



Stichting Onderzoek Multinationale Ondernemingen
Centre for Research on Multinational Corporations

RESPONSIBLE SUPPLY CHAIN MANAGEMENT

POTENTIAL SUCCESS FACTORS AND CHALLENGES
FOR ADDRESSING PREVAILING HUMAN RIGHTS AND
OTHER CSR ISSUES IN SUPPLY CHAINS OF
EU-BASED COMPANIES

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Social Europe

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Foreword:

In recent years, international issues beyond the EU have been mounting the corporate social responsibility (CSR) agenda - not least in the area of companies' "CSR footprint" in third countries, and especially in developing ones. A reflection of this greater international focus is the attention that is being given by all CSR stakeholders to the soon-to-be-concluded mandate of the Special Representative of the UN Secretary-General on business and human rights, Professor John Ruggie.

A key area of CSR adherence is the extent to which companies manage their supply chains responsibly, ie. that they ensure their chains of suppliers and/or subsidiaries respect basic rights – whether labour rights (for example, a living wage, freedom of association, work-life balance, or aspects of decent work), or other rights (for example, health and safety at work, no use of child or forced labour, respect for citizens in local communities, or access to water/food).

Our research led the Commission to believe that – while many good practices do exist – some European companies do not manage their supply chains as responsibly as we might wish them to. For this reason, the Commission launched this study, "Responsible Supply Chain Management, potential success factors and challenges for addressing prevailing human rights and other CSR issues in supply chains of EU-based companies", to look at responsible supply chain management in practice by European companies.

In mounting the study, the Commission consulted a range of stakeholders, including EU Member State representatives, enterprise representatives, trade unions, non-governmental organisations, socially-responsible investors, and academic representatives. The Commission is grateful for their input, which enriched the final study product.

Following prior research and consultation, the study focussed on three industrial sectors important to the EU (cotton, sugar from sugar cane, and mobile phones), in relation to five key CSR supply chain management issues (child labour, freedom of association and collective bargaining, an adequate standard of living, unfair price levels, and biodiversity). The emerging results were correlated with the "Protect, Respect, Remedy" framework being proposed by Professor John Ruggie.

The study undertook some valuable research and included a number of insightful case studies. These led to a series of recommendations that can be summarised as follows:

- Increase supply chain transparency
- Strengthen responsible supply chain management in the current revision of the OECD's Guidelines for multinational enterprises
- Enhance access to remedy for victims of supply chain abuse
- Address inter-state competition in relation to labour rights
- Ensure due diligence in relation to high-risk sectors/companies
- Promote responsible supply chain management through public procurement.

The recommendations are timely and pertinent, as the next task for the Commission in relation to business and human rights is to assess the feasibility of implementing the Special Representative Ruggie's framework. This study has increased awareness, and provided valuable pointers towards possible solutions in a complex, emotive but fascinating area of public policy.

I would like to thank our contractors Adelphi Consult and their colleagues for their hard work, and commend this study to our readers as inspiration for their own journeys along the road of respect by business for human rights and other CSR challenges.



László Andor

Commissioner for Employment,
Social Affairs and Inclusion

Responsible Supply Chain Management

Potential success factors and challenges for addressing prevailing human rights and other CSR issues in supply chains of EU-based companies

FINAL REPORT

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List of Abbreviations

ACP-countries	African, Caribbean and Pacific Group of States
BSCI	Business Social Compliance Initiative
CBD	Convention on Biological Diversity
CSR	Corporate Social Responsibility
EFTA	European Fair Trade Association
EICC	Electronic Industry Citizen Coalition
ETI	Ethical Trading Initiative
EU	European Union
FSC	Forest Stewardship Council
FLO	Fairtrade Labelling Organisation
HLG	EU High Level Group on Corporate Social Responsibility
GRI	Global Reporting Initiative
GSP/GSP+	Generalized System of Preferences
ICC	International Chamber of Commerce
ILO	International Labour Organisation
ISO	International Standards Organisation
OECD	Organisation for Economic Co-operation and Development
MFA	Multi Fiber Agreement
MNC	Multinational Corporations
MSC	Marine Stewardship Council
NGO	Non-governmental Organisation
RSCM	Responsible Supply Chain Management
SA8000	Social Accountability International, standard
SER	Social and Economic Council of the Netherlands
SEZ	Special Economic Zone
SME	Small and Medium Enterprise
SRSG	United Nations Special Representative to the Secretary General
UN	United Nations
UNGC	United Nations Global Compact
UN Framework	United Nations Framework on Human Rights (proposed by the UN SRSG on business and human rights, John Ruggie)
UNHRC	United Nations Human Rights Council
WTO	World Trade Organisation

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1 Introduction

1.1 Background to the study

In recent years, companies have faced increasing challenges in their ability to identify and manage labour and employment conditions and the environmental footprint at different tiers of their supply chains. Responsible Supply Chain Management (RSCM), as part of a company's Corporate Social Responsibility strategies and policies, has become a key part of the strategy of many companies. At the same time, many codes of conduct, standards, guidelines and principles have been developed with a supply chain focus and international scope (Leipziger 2003). These include widely used international initiatives like the Guidelines for Multinational Enterprises of the Organisation for Economic Co-operation and Development (OECD); the United Nations Global Compact (UNGC); ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration); and a wide variety of initiatives focusing on specific issues (like the Ethical Trading Initiative (ETI) focusing on improving working conditions) and others focusing on specific sectors (like the code of conduct for the electronics industry initiated by the Electronic Industry Citizen Coalition (EICC)).

Like Corporate Social Responsibility (CSR) in general, all these standards, codes, principles and initiatives are fluid, i.e. dynamically evolving. Recent developments include the finalisation of the ISO 26000 standard on Social Responsibility and the work of the UN Special Representative to the Secretary General on business and human rights, John Ruggie (United Nation Human Rights Council 2008).

RSCM can increasingly be found high on the CSR-agenda of European companies and governments. However, despite all these efforts and standards, a number of CSR issues still remain unsolved. Companies still face many challenges when trying to manage social and environmental issues in the supply chain. These include, for example, a lack of traceability of raw materials and products in the supply chain, the large number of supply chains a company may be part of, and the lack of legislation or enforcement of legislation in some of the supplier countries (ICC, 2007).

This study discusses a selection of CSR-issues for which CSR has not yet proven to be a solution. Attention will be paid to the causes of why CSR has not proven to be a solution, but also investigate whether CSR in itself could be a solution to all CSR-issues in RSCM. The study will identify good practices and challenges that may provide input for recommendations which could be used by the European Commission (EC) and/or Member States for further work on this topic of unsolved CSR-issues and RSCM.

1.2 Objective of the study

The objective of the study is:

to provide insight into the reasons why RSCM has not yet proven to be a solution for some of the CSR-issues encountered in supply chains and to provide recommendations which the EU and/or Member States could use for further work on this topic.

1.2.1 Approach

RSCM cannot be seen in isolation, successful implementation of sustainable practices in supply chains heavily depends on different actors, like governments, companies, suppliers and NGOs, in the supply chains. Additionally, each supply chain has its own specific characteristics. This makes it difficult to define a general approach to the research question why certain CSR-issues have not been solved by RSCM or by the CSR activities of companies in their supply chains.

Therefore this study is based on an analysis of twelve case studies and three sector analyses. For each of the case studies and sector analysis three main approaches have been chosen, each based on one of the three core principles of the UN Framework for Human Rights (Referred to in this study as the UN Framework). The UN Framework rests on differentiated but complementary responsibilities. It comprises three core principles: the State's duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for effective access to remedies (Ruggie 2008a).

Each principle is an essential component of the framework: the State's duty to protect, because it lies at the very core of the international human rights regime; the corporate responsibility to respect, because it is the basic expectation society has of business; and access to remedy, because even the most concerted efforts cannot prevent all abuse, while access to judicial redress is often problematic, and non-judicial means are limited in number, scope and effectiveness. The three principles form a complementary whole in that each supports the others in achieving sustainable progress (Ruggie 2008a).

In this study, the UN Framework is used to analyse the role of RSCM in solving some of the unsolved CSR-issues. By looking at RSCM in a context of Protect, Respect and Remedy, the (potential) role of companies, governments and other stakeholders in solving the unsolved CSR issues may become clearer in each of the case studies and sector analyses. The case studies and sector analysis will also provide insight in the challenges governments, companies and other stakeholders face when improving sustainable practices in supply chain management.

For this study, review of literature and other documents was conducted and a series of interviews were held with different stakeholders. First of all, Lene Wendland¹ was interviewed to provide a general overview and understanding of the UN Framework.

¹ Advisor on business and human rights in OHCHR. Interviewed 4 June 2010, Geneva.

Secondly, in the light of each case study one or more stakeholders were interviewed. Reference to the interviews is made at each separate case study in appendix 2.

A more detailed description of the methodology used for the study is presented in chapter 2. It must be noted that this study is based on a limited number of case studies. These illustrate why certain approaches to RSCM could work and others may be more problematic in solving human rights or other CSR-issues in supply chains.

1.2.2 Key questions

To meet the objective of the study the following key questions will be further elaborated upon throughout the study, based upon the approach presented in the previous paragraph:

1. How do the three core principles of the UN Framework, protect, respect and remedy, relate to the different case studies?
2. Which success factors, challenges and/or lessons learned can be drawn upon from the case studies and sector analysis, particularly in the context of Europe?

1.3 Terminology: Responsible Supply Chain Management

Although CSR in itself comprehends more than RSCM, RSCM increasingly plays an important role in CSR-policies of European companies. The focus in this study is limited to only RSCM.

In literature there is not one univocal definition of RSCM. To the question “What is supply chain responsibility?” the International Chamber of Commerce (ICC) States (ICC 2007: 2):

“Supply chain responsibility, also referred to as responsible sourcing, can be broadly defined as a voluntary commitment by companies to manage their relationships with suppliers in a responsible way. As a result of their purchasing activities, companies may have some opportunities to influence constructively their suppliers’ social and environmental performance. This can be done using several incentives, including information and training, as well as audits of suppliers’ practices. Whatever mechanism is used, the most effective way to achieve sustained improvement over time is through the development of a long-term collaborative relation between corporate buyers and their suppliers, through which suppliers can internalize change by participating in the shaping of social and environmental performance objectives, based on their own perception of their business capacity and needs.”

The United Nations Global Compact (UNGC) (2010: 7) takes another angle. The UNGC refers to supply chain sustainability and defines this as

“the management of environmental, social and economic impacts and the encouragement of good governance practices, throughout the lifecycles of goods and services. The objective of supply chain sustainability is to create, protect and grow long-term environmental, social and economic value for all stakeholders involved in bringing products and services to markets.”

When considering RSCM in relation to this study either definition could be applicable, from each some aspects need highlighting to establish the focus on RSCM chosen in this report. The ICC emphasizes '**voluntary**' in its definition. In the respect pillar of the UN Framework on human rights, which is used as a reference in this study, it is also said that the responsibility of companies to respect rights is a responsibility and not yet obligatory as such (yet).

Another important aspect in this study and also referred to by the UNGC in their guidance and ICC in their definition of RSCM is the **cooperation** between companies and their suppliers and other stakeholders. In this study several case studies and sector analysis will be evaluated against the successful implementation of stakeholder engagement and also the challenges faced when involving different stakeholders in initiatives to improve sustainable supply chains.

Although the UN Framework refers to human rights, in this study also other CSR issues, for example biodiversity, will be discussed. The UNGC makes reference to the different **social, environmental and economic impacts** companies may have on stakeholders throughout their supply chains and relates this directly to the core business of companies.

Although either definition highlights important aspects of RSCM in relation to this study, in this study the definition of ICC will be followed. This definition leaves room for the different nature of the case studies that will be discussed in this study and also the many different ways for dealing with RSCM. Although it needs to be noted that also the UNGC leaves room for many different approaches, the definition in itself does not refer to this.

1.4 Reader Guide

The report is structured as follows:

Chapter 2 provides an overview of the methodology used in the research. It presents the selection procedure for (1) selecting five unsolved CSR-issues; (2) identification of three suitable sectors which could serve as an example for the analysis provided in this study; and (3) identification of twelve case studies related to the different identified sectors. A more detailed description of the UN Framework can also be found in chapter 2, since this framework provides an important basis for the analysis of the sectors and case studies.

Chapter 3 presents a more detailed description of the five selected unsolved CSR-issues. This includes a brief explanation of steps taken on protect, respect and remedy level to solve these issues. However, the chapter will start with some general characteristics of and issues in RSCM, which contribute to the difficulties in solving the selected CSR-issues.

Chapter 4 gives an analysis of the presented good practices and challenges which can be derived from the sector analysis and case studies. This analysis will provide a basis for the discussion of conclusions and recommendations to the EC in **chapter 5**.

Chapters 3, 4 and 5 can be read independently of each other. However, a complete overview on the selected prevailing issues in RSCM, challenges faced by EU-based companies in resolving these, and potential success factors to eliminate the issues can be obtained by reading these chapters together.

2 Methodology

2.1 Overview

The focus of this study is on Responsible Supply Chain Management (RSCM) by European companies operating in a European and global context. The key question is: why for some CSR-issues in their supply chains, has CSR not yet provided a solution. Why do companies, assuming that they may be aware of the issues, fail to deal with them, and what is needed to improve the situation? Although the previous sentence presumes to focus on European companies, CSR and RSCM as part of CSR are not activities which take place in isolation. In their operations and in taking responsibility, companies also depend on actions by governments, e.g. to implement and enforce adequate legislation on social and environmental issues and possibly other stakeholders. RSCM by companies will also be influenced by the opportunities of workers and communities to address issues that need improvement (like complaint mechanisms). The UN Framework provides a solid basis to consider the duty to protect, responsibility to respect, and access to remedies in the light of the different roles and responsibilities by stakeholders in their supply chains. For this reason, the UN Framework will be used to provide insight in the interaction between the levels 'Protect', 'Respect' and 'Remedy' on sustainability issues where RSCM (in some cases) still fails.

An analysis has been made of three specific sectors/supply chains and five CSR-issues in RSCM, for which CSR has not yet proven to be the solution. The analysis is based on existing documents and additional information from interviews with the Business and Human Rights Office of the UN High Commissioner for Human Rights (adviser to John Ruggie²) and organisations linked to the different case studies (see appendix 2 for a description of each case study).

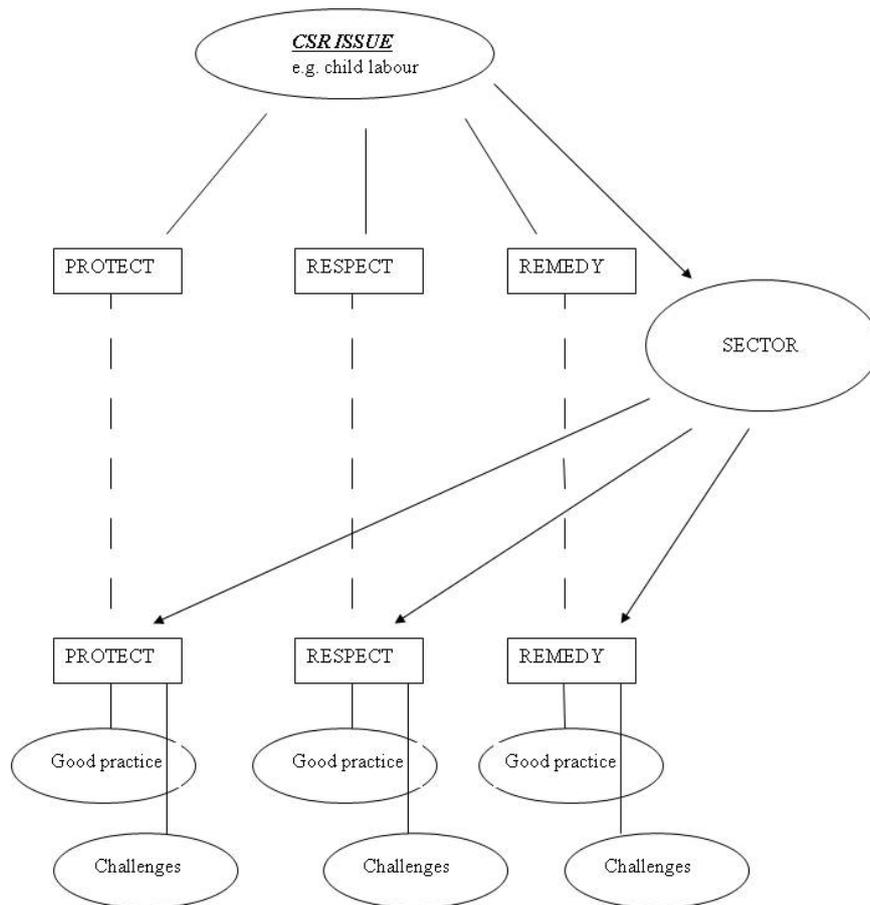
The manner in which the different CSR issues are analysed is presented in figure 2.1. The analysis consists basically of three steps:

1. For each of the five CSR issues a more detailed description is provided, including the manner in which the issue is generally covered by Protect, Respect and Remedy. The results of this step are presented in chapter 3.³
2. In addition, each issue is analysed in the context of a specific sector. The result of this step is presented in chapter 3 where the relevance of the five CSR issues is

² Harvard Professor John Ruggie was appointed as the United Nations Special Representative of the Secretary-General for business and human rights. Ruggie is mandated to identify and clarify corporate responsibility and accountability with regard to human rights, and also to elaborate on the role of States in effectively regulating and adjudicating the role of transnational companies and other business enterprises with regard to human rights. Furthermore he is to identify, exchange and promote best practices and lessons learned concerning business and human rights and the UN Framework on human rights he developed. His mandate was extended in 2008 and will last till mid 2011.

³International and EU legislation on the five CSR issues is analysed in more detail and presented in appendix 3.

Figure 2.1: Analysis of each of the five selected CSR issues



Source: SOMO

briefly analysed and held against the three pillars of the UN Framework. In appendix 1 an overview of the sectors' supply chains is given.

3. Finally, good practices and challenges on Protect, Respect and Remedy are identified in each sector and from the different case studies presented. For each good practice and challenge an analysis is made of the role of Protect, Respect and Remedy. The results are presented in appendix 2.

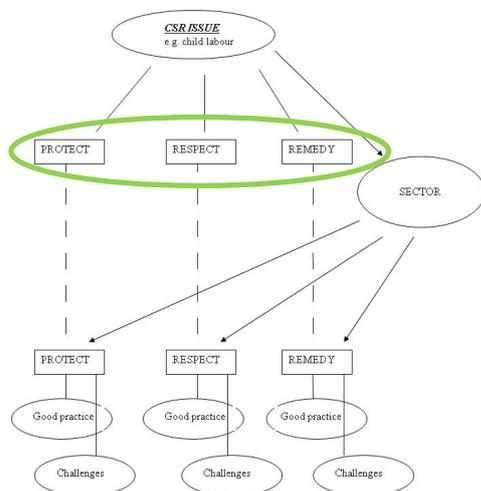
The learning outcomes from each of these good practices and challenges are combined in an overall analysis of the roles of Protect, Respect and Remedy in RSCM, which is presented in chapter 4.

To assure common understanding of the UN Framework Protect, Respect and Remedy in the light of this study, an overview of this framework is presented in paragraph 2.2. The selection of CSR issues and sectors is explained in the paragraphs 2.3 and 2.4.

2.2 Protect, Respect and Remedy

In 2008, the Special Representative of the Secretary-General (SRSG) for business and human rights, John Ruggie, published the report *"Promotion and protection of all human*

rights, civil, political, economic, social and cultural rights, including the right to development; *Protect, Respect and Remedy: a Framework for Business and Human Rights*”. The report presents a conceptual and policy framework to anchor the business and human rights debate, and to help guide all relevant actors. The conceptual framework of Protect, Respect and Remedy, now widely referred to as “the United Nations framework”, was proposed by the Special Representative for better managing business and human rights challenges. (Ruggie 2008a).



In this study, the UN framework is used to analyse the role of RSCM in solving some of the unsolved sustainability issues. By looking at RSCM in a context of Protect, Respect and Remedy, the (potential) role of (European) companies, governments and other stakeholders in solving the unsolved CSR issues may become clearer. In this paragraph the theoretical background of the UN Framework and its pillars will be further elaborated upon.

2.2.1 State Duty to Protect

The first pillar of the UN Framework is the state duty to protect against human rights abuses committed by third parties, including business. The state has a duty to put appropriate policies, regulation and adjudication in place. It highlights that states have the primary role in preventing and addressing corporate-related human rights abuses. Meaning that the state is not responsible for the human rights abuse in itself, but for taking appropriate steps to prevent from abuse and, if necessary, to investigate, punish and redress it. (United Nations 2010: 2).

International treaties and international human rights law commit states to refrain from violating the enumerated rights of persons within their territory and/or jurisdiction and to ensure the realisation of those rights by rights holders. Human Rights treaties generally contemplate legislative, administrative and judicial measures. The state duty to protect applies to all recognised rights that private parties are capable of impairing, and to all types of business enterprises. (Ruggie 2008a: 6-7)

According to the SRSG the nature of the duty to protect is well understood by human rights experts within governments and beyond. Internalisation of the duty to protect in State's processes, departments, policies and legislation still seems to be difficult (Ruggie 2008a: 9). As the SRSG on business and human rights (2010: 3) puts it: “The most prevalent cause of legal and policy incoherence is that departments and agencies which directly shape business practices – including corporate law and securities regulation, investment, expert credit and insurance, and trade – typically work in isolation from, and uninformed by, their Government's own human rights obligations and agencies”.

From the analysis executed for this study it may be read that protection of human rights abuses could on occasions even contradict other policy areas, like economic

development or bilateral investment treaties on trade with companies or other States. In the international business arena stringent enforcement of human rights laws could stimulate transnational companies to relocate to neighbouring countries, where enforcement of human rights laws is lacking.

At the same time, governments are uniquely placed to stimulate, regulate and sanction companies' behaviour with regard to CSR-issues. States can require companies to report on CSR-related performances by mandatory sustainability reporting (Ruggie 2008a: 10) or, as one of the recommendations in chapter 5 suggests, possibly mandatory due diligence. States are also increasingly holding companies responsible under criminal law. However, this requires inclusion of corporate liability, rather than individual liability (Donaldson and Watters 2008: 1). An extensive research of this issue has been conducted by Donaldson and Watters (2008).

The equal importance of Protect, Respect and Remedy in the UN Framework, leaves the State with a duty to protect its population from rights abuses. With regard to the role of Protect in RSCM, several learning points can be derived from the sector analyses and case studies. This practical analysis based on the Protect-pillar is presented in chapter 4.

2.2.2 Corporate Responsibility to Respect

Although governments are to assure proper policies and legal base for protection of their population against infringements of others, companies are not indemnified in taking responsibility for any negative impact infringed by them, directly or indirectly, on others. They are to have proper systems in place to prevent the abuse of (human) rights and to identify and mitigate these abuses in case of occurrence. This is referred to as the corporate responsibility to respect.

The corporate responsibility to respect human rights [or other rights] means acting with due diligence to avoid infringing on the rights of others, and addressing harms that do occur. The term 'responsibility' rather than 'duty' indicates that "respecting rights is not [currently] an obligation". [...] It [international human rights law] is a [global] standard of expected conduct acknowledged in virtually every voluntary and soft-law instrument related to corporate responsibility" (UN SRSG of business and human rights 2010: 2). The responsibility to respect applies to all company activities and also through its relationships with other stakeholders, such as suppliers, communities, non-state or state actors etc. (UN SRSG on Human Rights and Transnational Corporations and other Business Enterprises 2010a: 1).

Ruggie (2008a: 14-16) takes the discussion about companies' responsibilities away from determining a list of rights companies should consider, because companies can potentially infringe on all rights. He aims at defining "specific responsibilities of companies with regard to all rights", since he argues that the baseline responsibility, next to compliance with national law, is to respect human rights. This responsibility exists independently of State's duties and applies to all activities, not only company activities

within their core business. For example, it also applies to the responsibility not to bribe, or when communities have to be relocated due to company activities.⁴

The specific responsibilities of companies encompass the activities of companies to avoid harming rights. A main component of the specific responsibilities of companies is the due diligence. A due diligence allows a company to become aware of, prevent and address human rights impacts. The due diligence should be context specific, meaning that the country context where the operations take place is to be considered. Furthermore, it maps potential risks in relation to the company's own activities as well as the potential impact through relationships connected to the company's activities, like with business partners, suppliers, non-state or state agencies etc. (Ruggie 2008b: 6).

According to the UN Framework, a due diligence should consist of four components (Ruggie 2010: 3):

1. A statement of policy articulating the company's commitment to respect human rights;
2. Periodic assessments of actual and potential human rights impacts of company activities and relationships;
3. The integration of these commitments and human rights risk assessments into company decision-making;
4. And tracking as well as reporting performance.

Based upon the different case studies executed for this research, the responsibility to respect and the role of due diligence will be further explored in chapter 4.

2.2.3 Access to Remedy

Even where institutions operate optimally, adverse human rights impacts may still result from a company's activities and victims must be able to seek redress, or in other words have right to reparation. According to Ruggie (2008a: 22), "effective grievance mechanisms play an important role in both the state duty to protect and the corporate responsibility to respect". As part of their duty to protect against business-related human rights abuse, states must take appropriate steps within their territory and/or jurisdiction to ensure that when such abuses occur, those affected have access to effective remedy through judicial, administrative, legislative or other appropriate means. State's regulation will have little impact when not accompanied with "mechanisms to investigate, punish and redress abuses. [Whereas,] the corporate's responsibility to respect requires a means for those who believe they have been harmed to bring this to the attention of the company and seek remediation, without prejudice to legal channels available." (Ruggie 2008a: 22)

The UN Framework distinguishes two categories of grievance mechanisms: judicial and non-judicial mechanisms. The following mechanisms are mentioned by Ruggie (2008a: 22-27):

⁴ Interview with Mrs. Lene Wendland, 4 June 2010, Geneva

Judicial mechanisms mechanisms could provide investigation and punishment for company's who abuse rights and redress of the harm. Redress includes for example compensation, restitution, guarantees of non-repetition, and changes in relevant law and public apologies. Whether judicial mechanisms always have the mandate and standing to provide effective remedies, victims of corporate abuse can be debated. Especially extraterritorial abuses are difficult to be tackled by national judicial mechanisms, because of mandate or because of limited access for the victims involved.

Non-judicial mechanisms are divided in three main groups of mechanisms:

1. Company level-grievance mechanisms

According to the UN Framework, a company-level grievance mechanism could contribute to proactive response to rights violation and be part of a company's risk management. When an issue is brought to the company's grievance mechanism, the issues may be tackled before it is made public and escalates. This could reduce the exposure of victims to the abuse and reduce the reputation-risk of the company.

2. State-based non-judicial mechanisms

There are typical grievance mechanisms initiated by the State with a mandate to handle grievances or to advise in adjudicative or mediation-based grievance procedures. Examples of these are the National Contact Points in the 42 States adhering to the OECD or National Human Rights Institutions.

3. Multi-stakeholder or industry initiatives and financiers

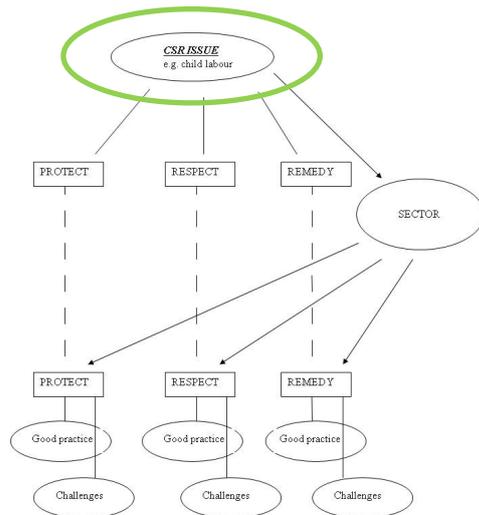
Multi-stakeholder or industry initiatives aiming at improving RSCM by standards or codes may be questioned about effectiveness when appropriate grievance mechanisms are absent. The mechanisms provide an important check on performance of engaged companies. The same is true for financial institutions seeking to ensure compliance with rights-based standards of projects they support.

2.2.4 Appliance of the UN Framework in this study

The UN Framework is considered a systematic model, which can be applied in a much broader sense. In this study it is not limited to human rights, since the principles of protect, respect and remedy could also be applied to, for example, environmental protection.

Conversely, Ruggie considers the corporate responsibility in a broader sense. In this study, the corporate responsibility is limited to the responsibility in the company's supply chain, based upon the CSR issues identified for this study (see paragraph 2.3).

2.3 Selection of CSR issues



In this study, three social, one environmental and one economic issue have been selected for which CSR has not yet provided a solution. This selection was based on the results of a written questionnaire which was shared with the EU High Level Group (HLG), Multi-stakeholder Forum, European Commission Interservice Group on CSR and approximately 75 independent stakeholders, including (representatives from) NGOs, universities, trade organisations, trade unions and companies. A further selection of European as well as non-European stakeholders were made. Non-European stakeholders were selected to assure identification of CSR issues

prevailing in global supply chains.

