PROMOTING LIVING INCOMES IN THE COCOA SECTOR:

POLICY OPTIONS FOR CONSUMER COUNTRIES

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EXECUTIVE SUMMARY

The case for delivering living incomes in the cocoa sector has been made extensively by Fairtrade, amongst many others. It is argued that a living income is a basic human right; that unless cocoa farmers possess the means to secure the basic necessities of life, they will be unable to sustain production in harmony with the natural environment; and that without living incomes, systemic problems such as child labour, deforestation and economic migration – which have poverty as a root cause – will persist.

Delivering living incomes in practice, however, is a complex undertaking. This paper outlines a range of possible public policy measures that consumer-country governments – chiefly the EU and its member states – could take to contribute to living incomes in the two main cocoa-producing countries, Ghana and Côte d'Ivoire, the source of two-thirds of global production and of EU imports of cocoa.

LIVING INCOMES

A growing body of work has aimed at defining living incomes in the cocoa sector in Ghana and Côte d'Ivoire, taking into account the costs of a nutritious diet, basic decent housing, other essential expenses such as education, health care, clothing and transport, and provision for unforeseen or special events. Based on the latest estimates, Fairtrade has calculated living income reference prices for cocoa beans, based on assumptions about sustainable target yield, viable farm size to fully deploy the available household labour, and the costs of production. These reference prices are beginning to be implemented by a few companies (as part of pilots of Fairtrade's holistic Living Income Strategy) but account for only a small minority of sales.

As well as the price paid for cocoa, however, many other interventions can affect famers' incomes and the costs of living and of cocoa production. These include, for example, the provision of basic social services such as education and health care; farm support services such as training and the availability of inputs such as fertiliser; farming practices, such as agro-forestry; financial services such as accountancy, savings and credit; farm organisation options through cooperatives and other structures; and wider issues such as standards of governance, particularly over land and tree tenure, and law enforcement. Any successful strategy for achieving living incomes needs to take these factors into account.

In practice, it is likely that no single policy instrument will achieve the aim of a living income by itself, and multiple simultaneous and mutually reinforcing interventions, designed to address the problems outlined above, will be necessary.

Against this background, this paper outlines potential policy instruments that could be introduced by consumer or donor countries with the aim of providing living incomes to cocoa farmers.

PROMOTING DEBATE

In promoting commitments to living incomes, it would be helpful if a broad international consensus could be reached on, first, the idea of living incomes as a target and, second, on appropriate levels of living incomes. The involvement of governments, companies, farmers and civil society in producer countries in these debates would clearly be of value, and this may need, or benefit from, the involvement of a neutral convening forum such as, possibly, UNCTAD. Support could also be provided for improvements in the collection and analysis of data to validate the assumptions on which living income and reference price calculations rest.

Option 1

Consumer-country governments, preferably acting together with other stakeholders through the Alliance on Living Income in Cocoa, and with producer-country governments, promote internationally (a) the concept of living incomes as a target and (b) discussion and improved data collection on appropriate levels of living incomes.

Advantages: *Relatively little resource needed; helps to support all other measures examined here.*

Disadvantages: *Impacts limited and indirect.*

PRODUCER-COUNTRY FOCUSED OPTIONS

Putting in place many of the enabling conditions behind the achievement of a living income for cocoa farmers will rely on actions on the ground in producer countries. This includes, for example, improvements in education and training, health care, farm support services, farm organisation, financial services, and land use planning. Improvements in governance and law enforcement are also likely to be necessary.

Many cocoa-importing and consuming countries, particularly in the EU, are major development assistance donors to cocoa-producing countries, but with a few exceptions, donor governments have not implemented development projects explicitly aimed at achieving living incomes for cocoa farmers, or for smallholders in other sectors.

Option 2

Consumer-country and donor governments use development assistance explicitly to create the enabling conditions for a living income.

Advantages: *Some cocoa-consuming countries are already large donors to cocoa-producing countries; requires no new legislation; has the potential to act across many policy areas; could provide support for staff to work with farmers and cooperatives and for monitoring of living income strategies.*

Disadvantages: *Many other competing priorities for development aid; cannot address cocoa prices directly.*

The option also exists of the EU negotiating bilateral agreements with the main cocoa-producing countries to achieve agreed standards for cocoa production – potentially including living incomes – through investing in enabling conditions and improving standards of governance and law enforcement; the EU would provide financial and capacity-building assistance. This option is modelled on the EU's Forest Law Enforcement, Governance and Trade (FLEGT) voluntary partnership agreements (VPAs) with timber-producing countries, designed to reduce levels of illegal logging.

Under the terms of the VPAs each partner country commits to reforms in policies and laws affecting the forest sector and timber industry, improvements in transparency and law enforcement and the establishment of multi-stakeholder deliberative processes, involving government, the private sector, local communities and civil society, for forest governance.

Although the timber legality assurance and licensing schemes envisaged under the agreements have been slow to establish, the process of negotiating and implementing the VPAs has itself driven significant improvements in forest governance, with potential long-term impacts. Ghana already possesses a VPA with the EU, and Côte d'Ivoire is in the process of negotiating one; civil society discussions, in particular in Ghana, have suggested adding cocoa or mirroring the VPA model. In addition, the European Commission has signalled its interest in negotiating bilateral agreements for cocoa production with these two countries.

Option 3

The EU reaches bilateral agreements with cocoa-producing countries, modelled on FLEGT VPAs.

Advantages: *Agreement potentially sets framework and mutual commitments specifically for cocoa sector (or forests and land use, more widely); positive outcomes in terms of improving governance from some existing VPAs; Ghana already possesses VPA, Côte d'Ivoire is negotiating one; European Commission reportedly interested in pursuing idea; commitment to living incomes, or a price mechanism such as the living income differential, could form part of the agreement.*

Disadvantages: *Process of negotiating and implementing VPAs has been slow and resource-intensive; national traceability and export licensing systems in particular have proved slow to establish.*

Other possible models for bilateral agreements between the EU and cocoa-producing countries include free trade agreements, aimed at removing barriers to trade such as export and import duties (tariffs) and inconsistent product standards, and economic partnership agreements (EPAs), which cover development commitments as well as trade. These frameworks, however, are likely to be too limited to include detailed sector-specific provisions or broad issues of sustainable development or governance, or living incomes.

Option 4

Relevant clauses are included in EPAs and/or FTAs.

Advantages: *Stepping-stone EPAs (covering development as well as trade) already in place with Ghana and Côte d'Ivoire.*

Disadvantages: *EPA model too limited to include detailed sector-specific provisions or broad issues of sustainable development or governance, or living incomes; FTA model even more limited.*

Delivering living incomes for cocoa farmers, including through higher prices for cocoa, risks creating incentives for over-production. There are a number of ways to mitigate against this; one measure would be to attempt to limit overall global output through an international commodity agreement, with the aim of stabilising prices and ensuring that producers are adequately rewarded.

In general, however, previous attempts at such agreements almost all failed; while they did help to provide some price stability, they also tended to freeze patterns of production, deterring innovation and the emergence of new producers; there were also significant costs involved in maintaining the buffer stocks needed to stabilise prices.

Nevertheless, there has been some recent interest displayed, in particular amongst coffee producers, in negotiating a more modern kind of agreement designed to improve standards of production and rewards for producers without at the same time stimulating output and creating over-supply – though so far no detailed system has been proposed.

Option 5

Governments initiate discussions on an international commodity agreement for cocoa designed to stabilise prices and reward producers.

Advantages: *Addresses the problem that cocoa, like many agricultural commodities, is subject to significant price swings on international markets.*

Disadvantages*: Models have been tried before and have failed; not clear how a new approach could overcome previous problems.*

BUSINESS-FOCUSED OPTIONS: VOLUNTARY

Consumer-country governments can undertake a number of measures designed to encourage businesses, on a voluntary basis, to address living incomes in the cocoa sector.

A number of cocoa and chocolate companies already possess individual commitments to increasing cocoa farmers' incomes, though not necessarily to living-income level; others have commitments to investing in enabling conditions such as providing support to farmers and cooperatives. Governments could encourage companies to adopt these and similar measures, and to address broader issues round the distribution of value along the cocoa supply chain.

Option 6

Governments encourage companies to adopt specific living income or similar targets, and to address issues of the distribution of value along the supply chain.

Advantages: *Several companies already have targets for minimum incomes or enabling conditions contributing to living incomes; promotes debate over living incomes and living income reference prices; requires very little resource*

Disadvantages: *Companies not already possessing targets not likely to introduce them; voluntary initiatives have been under way for years and have not solved problems of cocoa sector.*

National initiatives or alliances, such as those already existing in Belgium, Germany and Switzerland (and forming in the Netherlands) could provide a favourable environment to encourage companies to adopt a living income target.

Belgium's 'Beyond Chocolate' commitment, for example, aims to tackle deforestation and child labour and ensure a living income for cocoa producers; signatories commit to, among other things, ensuring that cocoa growers will earn at least a living income by 2030. Governments in other countries could encourage the adoption of specific time-bound living income targets, and facilitate the creation of cocoa alliances and platforms where they do not exist; such organisations are already relatively common for some other commodities, most notably palm oil. This approach could expand beyond the national level, with like-minded governments creating an international coalition to argue for living incomes (and other aims, such as ending child labour and deforestation) in the cocoa sector, and to promote the exchange of information and best practice about particular policy interventions.

Option 7

Governments facilitate the creation of cocoa alliances and platforms where they do not already exist, and encourage the adoption of living income targets.

Advantages: *Potential to encourage debate on living income issues and adoption of living-income and other targets; eases burden on leading companies and encourages laggards; Amsterdam Declaration Partnership has potential to provide home for international coalition; requires relatively low resource.*

Disadvantages: *Not clear (so far) what industry alliances actually achieve on the ground in producer countries; may move only at speed of slowest participant.*

The implementation of sustainability objectives, including industry-wide initiatives aimed at improving human rights or environmental outcomes or farmer incomes, often require companies to collaborate in setting common goals. Existing competition law, however, which is designed to protect consumers from companies' abuse of their market power, places barriers and limits to such collaboration. These kind of arrangements are likely to result in higher prices, but they are not aimed at increasing companies' revenues or shares of the market; rather, they seek to internalise environmental or social externalities, and deliver public goods.

Research suggests that companies strongly feel that competition law places severe constraints on discussions about low farmer incomes and wages in particular. There is accordingly a case for it to be given a broader interpretation – perhaps through clarifications issued by the competition authorities, or perhaps by rewriting the relevant legislation (though this would be a much lengthier undertaking) – to allow businesses to collaborate for long-term sustainability purposes, while not opening up the potential for anti-competitive behaviour

Option 8

Competition law is reinterpreted or rewritten to allow companies to collaborate in the pursuit of public goods such as living incomes.

Advantages: *Removal of barriers to companies' ability to collaborate in the pursuit of public goods may remove fear of undercutting by competition.*

Disadvantages: *Process of reinterpretation or (especially) rewriting competition law likely to be complex and slow.*

Certification schemes clearly have an important role to play in achieving living incomes. Fairtrade already includes mandatory fixed minimum prices and a mandatory fixed premium; while in June 2020 Rainforest Alliance announced a mandatory 'sustainability differential', this has no fixed, minimum or published range of values until July 2022 when the minimum will become $70 per tonne. Assuming that minimum pricing will play an important role in achieving living incomes, it may be possible for governments – particularly if a group or coalition of them can be persuaded to adopt a leadership role – to encourage Rainforest Alliance to incorporate minimum price and guaranteed non-negotiable premium elements into its principles and criteria, and to discuss its relationship to living incomes.

Option 9

Governments encourage all cocoa and chocolate certification schemes to incorporate minimum price and guaranteed non-negotiable premium elements in principles and criteria.

Advantages: *Fairtrade already has pricing mechanism.*

Disadvantages: *Certified production a minority of cocoa production; uptake of schemes still voluntary; Rainforest Alliance 'Sustainability Differential has no fixed, minimum or published range of values until July 2022 when the minimum will become $70 per tonne.*

BUSINESS-FOCUSED OPTIONS: REGULATORY

Voluntary action by businesses can achieve much, but it obviously has its limits; some companies will always seek to avoid the higher costs (perceived or actual) of action to source cocoa responsibly. Several regulatory options are available to the EU and/or its member states.

Many governments already use their public procurement policy to encourage the purchase of sustainably or responsibly sourced products for use in the public sector. The public sector is a major purchaser of food and catering services, for schools, nurseries, hospitals, care homes, canteens, prisons and the military, and many governments already include criteria relating to food and catering in their public procurement policy; these are probably more common in local and regional governments than at the central level. The criteria used include preferences for organic, healthy, seasonal and sometimes fairly traded products; a few governments now include criteria related directly to deforestation. Governments could use their public procurement policy more systematically to encourage the purchase of responsibly sourced cocoa and chocolate.

Option 10

Governments use public procurement policy to require cocoa and chocolate products are responsibly sourced, including, potentially, living incomes or the payment of living income reference prices.

Advantages: *Sustainable procurement policies already well established in most EU member states; public purchasing criteria sends signal to industry.*

Disadvantages: *In practice, government buyers likely to rely on purchasing certified products; ability to promote living income or living income reference prices therefore depends on certification scheme criteria; public sector probably not major purchaser of cocoa and chocolate products; local and regional government probably larger purchaser than central government.*

Action by companies could be encouraged by requiring them to report on cocoa farmers' income levels in their supply chains, and/or on other elements relevant to living incomes, such as the prices paid. They would not be placed under any obligation to take action to increase income levels, but the exposure that such reports lead to could encourage them to do so. The obligation could be limited to those first placing the cocoa or chocolate products on the EU market, as those most likely to possess detailed information on the sources, or extended further throughout the supply chain.

Many companies already report on some aspects of their supply chains on a voluntary basis, and some are covered by regulation, such as the EU Non-Financial Reporting Directive.

Option 11

Legislation requires companies to report on farmers' income levels, or other elements, such as the prices paid, in their supply chains.

Advantages: *Some companies already report or intend to; in general, large companies are familiar with reporting frameworks; could act as first step towards due diligence requirement (option 12).*

Disadvantages: *Difficult to discover actual incomes of farmers; not clear what impact simple reporting really has; may create incentives for companies to drop low-income suppliers to make their reports look better.*

The introduction of a due diligence, or human rights due diligence, regulation offers clear opportunities to advance companies' contributions to living incomes.

There is now considerable momentum behind the idea at EU level and within several member states. In December 2019, three cocoa and chocolate companies (Barry Callebaut, Mars and Mondelez), a network of 14 NGOs (VOICE Network) and Fairtrade and Rainforest Alliance called for EU-wide due diligence legislation across the cocoa sector, as a central part of a package of measures, including bilateral agreements, designed to support sustainable cocoa production.

The criteria on which a due diligence regulation is based should include living incomes; if the criteria include international human rights, living incomes are generally held to be a component in any case. Other criteria, including respect for the laws of the producer country and high standards of environmental sustainability, can also contribute to the enabling conditions underlying living incomes.

The due diligence approach, which recognises the need for a gradual improvement in standards over time rather than an instant solution to problems, is potentially well suited to actions to contribute to living incomes, but the more certainty companies can be given about the direction they should be headed in, the more effective the regulation is likely to be. Accordingly, the aim of contributing to living incomes should be explicitly stated in the criteria included in the regulation, and not left to the interpretation of general phrases like 'human rights'. Subsequent guidance could be issued by the regulatory authorities as to how living incomes could be defined and measured.

Option 12

Legislation requires companies to exercise due diligence with regard to a range of criteria, including (explicitly) living incomes – either applying to cocoa and cocoa products, or forest risk commodities, or broadly across companies' entire operations and supply chains.

Advantages: *Due diligence systems increasingly applied on a voluntary basis, and experience from existing laws; considerable interest amongst governments, civil society and several cocoa and chocolate companies; focuses action on company supply chains; gradual approach well suited to building up contributions to living incomes over time.*

Disadvantages: *Legislative process likely to take time, as many details of legislation will need to be worked out and companies likely to need specific guidance for cocoa supply chains; implementation not likely to be straightforward; risk of creating incentives for companies to drop low-income suppliers.*

CONCLUSIONS AND RECOMMENDATIONS

No single policy instrument will achieve the aim of a living income by itself, but many can contribute. Multiple simultaneous and mutually reinforcing interventions are likely to be necessary, targeting all the different measures that can be taken to contribute to living incomes for cocoa farmers. Based on the analysis in this paper, most options have something to offer.

The recommendation reached in this paper is for a potential package, or 'smart mix', of feasible measures, including the following as top priorities:

- **Option 2**
  Using development assistance to create the enabling conditions for a living income.
- **Option 3**
  Bilateral agreements between the EU and the main producer countries, including commitments to improve governance, to transform the cocoa sector to sustainable production, together with capacity-building assistance from the EU.
- **Option 12**
  Legislation requires companies to exercise due diligence with regard to a range of criteria, including (explicitly) living incomes. A first step towards this obligation could be the imposition of a reporting obligation (option 11), but not as an end in itself.

The following options should also have some benefit, but are likely to have lower impact and are therefore of lower priority:

- **Option 1**
  Consumer-country governments promote internationally (a) the concept of living incomes as a target and (b) discussion and improved data collection on appropriate levels of living incomes.
- **Options 6 and 7 together**
  Governments encourage companies to adopt specific living income or similar targets, and facilitate the creation of cocoa alliances and platforms where they do not already exist.
- **Option 8**
  Competition law is reinterpreted or rewritten to allow companies to collaborate in the pursuit of living incomes.
- **Option 9**
  Governments encourage all cocoa and chocolate certification schemes to incorporate minimum price and guaranteed non-negotiable premium elements in principles and criteria.

