

WSRW REPORT – APRIL 2017

# P FOR PLUNDER

**Morocco's exports  
of phosphates from  
occupied Western Sahara**

*Fertilizer companies from across the globe import controversial phosphate rock from Western Sahara, under illegal Moroccan occupation. This report shows which of them imported in 2016.*

# 2016



**WSRW** WESTERN SAHARA  
RESOURCE WATCH

From 2016, a joint-venture in India has from nowhere become the second biggest importer of phosphates from occupied Western Sahara.



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#### **Front page**

The world's largest conveyor belt transports phosphate rock from Bou Craa mines to the coast

#### **Photos**

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Rick Vince (p. 21),  
John Tordai (p. 32)

#### **Design**

Lars Høie

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

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# Executive Summary

*All life on the planet, and so all agricultural production, depends on phosphorus, P. The element is found in phosphate rock and turned into fertilizers. For the people of Western Sahara, their P does not grow into benefits. It's rather the opposite.*

For the fourth time, Western Sahara Resource Watch publishes a detailed overview of the companies involved in the purchase of phosphates from occupied Western Sahara. The illegally exploited phosphate rock is the Moroccan government's main source of income from the territory it holds contrary to international law. Representatives of the Saharawi people have been consistently outspoken against the trade, both in the UN, generally, and to specific companies.

The list we present in this report is complete for calendar year 2016, naming all shipments of phosphates from occupied Western Sahara. This report attributes the purchases of Morocco's production in Western Sahara in 2016 to eight identified and one unknown importing companies in eight countries internationally.

The report details a total exported volume from Western Sahara in 2016 at 1.86 million tonnes, with an estimated value of \$213.7 million, shipped in 37 bulk vessels. That constitutes a slight increase in exports from the year before, after an unusually low export in 2015 due to infrastructure failures for the exporter. The largest importer in 2016 was Agrium Inc. from Canada.

Several clients internationally have abstained from the controversial imports over the last year. A remarkable development of 2016, is was the entry into the game of a subsidiary of OCP in India. OCP exported to its own company in India a volume of 344,000 tonnes phosphate rock, at a value of \$ 39,6 million, making OCP's Indian joint-venture the second biggest importer of OCP's own exports from Western Sahara.

Of the nine identified importing companies in 2016, three are registered on international stock exchanges or are majority owned by enterprises which are listed. All have been subject to blacklisting by ethically concerned investors because of this trade.

Of the remaining six companies not registered on any stock exchange, two are farmer owned cooperatives in New Zealand, two are fully or partially owned by the Government of Venezuela, one is partially owned by the Government of India, while one is privately owned.

WSRW calls on all companies involved in the trade to immediately halt all purchases of Western Sahara phosphates until a solution to the conflict has been found. Investors are requested to engage or divest unless action is taken.

## List of Abbreviations

DWT	Deadweight tonnage
OCP	Office Chérifien des Phosphates SA
UN	United Nations
US \$	United States Dollar

# The Controversy



Morocco's claim to sovereignty over Western Sahara is not recognised by any state, nor by the UN. Its arguments to claim the territory were rejected by the International Court of Justice.<sup>2</sup>

The UN Legal Office has analysed the legality of petroleum exploration and exploitation in Western Sahara, a resource extraction activity – one now in exploration stages – that is of a similar nature. The UN concluded that “if further exploration and exploitation activities were to proceed in disregard of the interests and wishes of the people of Western Sahara, they would be in violation of the international law principles applicable to mineral resource activities in Non-Self-Governing Territories.” Drawing on the subsequent judgement of the Court of Justice of the European Union and the Legal Opinion of the Office of Legal Counsel of the African Union, international law actually places the consent of the people of Western Sahara as the prerequisite for any activity in relation to the occupied territory, even without it being necessary to determine whether such activity is likely to harm or on the contrary benefit the people.<sup>3</sup>

Yet, only weeks after the 1975 invasion of the territory, the phosphorus of the Bou Craa mine in Western Sahara was being exported to fertilizer companies in North America, Latin America, Europe and Australasia. The Bou Craa mine is managed by the Office Chérifien des Phosphates SA (OCP), now known simply as OCP SA, Morocco's national phosphate company and today responsible for that country's biggest source of income from Western Sahara.

Phosphates de Boucraa S.A. (Phosboucraa) is a fully owned subsidiary of OCP. Its main activities are the extraction, beneficiation, transportation and marketing of phosphate ore of the Bou Craa mine, including operation of a loading dock and treatment plant located on the Atlantic coast at El Aaiun. OCP puts production capacity

in Western Sahara at 2.6 million tonnes annually.<sup>4</sup> Though OCP claims that Bou Craa mines represent only 1% of all phosphate reserves exploited by Morocco<sup>5</sup>, no less than a quarter of its exported phosphate rock departs from El Aaiun.<sup>6</sup> The exceptionally high quality of Western Sahara's phosphate ore makes it a much coveted commodity for producers of fertilizers.

However, that tale could be coming to an end. The Bou Craa phosphate deposit consists of two layers. Until 2014, only the first, top layer had been mined. This particular layer contained phosphate rock of the highest quality across all reserves controlled by OCP. In 2014, Bou Craa phosphate mining moved on to the second layer, which is of lower quality.<sup>7</sup> Morocco has sold all of the high quality phosphate that ought to have been available to the Saharawi people upon realizing their right to self-determination.

OCP claims that Phosboucraa is the largest private employer in the area, with around 2,100 employees<sup>8</sup> – more than half of those are said to be locally recruited. It also alleges that Phosboucraa is a major provider of economic viability and well-being of the region's inhabitants. OCP equally boasts the social impact of Phosboucraa, in terms of providing pensions to retirees, medical and social advantages to employees, retirees and their families, etc.<sup>9</sup> OCP presents the purported economic and social benefits as a justification for its exploitation of phosphate mines outside of Morocco's long-settled, internationally recognized borders.<sup>10</sup>

Morocco uses the Bou Craa phosphates for its political lobby-work to gain the support of other countries for its illegal occupation. An official Moroccan government document leaked in 2014 literally states that Western Sahara's resources, including phosphate, should be used “to implicate Russia in activities in the Sahara”. The document goes on to say that “in return, Russia could guarantee a freeze on the Sahara file within the UN.”<sup>11</sup>

Unemployed Saharawi graduates protested against OCP's employment policies from December 2015. For over a month, there were daily demonstrations in the streets of El Aaiun. Protests have continued ever since. In March 2017, a group of 60 unemployed Saharawis took control of a bus owned by Phosboucraa, and threatened to collectively self-immolate in protest of “the systematic marginalisation of Saharawis by the Moroccan occupying regime”.

***“Western Sahara has been under Moroccan occupation since 1975 and is on the United Nations’ list of non-self-governing territories that should be decolonised. The UN’s legal counsel stated in January 2002 that exploration of mineral resources in Western Sahara without local consent would be in breach of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.”***

Swedish government pension fund, AP-Fonden, upon exclusion of PotashCorp and Incitec Pivot from its portfolios.<sup>12</sup>

***“Agrium’s purchase of phosphates from Western Sahara by means of a long-term contract with OCP constitutes an unacceptable risk of complicity in the violation of fundamental ethical norms, and thereby contravenes KLP’s guidelines for responsible investment.”***

Norwegian insurance company KLP regarding its divestments from Agrium Inc.<sup>13</sup>

***“Illegal exploitation of natural resources”***

Fonds de Compensation commun au régime général de pension, Luxembourg, 15 November 2014, upon blacklisting of all involved phosphates companies.<sup>14</sup>

***“Human rights violations in Western Sahara”***

PGB Pensioenfonds, the Netherlands, third quarter of 2015, upon excluding OCP SA from its portfolios.<sup>15</sup>

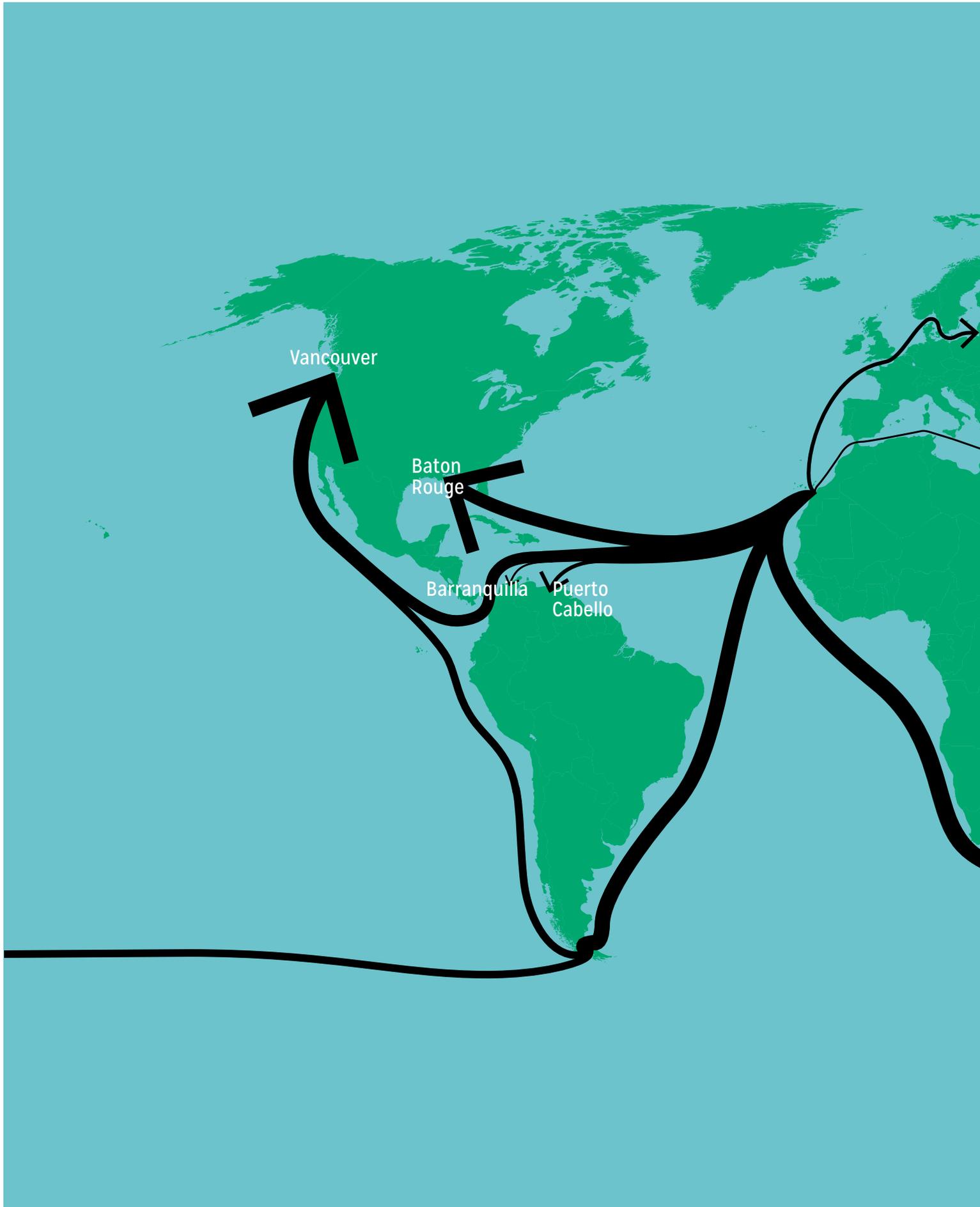
***“The Council does not believe that the company has been able to show that the business is consistent with the interests and wishes of the local population. Based on an assessment that further dialogue will not be productive, the Council has recommended that the AP Funds divest Agrium.”***