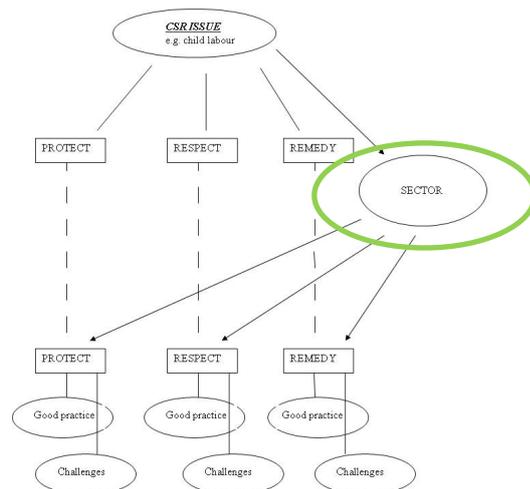
Around twenty questionnaires were sent back, representing all types of stakeholder groups. Recipients were asked to select the ten most prevalent issues where CSR is not yet a solution and to select a top-3, out of the ten. On the basis of these top-10 and top-3 selections, the following five most prevailing issues were selected for further in-depth research:

1. Child labour
2. Freedom of association and collective bargaining
3. Adequate standards of living
4. Loss of Biodiversity
5. Unfair price levels

A more comprehensive description of the issues as well as an analysis of each issue in the light of the UN Framework is presented in chapter 3.

2.4 Selection of sectors

To analyse the good practices and challenges with regard to RSCM and the five sustainability issues, three sectors were selected. For each sector the supply chain and the sustainability issues in this supply chain are analysed. In addition case studies were selected for each sector to identify good practices and challenges with regard to the five sustainability issues and three pillars of the UN Framework. The selection of sectors was based on the following selection criteria:



The sector:

- is a production sector;
- has a significant link to at least three of the five selected CSR issues;
- is important from the viewpoint of turnover in the EU-27;
- is important from the viewpoint of imports into the EU;
- has a significant number of employees in the EU-27;

An overall criterion was that the resulting selection of sectors should be diverse.

Based on these criteria a first overview of sectors was produced, as shown in table 2.1 (page 25). The information on the relevance of CSR issues is based on the expertise of the project team. The data on the imports in the EU are based on the EC trade statistics.⁵ When adequate information is lacking, a '?' is included in the table.

In practice, most of the five sustainability issues may be relevant to each sector to some extent (e.g. further down the supply chain). For this reason and to enable the analysis of good practices, the experience of a sector with CSR and the presence of CSR initiatives were also taken into account in the final selection of sectors. Based on the selection criteria and the presence of CSR initiatives, the following sectors were selected: electronics (including e-waste), garments and food processing.

Since these sectors are still quite diverse when considering the supply chains, sustainability issues and CSR initiatives, a further specification has been made for the analysis, based on the availability of existing studies and CSR initiatives. This resulted in the following selection:

- garments, focussing on garments made of cotton.
- electronics, focussing on mobile phones.
- food processing, focussing on sugar from sugarcane.

⁵European Commission, DG Trade website [online], [Accessed 22 May 2010], Available from: <http://ec.europa.eu/trade/creating-opportunities/economic-sectors/industrial-goods>

Table 2.1: Overview of manufacturing sectors and their score on the selection criteria

<i>Manufacturing sectors</i>	<i>CSR issues</i>					<i>Nr. of employees (,000) in the EU-27</i>	<i>Import into the EU per sector in 2008 (EUR billion)</i>	<i>Turnover of the sector in the EU-27 in 2008 (EUR billion)</i>
	Child labour	Freedom of association	Adequate standard of living	Loss of biodiversity	Unfair price levels			
Electronics⁶ (incl. e-waste)	X	X	X	X	X	3.668	188⁷	710
Construction	X	X	X	X	?	14.093	?	1.553
Garments	X	X	X	X	X	2.998	93.6⁸ (textiles and footwear)	235
Chemicals & fuel processing	X	X	?	X	?	2.068	90 (chemicals)	1.099
Energy supply	?	?	X	X	?	1.227	?	885
Transport	X	X	?		?	3.152	60.2 (automotive, shipbuilding)	945
Metals	X	X	?	X	?	5.081	31.3 (steel) ⁹	864
Food¹⁰ processing	X	X	X	X	X	4.700	64.7¹¹ (raw materials)	942

Source: SOMO

⁶ Electrical machinery & optical equipment

⁷ European Commission, DG Trade website [online], [Accessed 19 April 2010], Available from: <http://ec.europa.eu/trade/creating-opportunities/economic-sectors/industrial-goods/electronics/>

⁸ European Commission, DG Trade website [online], [Accessed 19 April 2010], Available from: <http://ec.europa.eu/trade/creating-opportunities/economic-sectors/industrial-goods/textiles-and-footwear/>

⁹ European Commission, DG Trade website [online], [Accessed 19 April 2010], Available from: <http://ec.europa.eu/trade/creating-opportunities/economic-sectors/industrial-goods/steel/#stats>

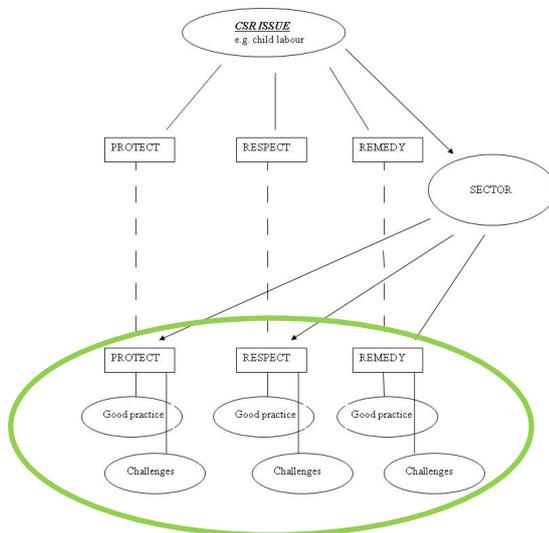
¹⁰ Food, beverages and tobacco

¹¹ European Commission, DG Trade website [online], [Accessed 19 April 2010], Available from: http://trade.ec.europa.eu/doclib/docs/2006/june/tradoc_129093.pdf

2.5 Case study analysis

2.5.1 Selection of case studies

From each sector between two and five cases were selected. These cases were selected in such a way that each case study represents a good practice or challenge:



- in one of the three sectors selected;
- on one or more of the five sustainability issues; and/or
- on one of the three pillars of the United Nations framework: Protect, Respect or Remedy.

In the selection of the case studies emphasis was put on the potential good practices or challenges that could be derived from the case study, so that the range of case studies would allow for the analysis of potential success factors and challenges presented in chapter 4. A direct relation to the EU or

involvement of EU stakeholders was not a criterion for the selection of the case studies. It was assumed that also non-EU related case studies could provide valuable input to the analysis and recommendations to the EU and could serve as an example.

2.5.2 Analysis

Each case study is analysed to identify the key factors behind the good practices and challenges, in the light of RSCM: Why is the initiative a success? Why is it that some challenges still remain challenges? Although each case study has either Protect, Respect or Remedy as its primary focus, the role and interrelation between Protect, Respect and Remedy have been elaborated upon as well. For example, a good practice case study on Respect also includes an analysis of the role of Protect and Remedy. In this way, the case studies provide insight into the dynamics between the three pillars and the way in which these pillars may inter depend on each other and reinforce each other in offering a solution to one or more of the sustainability issues for which CSR has not yet proven to be a solution.

The good practices and challenges are identified and analysed based on literature, through interviews and the consultants' experiences.

The following case studies have been conducted (see appendix 2 for description and analysis of each case study). The presentation of the case studies is structured according to the pillar to which the case study is mostly related to.

2.5.3 Overview case studies

Duty to Protect

Case 1	State efforts to enhance working conditions in Cambodian garment factories
Sector	Garments and cotton
Country/Region	Cambodia
Issues	<ul style="list-style-type: none"> • Freedom of association and collective bargaining • Adequate standards of living
Description	Trade in nationally produced garment encompasses 70 % of the total Cambodian export. Hence, the garment industry is of vital importance to the country's economy. Since 2001 there has been a comprehensive programme, the so-called Better Factories Cambodia programme, to enhance the working conditions of employees of all exporting garment factories. The Better Factories Cambodia programme is coordinated by the International Labour Organisation (ILO). As such, it provides a good example of how international proclaimed labour rights can be realised through governmental cooperation.
Case 2	Protect price levels in Mozambique
Sector	Sugar from sugar cane
Country/Region	Mozambique
Issues	<ul style="list-style-type: none"> • Adequate standards of living • Unfair price levels
Description	In an global economic system dominated by free trade and globalisation, the state of Mozambique protects its home market of sugar cane to avoid cheap imports in order to rehabilitate the sector and to make it competitive to world market prices. Mozambique challenged the conflicting interests of international organisations like WTO and IMF and its own interest in local economic development and protection of the local market. This case study shows the dynamics between the Mozambique government and local industry and the difficulties a government may be facing in the attempt to rehabilitate a sector.

Case 3

Race to the Bottom: States competing at the cost of workers' wages

Sector

Garment industry

Country/Region

Bangladesh

Issues

- Freedom of association and collective bargaining
- Adequate standards of living

Description

East Asia is the powerhouse of the global garment business and the main exporter of garment to the European Union. Competition between Asian countries is fierce. The challenge for states in such a competitive global economy is to balance the desire to provide low production costs with the duty to protect the right of adequate standards of living for workers. This case on Bangladesh shows that the garment industry often shifts too much in reducing costs at the expense of workers' wages.

Case 4

Child labour in sugar cane production in El Salvador

Sector

Sugar from sugar cane

Country/Region

El Salvador

Issues

- Child labour

Description

Although ILO convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour and ILO recommendation 190 require immediate action to eliminate worst forms of child labour, in practice this is not always the case. In 2004 Human Rights Watch challenged the social responsibility of the government of El Salvador and multinational corporations like Coca Cola on the issue of exploiting child labourers in the sugar cane fields of El Salvador.

Responsibility to Respect

Case 5	Cotton made in Africa
Sector	Cotton
Country/Region	Sub-Saharan Africa
Issues	<ul style="list-style-type: none">• Adequate standard of living• Loss of biodiversity• Unfair price levels
Description	Cotton Made in Africa (CMiA) is an initiative that stimulates the production of sustainable cotton in Sub-Saharan Africa. It is a demand-driven initiative that combines a strong marketing proposal for the mainstream market with clear development objectives in terms of economic empowerment and poverty alleviation. Originating from a corporate initiative, it now operates with Public Private Partnership funds and operational structure.
Case 6	Transparency frontrunners garment industry
Sector	Footwear and garment industry
Country/Region	Global
Issues	<ul style="list-style-type: none">• Child labour• Freedom of association and collective bargaining• Adequate standards of living
Description	A number of brand companies in the footwear and garment industry initiated an openness policy with regard to their supply chain. They published a list of their global suppliers on their websites. Additionally, they made independent audits on labour standards public.

Case 7	Dominican garment workers receive a living wage three times the local minimum wage
Sector	Garment manufacturing industry
Country/Region	Dominican Republic
Issues	<ul style="list-style-type: none"> • Freedom of association and collective bargaining • Adequate standards of living
Description	The focus of this multi stakeholder project is on paying workers in a garment factory in the Dominican Republic a living wage and allowing them to join unions. It involves an American garment company, a local trade union and an independent USA-based civil society stakeholder in a code-developing and monitoring role. This project is presented here as an example of a brand company respecting and implementing the workers' right to a living wage and the right to freedom of association in one of its factories.
Case 8	Workers' health respected throughout the supply chain
Sector	Technology and electronics industry
Country/Region	Mexico
Issues	<ul style="list-style-type: none"> • Freedom of association and collective bargaining
Description	This multi stakeholder project focuses on health training among female workers in Mexico. It involves a major brand company, two of its suppliers, a local health NGO, and an international NGO specialising in undertaking corporate responsibility projects with corporate partners. The objective of the project is to provide female workers an avenue to become spokespersons on behalf of other female workers to discuss important health topics with the factory management, as well as to improve the workers' understanding of preventable diseases. This project is presented here as an example of a brand company and its suppliers making an effort to respect female workers' health rights.

Case 9	Minerals tracing model at odds with mitigating human rights abuses
Sector	Electronics industry
Country/Region	Democratic Republic of the Congo
Issues	<ul style="list-style-type: none"> • Adequate standards of living • Loss of biodiversity
Description	<p>This case highlights a recent industry initiative of the electronics industry that focuses on mapping the supply chain for tin, tantalum and cobalt used in electronics. The initiative involved electronics industry membership organisations Global eSustainability Initiative (GeSI) and the Electronics Industry Citizenship Coalition (EICC). GeSI and EICC commissioned Resolve, a USA-based public policy dispute resolution organisation, to engage companies, associations, NGOs, academics, agencies and other stakeholders. The objective of the project was to create a transparency model, potentially allowing end-use companies to certify target metals as originating from conflict-free sources.</p>
Case 10	Precarious employment: a mechanism through which workers rights can be denied
Sector	Metal industry including the electronics and automotive industry
Country/Region	Export exporting zones and special economic zones (in Mexico, China, Korea and other nations).
Issues	<ul style="list-style-type: none"> • Freedom of association and collective bargaining
Description	<p>Precarious employment has become one of the principal mechanisms through which transnational corporations are able to deny workers their human rights. According to the International Metalworkers' Federation, employers in the electronics industry are using various forms of precarious employment to prevent workers from joining trade unions and bargaining collectively.</p> <p>The right to organise and bargain collectively are called enabling rights because they give workers tools to monitor their own workplace and to negotiate with management on the improvement of working conditions. There are many obstacles in organising workers which are especially applicable to precarious workers. Most of all workers fear to lose their jobs if they join a trade union. The complex phenomenon of precarious work is presented here as a challenge to the responsibility of companies to respect labour rights.</p>

Access to Remedy

Case 11	Fair Wear Foundation
Sector	Garment and textile industry
Country/Region	Bangladesh, China, India and Turkey
Issues	<ul style="list-style-type: none"> • Child labour • Freedom of association and collective bargaining • Adequate standards of living
Description	<p>The Fair Wear Foundation (FWF) is a European frontrunner initiative within the garment and textile industry. Business, trade unions and NGOs work together to achieve lasting workplace improvements for Asian workers. While FWF can be considered as a good practice in general, this description focuses on its verification component which includes access to remedy. Particularly this component can be regarded as a state-of-the-art model that deserves to be copied to multi-stakeholder initiatives in other industries.</p>
Case 12	National Contact Points
Sector	n/a
Country/Region	Global
Issues	<ul style="list-style-type: none"> • Child labour • Freedom of association and collective bargaining • Adequate standards of living • Loss of biodiversity
Description	<p>The OECD Guidelines for Multinational Enterprises' unique and added value – amongst the plethora of CSR initiatives and instruments – in its function as a potential grievance mechanism for affected communities and workers seeking redress. The case study highlights the opportunities for the OECD and some of the challenges the OECD is facing.</p>

2.6 In brief

In this study, the analysis of the question why, for some CSR issues, CSR has not yet proven to provide a solution, is approached from different levels. Since all CSR issues have their own characteristics, causes, legal and non-legal regulatory schemes, this study cannot provide insight into this question for all CSR issues. Five specific CSR issues were chosen based upon consultation of different stakeholders. This resulted in the following five CSR issues which will be the basis for further analysis:

1. Child labour
2. Freedom of association and collective bargaining
3. Adequate standards of living
4. Loss of biodiversity
5. Unfair price levels

Each of these issues might still be prevalent in many different European based supply chains, however examples for the analysis in this study will be found in three sectors with a certain importance to the EU. The focus will be on the mobile phones, sugar from sugar cane and cotton supply chains. These supply chains provide relevant good practices and challenges with regard to solving the selected CSR issues. The interaction between stakeholders, mainly the government and companies, in the supply chains are held against the three pillars of the UN Framework. The UN Framework provides a solid basis for analysis of the duties of States; the responsibilities of companies in protecting against violation of rights; but also puts emphasis on the importance of grievance mechanisms. The latter have a substantial role in solving CSR issues in supply chains.

Each of the aspects – UN Framework, CSR issues, case studies and sector analysis – introduced in this chapter have an importance in the analysis in the following chapters.

3 Five unsolved CSR issues

3.1 Introduction

The five selected CSR-issues – child labour, freedom of association, adequate standards of living, loss of biodiversity and unfair price levels – are still prevalent in the supply chains of the selected sectors; although these issues are often on companies' and governments' CSR-agendas to eliminate them from business practices. For each issue particular reasons why the issue is still prevalent can be identified. However, supply chain management and procurement practices in the global business arena also have some more general characteristics which may prevent businesses to effectively eliminate these issues from their supply chains. Examples of these are transparency, sphere of influence and responsibility, and level playing field. Before discussing each selected issue individually, a more general overview will be given of issues in supply chain management which may prevent companies from implementing effective CSR-measures or from effectively addressing these issues.

Subsequently, the five CSR issues referred to in the previous chapter are further elaborated. For each issue a more comprehensive description is given in relation to businesses and RSCM. This description provides input into the analysis of the issues on a sector level (appendix 1) and the analysis of the roles of Protect, Respect and Remedy in chapter 4.

3.2 General issues in RSCM

The main focus in this study is on why for certain CSR-issues, CSR or RSCM has not yet proven to be a solution and the issue is still prevalent. Although each CSR-issue and each supply chain has its own characteristics, some general issues with regard to supply chain management in the international business arena may contribute to the prevalence of CSR issues in supply chains. Some of these issues are presented in this paragraph. Although this is not an exhaustive list, it provides some insight into the general problems companies are facing in the effective implementation of CSR-policies with regard to RSCM.

One of the major challenges in RSCM is **transparency** throughout the supply chain. There are many ways companies may disclose their sustainability information, including sustainability reporting, provision of information on websites, disclosure through labelling and certification. However, many companies have thousands of suppliers across the globe. It seems to be impossible to provide transparency with regard to the operational practices of all suppliers.

Frontrunners in RSCM use several instruments to involve the majority of their suppliers in responsible practices in the supply chain. Examples are Supplier Codes of Conduct, use of industrial certification programmes and sustainability reporting by the companies

itself, and by its suppliers. However, the monitoring of compliance with these instruments remains a challenge.

The increased public pressure on companies and the challenge they face with regard to disclosure and monitoring of sustainable practices further down the supply chain, instigated the Global Reporting Initiative (GRI) to launch a programme on transparency in supply chains in 2009. GRI wants to support companies and their suppliers to face this challenge by implementing a GRI sustainability reporting process.¹²

In relation to suppliers' practices in the supply chain, it remains a challenge to provide an unambiguous definition of the '**scope of responsibility**', providing that amongst other factors of control a buyer can have on its supplier, and the duration and severity of the impact, should be part of the formula for assigning the responsibility. GRI addresses the responsibility of an organisation regarding sustainability reporting in its boundary protocol. The issue of scope of responsibility is also further elaborated upon in paragraph 4.3.2.2. Without a clear and univocal guidance on the scope of responsibility, it is to the discretion of the corporations to define their own boundaries and intervene in suppliers' practices.

Providing a **level playing field** in RSCM is subject to many actors at different levels in the supply chain and other related stakeholders, like governments. At macro level trade agreements being implemented tend to damage the economic opportunities of small enterprises. Examples can be found in the sector analyses and case studies in appendix 1 and 2 of this study.

For example

International market prices for sugar are held low partly because of subsidies from developed countries, putting small-scale producers at risk of disruption to their livelihoods when cheap imports displace local production, or when low quotas result in low net incomes to small farmers (UNDP 2010)

Additionally, level playing field is also determined by fair power of each of the actors in the supply chain, since level playing field is a concept about fairness, assuming that each actor in the supply chain adheres to the same set of rules. Theoretically, it may be true that all actors in the supply chain adhere to the same set of rules, but it can be debated whether this actually works in practice; where MNCs usually have much more power in the international business arena than smallholder farmers, which depend on local traders for their sales and prices. Workers and local SMEs or farmers down the supply chain may be at disadvantage in their position, because of lack of education, knowledge, funds and lack of accessibility to relevant market information. Therefore, local SMEs and farmers encounter competitive disadvantage for improving their position in the supply chain.

Industries are increasingly looking for ways to improve the level playing field in supply chains and the international business arena. Examples of these are international round tables (e.g. the Round Table on Sustainable Palm Oil or the Round Table on

¹² http://www.globalreporting.org/NR/rdonlyres/8D0F7A00-A714-4BA1-A957-374650B5DD39/4364/GANTS_Ch4pagerbrochureA4format.pdf, retrieved on 18 November 2010.

Responsible Soy). These Round Tables allow for improved collaboration between suppliers and buyers and attempt to avoid the exclusion from suppliers, but prefer to work with them.

Each of the issues mentioned above has an effect on the prevalence of CSR issues, in general, in supply chains. However, each specific CSR issue selected for this study also has its own characteristics contributing to the prevalence of the issue. In the following section each selected issue will be elaborated upon individually. Each issue will be explained, in the light of the protect, respect and remedy pillar of the UN Framework and some challenges will be mentioned, why this particular issue may still prevail in supply chains of EU-based companies.

3.3 Selected CSR-issues further explained

3.3.1 Child labour

3.3.1.1 Description of the issue

The abolition of child labour is a labour right. According to the International Labour Organisation (ILO) child labour is a violation of fundamental human rights and has been shown to hinder children's development, potentially leading to lifelong physical or psychological damage. Child labour is covered by the ILO in the Minimum Age Convention (1973; ratified by 155 countries) and the ILO Convention on the Worst Forms of Child Labour (1999; ratified by 172 countries). The conventions stress that countries should “ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons”.¹³ The minimum age is set at 15 years. However, a country whose economy and educational facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, specify a minimum age of 14 years. Youngsters of 13 are allowed to do some light work if this is not harmful to their health, education and development. The “Convention on the Worst forms of child labour” states that countries, which ratified the convention, need to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour.

The globalisation of economies has resulted in the growing use of international service and production chains by multinational corporations (MNCs). Child labour is still an important social issue that has not yet been banned from these global production chains. Today, children and adolescents account for one third of the world's population and half the population in most developing countries.¹⁴ In 2004, the ILO reported that 218 million children aged 5-14 were engaged in child labour. Amongst these children, 126 million were working under hazardous conditions. These figures have not significantly improved over the last few years. In May 2010, the ILO estimated in its global report on Child

¹³ Minimum Age Convention 1973, Office of the UN High Commissioner for Human Rights website [online], [Accessed 21 April 2010], Available from: <http://www2.ohchr.org/english/law/ageconvention.htm>

¹⁴ Europa, Summaries of EU Legislation website [online], [Accessed 21 April 2010], Available from: http://europa.eu/legislation_summaries/humanitarian_aid/l33603_en.htm

labour, that there is a global total of 246 million child labourers aged 5-17 years, of which nearly 180 million (73 percent) are believed to be engaged in the 'worst forms of child labour' (including all forms of slavery, sexual exploitation of children, the use of children in the commission of a crime, and work which is likely to harm the health, safety or morals of children).¹⁵

A strong link exists between household poverty and child labour. However, while a working child can help sustain the family standards of living in cases where basic needs need to be covered, evidence points to the fact that child labour perpetuates poverty across generations by keeping children of the poor out of school, and limiting their prospects for upward social mobility. This loss of human capital has been linked to slow economic growth and social development. A previous ILO study (ILO 2004: 4-5) has shown that eliminating child labour in transition and developing economies could generate economic benefits nearly seven times greater than the costs, mostly associated with investment in better schooling and social services, because companies are not likely to invest in countries where the population is lacking even the most basic educational qualifications. Child labour may conflict with education and time to play. As a result, children may remain under-educated or uneducated resulting in a future of working in badly poorly paid jobs. Henceforth, child labour is both a result and cause of poverty.

Child labour is also directly linked with the prevalence of an informal economy and informal employment: in developing countries, informal employments can make up to 90 percent of total employment in sectors such as agriculture or mining (International Labour Conference 2002). In such sectors, which are at the very beginning of long international supply chains, the responsibility of companies with regard to child labour is especially difficult to monitor. In a similar manner, States have little influence on the child labour when informal employment is widespread.

3.3.1.2 Protect, Respect and Remedy

State duty to protect

Appendix 3 presents an overview of rules and legislation on child labour on an international and EU level. The ILO conventions on child labour are used as minimum legislation by ratifying States and as reference by the international community. The State's duty with regard to child labor is closely linked to the State's policy in other fields. The State policies in the field of education and infrastructure/transport have, for example, an important influence on school attendance, and are thereby a means to curb the occurrence of child labour. In many countries, school costs (mainly school fees and uniforms, in many cases both for public and private schools) are a deterrent for families that live in a situation of economic vulnerability; this equally applies to the daily costs of commuting between home and school. In such contexts, incentive measures that facilitate access to school (or lower barriers to go to school) are key in preventing the occurrence of child labour.

Internationally, a significant amount of guidance with regard to child labour has been agreed upon; nevertheless EU-based companies still encounter child labour in their

¹⁵ http://www.europa-eu-un.org/articles/en/article_1355_en.htm 29 April 2010

supply chains and many NGOs report on the prevalence of child labour. For the EU and EU Member States the abolishment of child labour has been high on the political agenda, and an important focus in dialogues with partner countries. The EU uses all possible instruments, like political dialogue, trade negotiations, development cooperation, humanitarian aid and coordinated action in multilateral human rights bodies, to eliminate child labour. Oonk (2008: 3-5) also provides recommendations on the State's position in combating child labour in supply chains. Examples of these are: the inclusion of plans to monitor and remediate child labour in trade relations with countries where child labour practices are still widespread and withdrawal of the Generalized System of Preferences (GSP or GSP+) from countries not implementing ILO child labour conventions. However, he emphasises to include a time-bound transition period for companies and countries to allow for the implementation of no-child labour policies.

Corporate responsibility to respect

Companies that officially want to recognize the prohibitions of child labour and adopt a minimum age policy have different options to do so: companies can develop their own policies, commit to national law standards or sign up to collective initiatives¹⁶. These three possibilities also show interaction or overlap: a multi-stakeholder initiative supporting the abolition of child labour can require companies to choose between a fixed age or taking the minimum age of employment under national law. However, the "highest applicable standard" is often prescribed as the one that should be taken into account. According to the 2006 survey by UNHRC (UN Human Rights Council A/HRC/4/35/add) among 500 companies worldwide 60 percent recognise prohibition against child labour and 30 percent also state a minimum age policy. In the same study, only 25 percent of Latin American companies mention the abolition of child labour. Within different sectors, such as infrastructure and utility, only around 45 percent recognises prohibitions of child labour. In Asia & Pacific, this is even less than 25 percent.

As a result of recurrent mediatised campaigns accusing MNCs of being directly or indirectly involved in child labour cases, businesses are increasingly aware that corporate responsibility with regard to child labour cover direct and indirect suppliers throughout the different levels of the supply chain. When they source in countries where child labour may occur, EU-based companies frequently require written commitment from their direct and indirect suppliers. However, this does not clear their liability when child labour does occur. Businesses are increasingly required to also provide accompanying measures (training at supplier level, monitoring of compliance). Multi-stakeholder initiatives to improve working conditions at suppliers' level such as SA8000, the Business Social Compliance Initiative (BSCI) or the Ethical Trade Initiative (ETI) represent a reference framework (codes of conducts, auditing system, monitoring of continuous improvement) for companies that want to address their responsibility at suppliers' level.

¹⁶ For example: the International Council of Toy industries (ICTI), Worldwide Responsible Apparel Production (WRAP), Electronic Industry Code of Conduct (EICC), the international Council on Mining and Metals (ICMM). These industry initiatives are initiated by industry members for their specific sectors. Furthermore, there are multi-stakeholder initiatives like the Ethical Trade Initiative (ETI) or the Fair Labor Association (FLA).

Access to remedy

Access to remedy can be facilitated by a grievance procedure at different levels though it should be recognised that working children may not be in a position to use such procedures, because of their vulnerability, the household's context or because they are under aged or simply not equipped to search remedy. Businesses can impose commercial sanctions on non-compliant suppliers. Members of multi-stakeholder initiatives can require defaulting suppliers to follow a corrective action plan. At State level, sanctions can be taken against companies using child labour. Sanctions could, for example, be reflected in a State's sustainable procurement practices by providing incentives to companies combating child labour in their supply chains.

Additionally, Roberta Angelilli (2007: 23) member of the EU Committee on Civil Liberties, Justice and Home Affairs adds, amongst other points, to the discussion:

“Points to the fact that products being sold in the EU may be produced by child labour; calls on the Commission to implement a mechanism by which victims of child labour can seek redress against European companies in the national courts of the Member States; calls on the Commission to enforce supply-chain compliance and especially to come forward with mechanisms that make the main contractor liable in Europe in cases of violation of UN conventions on child labour in the supply chain; to this end, calls on the EU to use the generalised system of preferences (GSP) procedure as one way of combating more effectively the exploitation of child labour which occurs in various regions of the world, with special measures for dangerous work which a large number of children are forced to do.”