1 INTRODUCTION

The case for delivering living incomes in the cocoa sector has been made extensively by Fairtrade, amongst many others. It is argued that a living income is a basic human right; that unless cocoa farmers possess the means to secure the basic necessities of life, they will be unable to sustain production in harmony with the natural environment; and that without living incomes, systemic problems such as child labour, deforestation and economic migration – which have poverty as a root cause – will persist. The concept of a living income is embedded or implicit in several of the Sustainable Development Goals, including in particular SDGs 1 (no poverty), 2 (zero hunger), 8 (decent work and economic growth) and 10 (reduced inequalities).

Delivering living incomes in practice, however, is a difficult and complex undertaking. This paper outlines a range of possible public policy measures that consumer-country governments – chiefly the EU and its member states, though in principle other governments too – could take to contribute to living incomes in the two main cocoa-producing countries, Ghana and Côte d'Ivoire, the source of two-thirds of global production and of EU imports of cocoa (and, in principle, in other cocoa-producing countries as well).

Section 2 discusses the definitions of living incomes and living income reference prices and how they can be measured and monitored. It also discusses briefly the different policy interventions that could be implemented in producer countries that could affect the opportunities for cocoa farmers to earn a living income. This is not a comprehensive or detailed discussion; there is a very wide range of actions that producer-country governments could take by themselves to create the right conditions for living incomes, and full consideration of them would require a discussion of broad issues of domestic economic and development policy which falls well outside the remit of this paper.

Against this background, Sections 3 to 6 consider policy options for consumer-country governments:

- Suggestions for promoting the debate at an international level (Section 3).
- Actions that consumer-country governments could adopt to support and encourage producer-country governments to implement appropriate measures (Section 4).
- Measures through which consumer-country governments could encourage, on a voluntary basis, businesses based in or selling cocoa and cocoa products into their jurisdictions to take action to deliver living incomes (Section 5).
- Regulatory measures through which consumer-country governments could require businesses to take action to deliver living incomes (Section 6).

Each sub-section includes a text box summarising the option and its advantages and disadvantages, and each section finishes with recommendations on the options considered within it. Section 7 summarises the different options and suggests a package of high-priority measures that would be most worthwhile pursuing.

2 BACKGROUND: LIVING INCOMES

2.1 DEFINING LIVING INCOMES AND LIVING INCOME REFERENCE PRICES

There is now a growing body of work aimed at defining living incomes in the cocoa sector in Ghana and Côte d'Ivoire. Based on the comprehensive Anker methodology, representing the amount of profit from all sources of household income that would be necessary to cover the components of a decent standard of living for a family, these take into account the costs of a nutritious diet, basic decent housing, other essential expenses such as education, health care, clothing and transport, and provision for unforeseen or special events. The latest (2018) calculations for the Living Income Community of Practice[1] come to US$2.49 per person per day for cocoa-producing areas in Côte d'Ivoire and US$2.16 per person per day for cocoa-producing areas in Ghana.[2]

Based on these living income levels, Fairtrade has calculated living income reference prices for cocoa beans, based on assumptions about sustainable target yield (800 kg/ha, compared to the average yield of 437 kg/ha in Côte d'Ivoire), viable farm size to fully deploy the available household labour (5.3 ha in Côte d'Ivoire and 4 ha in Ghana – this includes an area lying unproductive for rejuvenation) and the costs of production to attain the sustainable yield level (for fertiliser, pesticides and other inputs, tools and equipment, administrative costs and labour paid at a living wage). Fairtrade's Living Income Reference Prices (farmgate prices) for 2019 are $2,200 per tonne for Côte d'Ivoire and $2,100 per tonne for Ghana.[3] The lower price for Ghana is attributed to a relatively lower cost of decent living per person and greater subsidies for the costs of production.

The calculation assumes that cocoa is the farm's sole cash crop, though the value of food produced on the farm is an important source of in-kind income, accounting for 25 per cent of total income. Cash crop diversification may happen – and is encouraged – but it is assumed that income from any other crop would be at least as high as from cocoa. Fairtrade is now planning to test the assumptions underlying the reference price through pilot projects. The Fairtrade Living Income Reference Price is a voluntary initiative that is in addition to the mandatory fixed Fairtrade Minimum Price and fixed mandatory Fairtrade Premium of $240 per tonne which must be paid in full to the cooperative. The Fairtrade Minimum Price differential in October 2019 in Côte d'Ivoire was $236.92 per tonne and must be paid in full to the farmer.

This model and reference prices have been accepted, and is being implemented, by a number of companies, including Tony's Chocolonely, Belvas, Oxfam Fair Trade and REWE. Fairtrade and Tony's differ over whether the Fairtrade premium of $240 should be added on top of the reference price or incorporated within it. Although both acknowledge that the premium is an important (and in Ghana the main) source of income for cooperatives to cover their costs and provide services to their members (e.g. to support them in attaining sustainable farm yields), Fairtrade argues for adding the premium on top of the reference price, while Tony's channels separate programme funding to cover cooperative-related and productivity improvement costs and therefore counts the premium towards the reference price.

Oxfam Fair Trade and Belvas have started paying a premium to reach a farmgate price of $2,668 in Côte d'Ivoire (the initial preliminary Fairtrade Living Income Reference Price calculated in 2018).

In June 2020, Rainforest Alliance announced a mandatory 'Sustainability Differential' in its cocoa certification programmes: a cash amount paid to individual farmers per tonne of cocoa beans meeting Rainforest Alliance standards, and investments at farmer group level (cash and/or in-kind), complemented by mandatory reporting on investments by first buyers.[4] Chain-of-custody reporting and documentation at first buyer level will be required in order to confirm the disbursement of the amount from first buyer to certificate holder. However, achieving a living income is not an explicit objective, the differential has no fixed or minimum value, and no range of values until July 2022 when the minimum will become $70 per tonne.

Fairtrade's reference price calculation is not, however, universally accepted. A consultation paper for the 2020 *Cocoa Barometer* report argued that it overestimated feasible productivity increases, overestimated farm size and underestimated the cost of inputs and labour.[5] While stressing the need for better data, it concluded that the minimum farmgate price necessary to earn a living income from cocoa should be at least $3,166 per tonne for Côte d'Ivoire and $3,116 per tonne for Ghana.

It has also been argued that the sustainable yield assumed in the Fairtrade calculation is unrealistic in current circumstances, particularly given that some productivity improvement programmes have been banned by the Ivorian government.

Cocoa tree yields in West Africa are the lowest in the world, partly because of ageing trees and depleted soils, which is why farmers generally increase output by expanding the cultivated area. While these problems can be addressed through reforming farming practices, this requires time and resources, and cannot simply be assumed to happen without external support.

In response to the *Cocoa Barometer* paper, Fairtrade argued that the target yield figure was in fact realistic, and was accepted by the Ghanaian cocoa regulator, COCOBOD; that while small farm sizes were problematic, that was not an issue that could be addressed through the reference price; and that the cost of inputs and labour were based on the best available data (while accepting the need for better data – one of the aims of Fairtrade's pilot projects).[6]

In promoting commitments to living incomes and living income reference prices, it would clearly be helpful if a broad international consensus could be reached on their levels; this is considered further in Section 3.

2.2 MEASURING AND MONITORING LIVING INCOMES

If the achievement of living incomes is to be incorporated into policy measures, self-evidently there must be some way of measuring whether the aim has been, and continues to be, met.

In practice, data on household income is collected by surveys.[7] In a study for the Living Income Community of Practice, between November 2016 and March 2017 KIT Royal Tropical Institute analysed quantitative and qualitative data on income diversification strategies and crop production activities involving 3,045 farming households in cocoa-growing areas in Ghana and Côte d'Ivoire.[8] The study estimated that in Côte d'Ivoire, the income of the typical male-headed household was about 64 per cent of the living income benchmark value, and only 6.9 per cent of such households achieved the benchmark. The equivalent figures for Ghana were 52 per cent and 9.4 per cent.

A similar study was conducted by Fairtrade and True Price on household incomes of cocoa farmers in Côte d'Ivoire.[9] In collaboration with COSA and GeoTraceability, in 2016 household income data was collected on 3,202 Fairtrade smallholder cocoa farmers from 23 cooperatives. The average household income was $2,707 per year, significantly below the living income level of $7,318, but above the extreme poverty line of $2,276.

Seven per cent of all farmers earned a living income, and within the sample, smaller households were better off than large households. Fairtrade is commissioning further studies.

Calculating net incomes from multiple sources from rural households, however, is a highly challenging task, mainly because of poor data availability on the various cost and income elements. The studies explained and discussed a number of conceptual and methodological difficulties connected with the calculations. Clear and broadly-accepted methodological guidelines on how to measure income elements and report against the living income benchmark will be necessary if living income is to be accepted as a policy aim. This has a number of implications for some of the policy options discussed below.

Barry Callebaut has adopted the aim of lifting more than 500,000 cocoa farmers in its supply chain out of poverty (defined with reference to the World Bank poverty threshold of $1.90 per person per day) by 2025. In pursuit of this aim, between 2017 and 2019 the company mapped the geographical location and size of 295,383 cocoa farms and conducted census interviews with 229,142 cocoa farmers to capture socioeconomic and household data.[10] This is part of the broader traceability system the company is establishing to deliver its complementary aims of eradicating child labour and becoming carbon and forest-positive. Again, this points to the kind of studies likely to be needed to support the delivery of living incomes.

2.3 ACHIEVING LIVING INCOMES

Even an agreed living income reference price for cocoa will not lift farmers out of poverty in all circumstances. The calculations described above are based on average sizes of farms and families and average costs of inputs; farmers with smaller farms or larger families will not achieve a living income even if paid the reference price (though in either of those cases, more household labour would be available to generate income from sources other than cocoa, should the opportunities exist).

Interventions solely targeted on delivering a minimum price for cocoa may therefore fail to achieve the objective of delivering a living income across the sector, though they may benefit some individuals. This may also be a relatively inefficient way of achieving living incomes. The Fairtrade / True Price study of cocoa farmers in Côte d'Ivoire mentioned above estimated that in isolation cocoa prices would need roughly to double to lift 80 per cent of farmers above the extreme poverty line, but that a large share of the extra value would go to the farmers that already earned above that level. The study concluded that: 'More interesting insights would be obtained when including a broader supply chain perspective. Mapping the constraints of productivity (soil fertility, land tenure change opportunities, climate) for certain countries and regions would help to inform, design and set up realistic programs and targets (e.g. on labour productivity).'[11]

Fairtrade accepted, however, that increasing the cocoa price was still an essential part of a wider holistic strategy (see below). More broadly, as well as the price paid for the cocoa, it is clear that many other interventions can affect famers' incomes and the costs of living and of cocoa production. These include, for example, the provision of basic social services such as education and health care; farm support services such as training and the availability of inputs such as fertiliser; farming practices, such as agro-forestry; financial services such as accountancy, savings and credit; farm organisation options through cooperatives and other structures; and wider issues such as standards of governance, particularly over land and tree tenure, and law enforcement.

Some cocoa and chocolate companies have adopted a range of measures to introduce these approaches. Tony's Chocolonely, for example, uses five 'sourcing principles' for its supply chains: traceability; price; support for farmer organisations; long-term relationships (at least five-year commitments to pay the higher price); and a supporting environment (investment in agricultural knowledge and skills).[12] Barry Callebaut's interventions aimed at achieving its farmer income target (the World Bank poverty threshold) include offering advice on the best mix of seedlings and fertilisers, distributing seedlings and shade trees, providing training on tree pruning techniques and the use of fertiliser, helping farmers to access labour and inputs on credit and assisting farmers to adopt Farm Business Plans.[13]

Fairtrade's own living income strategy is aimed at achieving living incomes for average Fairtrade small-holder families with at least a full-employment farm size and an adequate productivity level who sell their Fairtrade crop on fair trading terms.[14] Its objectives are:

- Sustainable pricing using Fairtrade living income reference prices; different mechanisms of implementing these (e.g. through Fairtrade minimum prices, premiums or separate income funds) are to be assessed.
- Existing and new Fairtrade commercial partners commit to improve farmers' incomes through paying the Fairtrade living income reference price, increasing Fairtrade sales volumes and investing in complementary programmes.
- Fairtrade producers reach adequate sustainable productivity levels and enhance farm resilience, including implementing sustainable agricultural practices and fostering diversification.
- Fairtrade producers are able to calculate their production costs and make informed business decisions to improve the profitability of their farms, including the development of appropriate tools and information systems.
- Fairtrade Small Producer Organisations are supported to be efficient, sustainable social enterprises with good governance practice and adequate business management capacity to optimise value creation for their members.
- Fairtrade premium payments are invested strategically by Small Producer Organisations, contributing to the accomplishment of their long-term goals, prioritising organisational and livelihood sustainability.
- An enabling environment is created, including fair and effective market systems addressing the imbalances of power in supply chains that obstruct progress towards living incomes.

In general, despite some progress, attempts to raise incomes and lift cocoa farmers out of poverty have not succeeded across the whole sector. A 2018 report from Wageningen University suggested a number of reasons: many farms are too small; average productivity levels have remained low for many decades; too many farmers have too few opportunities for diversification; the investments required to improve productivity present financial risks which many farmers are not willing to accept (sometimes because interventions are not tailored to their particular circumstances); alternative employment opportunities outside the sector are insufficient; and price or productivity increases may simply lead to greater production, with downwards market pressure on prices.[15]

It is likely that no single policy instrument will achieve the aim of a living income by itself, and multiple simultaneous and mutually reinforcing interventions, designed to address the problems outlined above, will be necessary.

In 2018 a study produced by Aidenvironment for the Living Income Community of Practice proposed a strategy with elements aimed at achieving: viable farming systems; integration with landscape management and community development; effective service delivery models; fair and inclusive value chains; market management and integrated development policies; and sector coordination.[16] This is, self-evidently, a complex set of objectives for policy interventions to deliver.

This question needs to be addressed in the context of each of the policy instruments explored in the rest of this paper: whether the measure should seek to deliver a living income, or a living income reference price for cocoa, or target its efforts on wider enabling conditions – or all three? While this paper cannot provide the answer in each case, it aims to describe a set of plausible policy frameworks that can be implemented by consumer-country governments through which that question can be addressed. In addition, the options described in the paper differ in their ability to target particular interventions. Companies, for example, cannot realistically be expected to invest in public education or health services, or improve national cocoa sector governance and law enforcement efforts, but they can pay higher prices for cocoa.

Government action is needed to address these wider enabling conditions for living incomes, but governments are less able to affect the prices companies pay for cocoa beans – though they are clearly not devoid of influence, as seen in the application of the living income differential in 2019.

One further challenge also needs to be considered: if successful strategies to raise incomes or prices or to improve enabling conditions lead cocoa farmers to receive more for their product, and if they are able to increase productivity through greater investment in their farms, they will face incentives to increase their production of cocoa. If replicated extensively, this could lead to over-supply and a crash in the global market price.

Even if companies are committed to paying a living income reference price for cocoa from Ghana and Côte d'Ivoire, they would face increasing incentives to switch their sourcing to lower-cost countries, leaving more cocoa farmers in those two countries unable to sell more of their crop, and seeing other countries without living incomes increasing their share of the market (though other countries could follow Ghana and Côte d'Ivoire in promoting higher prices).

The development of strategies to counter over-production is therefore an important step. This includes, for example, promoting long-term partnerships with brands and retailers and farmer organisations and their members, through which a specified volume at a specified price is guaranteed. Over-production is still possible, but under the agreement, the farmer only receives the higher price on the agreed volumes.

Another way to control output is to reduce the area of land used for cocoa cultivation, which would both reduce the production of cocoa and allow other crops to be planted and/or forest restoration to take place. There are a number of ways to achieve this, including the sale of small farms and their amalgamation into larger ones – which tends to make productivity increases more likely, but risks losing jobs and livelihoods.

An alternative approach would be to encourage diversification into different crops, reducing cocoa output but maintaining farm size and income. Both approaches have implications for the creation of alternative jobs and livelihoods, the structures of land tenure and ownership, and the overall direction of development within these two major cocoa-producing countries.

Another way of mitigating against over-production would be to attempt to limit overall global output through an international commodity agreement; this is discussed further in Section 4.

Against this background, the rest of the paper outlines potential policy instruments that could be introduced by consumer or donor countries with the aim of providing living incomes to cocoa farmers.

3 PROMOTING DEBATE

This section suggests various steps that could be taken to promote and inform the debate on living incomes in the cocoa sector at the international level.

3.1 OPTION 1: PROMOTING INTERNATIONAL DEBATE ON LIVING INCOMES

Section 2 has outlined the challenges in promoting living incomes, including debates around the levels of living incomes and living income reference prices. In fact, there is no internationally recognised definition of what constitutes a living income (or a living wage). The International Covenant on Economic, Social and Cultural Rights, for example, refers to 'an adequate standard of living', whereas the Living Income Community of Practice definition goes beyond basic subsistence and survival and emphasises the notion of a 'decent' standard of living.