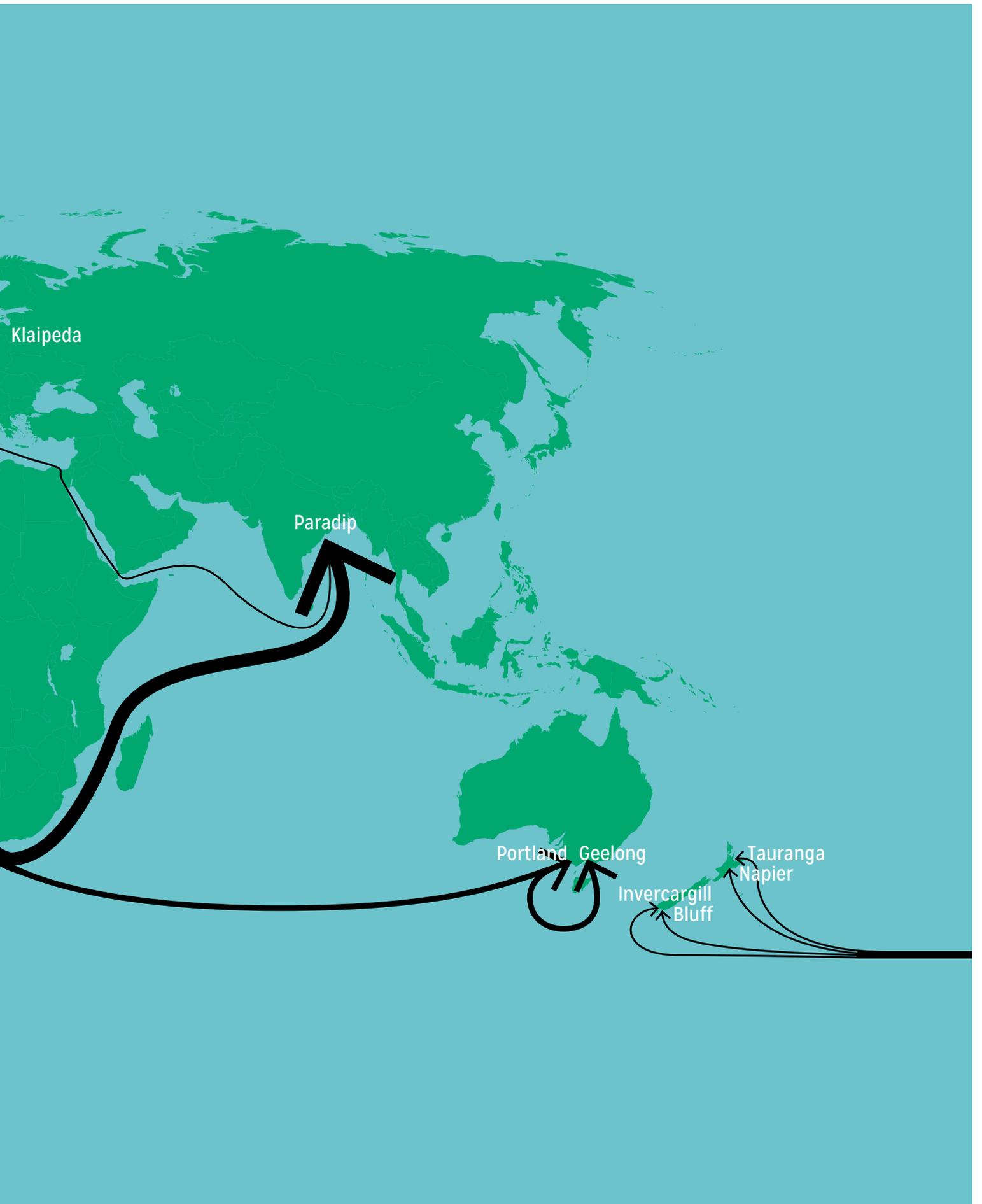
Swedish Ethical Council, 9 April 2015, explaining why all Swedish government funds have now divested from Agrium Inc.<sup>16</sup>

***“Companies buying phosphate from Western Sahara are in reality supporting Morocco’s presence in the territory, since the phosphate is sold by the state-owned Moroccan company OCP and it must be assumed that the revenues generated by the operation largely flow to the Moroccan State. In its present form, OCP’s extraction of phosphate resources in Western Sahara constitutes a serious violation of norms. This is due both to the fact that the wishes and interests of the local population are not being respected and to the fact that the operation is contributing to the continuance of the unresolved international legal situation, and thus Morocco’s presence and resource exploitation in a territory over which it does not have legitimate sovereignty.”***

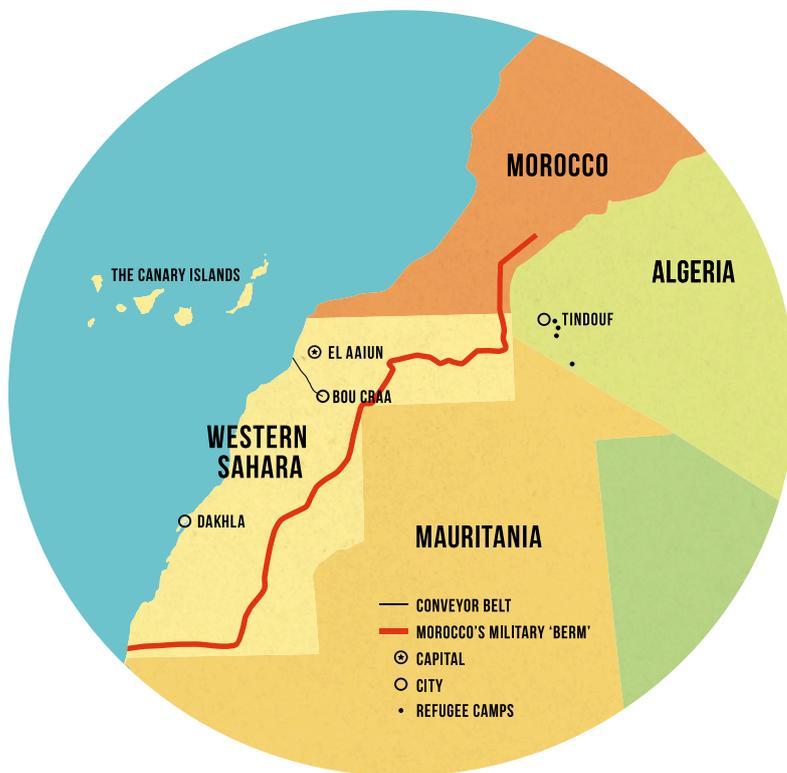
Council of Ethics of the Norwegian government’s pension fund, upon blacklisting Innophos Holdings Inc. in January 2015.<sup>17</sup>

# The Shipments





# The Moroccan take-over of Bou Craa mine



**1947:** Western Sahara's phosphate reserves are discovered 130 kilometres southeast of El Aaiun in a place called Bou Craa. The discovery of phosphate reserves is the first potential source of mineral revenues for the colonial power, Spain.<sup>18</sup>

**July 1962:** The Empresa Nacional Minera del Sahara is founded in order to operate the mine, which is owned by a Spanish public industrial sector company.

**May 1968:** The company is renamed Fosfatos de Bucraa, S.A., also known as Phosboucraa or Fos Bucraa.

**1972:** Spain starts to operate the mine. Many Spaniards find employment in the mines, as did the Saharawis; the native population of the Spanish Sahara, as the territory is known at the time.