3.3.1.3 Prevalence of child labour in supply chains of EU-based companies

The sector analysis and case studies researched for this study show several challenges EU-based companies and governments face when eliminating child labour from supply chains. Although, the challenges presented below are drawn from the cotton, sugar and mobile phones supply chains, some may be true for other supply chains as well.

- Child labour is more likely to be prevalent in levels of the supply chain where labour is more difficult to control.

For example

In the garment supply chain, parts of the production may be subcontracted to home workers. This 'informal' economy is difficult to monitor by EU-based companies and may allow for child labour. Additionally, monitoring the informal sector also remains a challenge to most States since it often goes undetected by the States legal monitoring institutes.

Child labour often occurs in the farmer's family circle. Supply chains with roots in the agricultural sector are vulnerable to the existence of child labour. However, the further back in the supply chain the child labour occurs, the more difficult it is to detect by EU-based companies. It remains difficult to monitor and control the practices of entities at the roots of the supply chain, also when companies require suppliers to sign their supplier's code of conduct.

Current European (electronic) disposal mechanisms may be linked to bad labour conditions and child labour. Electronic devices are sent to developing countries under the guise of second hand devices, but may end up on waste belts, where children dismantle the devices. This mechanism is currently out of sight of EU-based electronic companies.

- Efforts of local governments in introducing compensatory mechanisms when children are not working do not seem to be 100% effective.

For example

The Brazilian government introduced a mechanism of family compensation for the loss of family income when children no longer work. However, despite this incentive still 3% of the workers in the Brazilian sugar industry are under 17 years of age.

- Child labour is frequently put forward as one of the prevailing CSR-issues by NGOs. As a result of recurrent campaigns accusing companies of being directly or indirectly involved in the employment of child labour, EU-based companies often require written commitment of suppliers to adhere to the child labour policy of the company. However, this does not clear the liability of these companies when child labour occurs in their supply chain. Increasingly, EU-based companies require certification according to, for example SA8000, BSCI, ETI to contribute to the abolition of child labour. Especially in contexts where child labour still occurs.
- Lack of transparency in supply chains beyond first tier suppliers in combination with a complex web of suppliers maintains unsustainable practices further down the supply chain. EU-based companies are dealing with many, sometimes even more than a thousand, suppliers. Monitoring of so many suppliers and their supply chains remains a challenge in the global economy, where one company is often one of the many buyers of the supplier.
- The access to remedy also remains an issue when dealing with the underaged. Being employed in either the informal sector or illegally, children are often not in a position to seek remedy. Fear of retaliation and loss of jobs as well as lack of representation means that they have no adequate access to justice, and are simply

not equipped to effectively file their complaint at a grievance mechanism, if any would exist within their reach.

3.3.2 Freedom of association and collective bargaining

3.3.2.1 Description of the issue

The ILO perceives the right to freedom of association and collective bargaining as a prerequisite for improving other social issues. When workers are able to join forces and are entitled to bargain collectively with corporations they improve their position to effectively negotiate work relations, including wages, working time, discrimination, casual workers and health and safety provisions. The freedom of association and sound collective bargaining practices ensure that employers and workers have an equal voice in negotiations and that the outcome will be fair and equitable. This may also prevent costly labour disputes. Indeed, some research has indicated that countries with highly coordinated collective bargaining tend to have less inequality in wages, lower and less persistent unemployment, and fewer and shorter strikes than countries where collective bargaining is less established.

This so-called 'enabling right' is, however, not implemented in all countries or denied to certain categories of workers, such as public servants or workers in export processing zones. Amongst others China is well known for its prohibition on independent trade unions, as well as Vietnam (Whalen 2006: 3-4). Considering the garment supply chain discussed in appendix 1 of this research, both countries take a dominant role in the European supply chain of garments. Although EU-based companies search for effective ways to improve collective association within the countries legal boundaries, these companies may also benefit from the absence of trade unions, like lower wages.

In countries where trade unions are prohibited or where a one-union policy is promoted by the government, (EU-based) companies tend to find other ways to promote association and collective bargaining. In the light of the previous, it needs to be noted that this does allow the company to allow for collective bargaining with its own defined framework. Nevertheless, there are examples of successful implementation of so-called 'workers committees' (Maquila Solidarity Network 2008: 25). A description of the successful pilot of the implementation of a worker's committee in China is provided in the report: *From Words to Action: A Business Case for Implementing Workplace Standards; Experiences from Key Emerging Markets* (CIPE and SIA 2009).

However, implementation of freedom of association and collective bargaining in countries does not automatically safeguard union leaders and members. Workers may encounter several problems imposed by their employers, a.o. (1) dismissal of union leaders and union members; (2) management refusal to recognize and negotiated with union; (3) although hard to prove, patterns seem to show that unionized factories may be boycotted in procurement practices by MNCs; (4) shifting of production to countries or export zones where freedom of association and collective bargaining are not respected legally (Maquila Solidarity Network 2008: 23-25). Additionally, it has also been reported that union leaders are arrested for example for their contribution to strikes. Whalen

(2006: 2) reports Colombia to be the most dangerous country in the world for trade unionists. Trade unionists are systematically arrested, killed or they disappear.

3.3.2.1 Protect, Respect and Remedy

State duty to protect

Appendix 3 presents an overview of rules and legislation on freedom of association and collective bargaining on an international and EU level. The ILO conventions on the freedom of association and on collective bargaining are used as minimum legislation by ratifying States and are used, together with the Universal Declaration of Human Rights as reference by the international community. It is expected that ratifying States to the ILO conventions adopt its principles in their national labour rights legislations and develop related enforcement and monitoring measures to ensure compliance at company level. The national legislation can require that companies adopt such principles in their internal rules.

Freedom of association and collective bargaining is provided for by the European Convention on Human Rights (article 11) and in the Charter of Fundamental Rights of the European Union (article 28). In providing for a right of collective bargaining, the EU Charter may influence different constitutional texts and have a substantive impact on national legal systems without such rights at a constitutional level. Whatever the constitutional position, the development of collective bargaining in all Member States has produced legal rules regulating collective bargaining and collective agreements, and these will be affected by the fundamental right in the EU Charter.¹⁷

With regard to RSCM, it is easier to implement national or EU regulation concerning the part of the supply chain based within the EU than the part outside the EU. Beyond EU borders, the EU actively puts the right to freedom of association and collective bargaining on the agendas for example in meetings with countries related to the EU by extensive trade. For example in 2008, a thematic session on collective bargaining was planned on the Third India EU seminar on Employment Relations and Resolution of Conflicts¹⁸. This seminar was held in the light of the India-EU Joint Action Plan on employment and social policies. Additionally, the EU's drafted trade relations are carefully examined against the light of international labour standards. This should improve sustainability more effectively in trade relations.¹⁹

Corporate responsibility to respect

According to the UNHRC survey (UN Human Rights Council A/HRC/4/35/add) some 66 percent of all companies worldwide recognize both freedom of association and the right to collective bargaining. Outside Europe and the USA this is about 50 percent.

Freedom of association and the right to collective bargaining are frequently recognized in broad terms, with no limitations. Several companies even commit to the freedom to organize and bargain in the presence of local laws restricting the rights. However, some

¹⁷ <http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/rightofcollectivebargaining.htm>, retrieved 17 November 2010.

¹⁸ <http://www.labour.nic.in/lc/Indo-EU/seminarSep22-23-08.pdf>, retrieved 17 November 2010

¹⁹ <http://ec.europa.eu/trade/wider-agenda/labour/>, retrieved 17 November 2010

companies narrow the rights. For example, some of them limit recognition to the scope of national law or only recognize unions that represent a certain percentage of employees. Furthermore, most collective initiatives recognise freedom of association and the right to collective bargaining. Where some require that if no such right exists under national law, companies should find alternative means for workers to express their collective concerns, others require companies to provide for the right to representation only if it is recognised under national law. The International Council on Mining and Metal's (ICMM) recognition is rather weak: only requiring members to provide for the constructive engagement of employees on matters of mutual concern, but without actually recognising the right of association or collective bargaining.

Even where, for example, EU-based companies attempt to take appropriate measures to improve freedom of association and collective bargaining, involvement of supplier's management level is essential. As the example below illustrates, this is also where EU-based companies may face challenges in implementing worker involvement mechanisms. Other challenges lay in capacity building of workers.

For example

"At a factory in India producing for Reebok and Nike, the Workers' Forum established by management to address worker grievances initially consisted of workers appointed by management. When Reebok intervened in 2003, management agreed to hold elections for worker representatives on the Forum and a Grievance Committee. By August, 2007, however, Adidas (who had acquired Reebok) noted that the committees still "tend[ed] to be one of management's communication channels to the workers rather than active committees for representing workers to the management."

Source: Maquila Solidarity Network 2008: 25

Access to remedy

At State level, access to remedy can be established in the national labour rights legislation via monitoring and sanction measure against non-compliant companies. At company level, a grievance protocol should be implemented. However, in the case of freedom of association and collective bargaining are practices highly determined by national policies and legislation. For example, trade unions may provide an important institute where victims can address the violation concerning labour rights of companies and which can search compensation and reparation for victims. However, when prohibited by governments victims need to search for other grievance mechanisms to address the violation of companies. In many countries these are not provided for.

3.3.2.3 Prevalence of lack of freedom to association and collective bargaining in supply chains of EU-based companies

From the case studies and sector analysis several challenges can be identified with regard to (safeguarding) the freedom of association and collective bargaining in supply chains of EU-based companies.

- Companies fail to address freedom of association and collective bargaining effectively mainly in countries where an independent union-system is non-existent or where violation of this right is more distant to the core business of the company.

In countries where an independent union-system is non-existent due to legislation prohibiting trade union activities, EU-based companies often choose to search for alternative ways to involve workers in their suppliers' factories. An example is the worker committee. Effectiveness of the worker committee highly depends on the involvement of the management of the supplier and their willingness to collaborate and (fairly) negotiate with the factory workers. This management commitment to the worker committee may be influenced by intensive dialogue and capacity building between the EU-based company and the supplier and requires a sufficient transition period. (Maquila Solidarity Network 2008). In this sense, freedom of association could be tackled by RSCM.

However, it also needs to be noted that companies may also limit the rights. For example, some of them limit recognition to the scope of national law or only recognize unions that represent a certain percentage of employees.

In countries where there is a legal system which allows unionization of workers, harassment of union leaders and members has been reported. This may even be more difficult for EU-based companies to address, since the inflictors as well as the founder of the harassment may not be known or difficult to reach.

- Due to the base of the labour relationship and protection in legal systems, some categories of workers (like precarious employed people, people working in special economic zones, or seasonal workers) are more difficult to target in an attempt to promote freedom of association and collective bargaining by EU-based companies.

For example

In the electronics industry precarious employment constitutes an obstacle to electronics workers exercising their right to freedom of association due to the special relationship they have with their employer:

- temporary workers have no guarantee of remaining in the workplace for an extended period;
- agency workers have an indirect relationship with the company they work for.

This special relation with their employer is often reflected in legislation and Union Statutes. These usually prevent contract workers from joining the same unions as the permanent workforce. Or unions find it difficult to make contact with such workers who are likely to be on different pay and conditions from the permanent workforce.

And maybe even more important: the workers fear loss of current or future employment.

Furthermore, precarious workers are attractive to employers because of their flexibility and low wages. Precarious workers are increasing in numbers, and therefore the issue of freedom of association is becoming ever more pressing rather than being solved through CSR.

- Another form of collective bargaining in supply chains is found in the relation between local smallholder farmers and the local traders they are trading with. The agricultural tier in the cotton supply chain is characterised by a high number of smallholder farmers, which are usually not organised and therefore cannot benefit from collective bargaining power in relation to local traders.

3.3.3 Adequate standards of living

3.3.3.1 Description of the issue

In its most basic definition, standard of living encompasses subsistence rights, namely the right to adequate food and nutrition, clothing and housing. Broader definitions of standards of living state clean water and health as a separate right. The broadest concept states that every individual shall be able to “participate fully in society” (Chen and Ravillion 2001: 293), which includes elements of quality of life beyond survival. The issue of adequate standards of living is closely related to and sometimes used synonymously with the issue of poverty. Both can be assessed in absolute (e.g. people living under US\$1 a day) or relative terms (e.g. people living below a national poverty line). In this report, adequate standards of living refer to the provision of living wages to employees allowing for adequate housing and health and safety provisions for employees and communities.

As a supply chain issue, standards of living relate to the issues of unfair price levels, payment of living wages and respecting labour rights, but reaches beyond these as it encompasses workers outside the workplace as well as other individuals not participating in paid employment, families and communities. The latter will be indirectly touched upon in this study. An extensive analysis of the external effects of unfair prices

levels and payment of living wages on communities and the quality of life requires a normative discussion which is outside the scope of this study.

Considering the issues of living wages in the context of CSR it could be seen as another part of the economic pillar of CSR. Not so much, the profit needed by the company to assure its existence, but the profit (read salary) for the worker to feed his/her family, ability to rent, build or buy a house, buy clothes and pay for the children's education. In short: to provide for adequate standards of living. Although several companies (like Pantagonia, Novartis, Ben& Jerry's) assure the payment of a living wage in their CSR-policy, a clear definition of living wage cannot be found. What is considered a family: two parents and two children, two parents and four children or one parent and two children? What is considered a basic living: obviously housing, basic food, but also education and clothes?

The ILO defines a living wage as

“The level of wages sufficient to meet the basic living needs of an average-sized family in a particular economy”.²⁰

This definition raises the question what basic living needs are according to the ILO, which defines it as:

“certain minimum requirements of a family for private consumption (adequate food, shelter, clothing, household equipment and furniture) and essential services provided by and for the community at large (safe drinking water, sanitation, public transport and health, educational and cultural facilities)”²¹

And last but not least, how many hours of work should provide for this living wage? Assumingly the 48 hour working week standard provided by the ILO, or less if the national labour law includes lesser working hours per week.

The above reflects some of the issues encountered by companies and governments when introducing living wages. And although companies intend to pay living wages (as they may present it in their corporate communication), to put this into practice is not as straightforward as it seems.

²⁰ <http://www.ilo.org/public/libdoc/ILO-Thesaurus/english/tr4634.htm>, retrieved 17 November 2010

²¹ <http://www.ilo.org/public/libdoc/ILO-Thesaurus/english/tr1021.htm>, retrieved 17 November 2010

3.3.3.2 Protect, Respect and Remedy

State duty to protect

Encompassing the 'welfare' pillar of modern Statehood, governments clearly hold a State Duty to Protect and ensuring standards of living for their population. Such a duty exists for all UN Member States that ratified the declaration on Human Rights. Moreover, States develop (fiscal/investment) policies that promote and/or safeguard the availability and affordability of housing, clothing and food. However, despite every country in the world having in place some policies on this issue (e.g. poverty reduction strategy papers (PRSPs) etc.); the empirical global evidence suggests that they are not successfully tackling the problem (Sumner and Tiwari 2005).²²

Host and home States of corporations and their suppliers can address the State duty to protect through regulation and especially implementation of existing rules and norms (cf. below). The typical State approach to providing sufficient standards of living is the provision of collective or public goods and services, while corporations focus on the workers and employees (i.e. club goods).

Typically, whereas appendix 3 includes international and EU regulation on the other four CSR issues covered in this study, the issue of adequate standards of living cannot be found in this overview. Nearly all countries in the world have some policy or legislation on minimum wages, but living wages are clearly excluded from government policy. According to Buttle, only in 26% of the countries in the world, the minimum wage can be said to be a living wage. The position in Europe is better, in 40% of Europe's countries provides the minimum wage for an adequate standard of living (Buttle 2008a).

Although the main focus of this study concerning this issue is on living wages where most states fail to implement adequate regulation, most states have appropriate legislation on other issues beyond living wages which influence adequate standards of living. Examples of these are: legislation with regard to health and safety, displacement of communities and/or environmental issues influencing the communities' standard of living (like water or air pollution).

Corporate responsibility to respect

Besides States, the private sector also holds a Corporate Responsibility to Respect with regard to standards of living. The relationship between a corporation or suppliers and standards of living can either be positive or negative, if, for example, corporate activity pollutes land or displaces people. Concerning the potential negative relationship, the responsibility requires that corporations do not infringe on communities' standards of living rights, and compensate for any losses induced by their activity (e.g. factory discharge contaminating farmers' fields). Impact assessments are useful to identify

²² This impression is shared in Europe, cf. Eurobarometer survey on poverty and social exclusion 2009, website [online], [Accessed 10 May 2010], Available from: http://ec.europa.eu/public_opinion/archives/ebs/ebs_321_en.pdf, and the European Year for Combating Poverty and Social Exclusion, European Commission Employment, Social Affairs and Equal Opportunities website [online], [Accessed 10 May 2010], Available from: <http://www.2010againstpoverty.eu/>

potential negative impacts on standards of living and taking measures to mitigate such impacts.

Regarding the positive relationship at the work place, employers can provide adequate standards of living for their employees. The company might provide lunches and clean water, facilities for nutrition, clothing and housing accessible to the workers only, accessible to workers and their families, or, outside the company, accessible to the whole community. Housing support can be provided by clean and safe dormitories with adequate sanitary and emergency facilities, heat and ventilation, and reasonable space. Furthermore it may include access to potable water and sanitary food preparation, storage facilities and lunchrooms. A health centre at the work place can provide basic services, not only for liabilities from work injuries. Regarding basic education, employers may offer literacy and numeracy courses.

However, as previously mentioned the payment of living wages is regarded as one of the most important aspects of adequate standards of living in this study concerning RSCM. Parts of supply chains nearly always take place in countries with significant poverty levels. A living wage can actively contribute to the alleviation of poverty. As presented in the introduction to this issue, companies are still in search of adequate ways to face this issue. Nevertheless, companies seem to be increasingly determined to also tackle this issue.

Access to remedy

The Access to Remedy therefore consists of citizen rights regarding the government's duty and individual employee rights regarding corporate responsibilities. For the first, the UN Committee on Economic, Social and Cultural Rights (CESCR) defines concrete indicators regarding the availability, quality, and the economic and physical accessibility, of each good.

Regarding corporate responsibilities, the access to remedy has micro and macro level mechanisms. On the micro level, grievance/complaint forms or suggestion boxes are a common approach, though entirely dependent on the companies' goodwill for realisation. Corporate whistle blowing procedures and ombudsman may provide some leverage for realisation. At the macro level collective bargaining offers an opportunity to raise standard of living topics and provides more binding power than voluntary approaches. Nevertheless implementation may still depend on contextual factors, such as rule of law. However, in contexts where minimum wages do not provide for an adequate standard of living, it may be difficult to find grievance mechanisms to fight for more adequate wages.

3.3.3.3 Prevalence of lack of adequate standards of living in supply chains of EU-based companies

Whereas for most CSR issues appropriate legislation is in place, but efficient enforcement may be lacking, in the case of adequate standards of living corporations are often facing contexts where legislation is non-existent. In this sense, companies could be entitled in taking the lead concerning this issue. However, they are still facing challenges by doing so, amongst others the following of which were derived from the sector analysis and case studies.

- Adequate standards of living are determined by many different aspects of CSR, like wages, access to health care, health and safety at the workplace, community relations; only a holistic approach to CSR could optimise the adequate standards of living.

For example

At a macro level, the promotion of sugar cane as a cash crop in Swaziland lead to reduced production of other crops that in some cases were used to feed the villagers. In addition, the replacement of local varieties of food crops for hybrids has meant a loss in biodiversity, resulting in lower production and an increased dependence on imports and food aid, and less income-earning activities, especially for women. (UNDP 2010: 26). Henceforth, an intended economic growth had adverse effects on the subsistence activities of the population.

At company level, the impact on adequate standards of living of precarious workers in the electronics industry is significant and will only increase considering the growing numbers of precarious workers in this industry. Job security is an important feature of labour conditions providing an adequate standard of living as well as the payment of living wages. Currently, the low wages in the electronics industry do not provide for the payment of basic social services, including decent housing, health care, (higher) education for children (SOMO 2009b, c).

- The definition of a living wage and features of an adequate standard of living remains a challenge in the global business arena. Let alone, the implementation of such wages analysed in the highly competitive market sectors.

3.3.4 Loss of biodiversity

3.3.4.1 Description of the issue

According to the Convention on Biological Diversity (CBD) (1992), biological diversity (or biodiversity) means

“the variability among living organisms from all sources including, amongst other things, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.”

Biodiversity is of vital importance to society because of its role in maintaining ecosystem functioning. ‘Ecosystem’ means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit (CBD 1992). Although the role of biodiversity in maintaining ecosystem functioning is not fully understood, scientific evidence shows that ecosystems characterised by high species diversity are more productive, more stable and resilient, less vulnerable to external stresses and pressures and they contribute to a higher overall ecosystem functionality (EU COM, 2010). Ecosystems are the source of many ecosystem services and goods, including (for example) climate regulation, cultural heritage, food, timber, fibre, genetic

resources and water. Ecosystems provide the environment and the natural resources essential for businesses to operate and survive. As industry requires increasing supplies of these materials, greater pressure on ecosystems is compromising their ability to deliver. The resulting diminishing natural supply chain will have profound effects on business with bottom lines affected by increasing costs, scarcity of materials, stakeholder pressure, and increased regulation.

The interdependence between people and biodiversity is most apparent for some indigenous peoples, who may lead a subsistence lifestyle and be critically dependent on biodiversity, or whose culture and history are intimately associated with the natural environment and systems. In Western culture, biodiversity remains critically important. An estimated 40 percent of the global economy is based on biological products and processes (WEHAB working group 2002). Through a close interaction with and manipulation of biodiversity, humans have created thousands of new crop varieties and livestock breeds, with distinct development benefits. This has enabled large increases in the production of food and other natural materials, which have fed the growth and development of human societies (ICMM 2006).

Habitat loss and habitat degradation are the largest of many threats to biodiversity. Agriculture and mining are important sectors in this respect. As an example, the relation between agriculture and biodiversity is further explained. Clearing and using land for agriculture is a major cause of the loss of biodiversity. At the same time, biodiversity and the ecosystem services supports are crucial for a successful agriculture. Agriculture relies on biodiversity for pollination, the creation of genetically diverse plant and crop varieties (for innovation in seeds, biodiversity is the crucial 'raw material'), development of robust, insect or disease-resistant strains, crop protection and watershed control. In short, agriculture has a high level of dependence on the whole range of ecosystem services. Therefore, biodiversity loss represents a significant business risk.

Over the last century, population, market pressures and the development of new agricultural technologies have encouraged patterns of agricultural development tending towards agricultural intensification (i.e. increasing scales of monoculture production, intensive mechanical tillage, irrigation, and the use of synthetic fertiliser, pest control agents and a restricted diversity of crop and livestock varieties), often leading to natural resources degradation. The growing food demand by a wealthier and larger global population is expected to induce further encroachment of agriculture on unmodified ecosystems (10 billion hectares by 2050), with inevitable negative impact on biodiversity (El-Hage Scialabba and Williamson 2004: 3).

Clearance of indigenous vegetation results in a direct loss of biodiversity. Vegetation clearance may also lead to habitat and food supply loss for other species. In steeper areas vegetation clearance and grazing development will likely result in increased erosion with resulting detrimental downstream impacts on wetlands and waterways from sediments and nutrients. Crops grown for one specific purpose (such as cotton for fibre production or sugarcane for biofuel production) are often grown in monocultures in large areas, which significantly reduces biodiversity in that area. For tropical forests, the richest habitat for biodiversity, logging is typically the first major pressure, often providing access to remote areas and leading to further clearance and degradation.

Population growth alone is not solely responsible for driving demand for food and non-food crops. As populations are becoming wealthier, consumption patterns are changing and demand for protein such as meat and milk products is increasing. The production of 1kg of chicken meat requires 2kg of grain, for example, which further amplifies the demand on grain, not to mention the increasing demand on water. Similarly, migration from rural to urban areas is reducing the availability of agricultural labour. In addition, the quest for carbon-neutral energy sources, as well as water scarcity, global food sourcing pressures, fluctuating commodity prices and disproportionate government support to agricultural investment all collude to put further pressure on ecosystems and biodiversity (Dollacker and Gozalez Valero 2008).

The respective roles and responsibilities of States and businesses with regard to the current pressure on biodiversity can be analysed under the lens of “The tragedy of the commons” (Hardin 1968). This socio-economic theory argues that private benefits generated from the exploitation of finite resources outweigh damages to the community. Such a situation stimulates the over-exploitation (by a State or a private entity) of resources to the detriment of the long-term collective interest. This theory poses the problem of the regulation and management of the use of resources that have little resilience to depletion or degradation. Water, soils, species, forests are such commons and many approaches have been proposed to operate the optimal combination between the State duty to protect and the companies responsibility to respect.

3.3.4.2 Protect, Respect and Remedy

State duty to protect

Appendix 3 presents an overview of the international treaties and convention on biodiversity on an international and EU level, including related States. However, the recognition of biodiversity as a component of the State’s duty is a novel and complex issue. As an illustration of this complexity, developing countries on occasions advocate for the right to exploit their natural resources as an instrument to their economic and human development. In such cases, States may disregard the duty to protect biodiversity. However this State duty is also linked to the State duty to provide a decent livelihood when it comes to the right of communities to use natural resources for their livelihood and food security. The current polemics on “land grabbing” (Cotula et al 2009) (the large-scale acquisition of land in developing countries by international investors) illustrate how the two objectives of (1) economic development and (2) sustainable development potentially conflict at private and State level for the use of natural resources and the conservation of biodiversity.

National rules concerning the use of natural resources may act either in favour or in detriment of biodiversity protection. Property rights and economic instruments are generally used by States to implement these rules.

In the case of property rights, the privatisation of natural resources (exploitation licenses or land lease for example for activities including mining, fishing, hunting, livestock raising, timber extraction) is a controversial approach in the sense that experiences show that it can lead either to a better care for biodiversity (giving the new owner an incentive

to enforce its sustainability) or to an over-exploitation of resources (giving him unregulated access to resources).

In the case of economic instruments, States may apply tax systems according to the polluter-pay-principle in order to ensure that the private sector reintegrate the cost of externalities in their bottom lines, therefore stimulating a cautious management of natural resources.

Corporate responsibility to respect

In the case of the corporate responsibility to respect, biodiversity also remains a novel issue for many companies as they lack awareness and understanding on the interaction between their activities and biodiversity. Some sectors like the extractive and mining industry have developed biodiversity specific codes of conducts under the pressure of groups condemning their impact on biodiversity. Some tools have also been developed to raise awareness within businesses and help them to introduce biodiversity-related measures in their sustainability policies. The GRI Biodiversity Resource Guide is an example of such a tool. Other multi-stakeholder initiatives such as Rainforest Alliance, Forest Stewardship Council (FSC), Marine Stewardship Council (MSC) also offer a platform for companies to improve their interaction with biodiversity. As a general rule the corporate responsibility towards biodiversity revolves around three gradual principles: businesses should (1) prevent, (2) reduce, and (3) compensate their impact on biodiversity.

Pro-biodiversity economic instruments such as 'payments for environmental services' have been developed in recent years as an attempt to offer market-based mechanisms for companies to support biodiversity conservation.

Access to remedy

Access to remedy is a complex subject when it comes to businesses that negatively affect biodiversity. The nature of victims can be diverse (individuals, communities, other actors of the private or public sector). Victims can be located in the vicinity of, or far away from the defaulting company. The damage can be material or immaterial (referring to the concept of the intrinsic value of nature). Effect can be felt on the short and/or long term (with potential effect for future generations).

There is at the moment no such thing as a well-defined access to remedy at company or at State level in case of damages caused by businesses on biodiversity. When it comes to the prevention of environmental pollution or damages (which is a narrower concept than biodiversity), the precautionary principle can be referred to, or instruments such as the polluter-pays principle can be used as deterring measures. When it comes to sanction for polluting companies, State can fine companies and require for compensation of victims.

Finally, companies that have adopted a pro-biodiversity policy may adopt compensation measures in case their impact cannot be reduced or prevented. Compensation of biodiversity is the subject of much debate and research as it is very difficult to determine the right compensation measures for a local loss of biodiversity which may be linked to a loss in ecosystem services delivered by the ecosystems affected. Different stakeholders

may value these ecosystem services differently. For some organisations, especially some NGOs, compensation of a residual impact on biodiversity is still a controversial issue as it might present companies with a license to operate regardless of the negative consequences (some of the organisations may refer to this as 'a license to trash').

3.3.4.3 Prevalence of loss of biodiversity in supply chains of EU-based companies

Each of the sectors analysed for this study have a significant impact on biodiversity throughout the supply chain. The control and monitoring of the entire supply chains remains a challenge for EU-based companies, obviously loss of biodiversity prevails at different levels in the supply chains discussed in this study.

- Economic growth often goes hand in hand with the loss of biodiversity. Developments of new industrial areas, but also growth of the extractive or agricultural sectors, each have an impact on the conservation of biodiversity. In recent years pro-biodiversity economic instruments, like 'payments for environmental services', have been developed in an attempt to offer market-based mechanisms for governments and companies to support biodiversity conservation.