In promoting commitments to living incomes, it would be helpful if a broad international consensus could be reached on, first, the idea of living incomes as a target and, second, on appropriate definitions and levels of living incomes. Consumer-country governments, together with other stakeholders, and in particular producer-country governments, could take action to promote both these aims.

In addition, the Alliance on Living Income in Cocoa (formerly the Living Income Task Force), comprising a number of chocolate and cocoa companies, NGOs, several Dutch, German and Swiss government departments, the Belgian, German and Swiss national cocoa initiatives, and Fairtrade and Rainforest Alliance, could adopt these aims and promote them amongst other governments, companies and international development organisations such as the World Bank.

The involvement of governments, companies, farmers and civil society in producer countries in these debates would clearly be of value. This may need, or benefit from, the involvement of a neutral convening forum.[17] If existing organisations within the cocoa sector, such as the International Cocoa Organisation or the World Cocoa Forum, are not felt to be suitable, other institutions, such as UNCTAD (UN Conference on Trade, Aid and Sustainable Development), which is familiar with hosting discussions involving a range of governments, the private sector and civil society, could potentially fill this role.

As well as the concept of living incomes as a policy target, it would be helpful to promote debate on the levels of living incomes and reference prices. As Fairtrade's Living Income Strategy puts it: 'Hard data on living income gaps are needed to support trade policy and business regulation advocacy at international level or for lobbying for better access to services and infrastructure at a local level.' Support could be provided for improvements in the collection and analysis of data to validate the assumptions on which the figures rest and to adjust them as new, more reliable, data become available, including implementation and careful monitoring and evaluation of models. Fairtrade has started testing these models and intends to report on the outcomes, but further studies would, clearly, be helpful. The Living Income Community of Practice and the Alliance on Living Income in Cocoa provide important forums within which these questions can be further explored.

OPTION 1: ADVANTAGES & DISADVANTAGES

PROMOTING INTERNATIONAL DEBATE ON LIVING INCOMES

Consumer-country governments, preferably acting together with other stakeholders through the Alliance on Living Income in Cocoa, and with producer-country governments, promote internationally (a) the concept of living incomes as a target and (b) discussion and improved data collection on appropriate levels of living incomes.

Advantages

Relatively little resource needed; helps to support all other measures examined here.

Disadvantages

Impact limited and indirect.

3.2 RECOMMENDATIONS

Compared to the other options discussed in this paper, Option 1 does not rank in the highest priority; while valuable, its impact is likely to be limited. I therefore recommend it as a lower-priority option for governments.

4 PRODUCER-COUNTRY FOCUSED OPTIONS

It is clear from the discussion above in Section 2 that putting in place many of the enabling conditions behind the achievement of a living income for cocoa farmers will rely on actions on the ground in producer countries. This includes, potentially, improvements in education and training, health care, farm support services, farm organisation, financial services, and land use planning. It may be difficult for companies in the cocoa sector, and consumer-country governments, to affect these directly, but they are important for the achievement of living incomes.

Initiatives in the timber sector designed to combat illegal logging have demonstrated the importance of good governance as a factor underlying many positive outcomes. Under the Voluntary Partnership Agreements negotiated between the EU and a number of timber-exporting developing countries, governments have committed to improvements in the governance of the timber sector, including processes for the reform of policies and laws on issues such as land and tree tenure and forest protection, and the establishment of genuinely deliberative national processes, involving government, the private sector, local communities and civil society. In principle this model is transferable to the cocoa sector, leading, for example, to the empowerment of cocoa farmers' cooperatives as forest and cocoa landscape managers and advocates.

Producer-country governments also have the potential to influence the price paid for cocoa beans – for example through the introduction, in 2019, by the governments of Ghana and Côte d'Ivoire of a 'living income differential' of $400 per tonne to cocoa export prices.

While this step was generally welcomed, by Fairtrade among others, its level falls well short of the living income reference prices discussed in Section 2.

As noted in Section 1, a full exploration of the steps producer-country governments could take to deliver living incomes goes beyond the remit of this paper. Nevertheless, there are measures consumer-country or donor governments could take directly aimed at influencing activity by producer-country governments; this section suggests four.

4.1 OPTION 2: USING DEVELOPMENT ASSISTANCE PROGRAMMES

Many cocoa-importing and consuming countries, particularly in the EU, are major development assistance donors to cocoa-producing countries. In 2016–17, France was the largest donor of gross official development assistance (ODA) to Côte d'Ivoire, and the EU institutions, Germany and Spain were also in the top ten donors; between them these four sources supplied more than 40 per cent of gross ODA to the country. The EU and its member states' ODA to Ghana was somewhat smaller, but the UK, France, Germany and the EU institutions all featured in the list of top ten donors, between them providing over 15 per cent of gross ODA in 2016–17.[18]

Some of this financial and capacity-building assistance could be devoted explicitly to creating the enabling conditions for a living income, as listed above. Unlike several of the other measures considered in this paper, this option has the potential to address directly these enabling conditions, though development assistance would not be able to affect directly the price paid for cocoa. One possible model was suggested by the Fairtrade Foundation in 2019. Aimed at the UK government, the report *Craving a Change in Chocolate* proposed that living incomes and wages should be placed at the heart of the Department for International Development's economic development strategy, supporting programmes and businesses that took living income seriously. This could include the establishment of a strategic match-fund facility to support businesses committed to achieving living incomes for farmers and looking to innovate in their supply chains. The fund could be used to empower farmers and farmer organisations to shape interventions; support pilot projects to promote sustainable cocoa production; and address local market failures and dysfunctions on issues such as poor-quality fertilisers.[19]

While the Dutch and German governments provide support for the Living Income Community of Practice, and the Belgian, Dutch, German and Swiss governments support the Alliance on Living Income in Cocoa, donor governments have not, in general, implemented development projects explicitly aimed at achieving living incomes for cocoa farmers (or for smallholders in other sectors).

One exception is the German government, which (through BMZ, the Federal Ministry for Economic Cooperation and Development, and GIZ, the development agency) has supported ALIGN, a guidance tool to enable agri-food companies to take action towards a living wage for workers and a living income for farmers in their supply chains.[20]

In addition, the Belgian 'Beyond Chocolate' national initiative, which is supported by the Belgian government, has adopted the objective of achieving a living income by 2030, and is planning to provide funding for pilot projects related to living incomes, starting in 2020. It is possible that other national cocoa initiatives may adopt a similar approach.

There are, of course, many donor-supported development projects in the cocoa sector (its link to deforestation and climate change is increasingly attracting attention, and there has been a longer record of activities to tackle child labour) and living incomes, and/or living income reference prices, could be included in their objectives. Donor support would also be useful in testing living income strategies through implementation and careful monitoring and evaluation of models (see Section 3.1). While donors would be highly unlikely to support higher prices directly, they could provide financial support for the additional staffing capacity needed to work with farmers and cooperatives and monitoring and evaluation as these models are piloted.

All these objectives apply equally to other donors as well as national governments, including multilateral development banks, charitable foundations and other development agencies.

OPTION 2: ADVANTAGES & DISADVANTAGES

USING DEVELOPMENT ASSISTANCE PROGRAMMES

Consumer-country and donor governments use development assistance explicitly to create the enabling conditions for a living income.

Advantages

Some cocoa-consuming countries are already large donors to cocoa-producing countries; requires no new legislation; has the potential to act across many policy areas; could provide support for staff to work with farmers and cooperatives and for monitoring of living income strategies.

Disadvantages

Many other competing priorities for development aid; cannot address cocoa prices directly.

4.2 OPTION 3: REACHING BILATERAL AGREEMENTS WITH PRODUCER COUNTRIES

This option envisages the EU negotiating bilateral agreements with the main cocoa-producing countries to achieve agreed standards for cocoa production – potentially including living incomes – through investing in the enabling conditions discussed above and improving standards of governance and law enforcement; the EU would provide financial and capacity-building assistance.

This option is modelled on the EU's Forest Law Enforcement, Governance and Trade (FLEGT) voluntary partnership agreements (VPAs) with timber-producing countries, designed to reduce levels of illegal logging. By April 2020, VPAs had been agreed with nine countries and negotiations were under way in a further six, with several more expressing interest.[21] Under the terms of the VPAs each partner country commits to reforms in policies and laws affecting the forest sector and timber industry, improvements in transparency and law enforcement and the establishment of multi-stakeholder deliberative processes, involving government, the private sector, local communities and civil society, for forest governance.

Each partner country must also establish a timber legality assurance system (a national traceability system) and an export licensing system to ensure that only timber products that have been produced legally can be licensed for export to the EU (in fact all VPA countries so far have announced their intention to license all exports regardless of destination). The EU has legislated to require the presence of the FLEGT license before it permits the entry of timber products from partner countries with licensing schemes in place to the EU market. In November 2016 Indonesia started to issue FLEGT licenses to accompany its timber exports, its timber legality assurance system having been judged adequate by both parties to the VPA. To date it is the only VPA country to establish a successful licensing system, though Ghana is expected to finalise its own scheme in 2020. In general, legality assurance systems have proved to be more complex and difficult to establish than originally anticipated largely because of the size and diversity of the timber sector and patterns of production and trade; tracking the movement of timber through the supply chain has proved particularly difficult where the country imports timber as well as producing it domestically, as in Cameroon and Vietnam, for example (this is not a major problem, however, for cocoa in Ghana or Côte d'Ivoire).

Despite this slow progress in finalising the licensing systems, however, in many cases the process of negotiating the VPAs has itself driven significant improvements in forest governance, with potential long-term impact. In most cases the VPA negotiations have seen multi-stakeholder processes agree operational definitions of 'legal timber' – i.e. which of the laws of the producer country are relevant – and all the agreements contain commitments to regulatory and policy reform to make forest laws and regulations clearer and more comprehensive, together with improvements in transparency and stakeholder involvement. This has helped open up forest sector governance to civil society; the EU has often provided support directly to NGOs to facilitate their participation.

The VPAs also contain provision for independent auditors to check the integrity of the legality assurance and licensing systems; in some cases civil society independent monitors also operate to scrutinise the forest sector and illegal activities more broadly. The EU and EU member states have provided capacity-building assistance to partner countries to help them set up the licensing scheme, improve enforcement and reform policies and laws.

Studies of the VPAs have concluded that at least in some countries their main achievement, even before the implementation of the licensing system, has been a significant improvement in governance.

A 2016 study of the VPA processes in Ghana and Indonesia, for example, concluded that they had: 'resulted in significant improvements in forest governance in both countries, including measurable declines in illegal logging … the VPA implementation process has led in both countries to substantially increased participation by civil society and other stakeholders in forest governance, greater transparency and accountability of forestry administration, and heightened recognition of community rights. In both countries, too, the VPA process has focused attention on protecting the needs and livelihoods of small producers in the transition to the new timber legality regime … the VPA process has contributed to reducing arbitrary administrative discretion in forest governance, including the award of concessions and harvesting permits, while creating new mechanisms for exposing corruption across the supply chain, whose effectiveness can be expected to grow as the monitoring, reporting, and review provisions of their timber legality assurance schemes kick into full gear with the onset of FLEGT licensing.'[22]

Associated benefits in Ghana have included the adoption of the 2012 Forest and Wildlife Policy, which was heralded as providing the most ambitious steps to date towards addressing tree tenure and community participation in forest management, and a 640 per cent increase in logging taxes collected by the government.[23]

The linkage of trade to governance and law enforcement has been important, with access to the EU market providing an incentive to partner countries to negotiate and implement VPAs. The adoption of the EU Timber Regulation in 2010 was a valuable complementary step (see further below in Section 5.2). The Regulation obliges any timber operator first placing timber products on the EU market to have in place a system of due diligence to minimise the risk of them handling illegal timber, but FLEGT-licensed products are automatically considered to meet the requirements of the regulation; the evidence suggests that it is now becoming (slightly) easier to sell Indonesian timber products on the EU market as a consequence.[24]

Some countries with very little trade with the EU have nevertheless expressed an interest in agreeing VPAs, suggesting that market access is not the only incentive; participation in a system which aims to improve standards of forest governance and reduce levels of illegal logging seems itself be a reason to join a VPA, as well as recognition of the country's efforts by the EU.

This model could be adapted to cocoa, based on a wider set of objectives than just legality of production (though illegal production is one of the problems of the cocoa sector). Producer-country commitments could include the establishment of a multi-stakeholder deliberative process, involving government, the private sector, local communities and civil society to, for example, produce a national definition of 'sustainable cocoa'; improvements in the transparency of cocoa sector management; processes of reform of laws and policies governing, for example, land and tree tenure, land use and forest planning, child labour and minimum incomes; and the application of price mechanisms such as the living income differential. The agreement, and the negotiations leading up to it, offer a suitable framework in which to hold discussions about the appropriate mix of measures needed to deliver living incomes.

The agreement should also provide the framework for a national traceability system to ensure that all cocoa in the country is being produced according to the standards defined through the multi-stakeholder process. This traceability system must extend down to the farm level, not merely to the cooperative level, and up to the point of processing or export, to ensure that the standards agreed in the country are adhered to. The experience of the VPAs, and their timber legality assurance schemes, shows how this can be achieved.

While it is recognised that this can be a long and complex process, the VPA experience, as summarised above, also demonstrates how the implementation of the agreement can bring positive outcomes even in the absence of a full traceability system.

Ghana already possesses a VPA with the EU, and Côte d'Ivoire is in the process of negotiating one; civil society discussions, in particular in Ghana, have suggested adding cocoa or mirroring the VPA model. In addition, the European Commission has signalled its interest in negotiating bilateral agreements for cocoa production with these two countries. Although the details are not yet clear, the idea is that the EU would support in some way the living income differential, or a similar price mechanism, in exchange for a set of commitments to improve the sustainability of cocoa production, such as a reduction in deforestation, or child labour.

Minimum incomes or prices have not featured in the VPAs (smallholder and artisanal logging is generally a smaller proportion of the timber sector than smallholder production is of cocoa), but could in principle be included in the producer-country and EU commitments under a bilateral agreement on cocoa. This would not be a straightforward step, raising the questions about the overall economic impact of minimum incomes or prices discussed above in Section 2.3 – but negotiations on a bilateral agreement provide a framework in which to discuss the issue. A commitment to a price mechanism such as the living income differential could form part of the agreement.

Some of the elements discussed above are reflected in the Cocoa and Forests Initiative, established in 2017.[25] Originally including Côte d'Ivoire and Ghana, joined in 2018 by Colombia, each government has agreed Frameworks for Action with chocolate and cocoa companies, aiming to end deforestation and restore forest areas. Commitments include the introduction of farm mapping and traceability systems, no further conversion of any forest land for cocoa production, the elimination of illegal cocoa production in national parks, stronger enforcement of national forest policies and the development of alternative livelihoods for affected farmers.

While progress with implementation has been slow, consumer-country governments are not included in the Initiative, and it does not contain any processes to improve transparency or governance, this nevertheless has the potential to provide some foundations on which to build the new bilateral agreement.

OPTION 3: ADVANTAGES & DISADVANTAGES

REACHING BILATERAL AGREEMENTS WITH PRODUCER COUNTRIES

The EU reaches bilateral agreements with cocoa-producing countries, modelled on FLEGT VPAs.

Advantages

Agreement potentially sets framework and mutual commitments specifically for cocoa sector (or forests and land use, more widely); positive outcomes in terms of improving governance from some existing VPAs; Ghana already possesses VPA, Côte d'Ivoire is negotiating one; European Commission reportedly interested in pursuing idea; commitment to living incomes, or minimum incomes, or a price mechanism such as the living income differential could form part of the agreement.

Disadvantages

Process of negotiating and implementing VPAs has been slow and resource-intensive; national traceability and export licensing systems in particular have proved slow to establish.

4.3 OPTION 4: INCLUDING COMMITMENTS IN FREE TRADE AGREEMENTS AND ECONOMIC PARTNERSHIP AGREEMENTS

Other possible models for bilateral agreements between the EU and cocoa-producing countries include free trade agreements, aimed at removing barriers to trade such as export and import duties (tariffs) and inconsistent product standards, and economic partnership agreements (EPAs), which cover development commitments as well as trade.

In February 2014 negotiations for an EPA were concluded between the EU and the 16 West African countries and their two regional organisations, the Economic Community of West African States (ECOWAS) and the West African Economic and Monetary Union (UEMOA).[26] The aims of the agreement for the West African countries are to increase exports to the EU, stimulate investment, contribute to developing productive capacity and employment and support structural reforms; and for the EU, to open up new business opportunities and increase legal certainty for European investors in the region. The agreement has not yet entered into force, however, and pending this, 'stepping stone' EPAs have been agreed with Côte d'Ivoire and Ghana; they entered into provisional application on 3 September 2016 and 15 December 2016 respectively.[27] As well as the general aims of the West Africa EPA, they include specific commitments on trade in goods, including product standards and trade facilitation.

This broad EPA model may have benefits for the general development of the two cocoa-producing countries, but it will never provide the same kind of detailed sector-specific provisions of the VPA model, and neither does it focus on broad issues of sustainable development or governance. It does not seem likely to provide the same kind of scope for stimulating change on the ground as the VPA model, or including commitments to living incomes or living income reference prices.

The same is the case, even more strongly, for the even more limited free trade agreement model. Even though free trade agreements are increasingly including sustainability clauses, or conditionality related to other agreements – for example the Paris Agreement on climate change – they are still much broader than dedicated sector-specific agreements such as the timber VPAs, and are therefore not appropriate for setting out detailed sector-specific commitments.