**1975:** Mounting international pressure to decolonise forces Spain to come up with a withdrawal strategy from Spanish Sahara. A UN mission that was sent to Spanish Sahara in view of an expected referendum predicts that Western Sahara could very well become the world's second largest exporter of phosphates, after Morocco. Maintaining a claim to the phosphate deposits is a key consideration for the colonial power. Failing to decolonise Western Sahara properly, by allowing the people of the territory to exercise their right to self-determination, Spain strikes a deal; through the Madrid Accords. It illegally transfers administration over the territory to Morocco

and Mauritania, while retaining a 35% share of the Bou Craa mine. No state in the world, the UN, nor the people of Western Sahara, recognises the transfer of authority from Spain to the two states. Mauritania withdraws in 1979, admitting it had been wrong to claim and to occupy the territory. At the same time in 1975, recouping his authority after two failed coups d'état, Morocco's King Hassan II orders the Moroccan army to invade Western Sahara. The King may have hoped that this would give Morocco as much leverage to determine world phosphate prices as OPEC has over oil prices.<sup>19</sup>

**1 January 1976:** The Madrid Accords come into effect and after a transition period of 16 months OCP would take over the management of the mines.<sup>20</sup>

**2002:** Spain sells its 35% ownership of Bou Craa.

**2014:** OCP files for public subscription on the Irish Stock Exchange an inaugural bond issue of US \$1.55 billion.<sup>21</sup> It files a similar debt financing prospectus on the Exchange a year later<sup>22</sup>

**2017:** Morocco continues to operate the mine in occupied Western Sahara.



### Large plans

An investment and development program worth US \$2.45 billion has been developed by OCP across all its operations the period 2012-2030. In that timeframe, the program will aim to modernize the Bou Craa mine, develop deeper phosphate layers, create higher added-value products for exports, increase the El Aaiun harbour capacity for phosphate activities and expand the social and sustainable development projects in the Bou Craa area.<sup>23</sup>

OCP states that, as part of its long-term investment program, industrial development investments are planned, such as mining investments (worth around US \$250 million) that will include the building of a flotation/washing unit and upgrading of extraction equipment, as well as new infrastructure to extract lower phosphate layers.<sup>24</sup>

On 7 November 2015, exactly 40 years after Morocco's invasion of Western Sahara, OCP announced it would invest \$1.9 billion in Phosboucraa. The stated main objective is to develop Phosboucraa's industrial capacity, in particular by installing a fertilizer production plant. In addition the logistic capacity of Phosboucraa is apparently to be reinforced.<sup>25</sup>

### Peak P

Phosphate is a vital component of the fertilizers upon which much of the global food production and food security depends. For some time, there has been concern about the world population's reliance on a finite supply of phosphorus, and the implications of this for agricultural productivity, food prices and nutrition, particularly in developing countries. The term "peak phosphorus" has joined the concept of "peak oil" in the lexicon of 21st century scarcity. There are no substitutes for phosphorus in agriculture.<sup>26</sup>

Morocco, including Western Sahara or not, controls the world's biggest phosphate reserves and is the third largest producer of phosphates in the world.<sup>27</sup>

The increasing global need for phosphate rock and fertilizers was a contributing factor in the oddly fluctuating market price of the commodity in 2008. As global food demand and food prices have increased, there has been an added demand for phosphate. In this report, the average price of phosphate in 2016 is calculated at an average of US \$112/tonne. The year was comparatively very stable in the price of the commodity.

*The world's longest conveyor belt (above) transports the rock from the mine inland out to the sea. Continental and Siemens are key partners for this belt. The Siemens windmills, built in 2013, provide all energy needed for the belt system.*

# The Exports

	2016	2015
Exported amount of phosphate	1,858,000 tonnes	1,410,000 tonnes
Value of exported phosphate	\$213.7 million	\$167.8 million
Estimated cost of production	\$80 million	\$80 million
Estimated revenue to OCP	\$130 million	\$90 million
Value of largest single shipment from the territory	\$8.325 million	\$8.6 million
Value of smallest single shipment from the territory	\$1.725 million	\$1.8 million
Number of ships that departed with phosphate from the territory	37	30
Average amount of phosphate exported in each ship	50,000 tonnes	47,000 tonnes
Average value of phosphate exported in each ship	\$5.6 million	\$5.55 million
Average annual phosphate price of Bou Craa rock (per tonne)	\$112	\$118

## Methodology

This report is made from data gathered through continuous vessel tracking. Phosphate prices were obtained from the commercial commodities pricing website "Index Mundi" and checked against other sources. The amounts of phosphate loaded into ships were ordinarily calculated to be 95% of the ship's overall cargo (and bunker fuel and stores) capacity expressed in deadweight tonnes (DWT). In cases where ships were less than 40,000 DWT the 95% factor was reduced to account for a higher relative amount of fuel and provisions and, occasionally, heavy weather likely encountered en route to destination ports. Ships were tracked and confirmed to have arrived at stated destinations. Where possible, estimated loaded amounts were checked against shipping documents, including bills of lading and port arrival receipts.

WSRW believes that it has detected, tracked and accounted for all vessels departing from

El Aaiun harbour for 2016. However, WSRW cannot exclude a possibility that one or more vessels have gone undetected.

## Fluctuating export levels

In general, WSRW's calculations over the last years are confirmed in OCP's own reports.<sup>28</sup>

There is a slight discrepancy between WSRW's and OCP's Bou Craa figures for 2015. WSRW's 2015 projection of 1.41 million exported tonnes, as described in last year's report, turns out to be more conservative than OCP's figures for the extracted tonnage at the Bou Craa mine, which they put at 1.6 million tonnes.<sup>29</sup> Several reasons could explain the difference between our export estimates and OCP's extraction figure. First, there is a difference in definition between 'extraction' and 'export'. The port of El Aaiun experienced significant loading problems during the first three months of 2015, while extraction at the mine went on, which may have resulted in growing piles of unshipped rock at the docks.

This could in turn have led to a difference in the production level and export level.

Another possible explanation is that Lifosa/EuroChem could have underreported their purchase of Bou Craa rock to WSRW, in only confirming 68,000 tonnes out of the 113,000 tonnes we traced to the port of Klaipeda. A third possibility is that WSRW might not have spotted all shipments in its continuous monitoring.

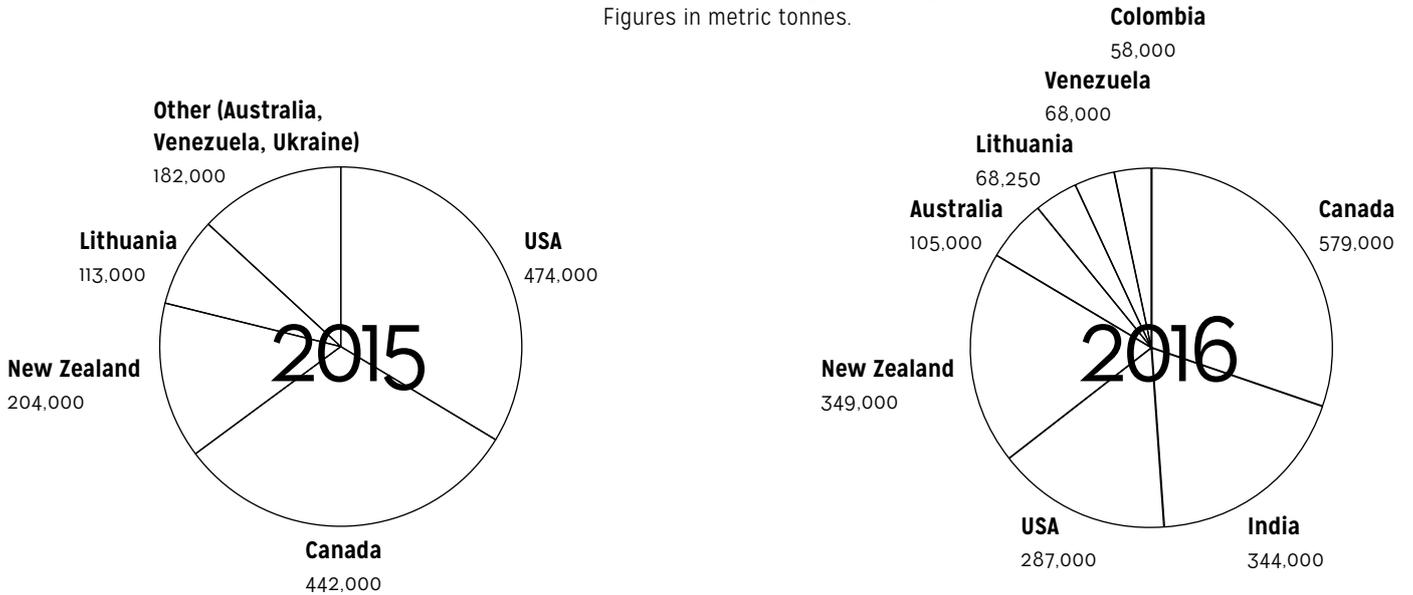
Until 2006 the export of phosphate rock averaged 1.1 million tonnes annually, considerably less than the production capacity of 2.6 million tonnes.<sup>30</sup> In the late 1970s, production stopped for three years during armed conflict in the territory, only gradually achieving 2.0 million tonnes by the late 1990s. WSRW started the daily monitoring in 2011. Our first report put OCP's exports of phosphate mined in Bou Craa at 1.8 million tonnes in 2012 and 2.2 million tonnes in 2013. WSRW's projection of 2.1 million tonnes of exported phosphate rock from

Bou Craa in 2014 was confirmed in the volume of "processed" phosphates as mentioned in OCP's Prospectus filed on the Irish Stock Exchange.<sup>31</sup> After the unusually low level of exports in 2015, the 2016 volume is more in line with the levels we have observed in the past.

OCP estimates the Bou Craa reserves at 500 million tonnes.<sup>32</sup> Bou Craa contributes around 7% of OCP's total extracted volumes<sup>33</sup>, and around 25% of its total sales of phosphate rock.<sup>34</sup>

## Imports per importing country

Figures in metric tonnes.