However, biodiversity remains a difficult issue to grasp by States as well as companies. It is generally known that the increasing demands of supplies results in a diminishing natural supply chain leading to increasing costs, scarcity or extinction of materials, stakeholder pressure, and increased conflict. But, many companies lack awareness and understanding on the interface between their activities and biodiversity. Due diligence could offer an important solution here.

- Companies have to deal with short term as well as long term impacts on biodiversity of the practices in their supply chains. The complexities of the impacts of practices make it difficult for companies to tackle the problem, without causing new problems.

For example

Genetically modified (GM) cotton (also referred to as Bt-Cotton and HR-cotton) accounts for about 54 percent of the world production in 2008-2009 (ICAC 2009). However there are recurrent controversies about the benefits of GM cotton and its potential impact on biodiversity: while it requires less pesticides and herbicides (Bt-cotton produces a pest-repellent toxin while HR-cotton has a build-in herbicide resistance), it is accused of stimulating resistance of weeds (via cross-pollination) and resistance of pest populations, therefore leading to a higher use of chemical inputs over time. Also the contamination of the genetically modified genes with surrounding species may influence local eco-systems, with unknown consequences for biodiversity.

- In many cases, the effects of the loss of biodiversity will only have an impact on business in the longer term. Therefore, it is on the agenda of frontrunners, but remains underexposed on the agenda of the majority of international business partners.
- Also 'access to remedy' remains a challenge with regard to biodiversity. Victims can be diverse in nature; located to the vicinity of or far away from the defaulting

company; the damage can be material or immaterial; and the effects can be felt on the short and/or long term with potential effects for future generations. With regard to loss of biodiversity there is also a question of representation.

- Finally, companies that have adopted a pro-biodiversity policy may adopt compensation measures in case their impact (direct or in their supply chain) cannot be reduced or prevented. Compensation of biodiversity is the subject of much debate and research as it is very difficult to determine the right compensation measures²³ for a local loss of biodiversity which may be linked to a loss in ecosystem services delivered by the ecosystems affected. Different stakeholders may value these ecosystem services differently. For some organisations, especially some NGOs, compensation of a residual impact on biodiversity is still a controversial issue as it might present companies with a license to operate regardless of the negative consequences.

3.3.5 Unfair price levels

3.3.5.1 Description of the issue

The issue of unfair price levels is seen as a major challenge in relation to RSCM. The term 'unfair price levels' is not well defined in treaties, declarations or regulations. The European Fair Trade Association (EFTA) regards unfair prices as prices 'below sustainable production costs'.²⁴ However, unfair prices may also refer to prices being higher or lower than the levels that would usually exist in a competitive market. In a non-competitive market trade is distorted. Thus, for understanding unfair price levels, distortion of trade is a key issue.

It is recognised globally that anti-competitive practices or restrictive business practices can adversely affect international trade and economic development, particularly that of developing countries. Restrictive business practices means acts of behaviour of enterprises which, through an abuse or acquisition of a dominant market power, limit access to markets or otherwise unduly restrain competition, having or being likely to have adverse affects on international trade and economic development, or which through formal, informal, written or unwritten agreements or arrangements among enterprises, have the same impact (UNCTAD, 2000).

Tackling unfair price levels as a sustainability issue within supply chains is difficult to approach because it is related to market mechanisms. Moreover, it is often hardly being influenced by one single company since price levels are particularly influenced by macro-economic and investment policies. However, in some cases enterprises may create a dominant market position or act together with other enterprises to control the relevant market for a particular good or group of goods. Due to this market power and that of

²³ Determination of the exact damage is difficult to determine and depends on the context in which it occurs. This requires (international) custom-made approaches. Reactive compensation mechanisms are therefore still absent. However, pro-active measures are more easy to be found. Examples of these are: compensating communities for their loss of land, participation in biodiversity banking mechanisms or other credit-systems.

²⁴ <http://www.european-fair-trade-association.org/efta/index.php>, retrieved 18 November 2010

international buyers, these international buyers are able to negotiate low prices for the goods and services supplied by entrepreneurs in developing countries.

Small farmers and producers of agricultural products often receive low prices at the world market. They often depend on the prices that their buyers offer. These buyers know the market better and can switch more easily between suppliers and may use their market power to bargain low prices. Most small farmers do not have the power to influence the price-setting.

Another mechanism creating unfair price levels is caused by import barriers and domestic subsidies which may encourage over-production (subsidies) and may make crops more expensive on a country's internal market (import barriers). If the surplus resulting from over-production is to be sold on world markets, where prices are lower, then export subsidies are needed. As a result, the subsidising countries can produce and export considerably more than they normally would. This can even lead to dumping of surplus production on markets where prices are lower and where demand and supply would normally be in balance, thus disturbing the regional market.

A second consequence is that producers seeking export markets are confronted with export markets protected by import tariffs. Paying these tariffs will lead to lower profits.

At the same time, supporting and protecting farmers may be important even if this distorts agricultural trade. Governments might want to make sure that enough food is produced to meet the country's needs or want to shield farmers from the effects of the weather and swings in world prices.

The effects of anti-competitive practices are not easily quantifiable. However, there is a growing awareness among developing countries of the adverse effects of anti-competitive practices on their economies and their populations. Therefore the drive to establish legal and institutional frameworks in order to fight anti-competitive practices has intensified in recent years.

3.3.5.2 Protect, respect and remedy

State duty to protect

The State duty to protect concerning the issue of unfair price levels is exerted via (1) the participation in international trade agreements (Appendix 3 offers an overview of multilateral instruments). This allows countries to, for example, protect home markets against dumping. It is also exerted via (2) the State's economic policy and national business legislations (limiting monopolies at national level for example) to regulate trade practices at national level.

The common commercial policy is a pillar for the external relations of the European Union. It is based on a set of uniform rules under the Customs Union and the Common Customs Tariff and governs the commercial relations of the Member States with Non-EU Member Countries. The purpose of the instruments of trade defence and market access is mainly to protect EU-based companies from obstacles to trade. The EU has evolved during the process of globalization by aiming for the harmonious development of world

trade and fostering fairness and sustainability. It actively encourages the opening of the markets and the development of trade in the multilateral framework of the World Trade Organization (WTO). At the same time, it supports developing countries and regions through bilateral relations with a view to involving them in world trade using preferential measures.

Corporate responsibility to respect

The maximization of profits is a central principle to business economics. In the context of open markets and standardised products and services, price competitiveness is playing an essential role in the financial success of companies. The corporate responsibility to respect concerning unfair price level is therefore difficult to implement. However, supply risks (typically when the demand exceeds the offer, which occurs regularly on the world commodity markets) are increasingly leading companies to pay their suppliers a fair/reasonable price. Such RSCM practices allow securing the loyalty of suppliers over a longer term. Via initiatives such as the fair trade movement (under the umbrella of the FLO for example), companies agree to pay a minimum price plus a price premium to small farmers. In the mainstream market, price transparency remains a sensitive issue since it represents highly competitive information and it would also disclose division of profits throughout the supply chain. Additionally, the global trade of commodities allows for disproportionate division of profits throughout the supply chain, where all traders throughout the supply chain add their own profit margins. Usually these are unknown to the public. Often the further down the supply chain the smaller the profit, putting the farmer at the bottom of the supply chain under pressure to earn a living with the low prices he gets.

Access to remedy

At international level developing countries may make a stand for better access to markets and fair trade (e.g. Doha rounds). Appendix 3 lists some of the dispute settlement mechanisms that are linked to binding international trade agreements. At national level, disputes related to price dumping or unfair competition can be settled via trade judiciary instances.

At company level, the rule of trade generally prevails in the fixation of prices, depending on the bargaining power of each party. This leaves little space for further access to remedy. Experience shows that when the terms of contract become too difficult for one of the contracting parties, default becomes frequent.

3.3.5.3 Prevalence of unfair price levels in supply chains of EU-based companies

According to practices in the researched sectors, the prevalence of unfair price levels is stimulated by government as well as by company practices. A few challenges are shown below.

- Tackling unfair price levels as a sustainability issue within supply chains is difficult to approach because it is related to market mechanisms. Moreover, it is often hardly being influenced by one single company since price levels are particularly influenced by macro-economic and investment policies. However, in some cases

corporations may create a dominant market position or act together with other corporations to control the relevant market for a particular good or group of goods. Due to this market power, international companies are able to negotiate low prices for the goods and services supplied by entrepreneurs in developing countries.

- The pressure put on prices and lead times by MNCs in combination with the low bargaining power further down the supply chain often results in unfair price levels in the supply chain.

For example

In the electronics supply chain pressure on prices and lead times results in speeding up production outputs, cutting down on labour costs and the demand for longer working days. This causes unfair wages and social hardship for workers concerned.

In cotton production smallholder farmers are usually poorly organised, which limit their bargaining power with regard to local traders.

- Government trade policies and subsidies may maintain unfair prices on the international market, putting fair price levels under pressure. Although recognized as such, this remains an (sensitive) issue with regard to RSCM in which the State plays an important role. For example unfair price levels are created by import barriers and domestic subsidies which may encourage over-production (in case of subsidies) and may make crops more expensive on a country's internal market (in case of import barriers). The effects of anti-competitive practices are not easily quantifiable. However, there is a growing awareness among developing countries of the adverse effects of anti-competitive practices on their economies and their populations. Therefore the drive to establish legal and institutional frameworks in order to fight anti-competitive practices has intensified in recent years.

For example

The cotton sector is well-known for its market distortions. The strengthening of national government policies regarding cotton in specific countries promoted increases in cotton production (despite relatively low prices). In 2004, 14 countries representing three-fourths of world cotton production offered direct income and price support programs to cotton growers, resulting in higher production and forcing the burden of adjustment to low cotton prices onto growers in countries (in Asia and Africa) that did not provide similar measures of protection (ICAC 2007). Most importantly developed countries (with the frequently reported case of the US cotton industry) and China accounted for 86 percent of assistance provided worldwide (ICAC 2007). This resulted in depreciated world cotton prices by about 25 percent (ICAC 2002), lowering the income of more than 10 million poor cotton farmers in West Africa and Asia (Oxfam 2002).

- Small farmers and producers of agricultural products often receive low prices on the world market. They often depend on the prices that their buyers offer. These buyers are more familiar with the market and can switch more easily between suppliers and may use their market power to bargain for lower prices. Most small farmers do not have the power to influence price-setting.

3.4 In brief

Although an increasing number of EU-based companies intend to improve business practices in their supply chains, many issues remain prevalent in their supply chains. General characteristics of contemporary supply chains in the global business arena, like lack of transparency, lack of level playing field and unclarity about the scope of responsibility, contribute to the prevalence of these issues. However, each issue also has its own characteristics playing a role in the effectiveness of eliminating them from supply chains.

Child labour, for example, is tackled in many international business codes; however it often takes place in the informal economy of a country and is therefore difficult to trace, monitor and fully eliminate. Whereas child labour is often regulated by legislation, the enforcement tends to fail. With regard to freedom of association, in many important trade countries for the EU, the right to associate is neglected in the national laws of the countries. In other occasions it is reported that union leaders and members are being threatened and cannot openly practice their right to associate. Although MNCs tend to find other ways to organise workers, acceptance of the suppliers' management is crucial for the effectiveness of worker committees.

An adequate standard of living is influenced by many different factors; some of these factors can directly be related to RSCM. An important factor is the payment of living wages. A clear univocal definition of living wages is, however, difficult to be found. This challenges business in implementing living wages along their supply chains. In relation to this, the pressure put on suppliers with regard to lead time and salaries, causes unfair price levels in supply chains. This may cause unfair practices towards workers, but also effect price levels for farmers and SMEs down the supply chain.

Last but not least, the complexity of the effects of businesses on biodiversity places businesses in a difficult position to fully eliminate the loss of biodiversity throughout their supply chains.

How these issues and their prevalence in supply chains have to be read in the light of the UN Framework, is discussed in the following chapter. The discussion is supported by a number of case studies, which present either success stories or challenges with regard to the five CSR issues discussed in this chapter.

4 RSCM in the context of Protect, Respect and Remedy

4.1 Introduction

Companies are in a continuous process of balancing their ethical and economic and legal responsibilities in their operations. This process takes place at all levels: production, R&D, human resources, procurement. It not only touches internal processes and stakeholders, but also their external responsibilities towards communities, suppliers, consumers, governments etc. Additionally, companies cannot isolate their responsibilities within the industry they are operating in, as the position competitors take and the broad public opinion regarding their industry are of equal importance.

The company's challenge of balancing their ethical, economic and legal responsibilities takes place in a much larger context of globalization. The scope and impact of economic forces and actors defies the international community and individual governments and societies to manage the adverse consequences of operations in the global business arena. The international community is still in the early stages of adapting human rights law to provide more effective protection to individuals and communities against corporate-related human rights abuse. Currently still allowing for an environment in which wrongful acts by companies of all kinds are left without adequate sanctioning or reparation (Ruggie 2008a:3).

John Ruggie, Special Representative of the Secretary-General (SRSG) on business and human rights, proposed the principles-based conceptual and policy framework of Protect, Respect and Remedy; referred to as the UN Framework, to narrow and ultimately bridge the governance gaps created by globalization. The UN Framework serves as a basis in the analyses of the different sectors and CSR-issues presented in the previous chapters.

In the previous chapter, different prevailing CSR issues in supply chains of EU-based companies were analysed. In chapter 3, some challenges for the prevalence of these issues were already analysed based on the sector analyses of cotton, sugar and mobile phones. In this chapter, the analysis will be continued based on each pillar, Protect, Respect and Remedy of the UN Framework. In the following paragraphs for each pillar of the UN framework potential success factors and challenges with regard to RSCM will be highlighted.²⁵ The potential success factors and challenges are drawn from the sectors analyses (appendix 1) and the case studies (appendix 2). These illustrate the role of RSCM in solving some of the unsolved sustainability issues.

The potential success factors represent opportunities to successfully improve on specific CSR issues. It should be realised that these opportunities should be viewed in the context presented in the case studies. Successful use of these success factors in other situations will require further research and adaption to the particular context. The same is true for the challenges identified.

²⁵ It needs to be noted that the focus will remain on the selected issues, sectors and case studies.

4.2 State duty to protect

The equal importance of Protect, Respect and Remedy in the UN Framework, leaves the State with a duty to protect its population from rights abuses. With regard to the role of Protect in RSCM, several learning points can be derived from the case studies. The cases should be regarded as illustrations of prevailing CSR issues in supply chains. Since the case studies deal with specific good practices and challenges in specific sectors and specific countries, these learning points cannot automatically be extrapolated to a general level. They do however provide insight in ways in which Protect may work with RSCM and may provide input for further research or further steps.

Lessons learned and observations derived from the case studies will be highlighted in the following section.

4.2.1 Protect in the light of the case studies

The overall view from the case studies is that actions on a Protect level may very well complement and reinforce actions on RSCM. For example, by addressing sector specific CSR issues through legislation and by government participation in sector specific CSR programmes. At the same time the case studies illustrate that economic interests may sometimes conflict with the state obligation to Protect, resulting in situations where RSCM cannot build on a legislative basis, and internationally recognized standards will need to be taken into account.

In this analysis a broad interpretation of the Protect pillar is chosen to illustrate potential roles States could play in RSCM. Some potential success factors or challenges indicated below directly relate to the duty to protect, whereas some relate to more supportive roles States could implement. This could include support to third States or partners or support to particular supply chain initiatives. For example, it is not a duty of States to financially support other States in implementing more sustainable practices. However, it is the duty of both States (supporting and receiving State) not to infringe on others. This means that the provision of financial support is voluntary, but when provided, it should be directed in a way that does not infringe on either its own population or the population of the receiving State.

Included in this section are the more voluntary actions of States as well as the duty of States are considered.

In summary the following success factors and challenges derived from the case studies and additional literature research will be elaborated upon below.

Potential success factors

- Actions on a protect level may provide more cost effective solutions to specific CSR issues and may work complementary to actions on a respect level or may even substitute the need of RSCM on specific issues, in a specific country and in a specific sector.
- Actions on a protect level in developing countries may require initial funding or non-financial commitment from developed countries.
- International cooperation between States is inevitable to enlarge the effectiveness of domestic measures for improvement of RSCM.

Challenges

- RSCM may be complicated by a country's economic interests which conflicts against the duty to protect communities from company-related rights abuses.
- Trade agreements and/or trade barriers may be controversial in relation to RSCM, since it may raise concerns regarding the competitive position of producing countries or, foremost, the position of actors in the supply chains.
- Monitoring could be part of the enforcement of legislation and policies, but States are still in search of effective tools to monitor the performance of companies in host States. It is much easier for States to monitor territorial activities of companies than the activities of the same companies in other countries.

4.2.1.1 Potential success factors for an effective State duty to protect in RSCM

Actions on a protect level may provide more cost effective solutions to specific CSR issues and may work complementary to actions on a respect level or may even substitute the need of RSCM on specific issues, in a specific country and in a specific sector.

This is illustrated by the Cambodian case study (case 1) in which a trade agreement between the USA and Cambodia resulted in a state run garment industry programme resulting in improved CSR performance of the garments sector, with a strong focus on minimum wages and freedom of association. Over the past three years, compliance with minimum wage payments reached 93-100% for regular workers and 98% for casual workers.²⁶ Additionally, the freedom of association improved.

The programme also has a potential to act as an alternative to costly private sector monitoring of social performance. As an example, the average cost per factory for participation in the programme added up to US\$ 2,333 per annum, compared to an average US\$ 10,000 for factory inspection and certification to verify compliance with buyer's codes of conduct (Polaski 2004: 15). International acceptance of the programme – in the sense that the acceptance level is as such that participation and positive internal

²⁶ Interview Anne Ziebarth, Legal specialist of the ILO Better Work programme – 8 September 2010.

verification may replace private sector monitoring – could contribute to the reduction in monitoring costs. The role the State of Cambodia could play to enhance the international acceptance of the programme is twofold, (1) the State could actively promote the programme internationally, emphasizing that the programme could replace private sector monitoring; (2) the State should monitor inclusion of issues in the international CSR-agenda so the programme meets international expectations.

The challenge States may face with regard to the latter is also illustrated by this Cambodian case. The Cambodian State focuses on the compliance with the legal minimum wages. Internationally provision of living wages is part of the CSR-agenda. However, minimum wages do not always meet the level of living wages. This might hamper the international acceptance of the programme as a substitute for private sector monitoring.

Actions on a protect level in developing countries may require initial funding or non-financial commitment from developed countries.

This also means that EU-based companies may depend on the willingness of the EU or their government to (financially) contribute to a solution on a Protect level in the developing countries the companies operate in or source from.

This is illustrated by both the Cambodian (case 1) and the Cotton Made in Africa (CMiA) case study (case 5). In both cases government investments from developed countries (USA and Germany respectively) were key to the success of the initiatives. In the Cambodian case the USA promised better access to US markets in exchange for improved working conditions in all exporting garment factories. The USA also supported the programme financially; the industry benefited from this interference by the US government. In the case of the CMiA-project, amongst others, German financial support contributed to the successful implementation of pilot projects. The successful implementation of this project allowed for further industry commitment and expansion of the project to six sub-Saharan countries. However, this project also demonstrates that such an ambitious initiative, even if demand-driven, is not financially viable for mainstream companies alone.

Additional non-financial commitment by governments may also be regarded as a success factor in the CMiA-case. Involvement of public as well as private actors allows for the creation of synergies. The synergy strengthens the project since each actor – private and public – contributes conform their own ability. It might be easier for importing States to negotiate with producing States regarding regulation and policy (realising the limitations in this respect), whereas the private sector's ability mainly lays in their negotiating power at the level of private to private.

International cooperation between States is inevitable to enlarge the effectiveness of domestic measures for improvement of RSCM. (Zerk 2010: 216-217).

International cooperation is crucial to the effectiveness of the implementation of national legislation or regulation to overcome adverse effects of domestic measures with effects beyond national borders.

In the case of biodiversity or other environmental issues, joint efforts by States are already seen (Zerk 2010: 176-177, 208); in these cases domestic measures or regimes are to prevent other States from harm, since environmental issues are often ‘transboundary’ in nature. For biodiversity this could for example include restriction on imports of products that have been harvested in an environmentally damaging way or measures of home States aiming at limiting the support to environmentally harmful projects overseas.

Conventions – like the Convention on Biological Diversity (CBD) – often form the basis to domestic measures. However, this may conflict with economic development. Large-scale land acquisition in developing countries by foreign investors is stimulated by the host States in order to increase or sustain economic growth. Home States, on the contrary, may impact this practice by domestic environmental legislation. The adverse short-term effect may lie in hampering the host State’s economic growth. This shows the conflicting interests of the global community and local States and the difficult context in which States are operating and the necessity of dialogue and cooperation between States to face global CSR-issues. It is outside the scope of the study to elaborate upon the complex issue of extraterritorial jurisdiction. The University of Edinburgh has recently executed a thorough study on, amongst others, this issue.²⁷

Where positive stimulus of home States were found in close cooperation with host States, positive impact on improvement with regard to RSCM was observed. For example the German government participated in the Cotton Made in Africa project, through its development agencies (case 5). The combined public/private consortium of participating partners contributed to attracting many textile companies and allowed the project to spread to a large public. Getting the African government bodies on board remained a challenge to the project. The Aid by Trade Foundation (AbTF), which runs the CMiA programme, works together with the cotton companies in Africa and does not interfere in their relationship with their local governments. Some government members (in Benin for example) are in contact with the AbTF, but do not have any active role in the CMiA initiative. This means that in this particular case the “State duty to protect” pillar in the involved African countries is not interacting with the “responsibility to respect” pillar. The “State duty to protect” is actually a result of the German international cooperation policy. This public involvement allows the CMiA to develop a financially acceptable CSR proposal for the allied companies: the licence fees that these companies pay to source CMiA cotton do not cover the farmer’s training and verification process.

²⁷ Augustein, Daniel 2010: Study on the Legal Framework on Human Rights and the Environment Applicable to European Enterprises operating outside the European Union. Published by the University of Edinburgh.

4.2.1.2 States' challenges concerning RSCM in their duty to protect

RSCM may be complicated by a country's economic interests which conflict with the duty to protect communities from company-related rights abuses.

Globally the effectiveness of States' policies is measured by economic or other quantitative performances of the country. It is in a State's favour to assure economic growth to remain competitive in the international arena. It often remains a challenge to States to balance economic performance and the duty to protect in other areas, like human rights and environmental protection.

The garment industry, for example, is an important industry to many Asian countries (case 3). This is illustrated by the importance of garment exports to Bangladesh. The garments exported from Bangladesh account for 80% of its total exports (Hussain 2010). At the same time garment factories can easily be shifted to cheaper States. It is in the State's interest to remain competitive with other (neighbouring) States. Due to the competition to attract foreign investors, countries can be unwilling or unable to enforce or implement regulation to improve labour rights or enforce other CSR-measures. The Asia Floor Wage Alliance might open doors with their proposition that Asia will not lose their global competitive position when wages are increased. Especially in a context where, in particular, European garment industries increasingly are in search of better practices in supply chains and in that sense increasingly support the pay of 'living wages'.

Government regulation occasionally also has an adverse effect on CSR-issues. In many countries mobile phones production is (re)located in Special Economic Zones, where usually the economic laws are more liberal than a country's typical economic laws. These zones attract foreign investment in the mobile industry and provide employment and economic growth to the country. Information regarding labour conditions is often limited due to the closed nature of the zones (Citizens' Research Collective on SEZ 2009: 2). For example, the presence of Nokia in the SEZ of Chennai has contributed to improved infrastructure paid by the local government due to tax exemption, and provides thousands of jobs, but the wages are low and many workers working on temporary contracts do not enjoy the labour rights in force outside the SEZ-boundaries. (Citizens' Research Collective on SEZ 2009)

Additional to the challenge of States to remain competitive, Mozambique also encountered problems in finding acceptance of their policy with the MNCs operating in Mozambique (case 2). For the industry the market mechanism – meaning low prices determined by the market – outweighed the rehabilitation of the local sugar industry – for which the State introduced a minimum national price for sugar. Internationally the State's protection policy was accepted. The State's intention to stimulate and rehabilitate the local sugar supply chain was hampered by the MNCs' unwillingness to pay the prices set by the government. The main sugar-using industries, dominated by Cervejas de Mocambique and the local branch of Coca Cola Bottling Company, continued to import sugar from neighbouring countries out of protest. According to observers, the industry seemed willing to pay the extra import fee, as part of their pressure to force Mozambican

sugar companies to lower their prices²⁸. In total it took about six months to reach an agreement on a preferential price for industrial consumers²⁹.

Trade agreements and/or trade barriers may be controversial in relation to RSCM, since it may raise concerns regarding the competitive position of producing countries or, foremost, the position of actors in the supply chains.

Especially in the sugar and cotton sectors adverse extraterritorial effects of domestic measures can be observed. Both sectors are characterized by domestic protective measures in many producing, developing and developed countries. It is only since the last decade that for example the EU-sugar sector is being reformed and protective subsidies are being lifted. As a result, the EU has become a net importer and no longer a net exporter of sugar. Nevertheless, EU sugar producers still benefit from the Common Agriculture Policy (CAP) payments to remain competitive in the global market.³⁰ The global sugar sector is characterized by over production resulting in pressure on the global market price for sugar, mainly effecting producers in countries lacking the ability to provide similar financial stimulus to their local agricultural producers. Indirectly market protective mechanisms may contribute to the perseverance of the issue of 'unfair price levels' as discussed in chapter 3.

However, lifting the Multi Fiber Agreement (MFA) in 2004 resulted in consolidation of domestic cotton and garment markets and shifting of the industry between (mainly Asian) countries. The restructuring resulted in Asian States assuring their competitive position in the global garment market (case 3). For example, Bangladesh highly benefited from the MFA, since it was excluded from the MFA country list. The MFA lasted from 1974 up until 2004, during this period Bangladesh saw its garments industry grow significantly to 80 percent of their exports in 2008. To remain competitive in the more open market after 2004 when the MFA was lifted, Bangladesh had to keep the wages in the garment industry down. Lifting the MFA did not go hand in hand with improvements of working and living conditions of the workers (Singh 2009: 26) and therefore does not necessarily contribute to RSCM.

These above examples argue in favour of 'due diligence' at State level, Ruggie refers to this as policy coherence. The pillar 'Corporate's Responsibility to Respect' of the UN Framework highly depends on mapping risks, impacts, activities to avoid or mitigate impacts, as part of the due diligence process of corporations. From the sector analyses and case studies in this research the conclusion could be drawn that due diligence could also be considered an important tool for States to map the impacts, perceived impacts on other States or their communities, when implementing domestic measures with foreseeable extraterritorial implications. Where the due diligence is spelled out in a four step process in the UN Framework, these steps have not been defined for policy

²⁸ Panapress website [online], [Accessed 30 August 2010], Available from: <http://www.panapress.com/newslatf.asp?code=eng088983&dte=29/07/2005>

²⁹ Afrol news website [online], [Accessed 30 August 2010], Available from: http://www.afrol.com/News2001/moz004_cashew_sugar.htm

³⁰ <http://www.europarl.europa.eu/sides/getDoc.do?language=EN&reference=A7-0204/2010> (retrieved 15 September 2010)

coherence, since this was not included in the SRSG's mandate. Potential adverse effects on RSCM of State policies and regulation may argue in favour of a State's commitment to human rights and other sustainability issues and a statement on how far a State commits itself to take this into account.

Monitoring could be part of the enforcement of legislation and policies, but States are still in search of effective tools to monitor the performance of companies in host States. It is much easier for States to monitor territorial activities of companies than the activities of the same companies in other countries.

In the search of States to support and strengthen companies to respect rights also beyond the State's boundaries, sustainability reports are increasingly playing a role. Ruggie (2010: 10) argues that sustainability reporting could enable stakeholders, like investors, consumers, governments, to compare rights-based performance and it also allows States to monitor companies' performance on rights-based issues. It could also pressure companies to respect rights beyond the States boundaries when companies are also required to report about their extraterritorial activities.

Reporting as a tool to provide a solution to unsolved CSR-issues as discussed in this study could be threefold: (1) it could provide insight to companies about pending sustainability issues in their supply chain and stimulate companies to improve their effect on these issues; (2) research of reports could provide suggestions why CSR has not proven to be a solution of unsolved CSR issues and allow for relevant measures to improve RSCM to be taken by industries or States; and (3) it provides information to (external) stakeholders about the RSCM-performance of companies and allows for appropriate action by these stakeholders if necessary.

Many States consider implementing some sort of mandatory sustainability reporting as, amongst others, a means to improve RSCM and to obtain more insight in companies' (extraterritorial) practices and the consequences of these practices. Companies also regard other forms of disclosure – like certified compliance with labels – equally important in their RSCM as sustainability reporting. A growing number of national obligations with regard to reporting practices which are not fully harmonised may increasingly prove to be a challenge to companies operating in or sourcing from different countries. Compiling different local data (complying with local legislation) in a corporate report will be very difficult and may complicate RSCM activities. Moreover, gathering data further down the supply chain may prove to be difficult in sectors where supply chains are not very transparent and traceability of raw materials may be limited (e.g. commodity markets and materials processed by small producers and family labour).