OPTION 4: ADVANTAGES & DISADVANTAGES

INCLUDING COMMITMENTS IN FREE TRADE AGREEMENTS AND ECONOMIC PARTNERSHIP AGREEMENTS

Relevant clauses are included in EPAs and/or FTAs.

Advantages

Stepping-stone EPAs (covering development as well as trade) already in place with Ghana and Côte d'Ivoire.

Disadvantages

EPA model too limited to include detailed sector-specific provisions or broad issues of sustainable development or governance, or living incomes; FTA model even more limited.

4.4 OPTION 5: NEGOTIATING AN INTERNATIONAL COMMODITY AGREEMENT FOR COCOA

Section 2.3 discussed the risk of over-production of cocoa as a side-effect of delivering living incomes or living income reference prices. One way of mitigating against over-production would be to attempt to limit overall global output through an international commodity agreement.

A number of international commodity agreements were established in the post-war period, with the aim of stabilising prices and ensuring that producers are adequately rewarded, thus helping to counter some of the typical unregulated behaviour of agricultural commodity markets; examples include those covering wheat, sugar and rubber.[28] In general, however, while these agreements did help to provide some price stability, they also tended to freeze patterns of production, deterring innovation and the emergence of new producers; there were also significant costs involved in maintaining the buffer stocks needed to stabilise prices. Almost all of them ultimately failed to sustain their approach, and the more deregulatory approach widely adopted from the 1980s onwards (the 'Washington consensus') sealed their fate.

The same is true of the International Cocoa Agreements (of which the first was negotiated in 1973) overseen by the International Cocoa Organisation (ICCO). After a decade of running a quota and buffer stock system, the idea of international cocoa supply management was abandoned, due not only to the problems described above but also to the intransigence of several producer nations.

The only exception to the general failure of international commodity agreements is OPEC (the Organisation of the Petroleum-Exporting Countries), a cartel currently controlling over 40 per cent of the global oil market. Since the 1980s it has set production targets for its member nations, with knock-on effects on global oil prices and member nations' own revenues. The status of oil as a strategic resource on which many elements of economic activity depend, helps to explain OPEC's continued existence.

In more recent years, more attention has been paid to the wider problems of commodity production such as environmental impacts and low incomes. Interest is growing in particular amongst coffee producers in attempting to negotiate a more modern kind of international agreement designed to improve standards of production and rewards for producers without at the same time stimulating output and creating over-supply – though so far no detailed system has been proposed.[29]

A similar option could be explored for cocoa, with consumer-country governments perhaps acting together with producer-country governments to initiate discussions – but it is not at all clear how the problems experienced in earlier decades could be overcome in the short or even medium term.

OPTION 5: ADVANTAGES & DISADVANTAGES

NEGOTIATING AN INTERNATIONAL COMMODITY AGREEMENT FOR COCOA

Governments initiate discussions on an international commodity agreement for cocoa designed to stabilise prices and reward producers.

Advantages

Addresses the problem that cocoa, like many agricultural commodities, is subject to significant price swings on international markets.

Disadvantages

Models have been tried before and have failed; not clear how a new approach could overcome previous problems.

4.5 RECOMMENDATIONS

Achieving change on the ground in producer countries will be essential to the objective of achieving living incomes. For this reason, I recommend that two of the options considered in this section – Option 2 (using development assistance) and 3 (bilateral agreements) should take their place as high-priority measures within a potential package, or 'smart mix', of feasible measures.

The other two options discussed here, however – Options 4 (commitments in FTAs and EPAs) and 5 (an international commodity agreement) – seem highly unlikely to lead to useful outcomes, and are not recommended for action.

5 BUSINESS-FOCUSED OPTIONS: VOLUNTARY

Sections 5 and 6 focus on actions that could be taken by businesses based in consumer countries and/or placing cocoa and chocolate on their markets. This section deals with encouragement for voluntary actions by companies, and also by certification schemes.

5.1 OPTION 6: PROMOTING VOLUNTARY ACTION BY INDUSTRY

A number of cocoa and chocolate companies possess individual commitments to increasing cocoa farmers' incomes. As noted above, Barry Callebaut is committed to raising more than 500,000 cocoa farmers out of poverty (defined by reference to the World Bank poverty threshold) by 2025.

In Germany, seven retail companies – the German Retailers Working Group on Living Income and Living Wages – have committed to a gradual realisation of living wages and living incomes in agricultural supply chains (not just cocoa) for their own-label products.[30] They intend to launch two pilot projects, one on living incomes and one on living wages, by 2025 at the latest.

Few other companies have such specific commitments. Mondelez's Cocoa Life programme contains two relevant indicators: net income from cocoa, and net income from sources other than cocoa. The programme's first impact report, in 2016, concluded that annual farmer income from cocoa in Ghana had risen from around US$183 to nearly $550, equivalent to $1.50 a day or $0.25 per person for an average household of six. Its 2018 report simply said that incomes from cocoa for Cocoa Life farmers in Ghana had grown by 6 per cent in some regions from 2015 to 2018 but declined by 26 per cent in other regions; income levels were not reported, and no information was provided on the other Cocoa Life countries (Côte d'Ivoire, Dominican Republic, Brazil and India).[31]

Mars states, as one of its long-term ambitions, that: 'we believe everyone working within our extended supply chains should earn sufficient income to maintain a decent standard of living'.[32] It also argues, however, that: 'Lifting smallholder farmers and farm workers out of poverty on its own will not ensure long-term supply security for critical raw materials', and 'Companies cannot guarantee overall household income levels, as we can't control all the variables'. The company draws attention instead to the need to invest in the enabling conditions discussed above, which should then lead to an increase in incomes – therefore raising the question discussed in Section 2.3, of the appropriate mix of interventions needed to achieve living incomes.

Governments could encourage companies to adopt specific living income or similar targets and could engage in the arguments raised above about whether incomes should be a specific target. Whether or not the conclusion is that these should be delivered via delivering higher prices or by focusing on enabling conditions, raising the profile of the debate and focusing attention on the impacts of the company's actions would be a positive step. A mapping of existing company commitments would be a helpful start; the Amsterdam Declaration Partnership (see below, Section 5.2) might be a suitable vehicle through which to achieve this.

More broadly, governments could encourage companies to engage in a wider dialogue with all stakeholders in the supply chain aiming at a more balanced distribution of value along the chain, delivering greater value to cocoa producers while not raising consumer prices excessively. On average, cocoa farmers currently receive only between 3 and 7 per cent of the retail price of a chocolate bar, compared to up to 50 per cent in the 1970s and 16 per cent in the 1980s.[33] By comparison, the chocolate brand manufacturers capture about 40 per cent of the price and retailers about 35 per cent. This is likely to require dialogue and collaboration between companies that may be facilitated by the creation of national initiative (see Section 5.2) and a reinterpretation of competition law (see Section 5.3).

OPTION 6: ADVANTAGES & DISADVANTAGES

PROMOTING VOLUNTARY ACTION BY INDUSTRY

Governments encourage companies to adopt specific living income or similar targets, and to address issues of the distribution of value along the supply chain.

Advantages

Several companies already have targets for minimum incomes or enabling conditions contributing to living incomes; promotes debate over living incomes and living income reference prices; requires very little resource.

Disadvantages

Companies not already possessing targets not likely to introduce them; voluntary initiatives have been under way for years and have not solved problems of cocoa sector.

5.2 OPTION 7: ENCOURAGING NATIONAL AND INTERNATIONAL INITIATIVES

National initiatives or alliances could provide a favourable environment to encourage companies to adopt a living income target. Belgium's 'Beyond Chocolate' commitment, for example, aims to tackle deforestation and child labour and ensure a living income for cocoa producers. Adopted in 2018, signatories commit to:

By 2025, ensuring that all chocolate produced and/or sold in Belgium shall comply with a relevant certification standard and/or shall be manufactured from cocoa-based products covered by a corporate sustainability scheme, and that 'Beyond Chocolate' partners shall comply with applicable agreements between governments and companies in the regions included in the Cocoa & Forests Initiative.

By 2030, ensuring that cocoa growers will earn at least a living income and that deforestation due to cocoa growing for the Belgian chocolate sector has ended.[34]

The 'Beyond Chocolate' partnership was put together during 2018, thanks largely to an effective campaign led by Fairtrade Belgium, an ambitious government minister and an industry representing an important sector in the Belgian economy.

The partnership is currently engaged in working out details of implementation, indicator frameworks, monitoring mechanisms and other key features, and is seeking funding for projects to implement the commitments; the Belgian government has contributed finance for living income projects to be conducted by partners. It is clearly too soon to evaluate the impacts of the partnership – though there already appears to have been a rise in sales of Fairtrade products – but ongoing information on its debates and development will be helpful across the sector.

Other national cocoa initiatives feature less specific targets, though discussions are under way in particular on developing specific indicators. In January 2019 the German Federal Ministries for Economic Cooperation and Development and for Food and Agriculture, both members of the German Initiative on Sustainable Cocoa (GISCO), launched a Ten-Point Action Plan for a Sustainable Cocoa Sector, with the aim of delivering the objectives GISCO is committed to. This included the statement that: 'Only if cocoa farmers do not live in poverty will a sustainable cocoa sector be achieved. We support projects aimed at increasing the income of cocoa farmers. This can be done through different approaches, e.g. fair prices for the sold cocoa, a sustainable increase in earnings for cocoa, the diversification of holdings and the creation of further alternative sources of income.'[35]

The government also committed to establishing a Living Income Task Force during 2019 to act on prices and incomes in the cocoa sector; in due course this became the Alliance on Living Income in Cocoa.

GISCO is currently revising its position, and however, and seems likely to incorporate some commitment to living income. The Dutch platform (DISCO) is in the process of formation, but seems likely to include a similar or stronger commitment on living income as the Belgian plan. The Swiss Platform for Sustainable Cocoa (SWISSCO) is committed only to a fairly loose income-related goal: 'In the frame of the Global Agenda 2030, the Cocoa Platform is committed to improving the living conditions of cocoa farmers by 2030 and protecting the planet and its resources.'[36] The four national cocoa initiatives are also formulating means of working together and aligning their objectives more closely, with the Alliance on Living Income in Cocoa as a probable delivery vehicle for living incomes.[37]

Governments in these and other countries could encourage the adoption of specific time-bound living income targets, and facilitate the creation of cocoa alliances and platforms where they do not exist; such organisations are already relatively common for some other commodities, most notably palm oil.

This approach could expand beyond the national level, with like-minded governments creating an international coalition to argue for living incomes (and other aims, such as ending child labour and deforestation) in the cocoa sector, and to promote the exchange of information and best practice about particular policy interventions. The Amsterdam Declaration Partnership, comprising seven European countries, and mainly focused on deforestation, provides one possible home for this approach; between them the seven countries account for 77 per cent of total European cocoa imports.[38] The ultimate aim could be a global initiative of governments and business to enable living incomes in supply chains, perhaps starting with cocoa.

Other forums also offer opportunities to raise the profile of the issue. In 2018, the inclusion of the statement: 'We affirm that the cocoa sector will not be sustainable if farmers are not able to earn a living income' in the Berlin Declaration of the Fourth World Cocoa Conference helped to raise awareness or the issue and advance the debate amongst many stake-holders, for example in the discussions in Belgium that led to the 'Beyond Chocolate' commitment.[39]

While these steps should at least raise the profile of the issue and encourage debate, it is not yet clear what these industry alliances actually achieve on the ground. In common with other broad groupings, there is always likely to be the problem of moving at the speed of the slowest participant.

Having said that, most of the existing cocoa (and other commodity) initiatives are quite new and may yet show positive outcomes.

OPTION 7: ADVANTAGES & DISADVANTAGES

ENCOURAGING NATIONAL AND INTERNATIONAL INITIATIVES

Governments facilitate the creation of cocoa alliances and platforms where they do not already exist, and encourage the adoption of living income targets.

Advantages

Potential to encourage debate on living income issues and adoption of living-income and other targets; eases burden on leading companies and encourages laggards; Amsterdam Declaration Partnership has potential to provide home for international coalition; requires relatively low resource.

Disadvantages

Not clear (so far) what industry alliances actually achieve on the ground in producer countries; may move only at speed of slowest participant.

5.3 OPTION 8: REVIEWING COMPETITION LAW

Both of the options described above in Sections 5.1 and 5.2 require companies to collaborate in setting common goals. Existing competition law, however, places barriers and limits to such collaboration.

European competition law today derives mostly from articles 101 to 109 of the Treaty on the Functioning of the European Union, as well as a series of regulations and directives, and is enforced mainly by DG Competition in the European Commission, in cases with an EU-wide impact, and by member state competition authorities for national cases. It aims to prevent or sanction anti-competitive conduct on the part of business, such as agreements between companies to fix prices or restrict choice, which negatively affect consumers.

The implementation of sustainability objectives often benefits from or requires collaboration, such as industry-wide initiatives aimed at improving human rights or environmental outcomes or farmer incomes. These kind of arrangements are likely to result in higher prices, but they are not aimed at increasing companies' revenues or shares of the market; rather, they seek to internalise environmental or social externalities, and deliver public goods.

Competition law forbids agreements between competitors that produce economic harm to consumers by increasing prices. This can cause real problems for sustainability outcomes. For example, in the 'Chicken of Tomorrow' case in the Netherlands in 2015, government brokered an industry-wide agreement to improve living standards for chickens; parties to the agreement agreed to ban chicken meat produced in a certain manner from supermarkets and to impose minimum standards providing chickens with a better life. The Dutch competition authority, however, considered the agreement to be anti-competitive, arguing that the benefits in terms of animal welfare did not outweigh the adverse effect on competition which had led to price increases.[40]

Research conducted by Fairtrade on the grocery sector in the UK suggested that while companies did not perceive any regulatory barriers to collaborative discussions on issues such as child labour, deforestation or low productivity, they strongly felt that competition law placed severe constraints on discussions about low farmer incomes and wages.[41]

Due to the close relationship between incomes and prices, discussions on low farmgate prices and farmer incomes were a highly sensitive issue that often led businesses to preclude any discussion on the subject whatsoever.

Interviewees for the Fairtrade study described situations in which they had felt obliged to cite strict disclaimers at the beginning of meetings forbidding any reference to prices in the supply chain, or where other companies had refused to attend meetings on the topic, citing competition law risks. Overall, they felt that there was very limited space to discuss even pre-competitive efforts to address low farmgate prices. Interviewees called for clearer guidance on current rules, and a more supportive policy environment, to help unblock the barriers to progress they were experiencing.

The study concluded that while competition law was rightly designed to protect consumers from price-fixing and other harmful practices, 'unless farmers and workers receive higher incomes and wages, the medium to long-term supply of commodities such as cocoa and bananas will be put at risk by loss of labour supply and the worsening impacts of climate change. These impacts will ultimately harm UK consumers, raising retail prices and even potentially compromising the nation's food supply chains.'

Companies can of course take unilateral action to raise the prices they pay for commodities; as noted in Section 2, some are already doing so. This cannot be relied upon as a strategy to achieve higher prices for cocoa farmers, however; any company doing so runs the risk of a competitive disadvantage from an increase in their cost base, leading to a loss of market share to competitors not paying higher prices – and thereby not achieving the objective.

While some consumers are prepared to pay more for ethically sourced products, this is still limited mainly to countries in Western and Northern Europe, and is still a minority of the market. It seems likely that a significant number of retailers, brands and traders will need to work together collectively to take action on the issues of low prices, incomes and wages across cocoa supply chains, ideally to achieve the more balanced distribution of value along the supply chain discussed above in Section 5.1.

Existing competition law appears to have a chilling effect on these kind of collaborative initiatives. There is accordingly a case for it to be given a broader interpretation – perhaps through clarifications issued by the competition authorities, or perhaps by rewriting the relevant legislation (though this would be a much more lengthy undertaking) – to allow businesses to collaborate for long-term sustainability purposes, including the payment of living income reference prices or similar objectives, while not opening up the potential for anti-competitive behaviour. While some of this could possibly be implemented by national competition authorities, it would be carried out more effectively at the EU level, which would involve providing guidance or policies that would clarify the application of the prohibition and the exemption criteria under Article 101 of the EU Treaty.[42] How long and complex a process this review, reinterpretation and possible rewriting would be is not clear and would benefit from further study by legal experts.

OPTION 8: ADVANTAGES & DISADVANTAGES

REVIEWING COMPETITION LAW

Competition law is reinterpreted or rewritten to allow companies to collaborate in the pursuit of public goods such as living incomes.

Advantages

Removal of barriers to companies' ability to collaborate in the pursuit of public goods may remove fear of undercutting by competition.

Disadvantages

Process of reinterpretation or (especially) rewriting competition law likely to be complex and slow.

5.4 OPTION 9: PROMOTING ACTION BY CERTIFICATION SCHEMES

The final option in this section on voluntary measures is aimed at certification schemes. In 2017 an estimated 22 per cent of globally traded cocoa was covered by certification schemes designed to promote the production and consumption of products produced to higher social and/or environmental standards than the market norm.[43] This represents a ten-fold increase from about 2 per cent ten years before, a higher rate of growth of certification of any tropical commodity other than coffee.[44]

While all of the schemes address some of the conditions likely to be necessary to achieve living incomes, only one of the four schemes (Fairtrade) includes mandatory fixed minimum prices and a mandatory fixed premium. Others, such as Rainforest Alliance and Utz (which have now merged) and organic, do not currently contain price-related criteria or fixed premiums. However, as noted in Section 2.1, in June 2020 Rainforest Alliance announced a mandatory 'Sustainability Differential' which will go into effect July 2022 at $70 per tonne.