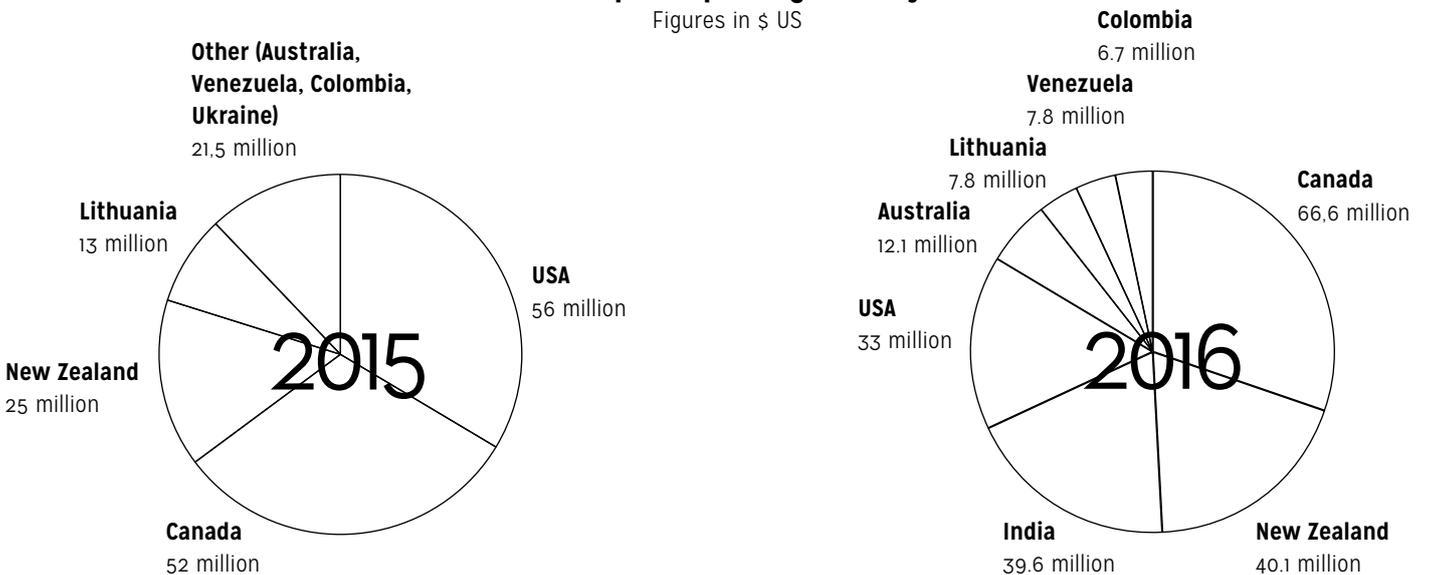
## Clients per nationality of (parent) company

Figures in metric tonnes.



## Value per importing country

Figures in \$ US



# The Importers, 2016

Rank	Corporation	Home country of (parent) company	Import destination	Number of shipments	Amount of phosphate purchased (tonnes)	Value of phosphate purchased (US \$)
1	Agrium Inc.	Canada	Vancouver, Canada	10	579,000	\$66.6 million
2	Paradeep Phosphates Ltd.	India/Morocco	Paradip, India	6	344,000	\$39.6 million
3	Potash Corporation of Saskatchewan Inc.	Canada	Geismar, USA	4	287,000	\$33 million
4	Ravensdown Fertiliser Co-op Ltd.	New Zealand	Napier, New Zealand	4	188,000	\$21.6 million
5	Ballance Agri-Nutrients Ltd.	New Zealand	Tauranga/Bluff Cove/Invercargill, New Zealand	3	161,000	\$18.5 million
6	Incitec Pivot Ltd.	Australia	Portland, Australia	3	105,000	\$12.1 million
7	Lifosa AB	Switzerland/Russia	Klaipeda, Lithuania	1	68,250	\$7.8 million
8	Unknown (Venezuelan Government)	Venezuela	Puerto Cabello, Venezuela	3	68,000	\$7.8 million
9	Monmeros SA	Venezuela	Barranquilla, Colombia	3	58,000	\$6.7 million

# OCP's helpers at the mine

## SIEMENS

German engineering company Siemens constructed the Fom el Oued wind park in occupied Western Sahara in 2013. The park was commissioned by Morocco's national agency for electricity, ONEE. Siemens collaborated with the Moroccan wind energy company NAREVA - owned by the King of Morocco. Fom el Oued, consisting of 22 wind mills, today supplies 95% of Phosboucraa's energy needs. In other words: practically all energy required for the exploitation and transport of the phosphate rock in Western Sahara, is generated by wind mills delivered by Siemens. The green energy production is thus making Morocco's plunder of the territory even more lucrative.<sup>35</sup>

## ATLAS COPCO

Swedish industrial company Atlas Copco in 2008 sold important drill rigs to OCP for use in the Bou Craa mine. Through the sales, Atlas Copco also obliged itself to provide maintenance and spare parts to the same rigs. It is not known for how many years Atlas Copco is tied to that contract. WSRW first confronted Atlas Copco about its deliveries in May 2013.<sup>36</sup> While the company appeared open to meet with WSRW at first, it later declined. WSRW sent Atlas Copco another letter on 27 March 2017, detailing our concerns and questions. The company replied that it did not wish to respond.<sup>37</sup>

## CONTINENTAL

A subsidiary of German company Continental, ContiTech, plays a key role in the maintenance of OCP's long belt carrying phosphate rock from the mine out to the sea. The company states having supplied systems allowing a throughput on the belt of "2000 metric tons per hour and a belt speed of over four meters per second"<sup>38</sup> In a letter to WSRW on 10 April 2017, Continental explains that it receives continuous orders to the Bou Craa conveyor belt. In April 2017, the company began constructing belt components in a proper factory in Morocco.<sup>39</sup>

*The German company Siemens is providing all the energy needed at Morocco's illegal phosphate mining operation in Western Sahara. Hundreds of refugees protested against Siemens in 2016.*



# Companies involved in the trade

Eight known companies and co-operatives involved in the imports of Western Sahara phosphates have been identified. One Venezuelan import remains somewhat unclear. The companies on the following pages are listed in the order of their involvement in 2016.

The uncertainty concerning Venezuela are related to the impossibility of identifying which of the Venezuelan government owned companies are importing.

# OCP SA (Morocco/Ireland)

OCP SA is a Moroccan state-owned company, which since 1975 has been in operation of the mine in Western Sahara. The work is carried out through its subsidiary Phosphates de Boucraa S.A.

A primarily state-owned company, it is not possible for foreign investors to buy shares in OCP.

However, OCP bonds have been offered to investors through the Irish Stock Exchange since 2014. Several institutional investors have since blacklisted OCP from its portfolios for its involvement in Western Sahara.

OCP's affairs at the Irish Stock Exchange are managed by Barclays, Morgan Stanley and JP Morgan; multinational financial services corporations based in the UK and USA.

The company has commissioned the firms DLA Piper, KPMG, Covington & Burling, Palacio y Asociados and Dechert LLP to advocate the suppositious legality of OCP's operations in Western Sahara. Besides carrying out lobbying-campaigns, the mentioned companies also write reports that allege the legal solidity of the Bou Craa exploitation on the grounds of being supposedly beneficial to the Saharawi people. None of these reports have been made available to Saharawis or to WSRW.

“Further to the emails I sent you on 19 October 2013, 15 November 2013, 15 July 2014, 10 September 2014, 16 October 2014, 10 February 2015, 4 March 2015, 5 January 2016, 14 January 2016, 2 February 2016, 10 February 2016, 15 March 2016, 30 August 2016, 27 September 2016, 13 October 2016, 16 November 2016, 12 January 2017 and 13 February 2017, I am writing once again to follow up on some very important questions.”



*Saharawi refugee Senia Bachir Abderahman, on 13 March 2017, for the nineteenth time asked OCP for copies of reports commissioned by OCP which the importing companies have claimed document the legality of their operations. She has received no reply.*

# Agrium Inc (Canada)

Agrium Inc. is a global producer and marketer of nutrients for agricultural and industrial markets. Agrium is a public traded company, based in Calgary, Canada. The company is listed on the New York Stock Exchange and the Toronto Stock Exchange.

Agrium signed a contract with OCP in 2011, and announced it would start importing in the second half of 2013. The phosphates, imported in order to replace an exhausted source in Canada, were claimed to be originating from "Morocco".<sup>40</sup> However, they do not. The phosphates are from Western Sahara. A first shipment arrived in the Canadian west coast port of Vancouver in October 2013.<sup>41</sup> Agrium then transports the landed phosphate from a dock in Vancouver, by rail to a fertilizer manufacturing plant in Redwater, in the province of Alberta.

In 2016, Agrium's commissioned an assessment of the firm's impact on human rights in Western Sahara, carried out by Norton Rose Fulbright Canada LLP. The report contains several flaws in terms of content, analysis and methodology. The analysis explicitly underlines that it "is beyond the scope of this Assessment" to conclude whether or not Morocco is the administering power of Western Sahara.

Yet, the report's assessment repeatedly takes for granted that Morocco is the administering power, and that it therefore has a right to manage the resources of the territory.

This report is used today to convince investors that the company's operations are ok. At the same time, Agrium commented to WSRW on 30 March 2017 that "any issues you may have with its content or the background work that they did, should be taken up with [Norton Rose Fulbright] directly and we would be happy to help facilitate that discussion."<sup>42</sup>

The company systematically refuses to answer any question relating to what steps it has taken to seek the consent of the Saharawi people.

In 2016, Agrium received 10 shipments of phosphate rock sourced in Western Sahara, amounting to an estimated 579,000 tonnes with a total value of US \$66.6 million. That is an increase compared to the 437,000 tonnes import of 2015, however well underneath the 779,000 tonnes of its first full year of importing, 2014. Agrium's 2016 import-shipments were concentrated around the early to mid-summer of the northern hemisphere. The first shipment arrived on 11 May, and the remaining shipments at about four week intervals, with two in December completing the imports for the year.