4.2.2 Protect contributing in solving CSR issues

Although twelve case studies is a limited number to draw general conclusions from, a few trends can be highlighted after having studied these case studies with regard to the pillar 'State Duty to Protect'. As the previous sections show, there is potential for State intervention to contribute to solving CSR issues. Nevertheless, the previous also shows

some of the challenges States are facing and which slowdown the process of offering a solution to still existing CSR-issues.

Effective solutions to specific CSR issues may be provided by States through specific regulation. In occasions these could even substitute voluntary measures to enhance RSCM. Thorough review of existing and future policies and laws should ensure the State to map the positive impacts of their proposed regulation, but also give insight in adverse or unintended effects. Effectiveness of State interferences, especially those with extraterritorial effects, could be enlarged by international cooperation between States, as observed from the case studies.

Defining State measures to improve RSCM remains a challenge due to contradictory implications. In several case studies conflicts between economic and social and environmental interests were observed. Measures to assure sustainable economic growth could have adverse effects on for example labour rights, for example an attempt of States' industries to remain competitive in the international business arena could put pressure on wages. Or in other occasions land (and henceforth biodiversity) is sacrificed for industrial development.

Therefore, State's involvement in RSCM cannot stand alone and goes hand in hand with companies taking their 'responsibility to respect' seriously.

4.3 Corporate responsibility to respect

Based upon the different cases presented in this report, the responsibility to respect and the role of due diligence will be further explored in the following section. It needs to be noted that the appliance of the UN Framework in this study is not limited to human rights, since the principles of Protect, Respect and Remedy could also be applied to, for example, environmental protection.

4.3.1 Respect in the light of the case studies

The overall view from the case studies is that due diligence (as proposed by Ruggie) and impact assessments play an important role in RSCM. It allows companies to know what their (possible) impact is and where action is required to minimize infringement on rights of others and allows for proactive response by companies on possible impact. Required action can be guided by codes or standards, of which several examples are given in different case studies. However, the responsibility to respect also raises questions: up to which level is a company responsible and ought to take responsibility, or which issues are most burning and require voluntary action in specific supply chains.

In summary the following potential success factors and challenges derived from the case studies and additional literature research will be elaborated upon below.

Potential success factors

- The execution of a due diligence allows companies to assess (potential) impacts on rights of individuals, communities or the environment and to define policies to prevent or mitigate these impacts in a structured way.
- Due diligence requires a proactive attitude to respecting rights and the internalization of that respect at all levels of the company's operation. This is also referred to as 'knowing and showing'.
- Codes and standards play an important role in the guidance of companies towards more sustainable practices, as they provide common understanding of the CSR issues in the supply chain and a more uniform way to approach these.

Challenges

- Due diligence may not prevent or mitigate right-based abuses by companies; the activities defined to prevent or mitigate these abuses are to the discretion of the company. The 'scope of responsibility' of companies remains unclear, undefined and ambiguous.
- Although CSR starts from compliance with local laws, especially in areas where these are not enforced, the voluntary aspect of CSR or doing more than the law requires is equally important to the concept. The concept of 'beyond the law' often remains a challenge for companies.
- Voluntary actions to face one CSR-issue might have negative side-effects on another CSR-issue. Companies are often left with finding a normative balance between the primary goal of the action (avoiding a rights-abuse to occur) and possible side-effects on other rights.
- Codes and standardizing initiatives cannot solely be expected to eliminate rights violation in a globalized business arena. Several issues remain difficult to tackle.
- Social auditing of rights-based standards throughout supply chains may not be able to detect all non-compliances

4.3.1.1 Potential success factors with regard to corporates' 'responsibility to respect'

The execution of a due diligence allows companies to assess (potential) impacts on rights of individuals, communities or the environment and to define policies to prevent or mitigate these impacts in a structured way.

The case studies show that, in practice, impact assessments are not executed under the name of due diligence, however, the case studies do show the importance of adequate assessments of potential impact on individuals, communities or the environment. Nevertheless, companies may often not be aware of the impact of their policy on human rights. As Ruggie argued in an interview with ILO Online: "In my view what's happening is that human rights today are where the environment was 30 years ago. No company had environmental impact assessment then, today almost everybody does. 30 years

from now companies will have human rights impact assessments. In fact many companies already do. It's part of the social evolution of the relationship between business and society that is focused on the need to have sustainable relationships with the physical environment but also with the social environment in which business operates."³¹

As Ruggie stated human rights assessments are not common yet, the basic concept of impact assessments is widely accepted. Several companies mentioned in the case studies execute management, environmental and/or quality assessments to comply with other standards, like ISO 14001, HACCP, BSCI, GlobalGAP. Issues concerning human rights or other complex issues like biodiversity and unfair price levels are often underexposed in these assessments.

Ruggie regards human rights assessment as part of the total due diligence. The due diligence is defined, by Ruggie, as a process that helps companies to address their responsibilities to individuals and communities. Part of this process is assessing what the potential impacts are, however it cannot be performed in isolation of the commitment to respect human rights, and integrate this respect in daily business and track and report performance on their impact on human rights and their (periodical) assessment of impacts.

None of the cases studied for this research showed a company fully committed to take responsibility for respecting human rights in their supply chain. As this is one of the starting points of due diligence as proposed by Ruggie (2010: 3), none of the case studies provides an example of a full due diligence executed conform the Ruggie's range of thoughts. However, the electronics industry committed themselves to map potential human rights abuses in relation to mining in their supply chain (case 9) and intended to implement initiatives to eliminate the rights abuses in particular mining industries especially in conflict zones (here: Democratic Republic of Congo). Two of the main objectives of this initiative were to (1) assess suppliers' use of codes of conducts addressing social, environmental, health and labour issues and (2) to identify the challenges of collecting data and consider ways to enhance and maintain transparency on the supply chain (Resolve 2010: 3). Companies like Philips, Dell, Apple, and Sony have committed themselves to this initiative, in an attempt to improve the conditions in their supply chains.

Parallel, the OECD developed a guideline concerning due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas.³² The due diligence process in this document is based on Ruggie's proposal of due diligence. A handful of willing companies diversified throughout the entire mineral supply chain of tin, tantalum, tungsten and gold, in all relevant downstream sectors, agreed to implement the guidance within their supply chains. The implementation of the guidance by these companies should offer lessons to strengthen the effectiveness of the proposed guidance by the OECD.

³¹ http://www.ilo.org/global/About_the_ILO/Media_and_public_information/Feature_stories/lang--en/WCMS_141320/index.htm, retrieved 15 July 2010

³² Draft Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-affected and High-risk areas, 2010. Not yet approved by OECD. Available from: <http://www.oecd.org/dataoecd/13/18/46068574.pdf>. Retrieved 20 November 2010.

Several other industrial initiatives can be found in the case studies in appendix 2. Whereas Ruggie proposes due diligence at company level, these case studies provide examples where the industry is concerned about the industrial impact and commits itself to improvements. Similarly, Ruggie proposes due diligence over the full range of impacts, whereas in the example provided the industry mostly tackles part of their impacts. In the example above, it is focused on the impact of the extractive tiers in the supply chain. Other examples also provide initiatives with regard to labour conditions along the supply chain of impact on the biodiversity.

In all these examples either part of, or the entire due diligence process is implemented and provides a structured way to companies' or industries' commitment to improve supply chain practices and/or the assessment of their actual impact.

Due diligence requires a proactive attitude to respecting rights and the internalization of that respect at all levels of the company's operation. This is also referred to as 'knowing and showing'.

Over the last decades cases of abuses by companies have been exposed by the media, companies were blamed for the negative impact of their operations on workers' or community rights or on environmental issues. So-called 'naming and shaming' is a response by external stakeholders to the failure of companies to respect rights (UN SRSG on Human Rights and Transnational Corporations and other Business Enterprises 2010b: 16). The importance of due diligence as part of a company's responsibility to respect requires a more pro-active approach to human rights or other issues in RSCM.

Some brands in the footwear and garment industry have set an example with regard to "knowing and showing" (case 6). These companies (a.o. Nike, Adidas and Levi Strauss) list their suppliers on their websites. Any abuses at supplier level can therefore directly be traced to the brand company. The reputational risk of the brand company enhances their efforts to assure and improve sustainability throughout the supply chain.

Companies may also choose other channels to disclose their sustainability information concerning their supply chain. Sustainability reporting is widely accepted as a means of disclosure of information about sustainability performance. The Global Reporting Initiative (GRI) is one of the commonly used frameworks for sustainability reporting and includes sustainability in the supply chain.

Additionally, companies may refer to codes and standards with regard to disclosure about their sustainability standards, as to the following potential success factor.

Codes and standards play an important role in the guidance of companies towards more sustainable practices, as they provide common understanding of the CSR issues in the supply chain and a more uniform way to approach these.

To comply with RSCM-principles, companies often search for guidance. All three sectors discussed in this report have sector initiatives to guide the industry towards more sustainable practices in the supply chain. Most of these initiatives are linked to codes or

standards for the sector. These initiatives contribute to a more sustainable sector from first tier to consumer. Compliance with these codes or standards is voluntary. Examples of these sector specific codes for cotton are: Fair Wear Foundation (FWF), Worldwide Responsible Apparel Production (WRAP), the Better Cotton Initiative and the Workers Rights Consortium. For the electronics sector, the Electronic Industry Citizen Coalition is a relevant initiative. For sugar cane there is the Better Sugar Cane Initiative (BSI) which defines sustainability criteria for sugar cane production. Additionally companies can search guidance in other, more general, codes or standards. Examples of these are the standard of the Business Social Compliance Initiative (BSCI), FLO Fairtrade Standards (FLO), the Ethical Trading Initiative and certification initiatives like the Rainforest Alliance and Utz Certified. Each of these codes has its own focus on sustainable supply chains.

The positive impact of codes and standardizing organisations on RSCM was shown in different cases. Notably, many of the initiatives described in the case studies made use of a code or standard. The Cotton Made in Africa initiative developed its own verification criteria based upon the ILO (case 5); the Code of Conduct of the Fair Labour Association (FLA) is used by 32 large MNEs in the garment industry, a.o. Adidas and Hennes & Mauritz³³ (case 6); and the Code of Conduct of the Electronics Industry Citizen Coalition is widely accepted by the Electronics industry with a.o. participants like Dell, IBM and Apple.

The acceptance of and compliance with codes and standards by industries and individual companies plays an important role in RSCM and tackling unsolved CSR-issues.

4.3.2.2 Challenges with regard to a corporates' responsibility to respect'

Due diligence may not prevent or mitigate right-based abuses by companies; the activities defined to prevent or mitigate these abuses are to the discretion of the company. The 'scope of responsibility' of companies remains unclear, undefined and ambiguous.

Due diligence requires commitment of a company to respect human rights and other rights and in the process of the due diligence, impacts on CSR issues in the supply chain are identified. However, this does not necessarily lead to action by the company. Although companies may benefit from rights violations, the violations might also be beyond their scope of responsibility.

Scope of responsibility is a narrower concept than that of 'sphere of influence' as commented on by Ruggie.³⁴ Although the latter can be taken into account, the notion of influence is in itself too extensive to provide a basis for a company's legal responsibility

³³ http://www.fairlabor.org/fla_affiliates_a1.html, retrieved 15 August 2010.

³⁴ Sphere of influence has become an analytical tool for delimiting the corporate voluntary responsibilities since the UN Global Compact (UNGP) introduced the term. Most prominent in this sense is work of the Business Leaders Initiative on Human Rights (BLIHR). See *A Guide for Integrating Human Rights into Business Management* (BLIHR, UNGP and Office of the High Commissioner for Human Rights (OHCHR) available at: <http://www.ohchr.org/Documents/Publications/GuideHRBusinessen.pdf> , or *Understanding Sphere of Influence and Complicity* (OHCHR).

for human rights abuses.³⁵ It remains a challenge to the international community to provide an exhaustive definition of 'scope of responsibility', providing that factors of control, causation and benefit and the duration and severity of the human rights impact, should be part of the formula for assigning the responsibility.

The UN Framework does comprise criteria to determine whether a company is required to tackle issues further down the supply chain. In this respect, Ruggie (2010: 2) argues that theoretically companies are responsible to respect rights and impacts on these generated through its own activities as well as through activities of parties with whom the company has relations. However, Ruggie makes some differentiations, as in practicing some rights may be more relevant to some sectors, industries and circumstances than others.

Furthermore, when a company contributes to the abuse by itself, the company is required to take appropriate steps to address the abuse. Impacts on human rights through relationships with other parties seem more complex. According to Ruggie there are two important variables determining what action should be appropriate. The first variable is how crucial the supply chain entity is for the company's business. Secondly, the level of leverage the company has in the supply chain entity determines what action to take. This depends on several factors, like the degree of direct control, terms of contract, proportion of business the company represents for the supply chain entity, the ability of incentivisation, reputational benefits for the supply chain entity and the ability to engage other actors. Following these variables in combination with due diligence provides companies with valuable guidance on their scope of responsibility. (UN SGSR on Human Rights and Transnational Corporations and other Business Enterprises 2010a)

However, from the case studies it may be concluded that the definition of a company's scope of responsibility and when to act remains a challenge. In the case of the publication of suppliers on the website of brand companies (case 6), for example, it is shown that tackling issues at second or third tier entities in their supply chains remains a challenge. The complex nature of the garment industry makes it nearly impossible to monitor the practices of all entities in the supply chain, which is a concern considering the fact that further down the supply chain rights are more likely to be violated. Similar complexities are seen in the sugar and mobile phones sectors.

³⁵ Amy Lehr and Beth Jenkins tried to clarify the concept of corporate sphere of influence. They argued that the concept as previously articulated lumped together too many disparate concepts, such as control, causation, physical proximity, benefit, and political influence, and thus was unable to provide crisp policy guidance to companies and stakeholders. See Amy Lehr and Beth Jenkins "*Business and human rights – Beyond corporate spheres of influence*", 12 Nov 2007 available at <http://www.ethicalcorp.com/content.asp?ContentID=5504>

Although CSR starts from compliance with local laws, especially in areas where these are not enforced, the voluntary aspect of CSR or doing more than the law requires is equally important to the concept. The concept of 'beyond the law' often remains a challenge for companies.

The importance of the voluntary aspect of CSR is also supported in EU communication (2006: 2), where it is said that CSR is about companies deciding to go beyond the minimum legal requirements and obligations stemming from collective agreements in order to address societal needs. With this in mind, the EU defines CSR as follows³⁶:

"A concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis."

The cases illustrate that CSR only provides a solution to CSR-issues when the issues are considered in itself and rights-based consequences of companies' activities are mapped, rather than that compliance with local laws is the basis for action. Compliance with local laws may not be sufficient to tackle the issue. Local laws do not always meet the standards set in international conventions and declarations. Therefore, a 'beyond the law' approach is required to tackle certain CSR-issues.

A remaining challenge for the Better Factories Cambodia programme (case 1) is the payment of living wages. Compliance with the local Cambodian law improved the workers' wages significantly, a tremendous growth of companies paying minimum wages was observed. Compliance with the local law is of importance to the workers, but it does not provide them with a living wage per se.

In general, an important challenge to going beyond the law is the lack of a level playing field for companies. This is also one of the reasons why initiatives like the Cotton Made in Africa initiative, but also the Better Cotton Initiative, do not focus on price premiums. The key benefits of participating cotton farmers is realised by better management practices resulting in financial benefits (lower costs and higher yields) and the security of demand for their products. The lack of a level playing field has also spurred multi stakeholder initiatives like the Round Tables for various commodities (palm oil, soy, cocoa, etc.) and the Better Sugar Cane Initiative. By involving stakeholders from different producing countries, buyers from key sourcing countries and key actors in the supply chain (like major processors of commodities) a (larger) level playing field is being created.

³⁶ http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index_en.htm, retrieved 1 September 2010.

Voluntary actions to face one CSR-issue might have negative side-effects on another CSR-issue. Companies are often left with finding a normative balance between the primary goal of the action (solving a rights-abuse to happen) and possible side-effects on other rights.

At first companies need to find their own ethical balance of what they regard as 'doing good', however they may remain in a difficult position when different stakeholders judge their behaviour. What one stakeholder regards as 'doing good' might be different from how another stakeholder judges the company's conduct. A multiplicity of codes and interpretations of standards and arbitrary judgements of what is 'doing good' and what is not, therefore requires basing CSR policies on internationally recognised standards and principles such as ILO Conventions and the OECD Guidelines for companies.

An example could be derived from case 9. Sustainable procurement is often part of CSR-policies. For mining products, it is possible to identify mining sites that are managed fully in line with international standards. If the electronics industry starts sourcing from only these mines, it is most likely that other buyers will fill the gap and intensify sourcing from dubiously managed mines. When buyers, willing to negotiate better working conditions for mine workers, pull out, chances of improvement for the workers will also be reduced. This shows that sustainable procurement, although contributing to better supply chain practices, also may have an adverse effect and cannot fully solve CSR-issues. There always seems to be a market for unsustainable products and a lack of level playing field will maintain this market. When adverse impacts are detected, companies are therefore encouraged to take all reasonable steps to mitigate and remedy the abuses with the identified supplier, rather than to "cut and run", which could worsen the particular situation.

Another example is provided by the case of paying living wages by Knights Apparel-owned Alta Gracia factory in the Dominican Republic (case 7). The US-based independent labour rights organisation Workers Rights Consortium developed a special code of labour standard for the factory; the provision of living wages was included in this code. The workers in the factory are paid three times the country's minimum wage. The challenge for Knights Apparel is to role the initiative out to other factories and still remain competitive. This example does not necessarily have negative side-effects on another CSR-issue, but shows that CSR-activities only have full effect when rolled out to all supply chains of Knights Apparel in this case. Otherwise it could be marked as window dressing.

Codes and standardizing initiatives cannot solely be expected to eliminate rights violation in a globalized business arena. Several issues remain difficult to tackle.

The case studies illustrate that several issues are difficult to tackle or are not tackled by codes and standardizing initiatives. It needs to be noted that an exhaustive list of untouched issues cannot be derived from the case studies. The following issues can be mentioned:

- Transparency, traceability and verification throughout the supply chain

Global supply chains are characterized by their complexity due to the numerous supply chain entities involved in the production of the end-product. Full insight from first tier to retailer in the current trade system seems nearly impossible. Transparency in the supply chain requires strong engagement with supply chain entities and mutual willingness to transparency, a partnership approach towards suppliers rather than a top down approach, increased direct sourcing, implementation of a traceability system (RESOLVE 2010: 15; Sisco et. al. 2010)

Several footwear and garment industry players take a frontrunner position by disclosing their list of first tier suppliers on their websites (case 6). However, the published lists of suppliers are usually only limited to their first tier suppliers. These are best known to the company, while second tier suppliers may not be known. Usually the further down the supply chain the more likely basic labour rights are violated; this combined with intransparency and untraceability in the supply chain may leave CSR-issues unsolved further down the supply chain.

- Certain issues are consequently not covered by codes and standards, except from a few exceptions. Issues often excluded from codes and standards are a.o.:
 - Security of employment

Security of employment is seen as an issue in new forms of employment, not only in developing countries, but also in developed countries. Case 10 illustrates that a serious issue with precarious work is the protection of the rights of temporary workers. Labour conditions for temporary workers are increasingly covered in codes and standards, but the codes and standards seldom cover the desire of long term contracts for the majority of the workers.
 - Unfair price levels

Unfair price levels are sometimes difficult to tackle by the private sector, since these may be dictated by protective measures of States (case 2). However, many supply chains are controlled by large MNCs negotiating low prices with suppliers, having a multiplier effect further down in the supply chain. Leaving, for example, small farmers with marginal profits on their produce and no power to negotiate better prices.

Tackling unfair price levels as a sustainability issue within supply chains is challenging, because it is related to market mechanisms, rather than individual sustainability practices by companies. However, issues like dumping surplus production for low prices and selling for prices significantly below the market price could possibly be included in individual codes or standards.
 - Adequate standards of living

Adequate standards of living is a normative notion, the definition ranges from rights to adequate food and nutrition, clothing and housing up to the ability to 'participate fully in society' (Ravallion 1998). Case 7 provides a good example of the provision of living wages to the workers of the Knights Apparel factory in the Dominican Republic.

The Workers Rights Consortium (WRC) performed a comprehensive market-basket analysis in order to establish a living wage standard (WRC 2008). In conducting its analysis, the WRC took, as a starting point, the broad agreement among researchers that a living wage should cover the cost of meeting a family's basic needs in the following categories of goods and services: food and water, housing and energy, clothing, health care, transportation, education and childcare, as well as modest funds for savings and discretionary spending. Although adequate standard of living is a broader concept than only a living wage, living wages cannot be ignored with regard to the issue of adequate standard of living.

The role of codes and standards in RSCM should not be underestimated, since they provide important guidance to companies. However, effective RSCM remains a common approach at all three pillars of the UN Framework and involving a wide range of stakeholders and cannot be solved by the use of codes and standards alone.

Social auditing of rights-based standards throughout supply chains may not be able to detect all non-compliances

There is a growing acceptance that social auditing (auditing the labour conditions at production facilities against a certain standard) as a tool to improve labour conditions in the developing countries has its limitations. Experience shows that while audits can improve individual supplier labour practices, they may not be enough to bring about sustained improvements for workers, and often fail in determining violations of freedom of association, excessive and forced overtime, abusive treatment and discrimination of workers.³⁷

One of the reasons for this failure is that the social audit industry is dominated by globally operating quality control and accountancy firms that may not have the necessary competences to detect all matters related to working conditions. Questions may be raised regarding the independence of social auditing firms when they are directly hired by brands to audit their supply chain, which may provide an incentive to portray a brighter picture. The audit methodologies can also contribute to a failure to determine the true working conditions. For example, where audit visits are announced, and workers are selected by management for interviews and interviews are not taking place in a situation where workers feel safe to speak openly. In such situation, workers may not feel protected enough to speak openly about the more sensitive issues at stake.

Another reason why social audits may not be able to detect all violations of labour rights is the one-off nature of these auditing practices. While during the audit itself, the situation may appear in accordance with the standards against which the supplier is audited, the situation may change soon after the audit has taken place, for example in case of conflict between management and trade union representatives.

³⁷ Clean Clothes Campaign (2005); Looking for a quick fix How weak social auditing is keeping workers in sweatshops

Generally speaking, physical improvements in terms of better health and safety conditions can be improved through social auditing mechanisms, while the more “enabling rights” remain problematic, such freedom of association, collective bargaining rights and freedom from discrimination. Therefore, some initiatives are increasingly shifting their focus from audits to worker training and remediation programmes. Workers need to be informed and aware of their rights, through worker training organised by independent groups and/or trade unions.

4.3.2 Respect contributing in solving CSR issues

Bottom line is that RSCM is not implemented overnight. It is a complex and long process to integrate RSCM in all levels of the organisation and requires a continuous process and continuous improvement. In this process companies are facing many challenges to overcome. GRI, codes and standards provide important guidance for companies to face these CSR-challenges and define appropriate action. Together with the due diligence these tools also provide guidance on identification of the CSR-issues, prioritizing those and proactively define appropriate actions. It remains a challenge to be comprehensive, since tackling one issue may conflict another issue, or a limited range of issues tackled by certain codes and standards. Companies are facing a complex web of codes and standards, all having their own focus. And even when actively involved in CSR, company actions may still infringe on rights of others.

4.4 Access to remedy

The need of grievance mechanisms is not debated, establishing efficient and accessible mechanisms remains a challenge. Observations from the case studies concerning grievance mechanisms will be discussed in the following.

4.4.1 Remedy in the light of the case studies.

Twelve case studies, all with their own focus, themes, and issues were studied for this report. In number the case studies related to Protect and Respect exceeds the number of case studies focusing on Remedy. Remedy or effective grievance mechanisms still seem to be in their infancy stage with regard to RSCM. The successes and challenges drawn from the case studies and additional literature review are presented below.³⁸

³⁸ It needs to be noted that an exhaustive research on grievance mechanisms is not within the scope of this research. The study of the cases and additional literature provides insight in the question why grievance mechanisms have or have not worked as a mechanism to solve existing CSR-issues.

Potential success factors

- Proximity to the potential victims may be a success factor for non-judicial grievance mechanisms targeting workers and local communities.
- Multi stakeholder process in grievance mechanisms enlarges equitability amongst parties in establishing grievance procedures and during grievance processes.

Challenges

- States' legal systems and their enforcement with regard to RSCM will have little impact without accompanying mechanisms to investigate, punish and redress. Home states are challenged to establish grievance mechanisms mandated to provide remedy to rights-based abuses throughout companies' entire supply chain.
- Providing effective grievance mechanisms for extraterritorial abusive activities of companies remain a challenge, in particular when they occur throughout the supply and value chain of the company.
- Constraints on access to a grievance mechanism may also lie in restrictions on who can bring a complaint; or in restrictions on the range of companies against which a complaint can be brought.

4.4.1.1 Potential success factors with regard to 'access to remedy'

Proximity to the potential victims may be a success factor for non-judicial grievance mechanisms targeting workers and local communities.

One of the key characteristics of a non-judicial grievance mechanism mentioned in the UN Framework is 'accessibility'. This is defined as "a mechanism [that] must be publicized to those who may wish to access it and provide adequate assistance for aggrieved parties who may face barriers to access, including language, literacy, awareness, finance, distance, or fear of reprisal" (Ruggie 2008a: 24).

One of the components of the verification system of the Fair Wear Foundation (FWF) is the complaint procedure providing access to non-judicial remedy for factory workers (case 11). The following characteristics of the complaint procedure are part of its success:

- Capacity building of the workers: knowledge of the workers about their rights is key to a grievance mechanism. Only when workers know what their rights are, can they effectively complain about violations.
- Communication about the mechanism: the existence of the complaints procedure is communicated through posters in the factories and during factory audits. The FWF observes an increase in complaints immediately after an audit.
- Complaint handlers speak the local language and aim at building relationships of trust and confidence with the workers. This enlarges the workers' confidence in the procedure.

- FWF-members³⁹ are informed about the complaint upon start of the investigation. Upon finalisation of the investigations, members are asked to formulate a response.
- Results of the investigation are published on the FWF-website. Transparency about the issues tackled is provided to the workers as well as to the public. This may stimulate the companies involved (buyer and supplier) to improve the working conditions at the factory at stake.

The determined complaint procedure of FWF provides a solution at individual supply chain entities and is regarded as successful as such, especially because of the total approach as listed above.

Multi-stakeholder process in grievance mechanisms enlarges equitability amongst parties in establishing grievance procedures and during grievance processes.

A good example is given by the positive feedback on the grievance procedures of the Dutch and UK NCP (case 12). The Dutch NCP, consisting of four independent experts with a background from various stakeholder constituencies (business, trade union, NGO and academia) gained legitimacy through its independence of the government, and credibility from its ability to undertake fact-finding visits and engage aggrieved parties on the ground. Additionally, the UK NCP, which has a multi stakeholder Steering Board as oversight mechanism, involves professional mediators to enhance the quality of the mediation process.

In many cases and sectors a multi-stakeholder process is observed. The involvement of different stakeholders provides different viewpoints and increases the likelihood that proposed solutions for solving the respective CSR issues are widely accepted by the various stakeholders. This contributes to the success of the project; it creates mutual respect and trust and allows for long term commitment of all stakeholders.

4.4.1.2 Challenges with regard to ‘access to remedy’

States’ legal systems and their enforcement with regard to RSCM will have little impact without accompanying mechanisms to investigate, punish and redress. Home states are challenged to establish grievance mechanisms mandated to provide remedy to rights-based abuses throughout companies’ entire supply chain.

Rees and Vermijs (2008: 50-69) researched five⁴⁰ national non-judicial grievance mechanisms; each initiated for addressing human rights violations. The researched

³⁹ By the end of 2009, FWF membership comprised 51 EU brand companies in seven European countries. Together they represent 1,200 factories employing 300,000 garment workers. When a company joins FWF, it commits to implement the FWF Code of Conduct of Labour Practices in its supply chain.

⁴⁰ Grievance mechanisms researched of Kenya, New Zealand, Cambodia, South Africa and the United Kingdom. The Indian grievance mechanism, although researched by Rees and Vermijs, is excluded from this report since it only applies to violations of government officials and servants. Furthermore, it needs mentioning that the research of Rees and Vermijs mainly focused on non-judicial grievance mechanisms. (Rees and Vermijs 2008: 50-69)

grievance mechanisms function at the level of mediation/conciliation and arbitration. The mediation-function implies direct or indirect dialogue between the parties assisted by an external neutral facilitator. The aim is to reach mutual agreement upon resolving the issue. Additionally neutral arbitrators could hear the involved parties and decide upon action to be taken in settling the grievance or dispute.

Research of the effectiveness of these mechanisms is outside the scope of this study. However, a few general observations could be made with regard to the effectiveness of grievance mechanisms for RSCM. First, each of the five by Rees and Vermijs researched mechanisms focuses on internal State affairs (Rees and Vermijs 2008: 50-69). Meaning that harmful conduct by companies outside the home State's boundaries cannot be brought to the grievance mechanism. Grievance mechanisms with regard to RSCM should provide access to any individual or community harmed by companies' practices throughout the entire supply chain. Second, only the Kenyan grievance mechanism includes a mandate for independent investigation and adjudication. The others rely on mediation and arbitration to come to a mutual agreement between the involved parties.