In 2018 just under 6 per cent of global cocoa production (260,672 tonnes) was sold as Fairtrade. From 1 October 2019 all cocoa sold on Fairtrade terms from Ghana and Côte d'Ivoire has attracted a 20 per cent increased mandatory Fairtrade Premium of $240 per tonne; Latin American and Caribbean countries followed in January 2020. The Fairtrade Minimum Price of $2,400 per tonne also became active in Ghana and Côte d'Ivoire for deliveries. In the October 2019 – March 2020 season the additional Fairtrade Minimum Price differential in Côte d'Ivoire was $235.92 per tonne; this amount must be paid to farmers.[45]

In 2018, sales of Utz-certified cocoa were 965,845 tonnes and of Rainforest Alliance 173,061 tonnes. Utz published an average premium of €83 per tonne; no premium values appear to have been published for Rainforest Alliance.[46] The premium is agreed between the buyer and the certified group or producer.

Assuming that minimum pricing will play an important role in achieving living incomes, it may be possible for governments – particularly if a group or coalition of them can be persuaded to adopt a leadership role (see Section 5.2) – to encourage Rainforest Alliance to incorporate minimum price and non-negotiated premium elements as part of its approach to living incomes.

This also raises the question of Fairtrade's own price premium framework and the extent to which it aligns with the living income objective, and Fairtrade's distinctiveness from other certification schemes.

In addition, the ISEAL Alliance, the global membership organisation for sustainability certification schemes, could be encouraged to promote living incomes, and/or minimum prices, throughout its membership; ISEAL helped to establish the Living Income Community of Practice and still jointly leads it, together with GIZ and the Sustainable Food Lab. A news post on ISEAL's website discussing the issue includes the statement that: 'A variety of levers and methods exists for improving incomes, appropriate for different actors and applicable to a wide variety of settings. For example, focusing on agricultural services, provision of financial and basic services, market access and even gender equality'.[47]

This encouragement may also come from companies, in particular those involved in national initiatives. The German retailer initiative mentioned above in Section 5.1 has as one of its objectives to 'work with relevant standard-setting organisations and support the development of appropriate certification criteria to monitor the progress towards a stepwise integration of living income and living wages as core requirements'.[48]

OPTION 9: ADVANTAGES & DISADVANTAGES

PROMOTING ACTION BY CERTIFICATION SCHEMES

Governments encourage all cocoa and chocolate certification schemes to incorporate minimum price and guaranteed non-negotiable premium elements in principles and criteria.

Advantages

Fairtrade already has such pricing mechanisms in place.

Disadvantages

Certified production a minority of cocoa production; uptake of schemes still voluntary.

5.5 RECOMMENDATIONS

Promoting voluntary action by companies is of some value but is inevitably limited in scope; many of the most progressive companies already possess commitments. Accordingly, I recommend that options 6 and 7 together –encouraging companies to adopt specific living income or similar targets, and to address issues of the distribution of value along the supply chain, and facilitate the creation of cocoa alliances and platforms where they do not already exist – are worth pursuing, but I rate them as relatively lower priority than the high priority options 2, 3 and 12. Option 8 (review of competition law) is similarly of potential value but I would rate it lower-priority.

The remaining measure, option 9 (action by certification schemes) is also of value: a level playing field amongst certification schemes in relation to mandatory financial benefits to the farmer organisations and their members would be beneficial. Again, I rate it as lower-priority.

Voluntary action by businesses can achieve much, but it obviously has its limits; some companies will always seek to avoid the higher costs (perceived or actual) of action to source cocoa responsibly. This section therefore focuses on legislation by the EU and/or its member states that would apply to businesses based in the EU and/or placing cocoa and chocolate on the EU market (in principle, the same options are available to other consumer-country governments).

6 BUSINESS-FOCUSED OPTIONS: REGULATORY

6.1 OPTION 10: USING PUBLIC PROCUREMENT POLICY

Public procurement is the acquisition of goods and services from a third party on behalf of a public agency, such as a government department or local authority. In all EU member states, purchasing by public authorities – central, regional and local as well as their agencies – is significant, accounting for about 12 per cent of GDP on average, though this varies substantially by sector and product.[49]

Many governments use their public procurement policy to encourage the purchase of sustainably or responsibly sourced products for use in the public sector; for example more than 30 countries, mostly in the EU, now require or encourage public-sector purchasers to buy or specify timber products that are legally or sustainably produced (the details differ by country).[50] The public sector is a major purchaser of food and catering services, for schools, nurseries, hospitals, care homes, canteens, prisons and the military, and many governments already include criteria relating to food and catering in their public procurement policy; these are probably more common in local and regional governments than at the central level, though no systematic survey has been conducted.[51] The criteria used include preferences for organic, healthy, seasonal and sometimes fairly traded products; a few governments, including the UK, Sweden and the Netherlands, now include criteria related directly to deforestation for products containing palm oil or soy.

At the EU level, the European Commission publishes voluntary green public procurement (GPP) criteria for a range of products and services, and encourages member states to use them.

The criteria for food and catering, which were updated in 2019, encourage the use of 'fair and ethical trade certification schemes' for products including cocoa and chocolate, coffee, tea, sugar and a number of fruits.[52] Such a scheme is defined as one that 'is based on multi-stakeholder organisations with a broad membership and addresses international fair and ethical trade standards, including working conditions for production in accordance with the core conventions of the International Labour Organisation (ILO), sustainable trade and pricing'.[53]

EU procurement rules do not allow procurement policies to specify particular certification schemes, like Fairtrade; they need to set out criteria that any product can satisfy whether or not it is certified. They do, however, explicitly allow for the inclusion of social and environmental criteria, including products 'of fair trade origin, including the requirement to pay a minimum price and price premium to producers', in award criteria.[54] They also allow procurement policies to identify which certification schemes meet their criteria, making it easier for government purchasers and their suppliers to source products.

In practice public purchasers would almost inevitably need to rely on sourcing certified products. Dealing with hundreds of products, often purchased through wide-ranging procurement services or supplier contracts, public buyers cannot be expected to research the background of all the cocoa or chocolate products they may end up purchasing, and need readily accessible signals or guidance, which are most easily provided through the use of certification schemes. For example, although several EU member states possess quite detailed criteria for sustainable and legal timber, in practice almost all their requirements are met through purchasing products certified under one of the two major global timber certification schemes.

So although public procurement policy could be used to specify that cocoa, or any products containing cocoa, purchased by government buyers would be required to meet minimum criteria for responsible sourcing – including, potentially, living incomes or the payment of living income reference prices – their ability to deliver this would depend on the extent to which the certification schemes were able to supply products which met these criteria. The impact this measure would have therefore depends on the extent to which those schemes themselves promote the elements of living incomes, a matter discussed in Section 5.4.

Given that much food and catering purchasing is probably carried out at regional and local government level, the adoption of procurement policies by these authorities would have more impact than at central level; whether this can be imposed by central government depends on the division of powers between jurisdictions in each country. However, whatever their level, while public authorities are major purchasers of food and catering, they are probably not major buyers of cocoa or chocolate, so the impact of this option is likely to be limited. Nevertheless, it could act as a signal and encouragement to the private sector and to consumers, as timber procurement policies have in at least some countries.

OPTION 10: ADVANTAGES & DISADVANTAGES

USING PUBLIC PROCUREMENT POLICY

Governments use public procurement policy to require cocoa and chocolate products are responsibly sourced, including, potentially, living incomes or the payment of living income reference prices.

Advantages

Sustainable procurement policies already well established in most EU member states; public purchasing criteria sends signal to industry.

Disadvantages

In practice, government buyers likely to rely on purchasing certified products; ability to promote living income or living income reference prices therefore depends on certification scheme criteria; public sector probably not major purchaser of cocoa and chocolate products; local and regional government probably larger purchaser than central government.

6.2 OPTION 11: REQUIRING COMPANIES TO REPORT

Action by companies could be encouraged by requiring them to report on cocoa farmers' income levels in their supply chains, and/or on other elements relevant to living incomes, such as the prices paid. They would not be placed under any obligation to take action to increase income levels, but the exposure that such reports lead to could encourage them to do so. The obligation could be limited to those first placing the cocoa or chocolate products on the EU market, as those most likely to possess detailed information on the sources, or extended further throughout the supply chain.

Companies are already obliged to report on an increasing range of factors in their supply chains, including their suppliers and contractors as well as their own operations. The EU Non-Financial Reporting Directive (2014/95/EU) applies to companies which have more than 500 employees and are of significant public relevance because of the nature of their business, size or corporate status, including listed companies, banks, insurance companies and other companies designated by national authorities as public-interest entities; there are an estimated 6,000 in total in the EU. They are required to report on how the company's performance, position and activities affect environmental, social, employee, human rights, anti-corruption and bribery issues.

Information should cover the company's policies on each issue and their outcomes, its due diligence processes, principal risks, the business relationships, products and services which are likely to cause adverse impacts in those areas of risk, and a description of how the company manages the principal risks.

National legislation implementing the Directive has required companies to start producing reports since 2018. Two analyses of the initial sets of reports suggested that they still had a long way to go in achieving the aims of the Directive. One concluded that while the vast majority of companies acknowledged in their reports the importance of environmental and social issues for their business, 'in only 50 per cent of cases for environmental matters and less than 40 per cent for social and anti-corruption matters, this information is clear in terms of concrete issues, targets and principal risks. The general information that most companies provide does not allow readers to understand their impacts and by extension their development, performance and position, as required by the NFR Directive.'[55] The analysis concluded by recommending that guidance was needed to ensure reports focused on clear indicators and specific risks and greater transparency around high-risk supply chains. The other analysis, focusing on human rights, was similar, concluding that companies were 'severely struggling with their human rights reporting obligations'.[56] It recommended using the UN Guiding Principles reporting framework to ensure human rights due diligence.

The requirement to report is relatively new, and it can be expected that quality will improve over time.

In the UK, Section 54 of the Modern Slavery Act 2015 requires all companies operating in the UK above a specified annual turnover (currently £36 million) to produce an annual slavery and human trafficking statement, including the steps the organisation has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains, and in any part of its own business, or a statement that the organisation has taken no such steps.This is a requirement for transparency rather than action; the company is not required to guarantee that its entire supply chain is slavery-free, but it is assumed that the requirement to publish the statements will raise the profile of the issue and facilitate pressure on the company to improve its performance, for example from campaigning groups or shareholders.

By April 2020, over 10,500 statements had been published (the government estimates that about 9,000–11,000 companies are required to report under the Act), though many of them had not met all the minimum requirements set out in the legislation.[57] An independent review of the supply chain transparency provisions published in January 2019 concluded that the lack of enforcement and penalties, as well as some confusion surrounding the reporting obligations, had helped to render the Act less effective than had been hoped.[58]

It recommended several amendments to the provisions, including drawing up a list of the companies covered, removing the option of stating that the company had taken no action, clarifying the content of statements and enforcing compliance.

Applying a reporting obligation to companies for cocoa farmers' incomes would be a significant development of these existing frameworks – and also a significant challenge; as discussed in Section 2.2, it is not easy to collect data on real incomes. Many of the major cocoa and chocolate companies already report some information on their supply chains through their use of certification schemes or their own initiatives, and some are covered by the EU Non-Financial Reporting Directive. As noted in Section 2, if existing company commitments to raise cocoa farmers' incomes – such as the Barry Callebaut target – are to be achieved, some form of measuring and reporting incomes will be necessary. This information will be more difficult to acquire in cases where companies purchase through traders or middlemen in the countries of origin instead of direct from the farmers. Such a reporting obligation could therefore create an incentive to increase the proportion of direct purchasing, or at least long-term contracts through traders with specific producer organisations, developments which appear to be gradually under way in any case.

The requirement would be more effective if a compliance mechanism was in place; in the UK Modern Slavery Act, for example, the government puts almost no effort into ensuring compliance with the supply chain reporting obligation. There is a danger, however, that in order to report the best possible data, companies may limit their sourcing to the highest earning farmers and exclude the poorest from their supply chains. Having said that, it is not clear what impact imposing a simple reporting obligation really has on companies not already possessing or intending to adopt ambitious objectives. The experience of the requirements described above is not particularly encouraging, though they are relatively recent pieces of legislation, and evidence of their impact is still limited. A reporting obligation could possibly act as a first step towards a due diligence regulation (see Section 6.3); including company reports in the due diligence obligation is good practice.

In 2019 a reporting obligation for living wages in the fashion industry was proposed by The Circle.[59] They suggested a regulation under which companies importing garments would be required to report on whether workers in their supply chains were paid a living wage, either because the country of export imposed a statutory minimum wage adequate to provide one, or because the company's scrutiny of its supply chains had revealed that workers were paid one. If the company could not provide that information, it would be required to report so.

As with the UK Modern Slavery Act, the assumption is that the requirement to publish statements, and to reveal conditions in their supply chains, would itself encourage companies to take action to raise wages. The garment industry is clearly significantly different from cocoa – there are more countries of export and the products are generally produced by workers rather than smallholders – but this proposal does help to highlight the growth of interest in international mechanisms to provide minimum incomes.

OPTION 11: ADVANTAGES & DISADVANTAGES

REQUIRING COMPANIES TO REPORT

Legislation requires companies to report on farmers' income levels, or other elements, such as the prices paid, in their supply chains.

Advantages

Some companies already report or intend to; in general, large companies are familiar with reporting frameworks; could act as first step towards due diligence requirement (option 12).

Disadvantages

Difficult to discover actual incomes of farmers; not clear what impact simple reporting really has; may create incentives for companies to drop low-income suppliers to make their reports look better.

6.3 OPTION 12: INTRODUCING DUE DILIGENCE REGULATION

Introduction

The idea of 'due diligence' can be traced as far back as Roman times. Originally a legal concept – reasonable steps taken by a person in order to avoid committing an offence – it is increasingly being applied to businesses, particularly as regards the impact or potential impact of companies' operations and supply chains on the environment, human rights and social and labour standards. Due diligence can be a voluntary undertaking; in a detailed study conducted for the European Commission and published in 2020, just over a third of the business respondents to the survey conducted for the report indicated that their companies were undertaking due diligence with respect to all human rights and environmental impacts, and a further third were undertaking due diligence limited to certain areas, all primarily on a voluntary basis.[60] Due diligence is increasingly finding its way into regulation, however; the concept is present, for example, in EU legislation on money laundering, hazardous substances, food safety, genetically modified foods and crops, illegally sourced timber and conflict minerals.

In 2011, the UN Guiding Principles on Business and Human Rights were agreed, describing the responsibility of companies to respect human rights (both to avoid infringing the rights of others and to address adverse impacts that occur) and the need for both states and businesses to strengthen access to appropriate and effective remedies for victims of business-related human rights abuses.[61] The Guiding Principles state explicitly that business enterprises should carry out 'human rights due diligence' to 'identify, prevent, mitigate and account for actual or potential adverse human rights impacts a company may be involved in through its own activities or business relationships'.

The publication of the Guiding Principles had an impact on other processes, including revisions of the Organisation for Economic Cooperation and Development (OECD) *Guidelines for Multinational Enterprises*.[62] In 2018 the OECD published *Due Diligence Guidance for Responsible Business Conduct*, which sets out a due diligence framework to be used by enterprises to avoid and address adverse impacts in their operations, supply chains and business relationships, covering human rights, employment and industrial relations, environment, bribery and extortion, consumer interests, and disclosure of information.[63]

This framework is also reflected in the *OECD – FAO Guidance for Responsible Agricultural Supply Chains* published in 2016, which also includes a model enterprise policy outlining the standards enterprises should observe in building responsible agricultural supply chains, a description of the major risks faced by enterprises and the measures to mitigate these risks.[64]

Due diligence is generally understood, in these formulations, as an ongoing process, involving identifying and assessing the actual and potential risks of human rights abuses or other specified impacts, acting upon the findings of this risk analysis, tracking the effectiveness of these actions, communicating how impacts are addressed, and providing remediation or compensation to those adversely affected. Importantly, the company does not absolutely have to guarantee the absence of negative impacts, but it does have to demonstrate that it has taken reasonable steps to avoid them; this would provide a defence against claims of liability. There is a recognition that this is an evolving process, with the standard of care expected to improve over time.

In 2018 the Commission's Action Plan on Financing Sustainable Growth committed to carry out 'analytical and consultative work with relevant stakeholders to assess … the possible need to require corporate boards to develop and disclose a sustainability strategy, including appropriate due diligence throughout the supply chain' (the study published in January 2020 followed on from this).[65]

By March 2020, according to the Business and Human Rights Resource Centre, due diligence initiatives had been adopted or (mainly) discussed in 11 EU member states – Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands and Sweden – and in three other European countries: Norway, Switzerland and the UK.[66]

On 29 April 2020, Didier Reynders, the European Commissioner for Justice, announced his intention to develop a legislative proposal by 2021 requiring businesses to carry out due diligence in relation to the potential human rights and environmental impacts of their operations and supply chains. This was confirmed in May by the Commission's communication on the EU Biodiversity Strategy for 2030, which stated that: 'to ensure environmental and social interests are fully embedded into business strategies, the Commission will put forward a new initiative in 2021 on sustainable corporate governance.'