Agrium stated to WSRW on 30 March 2017 that the company's supply agreement with OCP "was always viewed as an interim arrangement while we looked at other alternate sources of rock and also longer term arrangements which may include internal ones." This is the same kind of response it has given to investors in the past, and appears to have been the position of the company for several years.

Agrium announced in 2016 that it will merge with PotashCorp. The merger is expected to materialise in 2017. Agrium states that the merger might change the supply arrangements of phosphate rock.



Canada's Agrium started importing phosphates from Western Sahara for the first time during the autumn of 2013. The bulk vessel Ultra Rocanville is here seen in Vancouver harbour with phosphates from the occupied territory on 3 June 2016. At least half of all transports to Vancouver are made by the Danish shipping company Ultrabulk A/S.

# Paradeep Phosphates Ltd (India/Morocco)

Paradeep Phosphates Limited (PPL) produces, markets and distributes phosphate-based fertilizers and by-products for agricultural use.<sup>43</sup> The company was established in 1981 as a joint venture of the government of India and the Republic of Nauru. In 1993, the government of India took complete ownership of the company. Due to significant losses near the end of the nineties, the government of India decided to divest 74% in February 2002. That stake was bought by Zuari Maroc Phosphates Ltd, a 50-50 joint venture of Zuari Industries Ltd (a subsidiary of Adventz Group of India) and Maroc Phosphore SA – a wholly owned subsidiary of OCP.<sup>44</sup> Today, PPL operates as a subsidiary of Zuari Global Limited, which holds 80.45% stake, while the government of India holds the remaining 19.55%.<sup>45</sup> In other words, PPL is owned by the Government of Morocco, an Indian private conglomerate (Adventz Group) and the Government of India.

PPL is headquartered in Bhubaneswar, India and receives its phosphate rock at the port city of Paradip, approximately 120 kilometers to the east.<sup>46</sup>

According to WSRW's research, PPL received six shipments of phosphate rock from occupied Western Sahara throughout 2016, totaling approximately 344,000 tonnes worth an estimated US \$39.6 million. PPL received its first consignment of the reviewed year on 27 May. Thereafter, shipments arrived at about seven week intervals. The shipments averaged around 57,000 tonnes.

A possible additional shipment to PPPL has been discounted, and thus does not feature in the above totals. This was the case of the m.v. Orient Lucky, confirmed to have arrived at El Aaiun on 17 December 2015 and to have departed on 31 December of that same year. The ship, however, did not appear to anchor at the loading dock at the port of El Aaiun, and was later observed to have loaded a commodity at the phosphate loading dock in Casablanca, Morocco, over the period of 3 to 7 January 2016 before proceeding to the port of Paradip.

PPL has imported from occupied Western Sahara before. WSRW has traced a previous purchase from Phosboucraa during the financial year 2011-2012.<sup>47</sup>

WSRW has contacted PPL and Zuari in February 2015, but received no reply. WSRW again contacted PPL on 7 March 2017, and received no reply.<sup>48</sup>

# Potash Corporation of Saskatchewan Inc (US/Canada)



The vessel Double Rejoice loading phosphate at the pier in El Aaiun, occupied Western Sahara, 5 December 2012. The vessel headed then to PotashCorp, US. In the background a queue of bulk vessels waiting to load.

Potash Corporation of Saskatchewan Inc. (PotashCorp) is the company with the longest track record of importing from the occupied territory; upon acquiring Arcadian Corp in 1996, PotashCorp also inherited the firm's 1980s import contract with OCP. PotashCorp has been purchasing Saharawi Phosphate rock for two uninterrupted decades.

PotashCorp is based in Saskatchewan, Canada, and is registered on the Toronto Stock Exchange (TSX – PCS). PotashCorp operates a phosphoric acid plant in Geismar, Louisiana, USA, where phosphate rock from Western Sahara is imported and processed. The company imports via long-term agreements with the Moroccan state-owned OCP, and prices and volumes are set at prescribed dates through negotiation.

In 2016, PotashCorp purchased around 287,000 tonnes of phosphate rock from occupied Western Sahara, worth approximately US \$33 million. The imported volume presents a significant decline from the 474,000 tonnes the company took in during 2015 – making PotashCorp that year's top importer. PotashCorp's 2016 imports came in four shipments, at more or less at quarterly intervals, ostensibly to meet a constant demand for phosphorus in the manufacturing of food products.

Through the years, PotashCorp has several times changed its position statement on Western Sahara, entitled "Phosphate Rock from Western Sahara". The sixth and most recent revision was published in November 2016.<sup>49</sup> In it, PotashCorp attempts to defend its imports from Western Sahara by repeating the Moroccan government mantra that it permissible to exploit the Bou Craa mines as long as the "local population" stands to gain some benefits through the activity. The company has previously referred to EU agreements to defend this stance, but it has from 2016 stopped mentioning the EU altogether. PotashCorp also maintains that its involvement is non-political. The company claims it cannot cease importing because of contractual commitments and because doing so would involve a "political judgment" that could determine the "economic well-being of the region". PotashCorp neglects to mention the cornerstone principle of self-determination in its position paper.

In March 2017, WSRW asked PotashCorp whether it has sought the consent of the Saharawi people, as dictated by the CJEU. In its reply, the company dodged the question altogether, instead reiterating its conviction that OCP's operations "provide economic and social benefits to the Saharawi people". PotashCorp sees itself as a positive influence to OCP's behavior. "Any decision to cease doing business in the region on the basis of a political judgment could undermine the economic well-being of the region", the firm asserts.<sup>50</sup>

PotashCorp announced in 2016 that it will merge with Agrium. The merger is expected to materialize in 2017.

# Ravensdown Ltd (New Zealand)

Ravensdown Fertiliser Co-operative Limited is a producer of agricultural fertilizers that operates as a farmer owned co-operative that is not listed on any stock exchange. The company imports to its plants in Lyttelton, Napier and Otago, New Zealand.

WSRW tracked four shipments to Ravensdown during 2016, totaling an estimated 188,000 tonnes with a net value of around US \$21.6 million. That means that the company has imported a significantly larger volume in 2016 than in the two preceding years, when it took in around 100,000 tonnes per year. Ravensdown has thus returned to its pre-2014 import level, which averaged around 180,000 tonnes annually. WSRW asked the company about the trade on 8 March 2017, and received no answer.<sup>91</sup>



The bulk vessel Molly Manx of UK shipping company LT Uglund Shipping on 12 August 2016 arrived the port of Napier, New Zealand with phosphate rock from Western Sahara.

# 6 Ballance Agri-Nutrients Ltd (New Zealand)

Ballance Agri-Nutrients Limited manufactures, markets and distributes fertilizers and related products in New Zealand. The company has manufacturing plants in Whangarei, Invercargill and Mount Maunganui, New Zealand. It is a farmer-owned cooperative, and not registered on any stock exchange.<sup>52</sup> Ballance was previously known as BOP Fertiliser. The company changed its name to Ballance Agri-Nutrients Ltd in 2001. Before BOP Fertiliser would purchase plants and buy shares in other NZ based fertilizer companies. For example; BOP bought the Whangarei based plant from Fernz in 1998, while obtaining a 20% share in Fernz a year later.<sup>53</sup> At that time Fernz was already a long term client of Bou Craa phosphates.

The firm signed a long-term agreement with OCP in 1999, requiring OCP to supply phosphates to Ballance.<sup>54</sup> Ballance executives have on at least one occasion visited the Bou Craa mine in the occupied territory.<sup>55</sup>

During the course of 2016, Ballance received three shipments of phosphate rock illegally excavated in occupied Western Sahara. The cargoes have a projected combined volume of 161,000 tonnes worth around US \$18.5 million. This is consistent with the firm's imports of 2012 through 2014, with a decrease to 104,000 tonnes in 2015.

WSRW has contacted Ballance once a year from 2014 to 2017, but never received an answer.<sup>56</sup> In 2014, Ballance wrote to WSRW that "The United Nations does not prohibit trade in resources from Western Sahara. Nor does such trade contravene a United Nations legal opinion".<sup>57</sup>



Frederike Selmer at the port of Bluff,  
12 March 2014, after discharging approx.  
53,000 tonnes of phosphates from  
Western Sahara. The local importer  
is Ballance Agri-Nutrients.

# Incitec Pivot Ltd (Australia)

Incitec Pivot Ltd, also referred to as IPL, is an Australian multinational corporation that engages in the manufacturing, trading and distribution of fertilizers. The company's fertilizer segment includes Incitec Pivot Fertilisers (IPF), Southern Cross International (SCI) and Fertilizers Elimination (Elim).

Incitec Pivot has been importing from Western Sahara for the past 30 years. Since 2003, when Incitec Pivot arose out of a merger between Incitec Fertilizers and Pivot Limited, the company has been importing continuously.

Incitec Pivot has its headquarters in Melbourne, Victoria, Australia, and is registered on the Australian Securities Exchange. Today, Incitec Pivot is the largest supplier of fertilizer products in Australia, but also markets its products abroad, such as in India, Pakistan and Latin America.<sup>58</sup> IPL manufactures a range of fertilizer products, but uses the Saharawi phosphate for its so-called superphosphate products produced at plants in Geelong and Portland.<sup>59</sup>

For the calendar year 2016, Incitec Pivot procured three shipments of phosphate rock from Western Sahara, totalling 105,000 tonnes, worth an estimated US \$12.1 million. That is a substantial increase from its 2015 imports of 63,000 tonnes of Saharawi phosphate, as confirmed by the company.

WSRW last wrote IPL on 27 March 2017.<sup>60</sup>



*Ithaki spotted off Las Palmas harbour  
on 20 May 2015, shortly after departure  
from El Aaiun harbour.*

# Lifosa AB

## (Lithuania/Switzerland/Russia)

In February 2016, and after several years of correspondence with the company, Lifosa's parent company EuroChem wrote to WSRW that "... the Group does not intend to purchase phosphate rock from Western Sahara in 2016 or at any time over the foreseeable future." However, things have not gone perfectly as planned.

