce from countries that also are members of the World Trade Organisation and, consequently, has the right to protect themselves from such behaviour. Argentina has already tabled a complaint in the WTO against market access restrictions in Spain. The way this case was resolved illustrates the awareness on the part of EU policymakers that there are elements of the policy that cannot be defended

in a dispute-settlement procedure in Geneva. Other countries also have advanced plans to ask the WTO to rule against biofuels access restrictions in Europe: they run foul of basic principles in the GATT agreement and cannot be defended under the general exemption clause (allowing conditional departure from GATT rules).

So what happens now? The Commission seems to think that the best way to salvage Europe's biofuels policy is to introduce new market distortions and trade restrictions. Now it wants to cap the market-share of conventional biofuels to 5% and reinforce the aspects of current policy that resembles central planning. Policy should no longer encourage expanded production of rapeseed biodiesel in Europe (yet the EU will still subsidise it). Through new regulatory interventions, the aim is rather to favour special sources of biofuels (like waste and algae).

This is done on the imaginative assumption that Europe's consumption of biofuels has had a discernable, if not strong, impact on food prices by encouraging farmers globally to shift from food production to fuels production and thus raising the cost of food for the poor. Fighting hunger and high food prices are commendable objectives. The EU could (and should) also engage in profound policy reforms to effect improvements on both accounts. But they really have not much to do with energy crops, which represent such a marginal portion of agricultural production (biofuels production takes up less than 3% of global cropland) that the normal increase in agricultural productivity for one year would almost cover for the total production of energy crops.

Furthermore, the Commission is proposing to take a big step towards introducing so-called ILUC factors in its policy, initially by demanding suppliers to report emissions savings from indirect land-use change (ILUC) associated with a particular energy crop (e.g. cereals and sugars). The proposal falls short of conditioning market access on ILUC factors, but the ambition is to elbow producers, consumers, and EU member states (through national reporting) to use crops with greater greenhouse gas savings.

The problem is that it is impossible to make reliable global assessments on ILUC emissions for a particular crop. Many attempts have been made to model the ILUC emission effects, but they come to profoundly different results. One should not blame the modellers: correct accounts of ILUC emissions depend on so many factors (most of which change continuously) that no model result can be relied upon for policy. The only element of certainty in the ILUC regulation is that the ILUC emissions data that suppliers will be forced to report will be wrong.

This new ILUC dimension reinforces the incompatibility of Europe's biofuels policy with its obligations in the WTO (a vast body of scholars and observers have already shown how RED runs foul of WTO rules). If turned into law, suppliers will be forced to document and label products in a way that most certainly makes the regulation subject to disciplines in the WTO's agreement on Technical Barriers to Trade (TBT). As it is debatable whether RED in its original form would be covered by the TBT agreement, this is an important development. The TBT Agreement, like the GATT Agreement, builds on the principle of "like products", and by assigning to a crop an arbitrary ILUC factor that would make it less favourable than domestic crops, the EU will overstep the obligations it has signed up to. It could very well be that a particular product receiving less favourable treatment may differ very much from other similar crops, or that it actually entails much lower ILUC emissions than those crops that the revised directive has generally given more favourable status because it is believed that its ILUC emissions are lower.

The question that EU lawmakers must ask themselves is if it really makes sense to introduce a new policy that almost certainly will be ruled against if and when a case is brought to the WTO. Camels do not tend to fair well when judges of the WTO examines discriminatory and arbitrary policies that clearly distort trade.