This initiative, which may take the form of a legislative proposal, will address human rights and environmental duty of care and due diligence across economic value chains in a proportionate way according to different sizes of enterprises.'[67]

Existing models

A number of existing pieces of legislation are of particular relevance in the context of this report.

Like the VPAs discussed in Section 4.2, the **EU Timber Regulation** ((EU)995/2010) arose out of the FLEGT Action Plan aimed to combat illegal logging.[68] Entering fully into operation in 2013, the regulation prohibits the placing of illegally harvested timber and timber products on the EU market, and requires operators who first place such products on the market to implement a system of due diligence in order to minimise the risk of them doing so. Operators trading in such products further down the supply chain are required to keep records of who they buy from and sell to.

Operators' due diligence systems must include means of ensuring access to information on the products and a process of analysing and mitigating against the risk of placing illegal products on the market. This includes obtaining full information on the products, including their legal status and the countries, regions and sometimes forests of origin. The higher the risk of illegal behaviour in the place of origin, the greater the degree of knowledge the operator must have on the product and its chain of custody. The presence of a document verifying legality – such as a document issued by a timber certification scheme – is helpful but not necessarily conclusive, so reliance on certification by itself will not satisfy the regulation.

Member states nominate 'competent authorities' to check compliance by operators, and to receive 'substantiated concerns' from third parties such as NGOs, where illegal behaviour or non-compliance is suspected. Various terms and procedures have been further defined in implementing regulations.

Any timber products accompanied by a FLEGT licence issued by a VPA partner country (see Section 4.2) are considered to have been legally harvested: this provides a 'green lane' for access to the EU market. This has proved an important complement to the VPAs, helping to reassure VPA partner countries that imports to the EU from non-VPA countries will be subject to scrutiny and that there is a direct trade benefit from agreeing a VPA and implementing the licensing scheme.

To date, the prohibition element of the EU Timber Regulation has not been used in a prosecution; proving the illegal origin of products is difficult and would require corroborative information from the country of harvest. Some observers have argued that this element may therefore act more as a signal of intent than as a practical enforcement tool. The due diligence element is likely to have a more lasting impact, requiring companies to scrutinise their supply chains closely, helping to make information about both timber supply chains and company practices more visible and requiring companies to take action to address the risks of sourcing illegal products.

The framers of the regulation accepted that companies would not always be able to guarantee that every single piece of timber they handled had not been illegally produced; their obligation was to make the best efforts they could to put in place due diligence systems effective enough to minimise the risk. Compliance with the regulation has been enforced through competent authorities checking the adequacy of companies' due diligence systems, including issuing letters of correction, injunctions and financial penalties; in most EU member states the extent of checks has steadily increased year on year.

To date there have been no studies analysing exactly how companies are responding to the EU Timber Regulation in terms of their sourcing from producer countries. Anecdotal evidence suggests that while importers may be tending to avoid high-risk sources, there appears to have been no overall impact on volumes of tropical timber imported into the EU.[69] Rather, companies were reducing the number of suppliers they sourced from but working more closely with their remaining suppliers to understand and mitigate against the risk of illegal products entering the supply chain. There also seems to be an increase in the use of timber certification schemes.

The **EU Conflict Minerals Regulation** ((EU)2017/821), which targets the trade in gold, tin, tantalum and tungsten from areas affected by or at high risk of conflict, and will enter fully into force in 2021, is similar in principle to the Timber Regulation.[70]

It differs in only applying to companies above a set threshold of volume of imports, specified in the regulation and different for each mineral and metal (the aim is to place requirements on roughly the top 80 per cent of imports), and in requiring an independent third-party audit of the due diligence system and an annual report from each company.

Both these regulations apply only to companies handling specified commodities. In contrast, the French ***Devoir de Vigilance*** law is a 'horizontal' obligation, applying across a company's entire operations and supply chains.[71] Adopted in February 2017, the *Devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* (Due diligence of corporations and main contractors) law applies to companies incorporated under French law with more than 5,000 employees in France or 10,000 world-wide. Companies subject to the legislation (an estimated 150–200) must exercise due diligence in seeking to identify and avoid human rights violations, breaches of fundamental freedoms, violations of health and safety rights and environmental damage. This includes the identification of risks, procedures for regular assessments of subsidiaries, sub-contractors and suppliers, actions to mitigate risks or prevent serious harm, and mechanisms for alerts and monitoring. The companies must implement a diligence plan setting out these risks and procedures and publish annual reports on their progress.

The state plays no role in monitoring compliance; civil liability mechanisms are available in case of a failure to publish or implement a plan or weaknesses in it, but these must be pursued by third parties such as NGOs. As of January 2020, five such cases were in their early stages.

Surveys and analyses of initial sets of company reports suggest that while the majority of the companies affected had made commitments to due diligence, they had not provided much detail on the way in which they had identified and addressed human rights risks.[72] Risks were often assessed only in regard to the company rather than to the environment or human rights, and without regard to specific high-risk countries or regions; many appeared to be one-off analyses with no information available about how they would be reviewed or updated. Risk mitigation strategies were not always included, and risks relating to sub-contractors were often omitted entirely.

On a more positive note, some of the companies interviewed felt that the legislation had helped to highlight the role of the UN Guiding Principles and due diligence approaches, and would help in integrating responsibilities that were often dispersed widely throughout the company; the quality of reports can be expected to improve. Several companies requested detailed guidance on how to map and address all the human rights and environmental issues arising in their supply chains; the legislation provides only a very broad level of commitment.

In the Netherlands, the **Child Labour Due Diligence Act** adopted in May 2019 requires companies selling to end-users to identify, prevent and if necessary address the issue of child labour in their supply chains. The due diligence requirement can be satisfied by obtaining goods or services from companies that have themselves issued declarations that they have exercised due diligence.

Application to living incomes in cocoa

There is now considerable momentum behind the idea of due diligence, or human rights due diligence, legislation at EU level, both through a broad corporate due diligence requirement, as proposed by Commissioner Reynders, and possibly also as a result of a separate process under way to limit the EU's impact on global forests, through its import of commodities associated with deforestation, including cocoa.[73] In December 2019, three cocoa and chocolate companies – Barry Callebaut, Mars and Mondelez – together with the VOICE Network, Fairtrade and Rainforest Alliance, called for EU-wide due diligence legislation across the cocoa sector, as a central part of a package of measures, including bilateral agreements, designed to support sustainable cocoa production.[74]

The design of any kind of due diligence regulation, whether at EU or at member state level, would need to take into account a number of issues, including:

- Its coverage in terms of products: all products, like the French legislation, or specified commodities, like the EU Timber Regulation (which could be just cocoa, or a wider range of forest risk commodities, or an even wider group)?
- Its application in terms of companies: should a size threshold be applied by, e.g., employment or turnover; should smaller companies have less rigorous obligations; should only those companies first placing products on the market be subject to the regulation?
- Its jurisdictional coverage: does it apply to companies registered, or operating in, or placing products on the market, in the EU, or a member state? (If it applies to all those placing products on the market, EU single market rules mean it would have to be applied EU-wide.)
- Companies' obligations to report on their risks and mitigation actions.
- Procedures for monitoring, enforcement and penalties.
- Requirements for remediation and compensation.

Important though these issues are, they are not dealt with here; the question for this paper is whether a due diligence regulation can be used to address living incomes in the cocoa sector.

This is relevant to, first, the criteria on which the regulation is based: what should companies be required to exercise due diligence to avoid?; and, second, what realistically can companies be expected to do to ensure they source cocoa from farmers in receipt of living incomes?

If the criteria include avoiding abuses of human rights, as in the French legislation, it is generally recognised that the 'internationally recognised human rights' referenced in the UN Guiding Principles and the OECD Guidelines for Multinational Enterprises encompass living incomes.[75] As noted in Section 3.1, there is, however, no internationally recognised definition of what constitutes a living income (or a living wage) – for example, the International Covenant on Economic, Social and Cultural Rights refers to 'an adequate standard of living', whereas the Living Income Community of Practice definition goes beyond basic subsistence and survival and emphasises the notion of 'decency' – and how exactly it should be calculated. (This reinforces the case made in Option 1 (Section 3.1) for efforts to support a wide international debate and consensus.)

In addition, in common with other socio-economic rights, living incomes are subject to the principle of progressive realisation and non-regression: i.e. the recognition that their fulfilment depends on the availability of resources and competing priorities, and can only be achieved over time. Progressive realisation is not an excuse for inaction, however, but implies an obligation of continual progress requiring states to take deliberate steps immediately and in the future; and any regressive steps constitute a violation of those rights, unless they have been duly justified and weighted against the enjoyment of other socio-economic rights.[76] Whether socio-economic rights such as living incomes are justiciable – i.e. can be subject to trial in a court of law – is still a matter of debate.

This discussion is relevant to the obligations of states; but the inclusion of human rights criteria in a due diligence regulation would require companies to accept their responsibility to guarantee living incomes in their supply chains. The due diligence approach, which recognises the need for a gradual improvement in standards over time rather than an instant solution to the problem, is potentially well suited to this – though it does beg the question of how long this evolution should be expected to last, how much their steps are dependent on other stakeholders' actions (such as producer-country governments, or other companies in the supply chain), and how best to judge whether companies' activities are genuinely contributing to this aim or whether they are simply avoiding taking action.

This would be difficult to define in advance, and could be left to gradual interpretation of the law; but the more certainty companies can be given about the direction they should be headed in, the more effective the regulation is likely to be.

Accordingly, given this background, the aim of contributing to living incomes should be explicitly stated in the criteria included in the regulation, and not left to the interpretation of general phrases like 'human rights'. Subsequent guidance could be issued by the regulatory authorities as to how living incomes could be defined and measured.

As recognised in Section 2, there are many ways in which companies' actions can contribute to living incomes, including the payment of living income reference prices, and investments in enabling conditions, and it would also be helpful to include at least some of these in the due diligence criteria. The criteria suggested by the three cocoa and chocolate companies in December 2019 do not, in fact, include measures to achieve living incomes (though the signatories state that their ultimate aim is 'a cocoa supply chain that delivers living incomes to cocoa famers'); they include:

- Respect for the laws of the producer country, including in particular laws relating to: human rights; forced labour and child labour; employment conditions, such as working hours and health and safety conditions; rights of ownership and access to land; and environmental protection, including in particular the protection of forests …
- Respect for internationally recognised human rights, including the ILO core conventions, and respect for land rights consistent with the principles in the Voluntary Guidelines on the Responsible Governance of Tenure.
- Respect for high standards of environmental sustainability, particularly relating to the protection of forests, such as a prohibition on deforestation, the protection of high conservation value and high carbon stock forests, and requirements for new planting.

All of these should help contribute to living incomes. These are fairly specific to cocoa (or forest risk commodities more broadly) and it is doubtful whether they could be expected to be included in the kind of broad horizontal due diligence like the French *Devoir de Vigilance* Act. They could, however, be included in accompanying guidance dealing with specific supply chains; as noted above, some of the companies affected by the legislation have called for greater guidance over what is expected of them (this is particularly true of the obligation to avoid environmental harm, where there is no equivalent of the international human rights instruments).

If the due diligence regulation applies more narrowly, to cocoa or to forest risk commodities, the criteria could be more detailed; though there might still be a case for subsequent guidance, as has been issued, for example, through implementing regulations for the EU Timber Regulation.

Whatever the form of the regulation, it would need to be designed so as to avoid loading the costs of compliance on to suppliers, and creating incentives for companies simply to abandon high-risk areas or communities, including perhaps smallholder farmers, in favour of larger enterprises more able to implement and show compliance with the due diligence criteria, including living incomes (as noted above, there is no evidence that the EU Timber Regulation has led to this outcome, but it has not been systematically studied). Whatever system is implemented would require careful monitoring of its impacts, with the costs of implementation and monitoring borne by the companies (and/or by donors, possibly within the framework of the kind of bilateral agreement envisaged in Section 4.2) rather than by the farmers.

Some kind of traceability systems are likely to be necessary for the implementation of a due diligence regulation, particularly if companies further down the supply chain than those sourcing the cocoa beans are to apply the obligation; they have to have some means of ensuring that their products have been acquired by companies that have themselves exercised due diligence. Certification systems should help in this respect, as they have in the EU Timber Regulation (though they are not likely to be sufficient by themselves), and the national traceability systems envisaged in Option 3 (Section 4.2), or in the Cocoa and Forests Initiative, would help in this respect.

An alternative model could be that of the Dutch Child Labour Due Diligence Act, where companies not carrying out due diligence themselves are required to obtain a statement from their suppliers that those companies have themselves conducted due diligence.

Finally, there is also the possibility of applying due diligence requirements to investors and financial institutions providing finance and financial services to companies dealing with cocoa and cocoa products. In this case they would be required to scrutinise their investments and loans rather than their supply chains, for the presence of whatever criteria were decided upon.

In conclusion, the introduction of a due diligence regulation offers clear opportunities to advance companies' contributions to living incomes. This section has outlined some of the issues that would need to be debated and resolved in regulating in this way; these are not simple to resolve, but they should be included in the discussions over the regulation from the outset.

OPTION 12: ADVANTAGES & DISADVANTAGES

INTRODUCING DUE DILIGENCE REGULATION

Legislation requires companies to exercise due diligence with regard to a range of criteria, including (explicitly) living incomes – either applying to cocoa and cocoa products, or forest risk commodities, or broadly across companies' entire operations and supply chains.

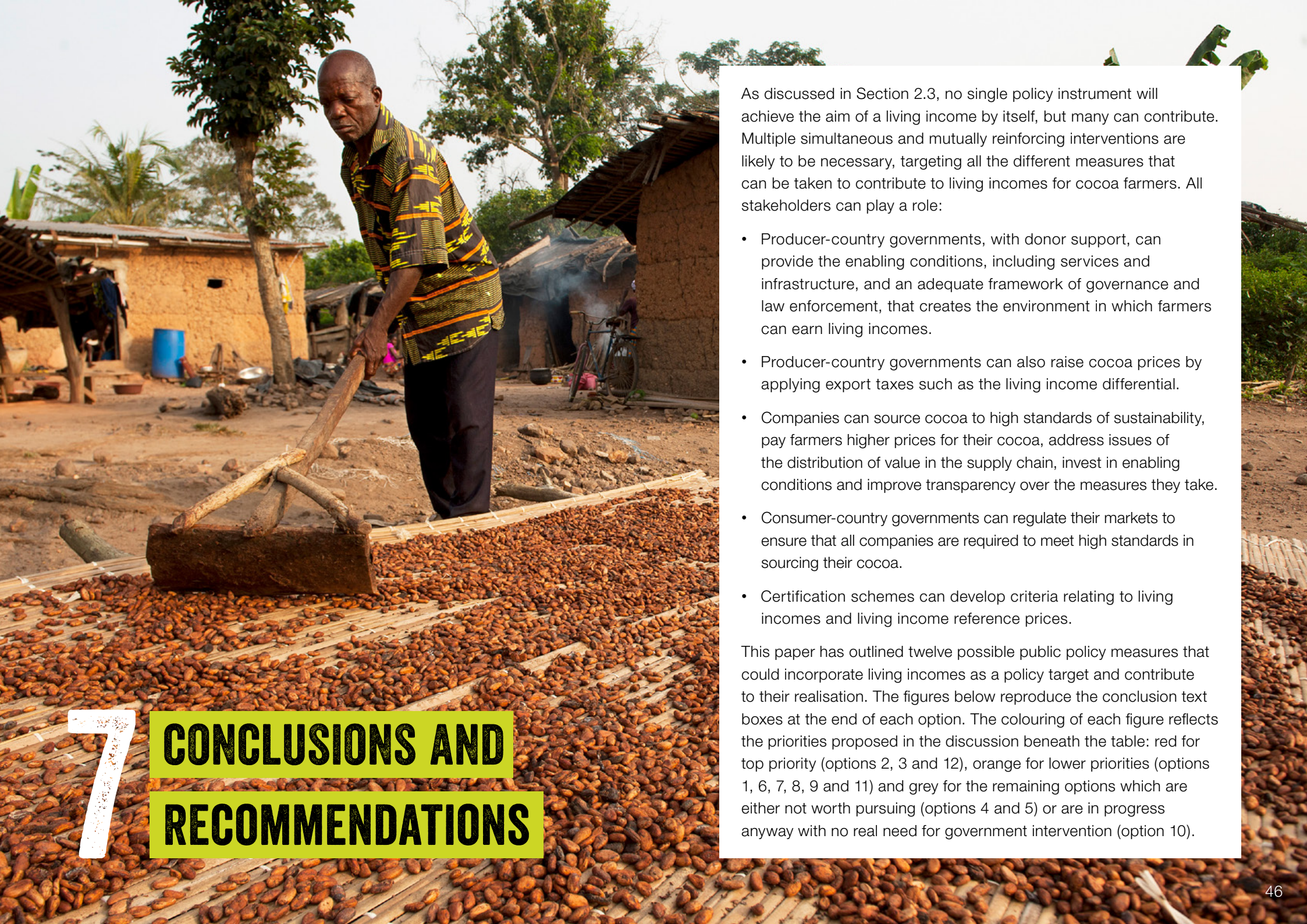
Advantages
Due diligence systems increasingly applied on a voluntary basis, and experience from existing laws; considerable interest amongst governments, civil society and several cocoa and chocolate companies; focuses action on company supply chains; gradual approach well suited to building up contributions to living incomes over time.