Lifosa AB is a producer of phosphate mineral fertilizer based in Kedainiai, Lithuania. The company was previously listed on the NASDAQ QMX Vilnius Exchange. Lifosa AB became a subsidiary of the privately Russian-owned Swiss based EuroChem Group in 2002. The company receives its Western Sahara phosphate rock at the harbor of Klaipeda, Lithuania.

On 8 October 2016, eight months after the EuroChem's promise, the bulk vessel SBI Flamenco arrived at the port of Klaipeda, with rock from Western Sahara. That cargo was destined for Lifosa, as Lifosa's managing director admitted to Lithuanian media.<sup>61</sup>

EuroChem confirmed to WSRW on 23 March 2017 that the subsidiary Lifosa had imported 68,250 tonnes on board the SBI Flamenco.

"EuroChem believes in vertical integration for economic and strategic reasons and this remains the case. We aspire toward the goal of raw material self-sufficiency and our investments in Kazakhstan and Kovdorskij were intended to help us become self-sufficient in the production of phosphate rock. The production of our own raw materials from these two investments has progressed at a slower pace than projected and so we continue to require third-party supplies of phosphate rock."

WSRW has been in dialogue with both Lifosa and its owners EuroChem Group since 2010. But the company's initial reluctance to thoroughly respond to WSRW's questions resulted in its June 2011 delisting from the UN List of Socially Responsible Corporations.

Ever since, Lifosa/EuroChem has actively sought ways to maintain its dialogue with WSRW and conduct further due diligence with regard to importing from Western Sahara while under occupation. The company stated in March 2014 that it was seeking to implement ways to diversify external purchases. In 2013-2014, the trade was around 400,000 tonnes annually.



The vessel SBI Flamenco seen upon discharging Western Sahara phosphates at the port of Klaipeda, in October 2016. Lifosa took in this single shipment in 2016, after having promised it would not do so.

# The Venezuelan Government (Venezuela)

Most companies that import from Western Sahara are privately owned. There is one exception; in Venezuela, the government is behind the imports.

In 2016, three shipments of phosphate from the Bou Craa mine in Western Sahara were transported to the port of Puerto Cabello during the course of 2015. The shipments totalled an estimated 68,000 tonnes, to the tune of US \$7.8 million.

WSRW has always suspected Tripoliven C.A. to be the main importer in Venezuela, based on its track record of importing from Western Sahara in the nineties and noughties. Tripoliven C.A. is probably a joint venture between the Venezuelan state company Petroquímica de Venezuela S.A. (Pequiven), Valquímica S.A. and Bancaribe. FMC Corp owned a part of the joint-venture until 2016, when the FMC shares were sold to Bancaribe.<sup>62</sup> Tripoliven's fertilizer plant is located at the same location as its headquarters; in Morón, near the port of Puerto Cabello.

However, in 2014, the Venezuelan investigative website Armando.info revealed that the registers at the Chamber of Commerce showed that two companies had purchased all cargos of Saharawi phosphate delivered in Puerto Cabello between 2012 and July 2014. These companies were Pequiven S.A. and Bariven S.A.<sup>63</sup>

Pequiven S.A., short for Petroquímica de Venezuela S.A., is Venezuela's state-owned petrochemical company that produces a wide range of chemical products, including phosphate-based fertilizers. Pequiven's fertilizer production plant is also located in Morón.

Bariven S.A. is a subsidiary of Venezuela's state-owned oil company Petróleos de Venezuela S.A. (also known as Pdvsa). The company handles the procurement of materials and equipment for Pdvsa. Pdvsa inaugurated a petrochemical plant in Morón in 2014, aptly called Hugo Chávez, which will produce fertilizers.

It is unclear how the imports that are accredited to Bariven and Pequiven relate to Tripoliven. In August 2014, Tripoliven admitted importing from the Bou Craa mine in occupied Western Sahara to Venezuelan investigative website Armando.info. It is uncertain whether Tripoliven's imports are managed through its owner Pequiven.

Over the years, WSRW has sent a number of letters and emails to Tripoliven. The only response WSRW ever received came in 2013, when the firm denied importing from Western Sahara. FMC Corp, part owner of the Tripoliven joint-venture, also denied in 2013 to one of its investors in Europe that its subsidiaries import from Western Sahara.<sup>64</sup>

WSRW contacted Tripoliven again in February 2015 to inquire why the company chose to deny its imports from Western Sahara, and asking for confirmation about its subsequent imports. No reply was received. Copies of WSRW's letters have been sent to the Venezuelan government. Those too, unanswered. When approaching FMC Corp, WSRW was told that all requests had to be directed to Tripoliven. WSRW sent letters to the government of Venezuela in February 2016 and March 2017, asking for clarifications as to how the phosphate imports by Venezuelan state-owned enterprises align with the government's favourable position on Western Sahara. No answers have been received.

# 10 Monomeros Colombo Venezolanos S.A. (Colombia/Venezuela)

The Colombian Company Monomeros Colombo Venezolanos S.A. is a petrochemical Company that produces fertilizers, calcium phosphate and industrial chemicals. Since 2006, the company has been a fully owned subsidiary of the Venezuelan state owned petrochemical company Pequiven (Petroquímica de Venezuela SA). The company has its corporate seat in Barranquilla, Colombia, near the city's port where it receives its Western Saharan phosphate cargoes. Monomeros operates as a non-listed, public limited company.

Monomeros received three shipments of phosphate from occupied Western Sahara in calendar year 2016, totalling approximately 58,000 tonnes, worth about US \$6.7 million.

WSRW has raised the matter with both Monomeros and its parent company Pequiven on several occasions. Our most recent letter was sent on 27 March 2017.<sup>65</sup> So far, neither Monomeros nor Pequiven have replied to any of our letters.

# Innophos Holdings (USA)

A Mexican subsidiary of the US registered company Innophos Holdings has for many years been a key importer of Western Sahara phosphate rock. Since 2015, WSRW has not observed any shipment into Innophos's plant in Coatzacoalcas, Mexico.

However, WSRW believes that Innophos's manufacture plant in Geismar, Louisiana, is dependent on sourcing phosphate rock from Western Sahara, sold to them via a pipeline from the plant of PotashCorp.

WSRW contacted Innophos on 25 March 2017 regarding the sourcing of its raw materials to the Geismar plant, yet has not received an answer.<sup>66</sup> From 2010 to 2016, WSRW sent Innophos five letters about the company's purchases from the occupied territory, without receiving a reply. The lack of response from the company management has also been observed by several of its former investors.

Innophos has been the subject of multiple divestments. A lengthy analysis for the ethical exclusion of the firm was prepared by the Council on Ethics of the Norwegian Government Pension Fund in 2015.<sup>67</sup> For the same reason, the company has also been kicked out of the portfolios of the Luxembourg Pension Fund and Danske Bank, among others.<sup>68</sup>



WSRW is not convinced that Innophos is out of the picture in relation to Western Sahara phosphate rock. Here is the vessel Coral Queen en route to transport a shipment in 2013.

# Companies under observation

Some companies have in the past been identified and named as importers. The following companies have not been involved in the trade during recent years, but WSRW sees a risk that they would resume purchases.

# Agropolychim AD (Bulgaria)

Bulgarian fertilizer producer Agropolychim AD is located near Varna port. The company has Bulgarian and Belgian owners.<sup>69</sup>

WSRW registered the last shipment of Western Sahara phosphate rock to Varna in 2011. WSRW has confirmed shipments specifically to Agropolychim from 2003 to 2008.

WSRW contacted Agropolychim in October 2008, urging the company to terminate its phosphate imports.<sup>70</sup> A reply was never received, but the company did defend its imports in Bulgarian media. "Agropolychim has a contract for the import of phosphate from North Africa since 1974 and never had problems with supply", the company stated.<sup>71</sup>

## Indian importers

In March 2014, WSRW observed a single shipment to India, unloaded at Tuticorin harbor. This follows the trend from previously years of one annual shipment arriving at Tuticorin.

WSRW has not yet been able to identify the responsible company, but has identified two potential recipients. One is Greenstar Fertilizers Ltd, a fertilizer manufacturer and marketer, which produces its fertilizers in Tamil Nadu, taking in its material in Tuticorin. The other is Southern Petrochemical Industries Corporation Ltd (SPIC), a petrochemical company that has fertilizer production as its core competency. SPIC has its headquarters in Chennai and is registered on the Bombay Stock Exchange and on the National Stock Exchange of India. The firm's phosphate business is located in Tuticorin. WSRW contacted both, they did not answer.

# Companies no longer involved

Some companies have in the past been identified and named as importers. These have not been involved in the trade since 2012, and WSRW sees no risk that they would resume purchases.

# Impact Fertilisers Pty Ltd (Australia/Switzerland)

Impact Fertilisers in Tasmania has not imported since the arrival of Alycia in Hobart harbour on 7 August 2012.



Australian superphosphate manufacturer Impact Fertilisers imported phosphates from Western Sahara, at least from 2002 until 2012. Impact Fertilisers imported the rock to Hobart, Tasmania. In 2010 the company became part of Ameropa, a Swiss privately owned grain and fertilizer trading company. Western Sahara groups in both Australia and Switzerland had worked at highlighting the company's involvement for many years.

In 2013 Impact announced it had halted the imports from Western Sahara.<sup>72</sup> WSRW has not observed shipments to Impact since August 2012.

# Nidera Uruguay S.A. (Uruguay/The Netherlands)

The Uruguayan company Nidera Uruguay S.A., subsidiary of Dutch trading company Nidera NV, received one vessel containing phosphate rock from Western Sahara in 2009.