According to Rees (2008: 21-22) especially NGOs urge for inclusion of processes that involve investigation and lead to findings, recommendations or adjudication. Two main arguments for this inclusion are addressed by Rees. Firstly, a clear message of right or wrong is easier to get across to the victims and to do justice to their complaint. It also communicates more easily to a wider public. Secondly, disputes that are settled between parties may not necessarily lead to lesson-learnt by companies, let alone at industry level and allow for structural and systematic change.

For OECD adhering States, the National Contact Point (NCP) may serve as an instrument to overcome the national focus of national grievance mechanisms. However as the next challenge shows, the OECD also faces challenges with regard to their effectiveness.

Providing effective grievance mechanisms for extraterritorial abusive activities of companies remains a challenge, in particular when they occur throughout the supply and value chain of the company.

Case 12 elaborates more on the OECD's challenges provided by Ruggie's statement: "The 42 States adhering to the OECD Guidelines for Multinational Enterprises must provide a National Contact Point (NCP) whose tasks include handling grievances. The NCPs are potentially an important vehicle for providing remedy. However, with a few exceptions, experience suggests that in practice they have too often failed to meet this potential." (Ruggie 2008a: 26)

The OECD Guidelines includes a paragraph referring to supply chain responsibility, which states that "Enterprises should encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the Guidelines (OECD 2000). However, this provision was narrowed down by a clarification from the OECD in 2003 that the scope of the Guidelines is limited to "investment-like" relationships only. As a result, a majority of cases filed by NGOs and

trade unions over the past ten years dealing with issues in supply chains of MNCs were rejected by NCPs on the basis of this argument (OECD 2010). In other words, many of the key issues addressed in this report, occurring most often in the supply chains of EU-based companies remain unaddressed through this instrument. Thus the OECD Guidelines' grievance mechanism currently only contributes to RSCM when the company has an 'investment-like' relationship with the supply chain entity, whilst adverse impacts may occur several layers further down the supply chain at supply chain entities with whom the buyer has no direct, 'investment-like' relationship.⁴¹

There are a number of additional challenges in the OECD Guidelines' grievance mechanism obstructing its full-effectiveness, in particular in dealing with RSCM issues. Firstly, most non-compliances in the supply occur in countries that do not adhere to the OECD Declaration on Investment. As a result, stakeholders that may wish to file a complaint against the buying companies would need to file the complaint at the home country NCP. Without support from civil society organisations in the home countries where the NCP is based, the system is therefore inaccessible for individual complainants or other adversely affected stakeholders in host countries. Secondly, complaints must relate to the provision stipulated in the OECD Guidelines. This implies that certain issues like living wages and biodiversity may be excluded from the complaints mechanism by NCP that use a narrow interpretation. Thirdly, the OECD Guidelines currently contain a limited and general provision on human rights, this makes it harder to pin down on a breach to have occurred (Rees 2008: 11). And finally, the voluntary nature of the instrument leaves NCPs unable to compel companies to remedy the victims and/or change its practices. Solving supply chain issues through mediation is particularly challenging given the involvement of different parties (buyer, suppliers, home countries NGOs and unions, as well as local stakeholders).

Constraints on access to a grievance mechanism may also lie in restrictions on who can bring a complaint; or in restrictions on the range of companies against which a complaint can be brought.

The restrictive policy of the OECD does not stand alone. For example, members of the Ethical Trading Initiative (ETI) can only file a complaint against other members. The FLA mechanism (case 6) is focused on complaints from third parties acting for workers, whereas the WRC (case 7) allows for complaints from workers as well as third parties on their behalf. (Rees 2008: 11) Logically, organisations have to restrict for they only have limited resources in finances and workforce; their knowledge may only be limited to certain areas and certain violations may require other approaches than others. However, these restrictions contribute to the complexity victims or organisations acting on behalf of victims are facing and may either discourage victims to search grievance or they may simply not find the right place to go.

⁴¹ The OECD guidelines are going to be revised, however whether this will have an effect on the current grievance mechanism is still uncertain.

4.4.2 Remedy contributing in solving CSR issues

According to Ruggie (2008a: 22), effective grievance mechanisms are essential to the state duty to protect and corporate responsibility to respect. States' mechanisms to investigate, punish and redress will only work when there are procedures to address violations of regulations stating where they can be filed and how. Avoidance of negative human rights impacts can never be 100 percent guaranteed by companies. Grievance mechanisms will therefore allow those who are harmed to bring this to the attention of the company and seek remediation.

Current existing grievance mechanisms seem to function within their mandate, but are also facing several challenges. Most successful seem to be grievance mechanisms visible for the (potential) victims, making proximity to the (potential) victims an important success factor. Although, only proximity will not do, a complete package of capacity building, information provision, involvement of stakeholders (including supplying and buying company), and publicity about report seems to be necessary.

Many grievance mechanisms have only a limited reach or complex procedures and therefore many (potential) victims are left out of the system.

4.5 In brief

In the light of the case studies and sector supply chains researched for this study, several conclusions were drawn in this chapter. Although RSCM is high on the international political and business agendas, issues are still prevalent. From the case studies and sector analyses general trends in potential success factors and challenges that are faced were presented in this chapter. The particular angle taken in the analysis in this chapter is that the potential success factors and challenges were scribed to the three pillars of the UN Framework.

Concerning the State's duty to protect its citizens from rights abuses by third parties, it can be concluded from the analysis that States play their own role in promoting, stimulating and supporting CSR activities of companies to improve the conditions along the supply chains. This support could be financial, but also nonfinancial commitments, like negotiation about CSR issues in trade agreements, could be helpful. However, the States' interference in improving supply chain management by EU-based companies also may confront States with their own adverse interests. For example, improvement of social and environmental issues may not always enhance economic growth.

Companies are to respect their responsibilities concerning human rights and other rights, regardless of the home or host States policies. International standards and conventions form an important basis for what companies are required to adhere to. Due diligence is regarded as an important tool for EU-based companies to determine and express their commitment to avoid or mitigate rights based abuses, to map them and to define an appropriate plan to do so. This may become complicated, however, in an international context where companies have to find their way in the local legislation of the many countries they are operating in and, even so, in the web of codes and standards they could possibly apply.

Last but not least, the access to remedy seems to remain the biggest challenge with regard to the cases and sectors studied. Although a good example was provided by the case of the Fair Wear Foundation, in many cases an effective mechanism is absent or limited in their mandate.

5 Final notes: Recommendations to EU policy makers and EU Member States.

5.1 Introduction

This study has identified key social, environmental and economic issues that still occur throughout the supply and value chains of EU-based companies. These issues are further analysed in three selected and rather distinct business sectors of significant importance to the EU (garments, mobile phones and sugar). On the basis of the case studies, good practices and challenges with regard to RSCM have been highlighted within the three business sectors. The good practices and challenges were framed in the UN Protect, Respect and Remedy Framework.

The analyses in the previous chapters provide insights into where CSR initiatives have not yet proven to be a solution for effectively solving social and environmental challenges that EU businesses may face in their operations and value chains throughout the EU and in third countries. The analysis also provides insight into good practices and areas where CSR initiatives have shown promising results. Both these perspectives provide the basis for a range of recommendations, ranging from regulatory measures the EU and Member States could adopt as well as recommendations to further support and upscale voluntary approaches to CSR. The recommendations are put forward on the basis of the analysis that they would further promote CSR through smart regulation and provide regulatory tools to ensure uptake of CSR issues on a larger scale than currently the case. The recommendations aim to provide a balanced overview of possible regulatory and voluntary initiatives the EU and Member states could implement and support.

In accordance with the terms of reference for this report, the recommendations are geared towards policy makers at EU as well as Member state level. EU-based companies, suppliers or other stakeholders may also benefit from the recommendations in this chapter and use these as an input for future RSCM actions.

Analysis of the political feasibility of each of these recommendations was beyond the scope of this report. If these recommendations are considered worth further exploring, additional analysis and research would be needed to work out details and make an assessment of the political feasibility, legal, administrative and economic consequences for the EU and EU-based companies.

The conclusions and recommendations are structured into a number of categories, without order of importance.

- Increase supply chain transparency;
- Strengthen the OECD Guidelines for MNCs;
- Enhance access to remedy for victims in supply chains;
- Support multi-stakeholder initiatives aiming to enhance RSCM;
- Address competition affecting labour rights;
- Due diligence for high risk sectors/countries;
- Promote RSCM through public procurement.

5.2 Increase supply chain transparency

An overarching challenge that the sector analysis and case studies have highlighted is the lack of transparency throughout supply chains. This relates to all matters of relevance to understanding what needs to be done to enhance CSR, such as the structure of the value chain and its chain entities, countries and regions of origin, prices and conditions of production.

Increasing supply chain transparency can make a significant contribution to solving the CSR issues highlighted in this report. Increased supply chain transparency would help stakeholders (like home States, consumers, investors and civil society organizations) to make an informed decision based on a company's performance. There is an increasing demand for information about the origin and conditions under which products are made in the downwards supply chain, as well as information regarding disposal and waste in the upward value chain, as highlighted in the study on the mobile phone industry.

Ruggie (2008a: 17-19) argues that companies should be transparent about their due diligence processes, because "a main purpose of human rights due diligence is enabling companies to demonstrate that they respect rights". Information should be accessible to stakeholders. He explains that, for home States, mandatory sustainability reports by companies about their extraterritorial activities could be a tool. By this, home States could pressure companies to respect rights beyond their home State boundaries. It is a domestic measure with extraterritorial CSR-benefits.

Several EU Member States have implemented policies as to how companies based in their countries should report on sustainability. A private standard dominantly used by companies is the Global Reporting Initiative (GRI). The guidelines of GRI increasingly comprise specific guidelines for sectors. Despite these promising initiatives, reporting on RSCM is still in its infancy, as most reporting primarily relates to the internal activities of the company. Introducing regulatory measures could upscale and mainstream the current voluntary initiatives.

The case studies have shown that the essential information needed by stakeholders regarding the supply chains of companies may be different for each sector and CSR-issue. In the garment industry the publication of audit results and lists of suppliers in the production phase are particularly relevant. To assess CSR-issues during mining of

metals, electronics companies may have to map the supply chain all the way down to the mine level, where most of the adverse impacts may occur. For supply chain issues, specific transparency and reporting requirements may need to be designed, tailored to each sector, in order to be effective. In this respect it should also be taken into account that concerns of stakeholders may not always be answered by reporting requirements companies might face. Therefore, it is also important to look into measures that require companies to deliver certain information on request that is deemed important by stakeholders about origin and conditions of production.

Recommendation 1: Require business to disclose supply chains and RSCM practices

Adopt legislation that would require large enterprises to disclose information on their supply chain and CSR-issues like labour rights, human rights, and the environment throughout their supply and value chains. Such disclosure requirements could include information that is of particular relevance to the supply chain, such as the enterprise' value chain and information about; origin of production; key suppliers; source of raw materials; and key productions processes. To avoid overburdening companies, the extent to which their value chain would need to be disclosed could depend on the significance of the source or material in a certain product or a significant production process (such as 'cut, make and trim' in the garment industry).

Enterprises could also be required to disclose their due diligence processes and management and control systems in place to identify and address issues in the supply chain, as well as any certification initiatives or labelling systems the enterprises adhere to. Finally enterprises could be required to disclose key risks of adverse human rights and environmental impacts in the company's supply chain, and other relations with third parties, including mitigation measures and other corrective actions taken.

Recommendation 2: Introduce right to information regarding origin and conditions of production

Adopt a Freedom of Information Act for corporate responsibility information. Under such regulation, consumers and civil society organisations would be able to request information from EU-based companies regarding their RSCM aimed at compliance with internationally recognised standards and principles such as the ILO core labour standards and the OECD Guidelines for MNCs.

Consumers and civil society organisations are important potential *drivers for change* for responsible business conduct. In order for consumers to make an informed decision, they need to be able to obtain the information relevant to their concerns. Given the complexity of global supply chains, the wide range of components in products (such as mobile phones) and the wide range of CSR issues that are of concern to consumers and other stakeholders, sustainability reports will inevitably lack all the necessary information to respond to consumer demands.

The rationale behind this recommendation is that not all information relevant to a diverse range of stakeholders can be captured in sustainability reports or in labelling and certification initiatives. A basic right to information about the origins of products and the efforts of companies to produce and source responsibly would therefore complement reporting requirements and labelling and certification initiatives. Consumer and societal concerns regarding sustainability may change over time as new issues arise, and information is more widely shared worldwide. A right to know where the product you buy is made, and under what conditions would ensure that EU-based companies are alerted to potential challenges of concern to their consumers. Such a right to know could be limited to core production processes or components of products and with due regard to commercial business confidentiality.

If more consistent information and certification mechanisms would exist, consumers would be more able, perhaps even more willing, to change their consumption decisions and direct their purchases towards more responsible suppliers of goods and services.

Recommendation 3: Require traceability throughout supply chains

Introduce sector specific requirements to improve traceability. Given the differences in production processes and raw materials, traceability requirements can best be tailored towards each specific sector. With regard to the sectors subject to analysis in this report, the following traceability measures could be introduced:

- *Garments*: Introduction of identification numbers in garments. Similar to RN numbering legislation in the US⁴², the EU could require garment retailers to label covered products to show the name or identifying number of the company responsible for manufacturing or marketing the product, or the name of a foreign manufacturer. This would allow consumer organisations to trace the owner of the brand name on the garment, thereby increasing accountability. Information on sustainability performance could be linked to such a traceability system.
- *Food*: Mandatory traceability for food products has been in force in the EU since 2005. Traceability in the EU follows the ‘one step back-one step forward’ principle. Any business in the food chain, whether it is a farmer, food processor, transporters, importer, distributor or retailer, should be able to identify the immediate supplier of the product (one step back) and the immediate buyer (one step forward).⁴³ The EU could consider expanding the current requirements’ focus on food safety, with additional due diligence with regard to sustainability issues such as labour rights, human rights and environment. In order to increase traceability from ‘farm to consumer’, the system could be expanded to second or third tier suppliers in the supply chain or even further.
- *Electronics*: Increase the traceability of metals used in electronic products. To do so, companies could be required to map their supply chain down to the extractives phase and set up a system for periodical updates of the supply chain for metals used. This could include the identification of the smelters, as they are key-actors in supply networks

⁴² RN stands for Registered Identification Number. It is a number issued by the FTC to U.S. businesses that manufacture, import, distribute, or sell products covered by the Textile, Wool, and Fur Acts.

⁴³ http://ec.europa.eu/food/food/foodlaw/traceability/factsheet_trace_2007_en.pdf, retrieved 7 October 2010.

in this aspect, and require them to place demands on mining companies and traders they are sourcing from.

5.3 Strengthen the OECD Guidelines for MNCs

The OECD Guidelines for Multinational Enterprises are addressed to enterprises based in the 42 adhering States. The guidelines include a broad range of CSR issues, including most issues addressed in this report: freedom of association, child labour, adequate standards of living and loss of biodiversity. The added value of the instrument amongst the plethora of voluntary guidelines and principles is its government endorsement and its grievance mechanism called ‘specific instance procedure’, which all of the 42 countries have to set up through a National Contact Point (NCP). These NCPs promote the Guidelines, and deal with complaints from organizations and individuals over alleged violations of the OECD Guidelines. In June 2010, the adhering governments have launched the process for an update of the OECD Guidelines.

One of the case studies for this report refers to the present functioning of the OECD Guidelines. A barrier highlighted is that the present Guidelines’ application to the supply chain is limited, given they only apply to investments and “investment-like relationships” that companies have entered into. Another barrier highlighted is that at present the performance of NCPs (including amongst EU NCPs) differs widely and that there are no consequences when it is concluded that a company has actually breached the OECD Guidelines.

Recommendation 4: Support broadening the scope of the OECD Guidelines

The EU and Member States could support the broadening of the scope of the OECD Guidelines in the current Update process, to include a responsibility to respect the provisions in the Guidelines throughout supply and value chains and relations with third parties. The supply chain responsibility could follow Ruggie’s analysis which states that “the responsibility to respect is determined by whether an enterprise causes or contributes to human rights harm through its own activities or through its relationships with other parties, including suppliers.”⁴⁴

Recommendation 5: Enhance EU NCP performance

- Improve the functioning of the NCPs in particular in dealing with specific instances which have been raised concerning alleged violations throughout operations and supply chains of European companies worldwide.
- Ensure policy coherence and a level playing field at EU by developing Performance Standards for EU NCPs to ensure clear and fair procedures.

⁴⁴ Remarks at OECD Investment Committee Professor John G. Ruggie Special Representative of the UN Secretary-General for Business and Human Rights Paris, 4 October 2010

- Promote adherence to the OECD Guidelines by all EU Member States and support peer learning, pooling of resources and joint handling of complaints dealing with multiple EU companies through the establishment of a NCP support facility at EU-level.

Recommendation 6: Introduce consequences to NCP statements confirming breaches of the OECD Guidelines

Linking adherence to the Guidelines to eligibility for public support and benefits will send a clear and predictable message: receiving these benefits is an advantage available to companies that operate in a manner that is consistent with their government's commitment to promote human rights and sustainable development. By creating stronger policy coherence in this regard, governments will reward responsible business conduct by providing incentives to prevent or correct irresponsible behaviour while also eliminating perverse incentives for continuing misconduct. Consequences will also greatly improve the Guidelines' ability to serve as an effective non-judicial remedial tool, consistent with the third pillar of the UN Framework.

Consistent with Ruggie's proposal to give more 'weight' to NCP statements, EU and Member States could consider attaching consequences to negative statements from NCPs such as possible restrictions on access to public support and services such as export credits, insurance, financing, subsidies, procurement, and government contracts. Departments offering promotional opportunities such as participation in trade delegations and public consultation processes as well as public superannuation departments (pensions) could also be notified. And cases with egregious findings, statements should be forwarded to appropriate legal authorities such as the UN or EU Sanctions Committees as well as stock exchanges, which could elect to take additional punitive actions to ensure adherence to national or supranational regulations and policies.

Recommendation 7: Support strengthening the content of the OECD Guidelines to cover critical sustainability issues more efficiently

The EU and the EU Member States could support the strengthening of the substantive provisions in the Guidelines to cover more adequately the CSR issues subject to this report, such as:

- uptake of a dedicated human rights chapter in the OECD Guidelines that is consistent with Ruggie's proposed responsibility of business to respect human rights.
- inclusion of a provision on living wages in the Employment Chapter;
- inclusion of provisions on environmental concerns such as biodiversity in the Environment Chapter.

5.4 Enhance access to remedy for victims in supply chains

Professor Ruggie (UN SGSR on business and human rights 2010) explains that States must take appropriate steps within their territory and/or jurisdiction to ensure access to effective remedy for corporate-related human rights abuses. Without such steps, the duty to protect could be rendered weak or even meaningless. State-based mechanisms could be judicial and non-judicial. Effective grievance mechanisms are an important part of the corporate responsibility to respect. They complement monitoring or auditing for human rights compliance.

There could be situations in which access to judicial mechanisms is appropriate in relation to alleged human rights abuses abroad by business enterprises domiciled in a State's territory and/or jurisdiction. In some cases extraterritorial jurisdiction may be considered reasonable and permissible, in other words not infringing on another state's sovereignty.

Studies by the European Coalition for Corporate Justice (ECCJ)⁴⁵ have shown that victims are confronted with many barriers (legal as well as financial) in getting extraterritorial access to justice inside the EU.

With regard to non-judicial State-based mechanisms, Ruggie (UN SGSR on business and human rights 2010) explains that these are often overlooked, as regards both their complaints-handling role and other key functions. The universe of State-based non-judicial grievance mechanisms remains both under-populated and under-resourced. Ruggie advises that non-judicial mechanisms should be expanded and improved, for example those of National human rights institutions, the OECD Guidelines, and the International Finance Corporation (part of the World Bank).

Another optional State-based mechanism is the establishment of a specific non-judicial monitoring authority at EU-level, setting position between relatively toothless soft law and self-regulatory initiatives (like the OECD Guidelines), and domestic civil liability systems that often offer too many barriers for claimants.⁴⁶ Such a monitoring authority could provide for more efficient and effective access to remedy for victims of alleged abuses by companies active in Europe. State-based non-judicial mechanisms can help fill gaps in existing frameworks for the protection of human rights of people affected by corporate activities⁴⁷, as concluded from a research conducted amongst UK-based companies. The effectiveness of such a monitoring authority at EU-level could be further investigated.

One of the case studies for this report (the one on the Fair Wear Foundation (FWF), case 11) highlights a good practice grievance mechanism. The FWF puts a lot of effort into making workers aware of the grievance mechanism, the building of trust and

⁴⁵ <http://www.corporatejustice.org/-thematic-priorities,023-.html?lang=en&priorities=11>

⁴⁶ Jennifer A. Zerk, a report prepared for the Corporate Responsibility (CORE) Coalition, "Filling the gap: a new body to investigate, sanction and provide remedies for abuses committed by UK companies abroad", December 2008, http://corporate-responsibility.org/wp/wp-content/uploads/2009/09/Filling-the-Gap_dec08.pdf

⁴⁷ CORE (2010) Protecting rights, repairing harm: How state-based non-judicial mechanisms can help fill gaps in existing frameworks for the protection of human rights of people affected by corporate activities, A briefing paper prepared for the UN Secretary General's Special Representative on Business and Human Rights on behalf of The Corporate Responsibility (CORE) Coalition, November 2010

confidence by local handlers of complaints, and the investigation and evaluation of the complaints. The lessons learned by FWF could be useful for other grievance mechanisms and also for State-based mechanisms.

Recommendation 8: establishment of a monitoring authority

The EU and its Member States should improve and expand its mechanisms to provide access to remedy for victims of corporate abuse outside the EU by EU-based companies. This includes the alleged involvement of companies with abuses throughout their supply chain, whenever the companies have not conducted a proper human rights due diligence. Lessons could be learned from other mechanisms with regard to making possible victims (workers, local communities etc.) aware of the mechanisms and the handling of complaints. The establishment of a monitoring authority at EU-level could be an efficient and effective State-based mechanism to address access to remedy. It would complement the voluntary OECD Guidelines' specific instance procedure, and focus on remedy rather than mediation and conciliation. It would get a mandate to investigate, sanction and provide remedies for abuses.

5.5 Support multi-stakeholder initiatives aiming to enhance RSCM

The good practices highlighted in this study make a strong case for further EU support by way of recognition, promotion and financing of RSCM initiatives that are multi-stakeholder in nature. Such a multi-stakeholder nature could be reflected at various levels; in the governance of the initiatives; membership and participation; and in verification and social auditing. Stakeholders can consist of: business- including buyers and suppliers-; NGOs and trade unions, governments, certification bodies and auditing institutions and other international organisations.

Generally it can be seen that the higher the level of multi-stakeholder involvement the higher the chances that solutions and methods presented by the initiative are considered successful and credible. By the involvement of all relevant stakeholders including those that are directly affected such as workers in global supply chains, it is more likely that a sense of ownership is created with the proposed solutions.

Furthermore, the research suggests that successful voluntary multi-stakeholder initiatives are often based on a number of key operational principles, such as: reference to internationally recognised standards and principles; multi-stakeholder participation and ownership; monitoring and independent verification; the existence of a complaint mechanism; and requirements regarding transparency and reporting.

Despite their voluntary nature, the effectiveness of multi-stakeholder initiatives can be further enhanced by improving the regulatory environment in which they operate. Companies should be rewarded for their positive efforts by linking participation in multi-stakeholder initiatives to various forms of public support for business such as export credits, invitations to trade missions and so on. This would require the identification of

initiatives the EU deems acceptable/valuable to be included in a ‘reward/incentive system’.

Recommendation 9: Recognise, promote and financially support credible and effective multi-stakeholder initiatives

The European Commission could recognise, promote and financially support credible and effective multi-stakeholder initiatives at the sectoral and European level, dedicated to resolving outstanding CSR challenges in the supply chains of EU-based companies.

In order to ensure that the right standards are promoted, the EU could outline a number of essential characteristics of these initiatives to ensure those initiatives follow internationally recognised standards and basic operational principles for CSR:

- use of the International Bill of Human Rights and the ILO Core Conventions as minimum standards;
- participation of all relevant stakeholders including business, trade unions State-based agencies, and NGOs from EU as well as production countries;
- independent verification of compliance to the agreed standards;
- existence of a robust complaints mechanism for workers or affected communities;
- transparency to stakeholders as demonstration that rights are respected.

The above mentioned criteria could be used by the EU to benchmark voluntary initiatives, and increase policy coherence by referencing such initiatives in other policy areas and requirements on business for public support.

Some Member States already financially support multi-stakeholder initiatives. To mention some, the UK Government (DFID) has financially supported the Ethical Trading Initiative, the Dutch Government has supported the Initiative for Sustainable Trade (IDH) and the French government has contributed to the Better Factories Cambodia programme.

In line with support for the sectoral multi-stakeholder initiatives, the EU could financially and technically support suppliers in developing countries to participate in sustainability certification schemes such as FWF, SA8000, FSC, Rainforest Alliance and UTZ certified. This could be part of development assistance, in particular to ensure that local stakeholders and the most marginalized groups in the value chain are protected and evenly represented in decision-making. Also the harmonisation and convergence of standards and codes of conduct within specific sectors and industries could be promoted.

5.6 Address competition affecting labour rights

The case studies conducted for this report, have shown that some CSR-issues in the supply chains are persistent, and only partly solved by initiatives conducted by the private sector. For labour rights in the Asia dominated electronics and garment industries, these persistent problems are: no payment of living wages; precarious work; lack of freedom of association; excessive working hours. A challenge with regard to RSCM remain the sub-contractors who supply the international buying companies, as

the example of the case study on child labour and sugar cane from El Salvador has shown (case 4). High competition between States may lead to States not fulfilling their duty to protect, as the case studies on the Bangladeshi garment industry and precarious work (Special Economic Zones) have shown (case 10).

In order to solve persistent problems related to competition between states, States must cooperate in applying their duty to protect. For example, Asian states could cooperate to agree on a minimum set of labour rights for the electronics and garment sector. Sector studies could be conducted to research to what extent the improvement of labour rights would affect the competition power of Asia.

Recommendation 10: Improve cooperation in EU relations with third countries on RSCM

In order to solve persistent problems related to competition between States, States must cooperate in applying their duty to protect. The EU and Member States could therefore address the issue of RSCM in their state level relations (for example in the negotiation on trade and investment agreements, in trade missions, through embassies) with third countries such as Asian states. As a minimum it should be avoided that trade and investment agreements undermine the state ability to regulate and take their duty to protect against human rights abuses and environmental damages.

In their economic and political relations with intergovernmental bodies such as the Asia-Europe Meeting (ASEM), the Association of South-East Asia Nations (ASEAN), the ASEAN Regional Forum (ARF) and the South Asian Association for Regional Cooperation (SAARC), the EU and Member States could specifically address the RSCM challenges faced by EU-based MNCs, when States compete by lowering standards, and support and encourage better regional cooperation amongst production countries to agree on a minimum set of rights and principles to avoid a race to the bottom between those countries.

Recommendation 11: Promote policy coherence of EU or Member State policies and establish a system to enhance policy coherence

States face the difficult task to balance economic, environmental and social societal needs. In this matter policies in one area may conflict with policies in another area. For example trade promotion may conflict with establishing fair price levels in all levels of the supply chain; or sacrificing land for industrial purposes may conflict with environmental protection. In this sense the SRSG on the issue of human rights and transnational corporations and other business enterprises (2010b: 7) argues that “States should ensure that governmental departments, agencies and other State-based institutions that shape business practices, at both the national and sub-national levels, are aware of and observe the State’s human rights obligations in fulfilling their respective mandates, including by providing them with relevant information, training and support.” Ruggie refers to this as (horizontal and vertical) policy coherence.

However, where the due diligence for companies is spelled out in a four step process in the UN Framework, the steps for policy coherence have not been defined, since this was not included in the SRSG's mandate. Potential adverse effects on RSCM of State policies and regulation may argue in favour of a State commitment to human rights and other sustainability issues and a statement on how far a State commits itself to taking this into account.

In order to promote policy coherence for EU Member States and possibly third States, the EU could continue the SRSG on policy coherence by initiating further research on a more detailed definition of policy coherence and to develop a step-wise approach for States.

5.7 Due diligence for high risk sectors/countries

According to Ruggie (2008a: 14-21) many corporate human rights issues arise because companies fail to consider the potential implications of their activities before they begin. Also, human rights considerations are often isolated within a company. Companies could conduct and internalize human rights due diligence throughout their supply chain. This enables them to become aware of adverse human rights impacts; and prevent and address these impacts.

While exercising and disclosing due diligence on CSR-issues ('knowing and showing') can be seen as a common tool for companies in order to fulfil the responsibility to respect rights, so far it remains a voluntary measure conducted by companies. The disadvantage of voluntary measures is often that not all companies will apply them. This becomes a major problem when high risks of severe human rights breaches are at stake. In this case, the EU could require due diligence from companies.