Disadvantages
Legislative process likely to take time, as many details of legislation will need to be worked out and companies likely to need specific guidance for cocoa supply chains; implementation not likely to be straightforward; risk of creating incentives for companies to drop low-income suppliers.

6.4 RECOMMENDATIONS

Regulating companies will have greater impact than simply encouraging voluntary action, though at the same time require a greater expenditure of resources and time on the part of governments, so are likely to be slower to implement. Of the three options examined in this section, option 12 (due diligence regulation) is clearly that with the greatest scope, and I therefore recommend it is adopted as a high-priority measure in the final package. A first step towards this obligation could be the imposition of a reporting obligation (option 11), but this should be seen as a transitional mechanism, not as an end in itself.

There may be some scope for including cocoa in public procurement policies (Option 10), but the public sector is probably not a large buyer of cocoa or chocolate, so this is not regarded as a priority measure.



7 CONCLUSIONS AND RECOMMENDATIONS

As discussed in Section 2.3, no single policy instrument will achieve the aim of a living income by itself, but many can contribute. Multiple simultaneous and mutually reinforcing interventions are likely to be necessary, targeting all the different measures that can be taken to contribute to living incomes for cocoa farmers. All stakeholders can play a role:

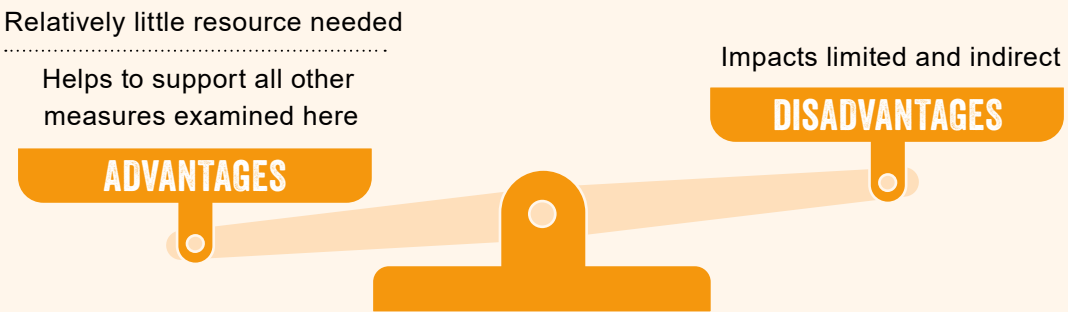
- Producer-country governments, with donor support, can provide the enabling conditions, including services and infrastructure, and an adequate framework of governance and law enforcement, that creates the environment in which farmers can earn living incomes.
- Producer-country governments can also raise cocoa prices by applying export taxes such as the living income differential.
- Companies can source cocoa to high standards of sustainability, pay farmers higher prices for their cocoa, address issues of the distribution of value in the supply chain, invest in enabling conditions and improve transparency over the measures they take.
- Consumer-country governments can regulate their markets to ensure that all companies are required to meet high standards in sourcing their cocoa.
- Certification schemes can develop criteria relating to living incomes and living income reference prices.

This paper has outlined twelve possible public policy measures that could incorporate living incomes as a policy target and contribute to their realisation. The figures below reproduce the conclusion text boxes at the end of each option. The colouring of each figure reflects the priorities proposed in the discussion beneath the table: red for top priority (options 2, 3 and 12), orange for lower priorities (options 1, 6, 7, 8, 9 and 11) and grey for the remaining options which are either not worth pursuing (options 4 and 5) or are in progress anyway with no real need for government intervention (option 10).

OPTION 1

PROMOTING INTERNATIONAL DEBATE ON LIVING INCOMES

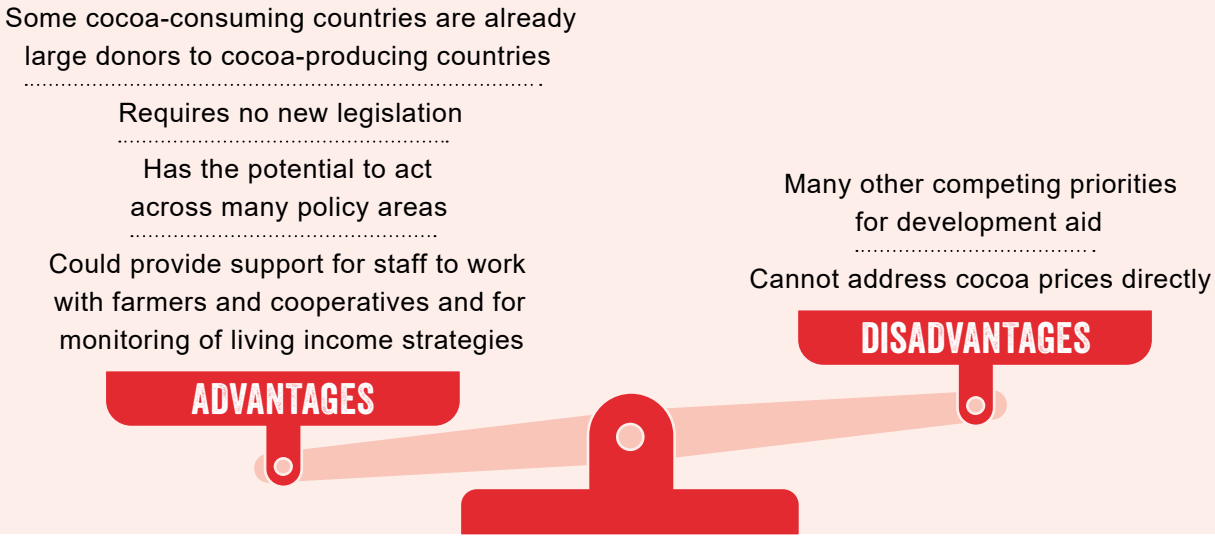
Consumer-country governments, preferably acting together with other stakeholders through the Alliance on Living Income in Cocoa, and with producer-country governments, promote internationally (a) the concept of living incomes as a target and (b) discussion and improved data collection on appropriate levels of living incomes



OPTION 2

USING DEVELOPMENT ASSISTANCE PROGRAMMES

Consumer-country and donor governments use development assistance explicitly to create the enabling conditions for a living income



OPTION 3

REACHING BILATERAL AGREEMENTS WITH PRODUCER COUNTRIES

The EU reaches bilateral agreements with cocoa-producing countries, modelled on FLEGT VPAs

European Commission reportedly interested in pursuing idea

Ghana already possesses VPA, Côte d'Ivoire is negotiating one

Agreement potentially sets framework and mutual commitments specifically for cocoa sector (or forests and land use, more widely)

Positive outcomes in terms of improving governance from some existing VPAs

Commitment to living incomes, or minimum incomes, or a price mechanism such as the living income differential could form part of the agreement

ADVANTAGES

The EU reaches bilateral agreements with cocoa-producing countries, modelled on FLEGT VPAs

DISADVANTAGES

OPTION 4

INCLUDING COMMITMENTS IN TRADE AND PARTNERSHIP AGREEMENTS

Relevant clauses are included in EPAs and/or FTAs

Stepping-stone EPAs (covering development as well as trade) already in place with Ghana and Côte d'Ivoire

ADVANTAGES

EPA model too limited to include detailed sector-specific provisions or broad issues of sustainable development or governance, or living incomes.

FTA model even more limited

DISADVANTAGES

PRIORITY OF OPTIONS: TOP PRIORITY LOWER PRIORITY NOT WORTH PURSUING *OR* IN PROGRESS WITH NO REAL NEED FOR GOVERNMENT INTERVENTION

OPTION 5

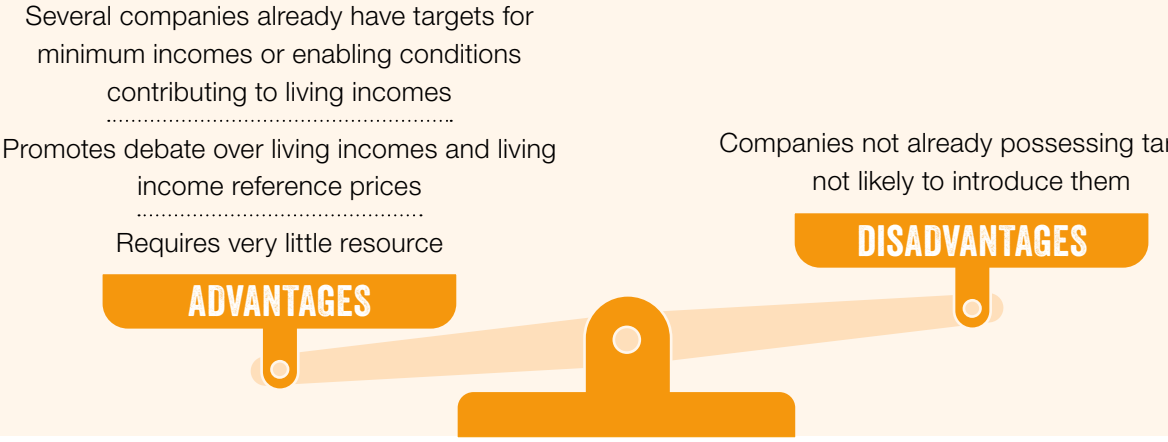
NEGOTIATING AN INTERNATIONAL COMMODITY AGREEMENT FOR COCOA

Governments initiate discussions on an international commodity agreement for cocoa designed to stabilise prices and reward producers

OPTION 6

PROMOTING VOLUNTARY ACTION BY INDUSTRY

Governments encourage companies to adopt specific living income or similar targets, and to address issues of the distribution of value along the supply chain



OPTION 7

ENCOURAGING NATIONAL AND INTERNATIONAL INITIATIVES

Governments facilitate the creation of cocoa alliances and platforms where they do not already exist, and encourage the adoption of living income targets

ADVANTAGES

- Potential to encourage debate on living income issues and adoption of living-income and other targets
- Eases burden on leading companies and encourages laggards
- Amsterdam Declaration Partnership has potential to provide home for international coalition – requires relatively low resource

DISADVANTAGES

- Not clear (so far) what industry alliances actually achieve on the ground in producer countries
- May move only at speed of slowest participant

OPTION 8

REVIEWING COMPETITION LAW

Competition law is reinterpreted or rewritten to allow companies to collaborate in the pursuit of public goods such as living incomes

ADVANTAGES

- Removal of barriers to companies' ability to collaborate in the pursuit of public goods may remove fear of undercutting by competition

DISADVANTAGES

- Process of reinterpretation or (especially) rewriting competition law likely to be complex and slow

PRIORITY OF OPTIONS: TOP PRIORITY LOWER PRIORITY NOT WORTH PURSUING *OR* IN PROGRESS WITH NO REAL NEED FOR GOVERNMENT INTERVENTION

OPTION 9

PROMOTING ACTION BY CERTIFICATION SCHEMES

Governments encourage all cocoa and chocolate certification schemes to incorporate minimum price and guaranteed non-negotiable premium elements in principles and criteria

OPTION 10

USING PUBLIC PROCUREMENT POLICY

Governments use public procurement policy to require cocoa and chocolate products are responsibly sourced, including, potentially, living incomes or the payment of living income reference prices

OPTION 11

REQUIRING COMPANIES TO REPORT

Legislation requires companies to report on farmers' income levels, or other elements, such as the prices paid, in their supply chains

ADVANTAGES

- Some companies already report or intend to
- In general, large companies are familiar with reporting frameworks.
- Could act as first step towards due diligence requirement (option 12)

DISADVANTAGES

- Difficult to discover actual incomes of farmers
- Not clear what impact simple reporting really has
- May create incentives for companies to drop low-income suppliers to make their reports look better

OPTION 12

INTRODUCING DUE DILIGENCE REGULATION

Legislation requires companies to exercise due diligence with regard to a range of criteria, including (explicitly) living incomes – either applying to cocoa and cocoa products, or forest risk commodities, or broadly across companies' entire operations and supply chains

ADVANTAGES

- Due diligence systems increasingly applied on a voluntary basis, and experience from existing laws
- Considerable interest amongst governments, civil society and several cocoa and chocolate companies – focuses action on company supply chains
- Gradual approach well suited to building up contributions to living incomes over time

DISADVANTAGES

- Legislative process likely to take time, as many details of legislation will need to be worked out and companies likely to need specific guidance for cocoa supply chains
- Implementation not likely to be straightforward
- Risk of creating incentives for companies to drop low-income suppliers

Based on the analysis in this paper, most options have something to offer, but some measures are so unlikely to lead to useful outcomes that they are not worth pursuing. This applies in particular to options 4 (commitments in FTAs and EPAs) and 5 (an international commodity agreement).

Two further options may have some value in themselves, but are likely to add little to the higher-priority measure listed below, and are probably not worth consumer-country governments devoting effort to:

- Option 10 (public procurement policies) may have some value in themselves, but is likely to add little to the higher- priority measure listed below, since the public sector is probably not a large buyer of cocoa or chocolate. It is therefore probably not worth consumer-country governments devoting effort to.

Other measures offer more potential. My conclusion, and recommendation, is that a potential package, or 'smart mix', of feasible measures includes the following as top priorities:

- Option 2: Using development assistance to create the enabling conditions for a living income – investment in health, education, governance, support for farmers, etc. – through donors adopting the achievement of living incomes as an explicit objective.
- Option 3: Bilateral agreements between the EU and the main producer countries, including commitments to improve governance, to transform the cocoa sector to sustainable production and to achieve either living incomes or living income reference prices (possibly through or including price mechanisms like the Living Income Differential), together with capacity-building assistance from the EU.
- Option 12: Legislation requiring companies to exercise due diligence with regard to a range of criteria, including (explicitly) living incomes – either applying to cocoa and cocoa products, or forest risk commodities, or broadly across companies' entire operations and supply chains. A first step towards this obligation could be the imposition of a reporting obligation (option 11), but not as an end in itself.

The following options should also have some benefit, but are likely to have lower impact and are therefore of lower priority:

- Option 1: Consumer-country governments, preferably acting together with other stakeholders through the Alliance on Living Income in Cocoa, and with producer-country governments, promote internationally (a) the concept of living incomes as a target and (b) discussion and improved data collection on appropriate levels of living incomes.
- Options 6 and 7 together: Governments encourage companies to adopt specific living income or similar targets, and to address issues of the distribution of value along the supply chain, and facilitate the creation of cocoa alliances and platforms where they do not already exist.
- Option 8: Competition law is reinterpreted or rewritten to allow companies to collaborate in the pursuit of living incomes.
- Option 9: Governments encourage all cocoa and chocolate certification schemes to incorporate minimum price and guaranteed non-negotiable premium elements in principles and criteria.

ANNEX

RESOURCE PERSONS

Many thanks to the following for agreeing to be interviewed or for providing comments on drafts of the paper, or both:

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Anne-Marie Yao, Fairtrade Africa
Fabienne Yver, Fairtrade Advocacy Office

REFERENCES

This list includes all references mentioned in the text, arranged in alphabetical order by author; if no author is shown, by publisher.

2018 Research Report: The state of corporate sustainability disclosure under the EU Non-Financial Reporting Directive (Alliance for Corporate Transparency Project, 2019).

2018/19 Forever Chocolate Progress (Barry Callebaut, 2019).

'Joint position paper on the EU's policy and regulatory approach to cocoa' (Barry Callebaut, Fairtrade International, Mars Wrigley, Mondelez International, Rainforest Alliance, VOICE Network, December 2019).

Sandra Boga, 'Coffee exporters discuss "coffee OPEC", global fund' (IEG Vu Agribusiness, 11 July 2019).

Duncan Brack, *Promoting Legal and Sustainable Timber: Using Public Procurement Policy* (Chatham House, 2014).

Duncan Brack, *Reducing Deforestation in Agricultural Commodity Supply Chains: Using Public Procurement Policy* (Chatham House, 2015).

Duncan Brack, *Towards Sustainable Cocoa Supply Chains: Regulatory options for the EU* (Fern, Fairtrade Advocacy Office and Tropenbos International, June 2019).

Fashion Focus: Towards a Legal Framework for a Living Wage (The Circle, November 2019).

'Civic Response and the EU-Ghana VPA: protecting forests, communities and the climate' (Civic Response Ghana, February 2017).

A Human Rights Review of the EU Non-Financial Reporting Directive (European Coalition for Corporate Justice, 2019).

Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.

Commission action plan on financing sustainable growth (European Commission, 2018).

'Economic Partnership Agreement with West Africa – Facts and figures' (European Commission, November 2017).

Commission Staff Working Document: EU green public procurement criteria for food, catering services and vending machines (European Commission, SWD(2019) 366 final, 27 September 2019).

Craving a Change in Chocolate: How to secure a living income for cocoa farmers (Fairtrade Foundation, 2019).

Fairtrade and Cocoa: Commodity Briefing (Fairtrade Foundation, April 2016).

Fairtrade Living Income Strategy (Fairtrade International, 2017).

Cocoa Farmer Income: The household income of cocoa farmers in Côte d'Ivoire and strategies for improvement (Fairtrade International and True Price, 2018).

'Response to Voice Network's Position Paper on Cocoa Farm Gate Prices for a Living Income' (Fairtrade International, January 2020), https://www.fairtrade.net/news/response-cocoa-farm-gate-prices-for-a-living-income

Tomaso Ferrando and Claudio Lombardi, *EU Competition Law and Sustainability in Food Systems: Addressing the Broken Links* (Fair Trade Advocacy Office, March 2019).