WSRW confronted Nidera Uruguay with the information about the 2009 vessel in a letter on 21 June 2010.<sup>73</sup> As no answer was received, new letters were sent to the parent company in The Netherlands in October 2011. The outcome of the following correspondence with Nidera, was a statement from the company underlining that "If our subsidiary in Uruguay again needs to import phosphate rock in the future, the matter which is now brought to our attention is something we shall definitively take into consideration". The company at the time also stated that its subsidiary in Uruguay had not received any phosphate rock from Western Sahara during the years 2007, 2008, 2010 and 2011.<sup>74</sup>

Yara's last imports took place in 2008, on this vessel. Here the vessel is on its way to dock in Herøya, Norway to offload.



## Yara International ASA (Norway)

Yara is the world's leading supplier of mineral fertilizers. It used to be a large importer of phosphates from Western Sahara in the past, but has since decided not to import from the territory. The main motive for the decision to stop purchasing has been that the Norwegian government urges Norwegian companies not to trade with goods from Western Sahara, due to concerns over international law. The company has today as a policy only to import or trade with phosphates from Morocco proper, not from the Bou Craa mines.

"We hope the country will be liberated, then the population there will profit from us quickly receiving their phosphates", Chief Communication Officer, Bente Slaatten told.<sup>75</sup>

# Mosaic Co (USA)

Mosaic Company is headquartered in Minnesota, USA, and listed on the New York Stock Exchange. WSRW confirmed 15 shipments from occupied Western Sahara to Tampa, Florida, USA in the period from 2001 to 2009. Tampa is home to the headquarters of Mosaic's phosphate operations and many of the firm's phosphate production facilities.

On 25 August 2010, Mosaic informed WSRW that it had received its last shipment of Western Sahara phosphate rock on 29 January 2009.<sup>76</sup>

In 2015, it confirmed to Bloomberg that its decision had been made "because of widespread international concerns regarding the rights of the Saharawi people".<sup>77</sup>

# BASF SE (Germany/Belgium)



BASF was one of the leading importers through the 1990s. It received its last known shipment to Belgium in 2008.<sup>78</sup> BASF's sustainability centre was confident such imports did not violate international law, but confirmed to WSRW that it would not expect more imports: "A part of BASF's phosphate demand is covered by Moroccan phosphate delivered by Office Chérifien des Phosphates (OCP). OCP has been a reliable supplier of phosphate from mines in the Kingdom of Morocco for over 20 years. In spring 2008, OCP contacted us because of a supply shortage at the Moroccan mine from which BASF usually receives the phosphate. OCP offered a temporary replacement order with phosphate in an alternative quality from a different mine operated by OCP in the Western Sahara region, which we accepted. For the time being, this was an isolated replacement delivery from this territory which we do not expect to be repeated in the future."<sup>79</sup>

# Wesfarmers Ltd (Australia)

Wesfarmers Limited is one of Australia's largest public companies, headquartered in Perth, Western Australia. The company is listed on the Australian Securities Exchange. Its fertiliser subsidiary, Wesfarmers CSBP, was a major importer from occupied Western Sahara for at least two decades. Earliest known imports of Saharawi phosphates by CSBP date back to 1990.

In 2009, the firm announced it would "reduce the company's dependency on phosphate rock from Western Sahara". The company said it would invest in new technology that would make it possible to use other phosphate sources. CSBP did, however, leave open the possibility that the imports could continue, albeit to a limited degree, depending on price and availability of alternative sources.<sup>80</sup> This decision followed a wave of European divestments over ethical concerns on trade in phosphate from occupied Western Sahara. Wesfarmers used to import between 60 and 70% of its phosphates from Western Sahara.

Wesfarmers has on numerous occasions since shown a will to phase down imports from Western Sahara, but has not committed categorically to completely stop imports. As the *de facto* imports seem to have stopped, some investors have returned to the company.

WSRW has not observed any shipments to Wesfarmers since it started daily monitoring of vessels in October 2011.

# Other companies

*BASF is not known to have imported since the arrival of the bulk vessel Novigrad on 7 October 2008, here seen discharging Saharawi phosphate in Ghent harbour, Belgium.*

Three companies that have previously been on WSRW's observation list, are from 2016 moved over to the list of companies longer involved. The reason for this is that such a long time has passed since a shipment took place that we expect them not to be engaged again. These are:

**Petrokemija PLC** from Croatia, **Tata Chemicals** from India; **Zen Noh** from Japan. The last time we saw shipments to these companies was in 2006. Neither of these companies have responded to requests from WSRW.

# Lobbying law firms

In defense of their phosphate imports from Western Sahara, several companies have referred to legal opinions by different law firms retained by OCP.

These legal opinions are systematically used by the international phosphate importers to legitimize their imports vis-à-vis shareholders. The confidential analyses are said to establish that the local people benefit from the industry. However, the local people – the owners of the phosphates – are themselves not allowed to see the opinions, and are thus unable to assess their veracity. All aspects related to Terms of Reference, methodology or findings are thus impossible for the Saharawis to question.

As the opinions allegedly have found Morocco's exploitation of the Saharawi people's resources lawful, WSRW believes that there is little reason to withhold them from the Saharawis.

Four international lobbying law firms are behind such undisclosed opinions.

**Covington & Burling LLP** is an international law firm with offices in Europe, USA and China, which advises multinational corporations. Among its clients is OCP.

Both the Belgian importer BASF and the Spanish importer FMC Foret referred to Covington & Burling's legal opinion made for OCP, but neither wished to disclose the report. BASF at the time (November 2008) urged WSRW to contact Covington & Burling for further questions. WSRW had contacted the firm in February 2008, but received no reply. When phoning the company to ask for a meeting, Covington & Burling replied that they "would not engage with you at all regarding anything at all. You're not my client, and as far as I can see you have no interest or stake in our company."<sup>81</sup>

It should be noted that Covington & Burling will travel around the world to defend the unethical trade to shareholders looking into divesting from any of the companies that import phosphate from Western Sahara.<sup>82</sup>

More recently, the law firm **DLA Piper** teamed up with the firm **Palacio y Asociados** to provide OCP with another legal opinion to justify the trade. Based on statements from the importing companies, this second opinion seems to follow the analysis of the Covington & Burling opinion, citing potential benefits

to the "local population" as a validation for the exploitation and subsequent trade to take place.

DLA Piper is an international law firm that has offices in around 30 countries throughout the Americas, Asia Pacific, Europe and the Middle East. Palacio y Asociados is headed by Spain's former Minister of Foreign Affairs and former MEP Ana Palacio, and has offices in Madrid, Brussels and Washington.

WSRW contacted both firms with the request to share their legal opinion with the Saharawi people. DLA Piper replied that it could not share the opinion that "was written for the benefit of Phosphates de Boucraa S.A., and its holding company, Office Chérifien des Phosphates S.A." due to legal privilege.<sup>83</sup> Ana Palacio, head of Palacio y Asociados, wrote back to express her disagreement with WSRW's analysis and also cited legal privilege.<sup>84</sup>

In November 2015, PotashCorp named the firm **Dechert LLP** and Palacio y Asociados as co-authors of a legal opinion. Dechert LLP is an international law firm, headquartered in Philadelphia, USA, with offices in 14 countries.

Up until August 2014, PotashCorp had named DLA Piper as the partner of Palacio y Asociados. It is not clear whether the Dechert-Palacio opinion is different from the DLA Piper-Palacio opinion. The missing link between the two could be Myriam González Duránte, wife of Britain's former Deputy Prime Minister Nick Clegg, who represented OCP when working at DLA Piper, but who is said to have taken the OCP contract with her when she moved to Dechert. OCP has reportedly paid an estimated US \$1.5 million for work carried out by both Dechert and DLA Piper.<sup>85</sup>

Dechert replied to WSRW's letter of 8 February 2016 that it could not disclose its legal opinion for OCP due to client confidentiality.<sup>86</sup>

WSRW has asked Dechert and Palacio y Asociados whether their client would consent to waiving privilege, as the confidentiality of the legal opinions as already been given up by making their existence public. WSRW never received a reply to that request.

OCP has failed to answer requests from Saharawis to share copies of the reports.





# Morocco lobbies for more toxics in EU farmlands

One of OCP's law firms, Dechert LLP, has been instructed to lobby the EU institutions against the European Commission's proposed cadmium regulation. Based on several risk assessments, the EU Commission wants to limit the EU population's exposure to this heavy metal due to its adverse health effects, particularly in terms of causing several types of cancer. In 2016, the Commission proposed a regulation for fertilizers made from phosphate rock, foreseeing in the stepwise reduction of cadmium content to 20 mg/kg over a 12 year timeframe.<sup>87</sup> Phosphate fertilizers are responsible for 60% of the current cadmium emissions to the Union's soil and crops, as documented in February 2017 study by the European Parliament's Policy Department.<sup>88</sup>

The phosphate rock managed by OCP - thus including the Western Sahara rock - are said to contain on average between 29.5 to 72.7 mg/kg.<sup>89</sup> The EP Policy Department paints an even bleaker picture, citing levels of 38-200 mg Cd/kg P<sub>2</sub>O<sub>5</sub>.

OCP has a sales figure of 32% in Europe. Since the proposed regulation would result in the nullification of that sales figure over time, OCP has unleashed an intense counter-lobby. OCP argues that there is not enough scientific proof to underpin the idea of limiting cadmium levels, and suggests the EU to even raise cadmium levels to 80 mg/kg, far higher than the suggestion from the EU Commission. On 11 May 2016, OCP sent a letter to the Commission, stating it disagreed with the proposal. OCP also lamented that "major fertilizer producers [...] had not been consulted"<sup>90</sup> The irony is that OCP itself refuses to seek the consent from the people of Western Sahara upon plundering the territory's phosphate rock.