An example of such a requirement is shown in one of the case studies conducted. In July 2010, the USA adopted legislation regarding the use by companies of conflict minerals originating from the conflict-affected eastern part of the Democratic Republic of the Congo and/or adjoining countries. If the companies use these minerals, the law requires them to annually disclose their exercised due diligence on the source and chain of custody of such minerals. Their report needs to include an independent private sector audit. (case 9)

Recommendation 12: Require business to exercise due diligence in high risk areas

The EU could require EU-based companies to exercise and disclose due diligence when operating in or sourcing from high risk regions or sectors, such as weak governance zones, the extractive industries and other areas prone to risk in production. The selection of areas or sectors with a high risk to social and environmental violations would need further detailed research into the root causes of the persistence of the violations, and the beneficiaries of the commercial activities (such as local communities or military groups).

If research shows that certain issues are persistent in certain regions or areas of production (for example child labour in cotton production in India) EU importers could be

required to exercise and disclose due diligence processes to avoid being associated with adverse practices.

Recommendation 13: Develop sector specific guidance for EU companies with regards to due diligence.

The EU could further build on the work of Professor Ruggie as well as the OECD's due diligence guidance responsible supply chains of minerals from conflict-affected and high-risk areas. Such guidance could be extended to other areas than conflict areas to include other high risk areas. Such guidance could include that companies are recommended to:

- a. Find out which other companies within the sector are active in the same countries where human rights abuses have been identified;
- b. Jointly, conduct research into the presence of human rights abuses, or the risks of abuses happening within the supply chain;
- c. Discuss the results with other companies;
- d. Draft a business code or action plan within the sector and set clear goals to be met within a reasonable time frame;
- e. Invite companies that work in high-risk countries with respect to human rights abuses to sign up for a multi-stakeholder initiative aimed at tackling the issue.

5.8 Promote RSCM through public procurement

The EU and Member States are important consumers of a large number of products that are produced through complex global supply chains where the CSR issues highlighted in this report are prevalent. As large consumers, of garments for civil servants or hardware and electronics for public bodies for example, public procurers may have considerable leverage which could be utilized to promote RSCM amongst those businesses that directly supply to public bodies. In the interest of policy coherence and as part of its own due diligence, the EU could make a risk analysis of products that it procures with a high risk of prevalence of key CSR issues throughout the supply and value chain of these products.

Recommendation 14: Integrate RSCM in sustainable public procurement policies

In their public procurements policies EU and Member States could include obligations on suppliers to analyse their supply chain and provide evidence for either compliance to internationally recognized standards or that all reasonable steps have been taken to avoid violations of rights and standards throughout the supply chain. When adverse impacts are detected, companies are encouraged to take all reasonable steps to mitigate and remedy the abuses with the identified supplier. Labelling and certification could function as proof for both, equally acceptable modes of responsible supply chain management.

5.9 Concluding notes

The array of instruments regarding responsible supply chain management is multifaceted. This chapter has listed a wide variety of policy options of different natures for EU and Member States to consider with the aim to contribute to solving CSR issues for which currently RSCM has not yet proven to be a solution. Such measures may be of voluntary or mandatory nature, depending on the aim of the policy measures, and the assessment of what is needed to upscale CSR efforts from “niche to mainstream”. The complexity of many of the global supply and production chains makes more transparency a prerequisite for enhancing RSCM. A combination of voluntary measures to support the efforts of frontrunners with regulatory measures to ensure laggards do not benefit and meet minimum standards may be chosen. Whilst there may be an ongoing debate regarding the *voluntary versus mandatory* nature of CSR and EU policies, there is scope for both approaches to exist alongside and actually reinforce each other. For example, a required due diligence for companies operating in or sourcing from high-risk countries or regions, may be demonstrated by participation in a relevant voluntary multi-stakeholder initiative. A right combination of voluntary and regulatory initiatives to tackle prevailing CSR issues may bring the EU closer to an operationalisation of the UN Framework by better balancing the duties to protect, the responsibilities to respect, and providing access to remedies throughout the EU.

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Appendix 1 – Sector Analysis

APPENDIX 1 – Sector analysis

To analyse the good practices and challenges with regard to RSCM and the five sustainability issues, discussed in this report, three sectors were selected. Based on several selection criteria (see chapter 2) the following three sectors were selected:

- garments, focusing on garments made of cotton
- electronics, focusing on mobile phones
- food processing, focusing on sugar from sugar cane

Each sector has significance for the EU-economy, but also play a notable role in the global commodities market. Each sector is a producing sector yet most sustainability issues are still prevailing in producing sectors. Therefore, these sectors could serve as an example for the analysis why CSR has not proven to be a solution yet to prevailing CSR-issues in the supply chain.

In this appendix the supply chain of each sector will be outlined. For each sector a description of the sector and its supply chain is presented and an overview is given of the five selected CSR issues in relation to the sector. Furthermore, the issues are put in an EU perspective in the last section of each sector analysis.

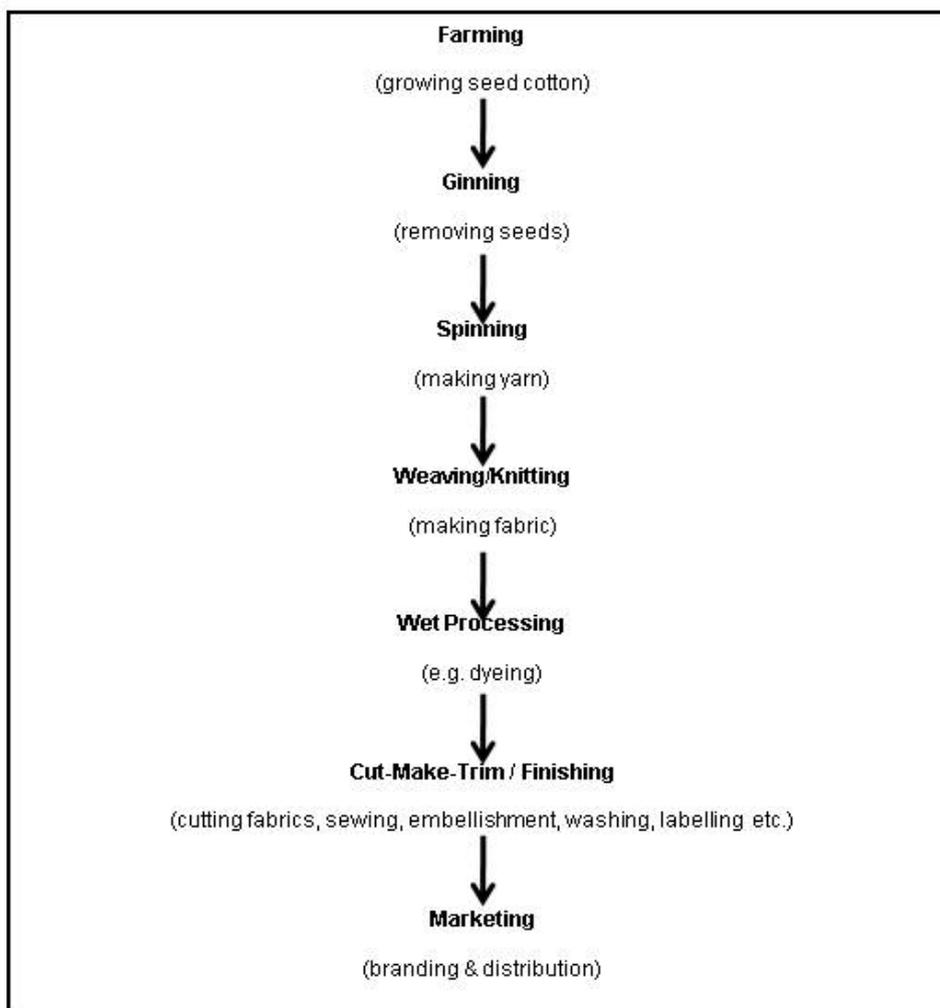
I Garments and cotton

I.1 Description of the garment sector and supply chain

The textile sector includes both the clothing (or garment) sector and the home and furnishing sector. The clothing sector produces fashion apparels (from high end, high quality garments; to low quality, fast fashion articles) and professional clothing (uniforms, for example). Two types of fibres are used in the textile industry: synthetic fibres (e.g. polyesters), and natural fibres (e.g. cotton, wool). Cotton accounts for 36 percent (Abare 2010) of the clothing articles consumed in Europe.

The value addition stage of the cotton-based clothing industry is described in figure I.1.

Figure I.1: Cotton-based clothing value chain



Source: CREM

Global actors in the cotton-based clothing industry

Cotton is grown in around 100 countries. About 25 million tons of cotton lint is produced each year of which nearly 40 percent is traded internationally. Despite increasing local processing and important domestic consumption (especially in developing countries), cotton remains one of the most agriculturally traded commodities; with substantial domestic and cross-border trading.

Projections for 2010/11 on the world production of cotton rank producing countries as follows (ICAC 2010):

1. China (7 million Tonnes),
2. India (5.5 MT),
3. United States (3.7 MT),
4. Pakistan (2.2 MT),
5. Brazil (1.4 MT),
6. Uzbekistan (1. MT),
7. Others (3.8 MT)

In general, the main cotton producing countries also have an important spinning and fabric industry as in the case of China, USA, India, Pakistan, and Turkey. Major parts of clothing manufacturing take place in low-wage countries that are dependent on imported yarn and fabric. Developing countries account for 87 percent of cotton imports for the production of yarns or fabrics, and Asia accounts for 78 percent of the global production of yarn in line with its expansion in spinning and Cut/Make/Trim (CTM) industry (Gruere 2007). Countries such as China, India, Pakistan and Turkey have an integrated cotton industry allowing them to cover several stages of the clothing value chain (from spinning to CMT, if not from farming to CMT).

International cotton trading is carried out by three types of actors: private companies, cotton cooperatives, through their own trading agencies, or governmental agencies. More than in other global commodity chains, trading companies have become essential intermediate agents in the cotton trade. They are actively involved at production level, contracting over the longer term with reliable suppliers and offering pre-financing services. Currently 36 percent of the cotton traded worldwide is in the hands of sixteen trading agencies, which annually handle more than 200,000 tons of cotton for example, Louis Dreyfus, Cargill, Dunavant, and Paul Reinhart. Three of the sixteen trading agencies are public

Because of the lack of specific trading data and the complexity of the cotton trading channels, it is difficult to estimate Europe's share in the global trade of cotton and of textile products made of cotton. However the following trends can be identified: Europe is a net importer of manufactured textile. Europe's share in the world production of manufactured textile has continued to decline as European production sites are relocated to low-cost countries and as the competition with developing countries intensifies. The largest importers of manufactured textile to Europe are China, Turkey, India, Pakistan and Bangladesh.

Regulation of the cotton market

The cotton economy is subject to powerful political and economic interests. Until recently, international trade has been highly regulated through tariff barrier, or import quotas. China has been the main driver of world cotton mill use (purchase of cotton lint for spinning) since 1998/99, thanks in part to its accession to the World Trade Organisation (WTO) in 2001. The removal of textile trade quotas agreed under the Multi Fiber Arrangement (exports quotas protecting domestic industries in the north and the south set up in 1974, also known as the Agreement on Textile and Clothing) was completed at the end of 2004. This encouraged further geographical redistribution of textile production to countries with lower production costs. It mainly shifted mill use to China, India and Pakistan. It also resulted in lower textile prices and boosting retail consumption. Since 2004, imports of textile and clothing articles into the EU from lower-cost countries have been increasing exponentially and EU producers are faced with a highly competitive market. Despite the safeguard mechanisms implemented against imports of Chinese textile products by the United States, Turkey and the European Union since 2005/06, the textile products imports from China have continued to rise (Gent and Braithwaite 2006).

I.2 General description of the five sustainability issues in relation to the sector

Child labour

Child labour including tasks that can damage a child's health, safety and education have been reported in various stages of the garment supply chain (Martin-Ortega and Wallace). At primary production level the majority of cotton is cultivated on small holdings (less than 3 ha). Child labour occurs in the farmer's family circle in many producing countries⁴⁸. There are many well documented cases in Venkateswarlu, India (2003) and in China for example. Murray and Hurst (2009) reported several severe cases of the worst form of child labour in Venkateswarlu, India (2007)⁴⁹. Large-scale use of child labour in the production and harvesting of cotton has also been found in Uzbekistan (ICAC 2008; EJF 2010). This has lead many leading international brands and textile companies in boycotting Uzbek cotton. Child labour has also been reported in the other stages of the textile industry when precarious and informal employment prevails (Edmonds 2007).

Freedom of association and collective bargaining

As a whole the cotton production and the textile industry is accused of failing to provide proper labour rights and occupational health and safety measures (Martin-Ortega and Wallace; Oxfam 2004; ICAC 2008). Amongst these issues, the freedom of association and collective bargaining are frequently neglected rights. Widely mediated campaigns against sweatshops in the textile industry (for example via the Clean Clothes Campaign⁴⁹) have pointed at poor working conditions and social rights of workers in the

⁴⁸WWF website [online], [Accessed 22 April 2010], Available from:

http://assets.wwf.ch/downloads/bericht_cleaner_greenier_cotton_in_english_.pdf

⁴⁹ Clean Clothes website [online], [Accessed 22 April 2010], Available from: <http://www.cleanclothes.org/>

textile sector. Freedom of association and collective bargaining are referred to in multi stakeholder initiatives for the improvement of working conditions such as the BSCI or the Fair Wear Foundation. At the level of the cotton production, farmers are generally poorly organised in producers' organisations, which limit their bargaining power with regard to local traders.

Adequate standards of living

Low wages are a common denominator in the garment industry (Martin-Ortega and Wallace). Cotton farmers are generally smallholders that can hardly break even as a result of the long term trend towards decreasing international prices (although the 2009-2010 season has seen an upward trend) and subsidies to local production facilities in western producing countries (mainly the US). Although the WTO confirmed the injury these subsidies cause in the world trade of cotton. Thus far, the US has ignored the ruling of the WTO adjudication and continues their subsidy programme to local cotton producers.

In addition, the high level of chemicals required to secure the harvest results in structural losses and debts. This has resulted in some notorious cases of farmer's committing suicide in India, Brazil and a number of places in Africa (CREM 2004b). In the textile manufacturing sector, low wages associated with informal employment are common place (Oxfam 2004).

Minimum standards on adequate housing, access to health services or sanitation essentially exist within the framework of multi stakeholder initiatives such as the BSCI or the Fair Wear Foundation (FWF). At the level of cotton farming, the FLO Fairtrade standards aim at developing access to adequate housing and social services.

Cotton and textile production has an impact on local communities concerning adequate living. For example in the vicinity of textile dye houses or CMT factories, high pollution levels (see also biodiversity) can affect the quality and quantity of drinking water and water flows and the quality of the air, leading to serious health damages (CREM 2004b). Irrigation for the cultivation of cotton can also divert water sources to the detriment of local population suffering from a limited access to drinking water, to irrigation water for food crops, or to water used for fishing. Down-stream communities can also be affected by a decreased level of water (affecting fishing communities) or by polluted water pollutes up-stream (Kooistra et al 2006).

Loss of Biodiversity

Various factors in the cotton production contribute to an increased pressure on biodiversity. Cotton is a vulnerable crop that requires large amounts of pesticides, herbicides and fertilizers (Kooistra et al 2006). This leads to the pollution of soil and drinking water. In addition cotton is a water-intensive crop: 1kg of cotton requires about 8500 litres of water on average (from 7,000 to 29,000 liters⁵⁰). One shirt requires about 2600 liters of water⁵¹. Irrigation is required for three-quarters of global cotton production (Kooistra et al 2006). Cotton cultivation is the cause of severe water depletion in areas such as the Aral Sea in Uzbekistan (Opp 2005) and in Andhra Pradesh in India⁵². Consequences may include a loss of biodiversity, a shortage in irrigation water and a shortage in drinking water. Finally heavy use of chemicals on soil of poor quality (cotton is mainly grown as monoculture and in hot arid regions) contributes to soil erosion, loss of fertility and downstream pollution (Kooistra et al 2006). The extension of cultivation areas is impacting natural habitats and wildlife in China, Brazil or Central Asia⁵³.

The production of organic cotton or the uses of better practices (IIED 2004) such as Intergrated Pest Management are recommended as a way to safeguard the local environment and its biodiversity. Many initiatives, such as the organic certification programmes (for organic cotton) and the Better Cotton Initiative (BCI) or Cotton Made in Africa (CMiA) promotes the production of cotton with respect to biodiversity.

Genetically modified (GM) cotton (also referred to as Bt-Cotton and HR-cotton) accounts for about 54 percent of the world production in 2008-2009 (ICAC 2009). However there are recurrent controversies about the benefits of GM cotton and its potential impact on biodiversity: while it requires less pesticides and herbicides (Bt-cotton produces a pest-repellent toxin while HR-cotton has a built-in herbicide resistance), it is accused of stimulating resistance to weeds (via cross-pollination) and resistance to pest populations, therefore leading to a higher use of chemical inputs over time. Also the contamination of the genetically modified genes with surrounding species may influence local ecosystems, with unknown consequences for biodiversity.

At textile production level, especially during the wet processing stages (for example, dyeing and bleaching operations) chemicals and volatile organic compounds are released as air emissions or in water run-off (CREM 2004b). They can be hazardous to human health or water ecosystems. The general lack of treatment facilities in dye houses of CTM's has an important impact on the surrounding environment and biodiversity.

⁵⁰ WWF website [online], [Accessed 28 April 2010], Available from:

<http://assets.panda.org/downloads/wwfbookletthirstycrops.pdf>

⁵¹ WWF website [online], [Accessed 22 April 2010], Available from:

http://assets.wwf.ch/downloads/bericht_cleaner_greenier_cotton_in_englisch_.pdf

⁵² WWF website [online], [Accessed 28 April 2010], Available from:

<http://assets.panda.org/downloads/wwfbookletthirstycrops.pdf>

⁵³ WWF website [online], [Accessed 22 April 2010], Available from:

http://assets.wwf.ch/downloads/bericht_cleaner_greenier_cotton_in_englisch_.pdf

Unfair price levels

In addition to previous trade regulations under the WTO (see previous) the Multi-Fibres Agreement), the cotton sector is well-known for its market distortions. The strengthening of national government policies regarding cotton in specific countries promoted increases in cotton production, despite relatively low prices. In 2004, 14 countries representing three quarters of global cotton production offered direct income and price support programs to cotton growers, resulting in higher production and forcing the burden of adjustment to low cotton prices onto growers in countries (in Asia and Africa) that did not provide similar measures of protection (ICAC 2007). Most importantly developed countries (with the frequently reported case of the US cotton industry) and China accounted for 86 percent of assistance provided worldwide (ICAC 2007). This resulted in world cotton prices depreciating by about 25 percent (ICAC 2002), lowering the income of more than 10 million poor cotton farmers in West Africa and Asia (Oxfam 2002).

A preponderant buyers' power is a key feature of the cotton supply chain leading to unfair price levels: at the production level, this is caused by a combination of (1) a low level of producer organisation and (2) the dependence on local intermediaries to access pre-harvest finance (in developing countries, around 50 percent of pesticides used are for cotton cultivation (Kooistra et al 2006)). In the textile industry, the increasing trends towards short time to market and low quality fashion on the retailing side put a high pressure on prices on direct and indirect suppliers. More and more suppliers are bound to offer low prices, to ensure a stringent compliance with product specifications and to guarantee high lead-time flexibility, forcing them to bear stocks and absorb related costs.

I.3 Issues in garments and cotton sector in EU perspective

Awareness regarding sustainability relating to cotton is steadily increasing in Europe at the level of the textile industry, retailers and consumers. Increasing publicity and scandals regarding sweatshops, child labour on cotton plantations, farmer's suicides, and water depletion have paved the way for the development of various initiatives. Sourcing certified cotton is one of the approaches that most large European retailers have started to adopt. Organic cotton, for example is currently available in most mainstream retail channels via the use of blended fibres (organic cotton blend with up to 95% of conventional cotton). The Better Cotton Initiative, which works towards the development of criteria for sustainable production practices, will in the coming years allow the European textile industry to source "Better Cotton" from various origins.

In addition to sourcing cotton produced sustainably, an increasing number of European textile companies have adopted practices that allow them to monitor practices in their supply chain. The Business Social Compliance Initiative (BSCI), SA8000 or the Fair Wear Foundation is used to improving, monitoring and auditing working and social conditions. The development of similar tools to monitor the environmental performance of textile suppliers is developing with labels such as BlueSign, or Oeko-Tex or the European Ecolabel.

Via the existing range of sustainability initiatives targeting, on the one hand the production of cotton, and on the other hand the social and environmental performance of

textile suppliers, the European textile sector tend to tackle the five different sustainability issues identified in this report. However the complexity and fragmentation of the cotton supply chain makes large-scale progress difficult to reach. Pre-competitive collaboration between corporate actors (for example in the case of the Better Cotton Initiative) and with institutional support remains essential in order to pursue improvements of social and environmental issues related to the cotton industry.

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II Sugar from sugar cane

II.1 Description of the sugar and sugarcane sector and supply chain

Sugar is made essentially from two crops: cane and beets. Sugar cane is produced in countries like Brazil, India, China, Thailand, Pakistan and Mexico. In 2008 Brazil, India and China consolidated as the largest sugar cane producers in the world (see table II.1). Brazil accounts for almost a third of total production, while India, China and Mexico mostly produce sugar cane to satisfy their domestic demands. Sugar beets are planted mostly in temperate regions (mostly European countries) in some 50 countries (UNDP 2010: 3). One of the selection criteria for choosing relevant sectors for this research was to focus on sectors with a supply chain beyond the European borders. Therefore the focus in this sector analysis will be on the production of sugar from sugar cane, since sugar cane is primarily grown in developing countries.

Table II.1: Top ten global producers of sugar cane in 2008 (UNDP 2010:5)

Country	Production (million tons)	Area (million Ha)	Productivity (ton/Ha)
Brazil	549.71	8.14	79.71
India	355.52	5.06	68.88
China	113.73	1.71	73.11
Thailand	64.37	1.05	69.71
Mexico	52.09	0.67	76.37
Pakistan	54.74	1.24	51.49
Australia	36.4	0.39	87.11
Colombia	38.5	0.38	100.42
USA	27.75	0.37	73.77
Guatemala	25.44	0.29	88.63

Leading sugar producing countries are Brazil, India, China, Mexico and Australia (UNDP 2010:5). In table II.2 the top ten *sugar producing and consuming countries* in 2005 are presented.

Table II.2 Top ten sugar producing and consuming countries in 2005 (million metric tonnes, raw equivalent) (Adapted from Nyberg, 2006; UNDP 2010:4)

Production		Consumption	
Brazil	28.13	India	20.11
India	21.70	China	11.79
China	15.22	Brazil	10.95
Mexico	5.62	Mexico	4.88
Australia	5.39	Pakistan	4.08
Thailand	4.59	Indonesia	4.05
Pakistan	2.84	Egypt	2.67
Total	83.49	Total	58.53

The EU accounts for roughly ten percent of the world's sugar consumption. In comparison, India accounts for 14 percent, China for 9 percent, Brazil for 6.9 percent and the US for 5.5 percent. The EU accounts for 9.1 percent of global sugar production, mainly consisting of beet sugar. Currently most of the sugar used in the EU is still beet sugar while 10 percent concerns sugar cane. However, it is expected that EU sugar regime reforms will change this situation in the coming years, in favor of increased imports of raw sugar cane to the EU. (Profound 2009)

The sugar supply chain

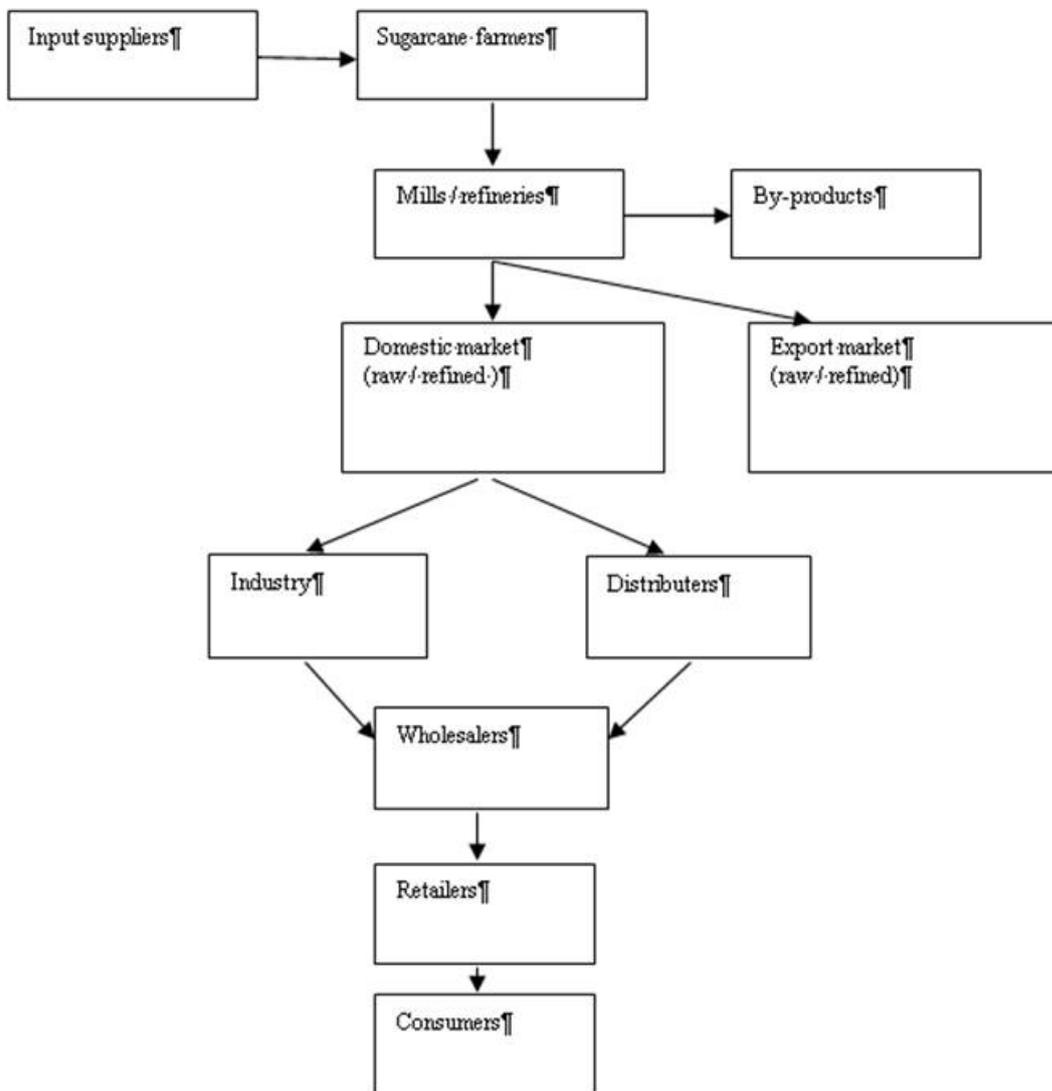
Figure II.1 shows a typical supply chain of sugar from the production of sugar cane to the final consumer. The typical by-products of the milling process (molasses and bagasse) are often used to fuel the refining process at the mills and to produce bi-products such as alcohols (including biofuels).

Farmers and millers are the main players in developing countries. Smaller farmers are usually based near a location where a mill is established. Most of the global sugar is produced on land that is owned by the same companies that refine the sugar. A mill usually serves many farms and there is unlikely to be more than one mill in a given area (UNDP 2010:11).

Large (EU) sugar traders include several transnational corporations like Sucden, Louis Dreyfus, Cargill, ED & F Man, Czarnikow and Bunge. Sucden and Cargill are thought to be the biggest amongst these, together they control about 35 percent of the market, however this is difficult to determine since reliable data is scarce/difficult to access (UNDP 2010:10).

Overall, the global sugar market is characterised by oversupply. This is partly the result of decreased consumption of sugar in developed countries (in favour of substitute sweeteners) and market protection mechanisms, but also from the increased production in developing countries. While most of the sugar produced is used to meet local demand in the majority of the countries, the largest producers satisfy the international demand (UNDP 2010: 12).

Figure II.1: Sugar Supply Chain



Source: UNDP 2010: 11

Demand for sugar

Direct household consumption dominates the market, accounting for about 68 percent of total domestic consumption. The remainder is used for industrial consumption, where the sugar demand of the beverage industry remains strong, accounting for about half of total industrial uses (UNDP 2010:12).

Sugar trade policies

The international sugar market is one of the most highly distorted agricultural commodity markets. Raw and refined sugar markets are generally characterised by significant and widespread domestic support and trade policies which significantly affect the international trade of sugar, such as guaranteed minimum payments to producers,

production and marketing controls (quotas), State-regulated retail prices, tariffs, import quotas and export subsidies (UNDP 2010:31).