Frank Field MP, Maria Miller MP and Baroness Butler-Sloss, *Independent Review of the Modern Slavery Act – Second interim report: Transparency in supply chains* (January 2019). Also see *Full Disclosure: Towards Better Modern Slavery Reporting* (International Corporate Accountability Roundtable and Focus on Labour Exploitation, March 2019).

Antonie C. Fountain and Friedel Hütz-Adams, 'Necessary Farm Gate Prices for a Living Income: Existing Living Income Reference Prices are Too Low' (Consultation Paper for the 2020 *Cocoa Barometer*, January 2020)

'Commitment by the German Retailers Working Group on Living Income and Living Wages' (not dated), https://www.nachhaltige-agrarlieferketten.org/fileadmin/media/Commitment_by_The_German_Retailers_Working_Group_on_Living.pdf.

Christopher Gilbert, 'International Agreements for Commodity Price Stabilisation: An Assessment' (OECD, 2011).

Ivorian Center for Socio Economic Research (CIRES), *Living Income Report: Rural Côte d'Ivoire* (Living Income Community of Practice, August 2018).

Sophie Long, *Competition Law and Sustainability: A study of industry attitudes towards multi-stakeholder collaboration in the UK grocery sector* (Fairtrade Foundation, 2017).

'Income Position Statement', Mars; https://aus.mars.com/about/policies-and-practices/income-position-statement

Jan Willem Molenaar and David Short, *Strategies to close the living income gap of smallholder farmers: The cases of cocoa in Côte d'Ivoire and rubber in Indonesia* (Aidenvironment, May 2018).

Alan Murray and Katherine Dunn, 'The Coffee Industry Considers Its Own OPEC: CEO Daily' (*Fortune*, 10 July 2019).

V. Nelson, O. Martin-Ortega and M. Flint, *Exploring the Impacts of Human Rights Due Diligence for Workers and Smallholders in Global Supply Chains* (University of Greenwich Natural Resources Institute and BHRE Research Group, forthcoming, 2020).

Oliver Nieburg,'Paying the Price of Chocolate: Breaking Cocoa Farming's Cycle of Poverty', ConfectioneryNews.com, 10 July 2014.

Oliver Nieburg, 'What does "going beyond certification" in cocoa sustainability really mean?', Confectionery news.com, 20 February 2018.

Oliver Nieburg, '"Cocoa Life has not been setup as a marketing tool", says Mondelēz International', Confectionery News.com, 3 October 2019.

OECD Guidelines for Multinational Enterprises (OECD, revised edition, 2011).

OECD-FAO Guidance for Responsible Agricultural Supply Chains (OECD, 2016).

OECD Due Diligence Guidance for Responsible Business Conduct (OECD, 2018).

Office of the UN High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (UNOHCR, 2011).

Rupert Oliver, 'The changing tropical timber trade', presentation to Forest Governance Markets and Climate forum, London, March 2019.

Christine Overdevest and Jonathan Zeitlin, *Experimentalism in Transnational Forest Governance: Implementing EU Forest Law Enforcement Governance and Trade (FLEGT) Voluntary Partnership Agreements in Indonesia and Ghana* (Amsterdam Centre for Contemporary European Studies, SSRN Research Paper 2016/02).

Laurent Pipitone, 'Cocoa markets still "unethical, unfair" despite 10 years of sustainability in the industry', Confectionery news.com, 13 November 2018.

Giancarlo Piscitelli and Anna Gerbrandy, 'The sustainability dilemma in competition law', *Great Insights*, 8:1, Winter 2018/19 (European Centre for Development Policy Management).

Strategies for Responsible Business Conduct (PwC for Netherlands Ministry of Foreign Affairs, December 2018).

Rainforest Alliance, *Cocoa Annual Report 2018: Utz Programme* and *RA Programme* (both May 2019).

'Measures to Strengthen the Cocoa Sector' (Rainforest Alliance, 21 February 2020), https://www.rainforest-alliance.org/business/innovating-certification/measures-to-strengthen-the-cocoa-sector/.

Sheila Senathirajah, 'It's time to deliver a living income for everyone', 4 December 2019; https://www.isealalliance.org/sustainaability-news/its-time-deliver-living-income-everyone

Loi sur le devoir de vigilance des sociétés mères et entreprises donneuses d'ordre – Année 1: Les entreprises doivent mieux faire (Sherpa, February 2019).

Lise Smit et al (British Institute of International and Comparative Law, Civic Consulting and London School of Economics and Political Science, *Study on Due Diligence Requirements Through the Supply Chain* (European Commission, January 2020).

Sally Smith with Daniel Sarpong, *Living Income Report: Rural Ghana* (Living Income Community of Practice, September 2018).

Peter Stanbury and Toby Webb, 'Sustainable cocoa: a manifesto for change', Innovation Forum, 6 February 2020.

Tony's Chocolonely Annual FAIR Report 2018/19.

Marcelo Tyszler, Roger Bymolt and Anna Laven, *Analysis of the income gap of cocoa producing households in Côte d'Ivoire: Comparison of actual incomes with the Living Income Benchmark* (KIT Royal Tropical Institute, 2018)

Marcelo Tyszler, Roger Bymolt and Anna Laven, *Analysis of the income gap of cocoa producing households in Ghana: Comparison of actual incomes with the Living Income Benchmark* (KIT Royal Tropical Institute, 2018).

Carla Veldhuyzen, 'Fairtrade Living Income Reference Prices for Cocoa: an explanatory note' (Fairtrade International, revised version, 2019).

Yuca Waarts et al, *A living income for smallholder commodity farmers and protected forests and biodiversity: how can the private and public sectors contribute?* (Wageningen Economic Research, November 2019).

Holger Weimar and Georg Becher, 'Timber Trade and the EUTR' (Thünen Institute of International Forestry and Forest Economics), presentation at conference on 'Timber trade and the conservation of forests, Hamburg, October 2018.

ENDNOTES

1 https://www.living-income.com.
2 Sally Smith with Daniel Sarpong, Living Income Report: Rural Ghana (Living Income Community of Practice, September 2018); Ivorian Center for Socio Economic Research (CIRES), Living Income Report: Rural Côte d'Ivoire (Living Income Community of Practice, August 2018).
3 Carla Veldhuyzen, 'Fairtrade Living Income Reference Prices for Cocoa: an explanatory note' (Fairtrade International, revised version, 2019).
4 'Measures to Strengthen the Cocoa Sector' (Rainforest Alliance, 21 February 2020), https://www.rainforest-alliance.org/business/innovating-certification/measures-to-strengthen-the-cocoa-sector/.
5 Antonie C. Fountain and Friedel Hütz-Adams, 'Necessary Farm Gate Prices for a Living Income: Existing Living Income Reference Prices are Too Low' (Consultation Paper for the 2020 Cocoa Barometer, January 2020).
6 'Response to Voice Network's Position Paper on Cocoa Farm Gate Prices for a Living Income' (Fairtrade International, January 2020), https://www.fairtrade.net/news/response-cocoa-farm-gate-prices-for-a-living-income.
7 For a longer discussion, see https://www.living-income.com/measurement-actual-income.
8 Marcelo Tyszler, Roger Bymolt and Anna Laven, Analysis of the income gap of cocoa producing households in Côte d'Ivoire: Comparison of actual incomes with the Living Income Benchmark (KIT Royal Tropical Institute, 2018); Marcelo Tyszler, Roger Bymolt and Anna Laven, Analysis of the income gap of cocoa producing households in Ghana: Comparison of actual incomes with the Living Income Benchmark (KIT Royal Tropical Institute, 2018).
9 Cocoa Farmer Income: The household income of cocoa farmers in Côte d'Ivoire and strategies for improvement (Fairtrade International and True Price, 2018).
10 2018/19 Forever Chocolate Progress (Barry Callebaut, 2019).
11 Cocoa Farmer Income, p. 30.
12 Tony's Chocolonely Annual FAIR Report 2018/19, p. 25.
13 2018/19 Forever Chocolate Progress (Barry Callebaut, 2019).
14 Fairtrade Living Income Strategy (Fairtrade International, 2017).
15 Yuca Waarts et al, A living income for smallholder commodity farmers and protected forests and biodiversity: how can the private and public sectors contribute? (Wageningen Economic Research, November 2019).
16 Jan Willem Molenaar and David Short, Strategies to close the living income gap of smallholder farmers: The cases of cocoa in Côte d'Ivoire and rubber in Indonesia (Aidenvironment, May 2018).
17 See Peter Stanbury and Toby Webb, 'Sustainable cocoa: a manifesto for change', Innovation Forum, 6 February 2020.
18 OECD DAC data at http://www.oecd.org/development/financing-sustainable-development/development-finance-data/aid-at-a-glance.htm.
19 Craving a Change in Chocolate: How to secure a living income for cocoa farmers (Fairtrade Foundation, 2019).
20 See https://align-tool.com.
21 The nine countries with which VPAs have been concluded are Cameroon, Central African Republic, Ghana, Guyana, Honduras, Indonesia, Liberia, Republic of Congo and Viet Nam (the VPAS in Guyana and Honduras have not yet entered into force). The six with which negotiations are ongoing or anticipated shortly to start are Democratic Republic of the Congo, Gabon, Lao People's Democratic Republic, Malaysia and Thailand. See http://www.euflegt.efi.int/vpa.
22 Christine Overdevest and Jonathan Zeitlin, Experimentalism in Transnational Forest Governance: Implementing EU Forest Law Enforcement Governance and Trade (FLEGT) Voluntary Partnership Agreements in Indonesia and Ghana (Amsterdam Centre for Contemporary European Studies, SSRN Research Paper 2016/02), pp. 60–61.
23 'Civic Response and the EU-Ghana VPA: protecting forests, communities and the climate' (Civic Response Ghana, February 2017).
24 Rupert Oliver, 'The changing tropical timber trade', presentation to Forest Governance Markets and Climate forum, London, March 2019.
25 https://www.worldcocoafoundation.org/initiative/cocoa-forests-initiative/.
26 'Economic Partnership Agreement with West Africa – Facts and figures' (European Commission, November 2017).
27 See https://ec.europa.eu/trade/policy/countries-and-regions/regions/west-africa/index_en.htm.
28 For a longer discussion, see Christopher Gilbert, 'International Agreements for Commodity Price Stabilisation: An Assessment' (OECD, 2011).
29 See, for example, Alan Murray and Katherine Dunn, 'The Coffee Industry Considers Its Own OPEC: CEO Daily' (Fortune, 10 July 2019); Sandra Boga, 'Coffee exporters discuss "coffee OPEC", global fund' (IEG Vu Agribusiness, 11 July 2019).
30 Aldi Nord, Aldi Süd, dm-drogerie markt, Kaufland, Lidl, REWE Group and Tegut. See https://www.nachhaltige-agrarlieferketten.org/en/news/translate-to-english-living-income-arbeitsgruppe-gemeinsame-erklaerung/.
31 Oliver Nieburg, '"Cocoa Life has not been setup as a marketing tool", says Mondelēz International', Confectionery News.com, 3 October 2019.
32 'Income Position Statement', Mars; https://aus.mars.com/about/policies-and-practices/income-position-statement.
33 Fairtrade and Cocoa: Commodity Briefing (Fairtrade Foundation, April 2016); Oliver Nieburg,'Paying the Price of Chocolate: Breaking Cocoa Farming's Cycle of Poverty', ConfectioneryNews.com, 10 July 2014.
34 See https://www.idhsustainabletrade.com/initiative/beyondchocolate/.
35 See summary in English at https://www.worldcocoafoundation.org/blog/germany-presents-10-points-action-plan-for-a-sustainable-cocoa-sector/.
36 See https://www.kakaoplattform.ch/en/activities/our-goals/.
37 Antonie Fountain (VOICE Network), pers. comm., March 2020.
38 See https://ad-partnership.org/commodities/cocoa/.
39 See https://www.icco.org/about-us/icco-news/387-berlin-declaration-of-the-fourth-world-cocoa-conference.html.
40 See discussion in Giancarlo Piscitelli and Anna Gerbrandy, 'The sustainability dilemma in competition law', Great Insights, 8:1, Winter 2018/19 (European Centre for Development Policy Management).
41 Sophie Long, Competition Law and Sustainability: A study of industry attitudes towards multi-stakeholder collaboration in the UK grocery sector (Fairtrade Foundation, 2017).
42 For a longer discussion, see Tomaso Ferrando and Claudio Lombardi, EU Competition Law and Sustainability in Food Systems: Addressing the Broken Links (Fair Trade Advocacy Office, March 2019).
43 Oliver Nieburg, 'What does "going beyond certification" in cocoa sustainability really mean?', Confectionery news.com, 20 February 2018.
44 Laurent Pipitone, 'Cocoa markets still "unethical, unfair" despite 10 years of sustainability in the industry', Confectionery news.com, 13 November 2018.
45 Figures provided by Fairtrade International.
46 Rainforest Alliance, Cocoa Annual Report 2018: Utz Programme and RA Programme (both May 2019).
47 Sheila Senathirajah, 'It's time to deliver a living income for everyone', 4 December 2019; https://www.isealalliance.org/sustainability-news/its-time-deliver-living-income-everyone
48 'Commitment by the German Retailers Working Group on Living Income and Living Wages' (not dated), https://www.nachhaltige-agrarlieferketten.org/fileadmin/media/Commitment_by_The_German_Retailers_Working_Group_on_Living.pdf.
49 For a longer discussion, see Duncan Brack, Reducing Deforestation in Agricultural Commodity Supply Chains: Using Public Procurement Policy (Chatham House, 2015).
50 Duncan Brack, Promoting Legal and Sustainable Timber: Using Public Procurement Policy (Chatham House, 2014).
51 Brack, Reducing Deforestation in Agricultural Commodity Supply Chains: Using Public Procurement Policy.
52 Commission Staff Working Document: EU green public procurement criteria for food, catering services and vending machines (European Commission, SWD(2019) 366 final, 27 September 2019).
53 Ibid., p. 14.
54 Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, Recital 97.
55 2018 Research Report: The state of corporate sustainability disclosure under the EU Non-Financial Reporting Directive (Alliance for Corporate Transparency Project, 2019).
56 A Human Rights Review of the EU Non-Financial Reporting Directive (European Coalition for Corporate Justice, 2019).
57 See https://www.modernslaveryregistry.org.
58 Frank Field MP, Maria Miller MP and Baroness Butler-Sloss, Independent Review of the Modern Slavery Act – Second interim report: Transparency in supply chains (January 2019). Also see Full Disclosure: Towards Better Modern Slavery Reporting (International Corporate Accountability Roundtable and Focus on Labour Exploitation, March 2019).
59 Fashion Focus: Towards a Legal Framework for a Living Wage (The Circle, November 2019)
60 Lise Smit et al (British Institute of International and Comparative Law, Civic Consulting and London School of Economics and Political Science, Study on Due Diligence Requirements Through the Supply Chain (European Commission, January 2020).
61 Office of the UN High Commissioner for Human Rights, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (UNOHCR, 2011).
62 OECD Guidelines for Multinational Enterprises (OECD, revised edition, 2011).
63 OECD Due Diligence Guidance for Responsible Business Conduct (OECD, 2018).
64 OECD-FAO Guidance for Responsible Agricultural Supply Chains (OECD, 2016).
65 Commission action plan on financing sustainable growth (European Commission, 2018).
66 See https://www.business-humanrights.org/en/national-movements-for-mandatory-human-rights-due-diligence-in-european-countries.
67 EU Biodiversity Strategy for 2030 – Bringing nature back into our lives (European Commission, 2020).
68 See http://ec.europa.eu/environment/forests/timber_regulation.htm.
69 See, e.g., Holger Weimar and Georg Becher, 'Timber Trade and the EUTR' (Thünen Institute of International Forestry and Forest Economics), presentation at conference on 'Timber trade and the conservation of forests, Hamburg, October 2018.
70 See http://ec.europa.eu/trade/policy/in-focus/conflict-minerals-regulation/.
71 http://www.csrandthelaw.com/2017/02/28/french-national-assembly-adopts-corporate-duty-of-vigilance-law/
72 See Strategies for Responsible Business Conduct (PwC for Netherlands Ministry of Foreign Affairs, December 2018); Loi sur le devoir de vigilance des sociétés mères et entreprises donneuses d'ordre – Année 1: Les entreprises doivent mieux faire (Sherpa, February 2019).
73 For a full discussion, see Duncan Brack, Towards Sustainable Cocoa Supply Chains: Regulatory options for the EU (Fern, Fairtrade Advocacy Office and Tropenbos International, June 2019).
74 'Joint position paper on the EU's policy and regulatory approach to cocoa' (Barry Callebaut, Fairtrade International, Mars Wrigley, Mondelez International, Rainforest Alliance, VOICE Network, December 2019).
75 This relies on interpretations of the various international instruments; for a full discussion, see V. Nelson, O. Martin-Ortega and M. Flint, Exploring the Impacts of Human Rights Due Diligence for Workers and Smallholders in Global Supply Chains (University of Greenwich Natural Resources Institute and BHRE Research Group, forthcoming, 2020).
76 See ibid; and 'Progressive Realisation and Non-regression', ESCR-net at https://www.escr-net.org/resources/progressive-realisation-and-non-regression.

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