Retained to work alongside Dechert, is the PR firm **Edelman**.<sup>91</sup> Edelman has worked for the Moroccan government in the past, as it is on the payroll of the Moroccan American Center for Policy (MACP), a registered agent of the Moroccan Kingdom.<sup>92</sup>

*The Bou Craa reserves are a gigantic, open-pit mine, where the phosphate rock is scraped from the surface by excavation machines.*

# Recommendations

## **To the Government of Morocco:**

- To respect international law and immediately terminate the production and exports of phosphates in occupied Western Sahara until a solution to the conflict has been found.
- To respect the right to self-determination of the people of Western Sahara, through cooperating with the UN for a referendum for the people of the territory.
- To compensate the Saharawi people for the benefits it has accrued from the sales of phosphate rock from the illegally occupied territory.
- To respect the African Union Legal Opinion on Western Sahara, published in October 2015, which noted among other things that any exploration or exploitation of the territory's natural resources is illegal as they violate the Saharawi people's right to self-determination and to permanent sovereignty over their resources.

## **To purchasers of phosphates from Bou Craa mine:**

- To immediately end all purchasing of phosphates illegally exported from occupied Western Sahara.

## **To the governments of Venezuela and India:**

- Abstain from further purchases of phosphate rock from Western Sahara.

## **To the governments of Australia, Canada, Colombia, Lithuania, New Zealand, USA:**

- To assess trade in phosphates originating in Western Sahara and engage with the companies concerned with a view to ending this trade.

## **To investors:**

- To engage with the mentioned companies, and divest unless action is taken to halt the purchase.
- To refrain from buying bonds of the Office Chérifien des Phosphates (OCP).

## **To Covington & Burling, Dechert, DLA Piper, KPMG and Palacio y Asociados:**

- To publish all reports written for OCP which aim to justify OCP's activities in occupied Western Sahara and the illegal export trade in Saharawi phosphate
- To refrain from defending Morocco's plunder of the territory by stopping the undertaking of assignments to legitimise its continuation

## **To the European Union and its Member States:**

- To assess trade in products originating in Western Sahara and adopt policies that ensure that such trade is consistent with the Court of Justice of the EU judgment of 21 December 2016 and with States' duty under international law not to recognize Morocco's sovereignty over occupied Western Sahara.
- To develop business advisory guidelines warning of the legal and reputational risks of doing business with Moroccan interests in the territory.
- To ensure European companies adhere to the principles established in the Court of Justice of the EU judgment of 21 December 2016, assuring that EU companies do not purchase phosphates from Western Sahara.

## **To the United Nations:**

- To create a UN administration to oversee or otherwise administer Western Sahara's natural resources and revenues from such resources pending the self-determination of the Saharawi people

# Notes

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# Annex: Shipments in 2016

Vessel Name	Departure	Destination	Arrival	Vessel Details
Filia Grace	06/01/2016	Puerto Cabello, Venezuela (Unknown/Venezuelan govnt)	19/01/2016	Panama IMO # 9125229 MMSI 351372000 26,412 DWT
Maratha Promise	10/01/2016	Napier/Christchurch, New Zealand (Ravensdown Fertiliser Co-op Ltd)	18/02/2016	Marshall Islands IMO # 9422809 MMSI 538004641 37,187 DWT
Zeus I	23/02/2016	Barranquilla, Colombia (Monomeros S.A.)	06/03/2016	Panama IMO # 9467885 MMSI 354962000 27,000 DWT
Star of Abu Dhabi	07/03/2016	Geismar, United States (PotashCorp Inc)	26/03/2016	Panama IMO # 9375927 MMSI 351674000 81,426 DWT
Doric Samurai	24/03/2016	Vancouver, Canada (Agrium Inc)	11/05/2016	Panama IMO # 9425899 MMSI 370534000 58,091 DWT
Zagora	18/04/2016	Paradip, India (Paradeep Phosphates Ltd)	27/05/2016	Greece IMO # 9235878 MMSI 240236000 73,435 DWT
Ultra Rocanville	22/04/2016	Vancouver, Canada (Agrium Inc)	04/06/2016	Panama IMO # 9476965 MMSI 373043000 61,683 DWT
Vipha Naree	24/04/2016	Geelong, Australia (Incitec Pivot Ltd)	03/06/2016	Singapore IMO # 9722027 MMSI 566167000 38,550 DWT
Hanton Trader 1	15/05/2016	Vancouver, Canada (Agrium Inc)	22/06/2016	Phillipines IMO # 9691412 MMSI 548883000 63,518 DWT
Marto	30/05/2016	Geismar, United States (PotashCorp Inc)	15/06/2016	Marshall Islands IMO # 9216224 MMSI 538005195 74,470 DWT
Summer Lady	06/06/2016	Paradip, India (Paradeep Phosphates Ltd)	09/07/2016	Malta IMO # 9184938 MMSI 229564000 72,083 DWT
Arosa	09/06/2016	Barranquilla, Colombia (Monomeros S.A.)	26/06/2016	Switzerland IMO # 9229879 MMSI 269689000 20,001 DWT

Vessel Name	Departure	Destination	Arrival	Vessel Details
Amis Champion	15/06/2016	Vancouver, Canada (Agrium Inc)	22/07/2016	Panama IMO # 9636369 MMSI 357887000 60,830 DWT
Molly Manx	18/06/2016	Napier, New Zealand (Ravensdown Co-op Ltd.)	09/08/2016	U.K. IMO # 9425863 MMSI 235105197 57,892 DWT
Federal Tweed	20/06/2016	Vancouver, Canada (Agrium Inc)	04/08/2016	Marshall Islands IMO # 9658898 MMSI 5380004749 55,317 DWT
Navios Vega	29/06/2016	Tauranga, New Zealand (Ballance Agri-Nutrients Ltd)	13/08/2016	Malta IMO # 9403102 MMSI 249663000 58,792 DWT
Symphony	06/07/2016	Puerto Cabello, Venezuela (Unknown/Venezuelan govnt)	19/06/2016	Liberia IMO # 9113381 MMSI 636016442 24,483 DWT
Serendipity	20/07/2016	Paradip, India (Paradeep Phosphates Ltd)	31/06/2016	Marshall Islands IMO # 9438030 MMSI 538005500 53,800 DWT
Ultra Saskatoon	06/08/2016	Vancouver, Canada (Agrium Inc)	10/09/2016	Panama IMO # 9448229 MMSI 373483000 61,470 DWT
Leo	09/08/2016	Tauranga, New Zealand (Ballance Agri-Nutrients Ltd)	22/09/2016	Marshall Islands IMO # 9594638 MMSI 538004332 56,581 DWT
Xing Rong Hai	19/08/2016	Portland/Geelong, Australia (Incitec Pivot Ltd)	20/09/2016 Portland, 25.09.2016 Geelong	Hong Kong IMO # 9725392 MMSI 477347300 38,904 DWT
Megalon	19/08/2016	Barranquilla, Colombia (Monomeros S.A.)	06/09/2016	Panama IMO # 9413066 MMSI 372427000 18,917 DWT
Ince Berlerbeyi	22/08/2016	Paradip, India (Paradeep Phosphates Ltd)	04/10/2016	Turkey IMO # 9599767 MMSI 271042993 61,429 DWT
Ultra Daniela	16/08/2016	Vancouver, Canada (Agrium Inc)	02/10/2016	Liberia IMO # 9731705 MMSI 636092630 61,288 DWT
Shandong Chong Wen	07/09/2016	Geismar, United States (PotashCorp Inc)	25/09/2016	Hong Kong IMO # 9592032 MMSI 477434600 76,098 DWT

Vessel Name	Departure	Destination	Arrival	Vessel Details
Ultramer	16/09/2016	Vancouver, Canada (Agrium Inc)	21/10/2016	Liberia IMO # 9705976 MMSI 636016489 63,166 DWT
SBI Flamenco	25/09/2016	Klaipeda, Lithuania (Lifosa AB)	07/10/2016	Marshall Islands IMO # 9710579 MMSI 5380066022 81,800 DWT
Jing Lu Hai	01/10/2016	Geismar, United States (PotashCorp Inc)	18/10/2016	Hong Kong IMO # 9747558 MMSI 477301100 77,927 DWT
Albatross	02/10/2016	Puerto Cabello, Venezuela (Unknown/Venezuelan govnt)	17/10/2016	Panama IMO # 9427574 MMSI 352707000 25,028 DWT
Topflight	05/10/2016	Napier, New Zealand (Ravensdown Co-op Ltd.)	26/11/2016	Panama IMO # 9278882 MMSI 371316000 52,544 DWT
Tubarao	03/11/2016	Portland/Geelong, Australia (Incitec Pivot Ltd.)	Portland 12/12/2016, Geelong 16/12/2016	Bahamas IMO # 9346160 MMSI 31102880 53,350 DWT
Ultra Lanigan	09/11/2016	Vancouver, Canada (Agrium Inc)	12/12/2016	Panama IMO # 9520596 MMSI 373949000 58,032 DWT
Ultra Integrity	14/11/2016	Vancouver, Canada (Agrium Inc)	26/12/2016	Marshall Islands IMO # 97408083 MMSI 538006751 61,181 DWT
Kang Hing	10/11/2016	Paradip, India (Paradeep Phosphates Ltd)	20/12/2016	Hong Kong IMO # 9240823 MMSI 477022000 52,828 DWT
Sophiana	15/11/2016	Tauranga, New Zealand (Ballance Agri-Nutrients)	26/12/2016	Marshall Islands IMO # 9738454 MMSI 538006303 59,985 DWT
Mykali	15/12/2016	Napier, New Zealand (Ravensdown Co-op Ltd.)	27/01/2017	Bahamas IMO # 9503811 MMSI 311055700 56,132 DWT
Tai Harvest	23/12/2016	Paradip, India (Paradeep Phosphates Ltd)	22/01/2017	Panama IMO # 9233428 MMSI 351143000 51,008 DWT

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

International Court of Justice, 16 Oct 1975

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