Generally, international sugar prices have shown a downward trend as the production of traditional importing countries increased, largely due to domestic support measures. However, international prices have risen in the last couple of years mostly due to poor outputs in Brazil and India because of extremely rainy conditions (UNDP 2010:31).

The sugar market is operated under an extensive range of governmental interventions. Its production, trade and even consumption levels are subject to governmental controls in many countries. Developed countries are protecting their production to avoid the import of cheaper sugar from abroad, failing to do this would make it impossible to grow sugar cane or beets. (UNDP 2010:13).

Although policies that protect the imports of sugar and ethanol in developed countries limit the production and trade of these products, policies in developing countries aiming to increase production for a potentially growing niche market in agrofuels poses a risk of overproduction.

Tariffs and quotas have greatly affected commerce between ACP countries and Europe, resulting in increased competitiveness and thus expansion of production. This situation is now changing after a WTO resolution lifted subsidies (no more preferential prices for these countries are in place). At the moment the WTO restricts the European Union's subsidised exports of sugar to about 1.4 million tons per year (exports were 6.4 millions of tons in 2001, of which 3 million tons with export refunds). With the EU slowly deregulating protection and opening its borders to sugar from all countries without preferences, it has become a net importer and no longer an exporter of sugar (UNDP 2010:13).

II.2 General description of the five sustainability issues in relation to the sector

Child labour

The low production costs of sugar cane and the protection of sugar markets have supported human rights abuses (UNDP 2010:14). Child labour, unfair wages and inhospitable working conditions are among the questions which are being asked by human rights and fair trade activists (UNDP 2010:14). For example, the Brazilian government signed ILO's recommendations, which has prohibited the most precarious forms of child labor and defined the minimum age of 18 years for hard jobs. Furthermore, Brazil has intensified its inspection on working conditions in the sugar cane sector. Nevertheless, the inspection is still insufficient and some violations of worker's rights have been reported. In Brazil, a mechanism of family compensation for the loss of family income from child labour has been implemented, where parents are compensated for the costs of education. However, even with these incentives, 3 percent of workers in the sugar cane and ethanol production sector in Brazil are younger than 17 years old (Goldemberg et al 2008: 2095). In 2009 several cases were reported in Brazil in which

slave labourers in the sugar cane sector were freed, including children (Repórter Brasil 2010:14).

The use of child labour, including the worst forms of child labour, has also been reported by Human Rights Watch in sugar cane cultivation in El Salvador (Human Rights Watch 2004:3). Children as young as eight years old are involved in cane cutting. The research states that “Even though many businesses that use Salvadoran sugar do not condone or permit child labor in their own or their direct suppliers’ operations, the use of child labor is rampant in planting and harvesting sugar cane, meaning that El Salvador’s sugar mills and the businesses that purchase Salvadoran sugar use the product of hazardous child labor.” (Human Rights Watch 2004:4)

Freedom of association / collective bargaining

As sugar cane is mostly produced on large plantations, the production process requires a substantial amount of seasonal workers, on the farm (labour intensive since most of the work is done by hand: seeding, weeding, cutting) as well as at the sugar mill. Freedom of association can still be a problem in producing countries like China and Colombia. The need to address the freedom of association is illustrated by the criteria of the Better Sugar Initiative, which includes the following criteria: “Respect the right of all personnel to form and join trade unions and/or to bargain collectively in accordance with the law” (Better Sugar Cane Initiative 2010:5).

In Brazil the labour union is developed and plays a key role in employment relationships. For sugarcane, the specific aspects of employment relations in agriculture are better than other rural sectors, with formal jobs mainly being in Sao Paulo State. Compared to the Brazilian 40 percent mean rate of formal jobs, the sugarcane industry’s agricultural activities now have a rate of 72.9 percent (from the 53.6 percent of 1992), reaching 93.8 percent in Sao Paulo (2005) and only 60.8 percent in the north/northeast region (Goldemberg et al 2008: 2094).

Adequate standards of living

For most African, Caribbean and Pacific Sugar Protocol countries, the socio-economic contribution of sugar production and trade is very significant, providing direct and indirect employment and livelihood opportunities for millions of people. It is considered that over a million workers in Brazil are dedicated to the production of sugar, of which 25 percent has permanent work, and the other is needed mainly during the cutting seasons (UNDP 2010:6).

The production of cash-crops can further undermine food security of the poorest (UNDP 2010:7). Sugar cane is typically grown in monocultures, in the same field, year after year, with minimal crop rotation. The expansion of the cane fields as a result of the increasing demand for ethanol competes with areas cultivated for food crops. This “food versus fuel” dilemma increases the threat of food security and rural development threats linked to sugar cane cultivation (UNDP 2010:32). The latter is illustrated by the promotion of sugar cane as a cash crop in Swasiland which has led to reduced production of other crops, which in some cases were used to feed the villages. In addition, the replacement of local varieties of food crops for hybrids has meant a loss in biodiversity, resulting in

lower production and an increased dependence on imports and food aid, and less income-earning activities, especially for women (UNDP 2010:26).

Health impacts of sugar cane production are related to the harvesting of sugar cane by hand, which represents a respiratory health risk and to injuries caused by machetes or the abrasiveness of the leaves. Extreme heat and dehydration also can affect workers in the fields as well as in the mills and workers can be exposed to smoke, pesticides and venomous animals (like snakes) (UNDP 2010:26). Violations to workers' health and safety conditions were also reported in Brasil in 2009, as well as cases of sub-standard toilet facilities and bathrooms, temporary lodging facilities, transportation to working areas by unsafe buses and workers not receiving proper individual safety equipment (IPEs) and quality tools (Repórter Brasil 2010:15,16).

The question whether it is possible to achieve a viable income in the sugar industry can only be answered for specific situations. Some of the determining factors are the position of the farmer (e.g. employee, smallholder, seasonal worker), the market price of sugar, the production costs, the local prices for the basic necessities and the expected yield from alternative crops (CREM 2004a:37). In the southern center of Brazil, the income of sugar cane workers' is higher than those working in coffee, citrus and corn crops, but lower than in soybean crops, which is highly mechanized and the jobs are more specialized. In the north-northeast, the income in sugar cane crops is higher than in coffee, rice, bananas, manioc (cassava) and corn crops, equivalent to the income in citrus crops, and lower than in soybean crops. Mills keep more than 600 schools, 200 daycare units and 300 ambulatory care units. A sample of 47 Sao Paulo-based units showed that "more than 90 percent provide health and dental care, transportation and collective life insurance, and over 80 percent provide meals and pharmaceutical care. More than 84 percent have profit sharing programs, accommodations and day care units" (Goldemberg et al 2008:2094).

Loss of biodiversity

Production of sugar cane on plantations may result in loss of biodiversity as a result of land conversion, water use, emissions to water and air and erosion (UNDP 2010:21, WWF 2005:2). Historically, substantial areas have been cleared for cane cultivation, leading to the loss of habitats including rain forest, thorn forest and savannah. While the rate of habitat destruction has slowed in recent years, the areas under cultivation are still expanding. Increasing global demand is expected to lead to the further expansion of areas for growing sugar (WWF 2005:2). As an example, in 2007 and 2008, the Brazilian States of Mato Grosso (MT) and Mato Grosso do Sul (MS) were top of the list regarding deforestation as a result of sugar cane plantations. In 2007, the crop replaced 1,119 hectares of forests in MS and 1,892 in MT (Repórter Brasil 2010:22).

Sugar cane is a deep-rooted, water intensive crop which remains in the soil all year round using some 7,000-45,000 litres of water per hectare of crop grown. Even in areas where sugar cane is fed by rainfall, the crop affects river flow by intercepting run-off from the catchment and drawing heavily on underground water supplies (WWF 2005:2).

In some areas 70 percent of the fertilisers applied are lost from the fields into underground water (UNDP 2010:22). When sugar mills are cleaned annually, organic

matter is released, which may end up in nearby streams. This reduces oxygen levels in the water, negatively affecting freshwater biodiversity. Burning of cane prior to harvest causes air pollution and increases soil erosion (WWF 2005:2).

In cane growing areas, steep slopes are often planted, resulting in soil erosion due to the intense rainfall that many tropical areas receive (WWF 2005:2).

Unfair price levels

Associated social impacts of the sugar industry are those related to international market prices, which are kept low partly because of subsidies from developed countries, putting small-scale producers at risk of disruption to their livelihoods when cheap imports displace local production, or when low quotas result in low net incomes to small farmers (UNDP 2010). Price levels may be influenced by governments (by protecting the domestic market) and buyers as is illustrated by the case on sugar cane production in Mozambique.

II.3 Issues in the sugarcane sector in EU perspective

With the imports of sugar cane increasing in the EU as a result of the EU sugar reform and the expanding biofuel market, the need to address sustainability issues related to sugar cane production are increasing for European policy makers, importers, processors and consumers. These preoccupations have already been addressed by different initiatives. Two consumers certification labels for sugar cane are currently available (Organic and Fairtrade), although it remains a niche segment in the EU market. The Better Sugar Initiative (BSI) aims at designing a more mainstream certification for sustainable sugar. Large EU traders and industries from the food and (bio-)fuel sectors are cooperating with the BSI. Also, Ethical Sugar is a European civil society organization which is particularly active in the EU and global debate around socially and environmentally sustainable sugar production. Finally, in recent years, the debate on sustainable sugar cane has been triggered by the increased use of sugar cane ethanol as a biofuel. Relevant initiatives that are aimed at the development of sustainability certification schemes for biofuels include the Cramer Criteria or the Roundtable on Sustainable Biofuels (RSB). These initiatives are high on the agenda of EU private actors who use sugar cane products. Of the five sustainability issues analysed in this report, the issue of unfair price levels is the most obviously linked to the European policy on sugar cane: the initiatives and debate about sustainable sugar cane are tightly correlated with the interest of the competing European beet sugar sector. Although the current EU sugar regime is allowing a more open competition (and possibly the improvement of economic position of sugar producers), the development of sustainability standards can operate as non-trade barriers that limit market access of the most vulnerable sugar cane actors. Also the debate on biofuels and sustainability has significant political and economic stakes for EU states members. The way EU private and public actors influence the development of biofuels sustainability standards can highly affect sugar cane producers, either positively or negatively with direct and indirect effect on social conditions and on adequate standards of living (e.g: the food versus fuel controversy). Also EU investors are scrutinised for making speculative investments on

land acquisition for the purpose of biofuels production (Ethical Sugar 2010). Such operations can also have direct and indirect effect on the issues of adequate standards of living and biodiversity. Such parameters are influenced by the discussion on sustainable sugar cane at the EU level in such a way that they should be incorporated in the corporate decision making process and the policy making process.

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III Mobile phones

III.1 Description of the electronics sector and supply chain

The term electronics sector refers to a broad spectrum of information and communication technology companies producing a wide variety of electronic goods. These goods include computers, office equipment, laptops, mobile phones and other communication equipment, consumer electronics (such as mp3-players, webcams and game consoles), semiconductors (chips), and miscellaneous electronic components. Such electronic products are highly complex constructions consisting of a wide range of diverse components. A typical computer, for example, is made up of an external keyboard, casing and screen, as well as internal circuitry and wiring including printed wiring boards (PWBs), semiconductors, hard drives, interface sockets, cables, etc, many of which are composed of numerous individual parts. The manufacture of this type of equipment is a truly global industry.

In the global electronics supply chain roughly three phases can be distinguished:

- the extractives phase – in which metals and mineral used in electronic products are mined;
- the production phase – during which electronic products are manufactured and assembled
- the disposal phase – during which redundant or obsolete products are disposed of.

More levels can be distinguished when telecommunication providers, software developers, IT hardware re-sellers, IT service providers, etc, are included. Increasingly, these actors are also addressed where CSR is concerned.

The EU trade in electronics is considerable. In 2009, the EU import of electronics valued €157 billion, while the value of electronics exports amounted to €86 billion.⁵⁴ EU trade in this sector is dominated by imports, particularly from the US and Japan. Together, these two countries account for half of total EU imports of electronics. Although the EU is very strong in certain electronics markets, it has a negative trade balance in the electronics sector as a whole. The EU is a net importer of electronic components, especially semiconductors and integrated circuits. The European market for these inputs has grown extremely rapidly. This growth has been stimulated primarily by increased demand for personal computers but also by the growing demand for digital mobile phones, automobile electronics and other telecommunications equipment, which increasingly rely on semiconductors. The EU is both a big importer and exporter of computer and office equipment, including hardware, peripherals and software. The US is the leading producer at world level, followed by Japan and Europe. European software is highly competitive in the face of stiff competition from Japan and the US. In the area of telecommunication equipment, European manufacturers maintain a strong international position in mobile telecommunications. They are also leaders in technological innovation,

⁵⁴ <http://ec.europa.eu/trade/creating-opportunities/economic-sectors/industrial-goods/electronics/>

producing technologies based on worldwide standards such as GSM for mobile telephony and UMTS / LTE for mobile broadband communications (that have been mainly defined by European stakeholders). The EU has consistently shown a positive trade balance in this sector. Exports are concentrated principally on network technologies, radio and transmission equipment.⁵⁵

Outsourcing and supply chains

The electronic products supply chain form an intricate web, with brand name companies that have many suppliers, who in turn have multiple suppliers. These buying companies may themselves also be component suppliers. Outsourced production of small components for handsets can stretch into supply chains of nearly a dozen companies. In total, these complex supply chains encompass thousands of companies. To a considerable extent, the components used in the manufacturing of electronics products are interchangeable. Manufacturers have quite some liberty to switch basic component suppliers. Different types of companies can be distinguished, including Original Equipment Manufacturers (OEMs) who develop and make products under their own name, and Contract Manufacturers (CMs) who produce the brand products developed by OEMs. Within the category of CMs, Original Design Manufacturers (ODM) and Electronics Manufacturing Services (EMS) are distinguished, the main difference being that ODMs have the intellectual property over the products they produce, while in the case of EMS the intellectual property is with the OEM.

Up to 75 percent of global electronics production has now been outsourced from Original Equipment Manufacturers (OEMs) or brand-name companies, to contract manufacturers (CMs) (IMF 2010). Brand companies increasingly reduce their own operations. As Philips puts it, *“a very high percentage of components and products is now purchased, rather than manufactured in-house. Overall, some 90 percent of our Bill of Materials comes from outsourcing, long-term partnerships, Original Equipment Manufacturers and Original Design Manufacturers.”*⁵⁶

This is not to say that labour and environmental issues do not exist even at this level, but the majority of non-compliances take place on supply chain level.

At different levels of the electronics industry, there is considerable market concentration. At the level of contract manufacturers, a fairly small number of CMs are producing electronic products for all major brands. Looking at revenue, Flextronics (Singapore), Foxconn (Hon Hai) (Taiwan), Celestica (Canada), Sanmina SCI Corporation (USA) and Jabil Circuit (USA), rank among the top 10 companies in this category. Despite being for the most part unknown to the general public, such CMs are themselves major stock exchange-registered companies that have seen general growth rates of 20-25 percent (IMF 2010). The mobile phone industry is in the hands of just a handful of companies, including Nokia, Motorola, LG, and Samsung. A similar picture emerges for the computing industry, with HP, Dell, Acer, Fujitsu, Lenovo as well known players. The number of hard disk drive suppliers worldwide amounts to five only – Seagate, Western

⁵⁵ Ibid.

⁵⁶ Philips Supply Management website [online], [Accessed 7 October 2010], Available from: <http://www.philips.com/about/company/businesses/suppliers/aboutsupplymanagement.page>

Digital, Hitachi (which owns the former disk manufacturing division of IBM), Samsung, and Toshiba.

Production is increasingly located in countries where wage costs are lower. According to the International Metalworkers' Federation (IMF) Contract Manufacturers' use low wage levels as a strategy to attract business from OEMs. Flextronics, for example, claims to save its clients 75 percent on labour costs (IMF 2010). The search for low-cost manufacturing locations has led production away from North America and West Europe, where there have been numerous plant closures and job losses, towards countries in Eastern Europe and Asia. In 2006, China overtook the European Union in hi-tech exports for the first time (IMF 2010).

Besides China, other important electronics production countries include Taiwan, the Philippines, Thailand, Indonesia, Malaysia, Mexico, Brazil, as well as Hungary and Poland. Several of these countries figure prominently among countries that are singled out by Maplecroft in its risk assessments regarding labour standards, human rights and legal and regulatory environment.⁵⁷ Philips, for example, refers to the Maplecroft risk assessment in its Risk Country List (Philips 2010/2011).⁵⁸

Mining

Together with the automotive industry, the electronics industry is a major user of a wide variety of precious metals and minerals. Where cobalt, platinum group metals (PGMs) and rare earth metals are concerned, the combined demand from the two sectors is more than half of the global demand (SOMO 2010). As a result of developing notions on extended supply chain responsibility beyond the first or second tier suppliers, electronics companies are increasingly acknowledging that the mining phase is part of their supply chain.

Conflict resources are defined as natural resources whose systematic exploitation and trade contribute to, benefit from or result in the commission of serious violations of human rights, violations of international humanitarian law or violations amounting to crimes under international law.⁵⁹ Companies operating in or sourcing from conflict zones can face a number of specific human rights risks. The electronics industry as a whole consumes significant quantities of various metals sourced from conflict areas, for example from the Democratic Republic of Congo. Tin (solder), tantalum (capacitors and deposition targets), cobalt (batteries and magnetic recording media), tungsten (circuit boards) and gold (motherboard contacts) are important.

Moreover, mining often has destructive environmental effects, and in some circumstances, may impose serious health risks for the mine workers.

⁵⁷ Focusing on countries, issues, sectors and companies Maplecroft aims to offer insights into the political, economic, social and environmental risks facing global business today. Maplecroft website [online], [Accessed 7 October 2010], Available <http://maplecroft.com/>.

⁵⁸ Philips Supplier Sustainability Involvement Program. Risk country list 2010/2011, website [online], [Accessed 7 October 2010], Available from: http://www.philips.com/shared/assets/suppliers/pdf/Risk_country_list_2010_2011.pdf. The risk country list is based on the Maplecroft Risk Index of "Human Right" and "Regulatory Environment".

⁵⁹ Global Witness website [online], [Accessed 25 May 2010], Available from: http://www.globalwitness.org/pages/en/natural_resources_in_conflict.html.

Manufacturing – precarious work

The International Labour Organisation (ILO) estimates that the manufacturing of electrical and electronic products offers employment to 18 million workers globally. Manufacturing is highly concentrated with 87 percent of workers employed in 20 countries, and 35 percent of global employment in this sector located in China (IMF 2010). In Europe and North America, employment growth is mainly in the in-service part of the sector. In Asia, growth is in production jobs but also research & development (IMF 2010)

The impacts of the global economic crisis have been severe, with a dramatic decline in exports of ICT goods in 2009. The global electrical equipment market fell by 2.02 percent in 2008. Consequently, significant job losses were noted. IMF analysis points out that the crisis is likely to accelerate the movement of electronics production from developed to developing countries. Signs of recovery of the electronics industry are to be seen, with the trade in ICT goods in Japan, Korea, Taiwan and China again on the increase and the sales in semiconductors picking up from early 2009. More recently, increased mobile phone sales are noted. IMF, however, fears that employment increases will be slow to follow growth in production. IMF points at the high rate of precarious employment, characterised by redundancies, and high turn-over due to mergers, acquisitions, plant closures, etc. (IMF 2010).

Informal employment is an important characteristic of electronics manufacturing. Other terms for the same and related processes are casualisation or contractualisation of employment. The common feature: it makes employment increasingly precarious. The employment practices associated with precarious work include: direct hire on temporary labour contracts for fixed or limited term or fixed task; hiring in labour via employment agencies or labour brokers; contracting out functions to other companies (off-site or on-site); personal labour contracts as bogus 'self-employed' workers; the replacing of regular contracts by renewable, short term contracts; abusive probationary periods; disguised employment training contracts; on call/daily hire; illegal or involuntary part-time work; home working (IMF 2007).

While labour flexibilisation may have a positive ring to it, especially for employers, the reality is that for workers it more often means increased insecurity of employment, income and livelihood. Wages of contract workers are generally significantly lower. Contract workers can lay no claim to employment rights which means: no paid sick leave; no holidays; no annual leave; none or smaller allowances for transport or energy costs; none or lesser annual bonuses or incentives for diligence since these are usually granted only to regular workers, etc. Workers employed through an employment agency are treated differently for the same work. A company can terminate the services of a contractual or temporary worker at any time. Often access to social services is limited as well.

During the economic crisis, many thousands of precarious workers lost their jobs and there is a real risk that employers will increase their reliance on precarious employment as a means of reducing wage costs and avoiding severance payments in the future.

Electronics manufacturing can have considerable impact on the environment. Water consumption, irresponsible disposal of chemical or toxic substances pose serious challenges (Brigden et al. 2008).

Disposal recycling of electronics waste

The irresponsible disposal of electronics waste (e-waste) creates and sustains environmental and social concerns at the beginning and at the end of the electronics lifecycle. When metals are not retrieved and recycled from e-waste, the production of new electronics increases the demand for mining of these metals. At the end of the electronics lifecycle, if e-waste is dumped, land-filled or improperly recycled, environmental pollution and health impacts threaten local communities and informal recycling workers in developing countries (SOMO 2009a). In Europe, export of waste from electrical and electronic equipment (WEEE) to developing countries is banned according to European legislation (the Waste Shipment Regulation), due to the presence of components that risk damaging human health and polluting the environment. Despite this regulation, 75 percent of European e-waste is unaccounted for. Of the estimated 8.7 million tonnes of e-waste created annually in the EU a massive 6.6 million tonnes of e-waste is not recycled. Presumably, much of this waste is exported.⁶⁰

III.2 General description of the five sustainability issues in relation to the sector

Child labour

Child labour is found throughout the global electronics supply chain, especially in the mining and disposal phases. In manufacturing, child labour may not seem to be a widespread problem, although production workers as young as 15 years old have been spotted. Children partake in the mining of metals and minerals used in electronic equipment, for example in cobalt, tin and coltan mines in the Democratic Republic of Congo. Children also work in the electronic waste disposal, for example in Ghana and China. The working conditions in these sectors are most appalling, even more so for children (Reset 2009:34).

Freedom of association

Freedom of association and collective bargaining are known as enabling rights, because they give workers tools to monitor their own workplace and to negotiate with management on the improvement of working conditions. Both formal and informal workers in the global electronics sector are mainly unorganised; the levels of unionisation are very low. The lack of observance of these enabling rights has a huge impact on the labour rights situation of workers in the global electronics supply chain. As a consequence, workers are unable to defend their rights and interests. Flexible, insecure, informal, precarious and migrant workers have very limited possibilities for

⁶⁰ Greenpeace Guide to Greener Electronics, quoted in Reset. Corporate social responsibility in the global electronics supply chain, Dutch CSR Platform and GoodElectronics, October 2009, page 75.

collective action or power to negotiate with employers. Notably, women workers are overrepresented in these categories (Reset 2009:28-29).

Special Economic Zones are designated industrial areas of a country where taxes, trade tariffs and government regulation are lifted or dramatically reduced in an effort to attract foreign investment. Freedom of organisation and the right to bargain collectively are often the first rights to be suspended in such zones (Reset 2009:68-70).

The very nature of precarious employment constitutes an obstacle to electronics workers exercising their right of freedom of association: temporary workers have no guarantee of remaining in the workplace for an extended period (although many in fact do); agency workers have an indirect employment relationship with the company they work for; legislation or union statutes prevent contract workers from joining the same unions as the permanent workforce; unions find it hard to make contact with such workers who are likely to be on different pay and conditions from the permanent workforce; and of course the biggest barrier of all: workers' fear of loss of current or future employment. In 2007, IMF estimated that in many instances 50 percent of the labour force in a given electronics factory consisted of contract workers, and at times even up to 90 percent. Within the broader metal sector, the electrical and electronics industries stand out as the industries which have been more affected than others by the informalisation of employment (IMF 2007).

Adequate standards of living

Low pay and precarious employment are closely linked to inadequate standards of living, in the discerned phases of the electronics supply chain. Job insecurity is the most important feature, for all phases. Infringement upon community rights and deterioration of traditional livelihoods are linked to irresponsible mining (Reset 2009:26-27).

Low wages are rampant – often not even a minimum wage is paid, a living wage is rare (SOMO 2009b, 2009c). Basic social services, including decent housing, professional health care, (higher) education for children, are often out of reach. Workers are rarely in the position to build up some financial reserve for calamities in the family, let alone a pension for their old age. Long hours combined with frequent overtime, either voluntary or not, have a direct impact on people's capacity to combine work with family life and social activities.

A specific feature of electronics manufacturing in China is the use of migrant labour, with people coming into the cities from the rural areas. Migrants leave their families behind to join the urban labour force at large scale production facilities that are often cities in themselves. Working to their maximum and living in cramped on-site dormitories, workers mention lack of free time, boredom and frustration over lack of quality of their lives (Chan and Pun 2010).

Loss of Biodiversity

At the different phases of the electronics supply chain environmental issues come into play. The environmental impact of mining, manufacturing, and irresponsible e-waste disposal can be extremely damaging. Mining sites are often established in rural areas where people live and work. Also, manufacturing facilities as well as e-waste dismantling

sites or dumping grounds are often set up in the close vicinity of human settlements. Agricultural fields, forests and sources of water are destroyed by contamination, pollution or overuse (Reset 2009: 62-64).

Unfair price levels

The pressure exerted by companies throughout the supply chain (retailers and brands as well as first and further tier suppliers) on lead times and prices is an important factor contributing to the harsh working conditions in the electronics sector in developing countries. This pressure means that suppliers need to accelerate production outputs, cut down on labour costs, and demand longer working days. This may also cause wages to fall below the cost of living. This causes social hardships for the workers concerned.⁶¹

III.3 Issues in the electronics sector in EU perspective

The **membership organisations of the international electronics industry**, that is the Global eSustainability Initiative (GeSI) and the Electronics Industry Citizenship Coalition (EICC), count a number of European electronics companies among their members, including brand name companies and telecommunication providers. European EICC members have committed to implementing the EICC code of conduct and supply chain management tools. Some European electronics **companies**, such as for example Philips and Nokia, have developed their own company codes or have developed additional clauses to the EICC code of conduct.

There is currently **no multi stakeholder initiative** in the electronics industry. The electronics industry membership organisations as well as individual companies are yet to engage in structural stakeholder consultation. Every now and then, individual electronics companies may invite a selection of civil society stakeholders to discuss unresolved issues, but this is mostly on an ad hoc basis. In September 2010, for example, Nokia organised a 'human rights summit' where a group of international stakeholders looked into the issue of a living wage and special economic zones, among other topics.

The **Dutch Sustainable Trade Initiative** (IDH) is currently developing a programme for the electronics sector. This programme intends to focus on improved supplier management and addresses social and environmental issues in supplying factories. So far, Philips, HP and Dell have joined the IDH programme, as well as Dutch trade union FNV, SOMO and the GoodElectronics Network. An ambitious programme is currently being developed with the intention of contributing to improving the working conditions of 500.000 workers in the Chinese Pearl River Delta as well as another, yet to be identified, electronics producing country, with regard to the following areas: precarious work and job security, working relations, occupational health and safety, and environmental issues. The programme's ambition is to move 'beyond auditing' and beyond current corporate practices in dealing with non-compliances. Good practices implemented by frontrunner companies as well as civil society initiatives will be used as a point of reference. The programme expects to engage and influence suppliers in different parts of the supply

⁶¹ Procure IT Fair website [online], [Accessed 2 October 2010], Available from: <http://www.procureitfair.org>

chain (multiple tiers). The programme is, however, still under construction and implementation.

European national **trade unions**, the European Metalworkers Federation (EMF), as well as the International Metalworkers' Federation (IMF) are persistently addressing individual European electronics companies as well as the global electronics sector at large to improve their labour records. Increased outsourcing to low wage countries and loss of employment in the EU are major concerns. The emphasis is on mature industrial relations and social dialogue. Key is freedom of association and the rights to collective bargaining. Even in the EU electronics production context, however, these rights are not necessarily assured.

In the EU, besides trade unions, a great many **NGOs** are extremely concerned with labour and environmental issues in the global supply chains of European and other electronics companies. NGOs operate individually, however are increasingly taking joint action towards the electronics industry. Greenpeace, for example, has been successful in addressing the electronics industry by means of the Greenpeace Guide to Greener Electronics; rating individual companies' environmental performances. Philips and Nokia are among the companies which have, to a certain extent, headed Greenpeace's calls for cleaning up their acts. European NGOs are working together in EU-funded campaigns such as makeITfair⁶² and Procure IT Fair⁶³. These and many other organisations from Southern electronics production countries, like India and China, are also united in the GoodElectronics Network⁶⁴. These campaigns and networks have a common objective in improving labour conditions and addressing environmental issues throughout the global electronics supply chain. The electronics sector and individual companies are targeted, as well as individual and institutional consumers, and governments.

In 2003, the **EU directive** on **waste** electrical and electronic equipment (directive 2002/96/ EC, referred to as the WEEE directive) was adopted to stimulate re-use and recycling of electronic equipment and to provide electronics producers with incentives for ecodesign. The WEEE makes producers of electronics responsible for the collection and treatment of waste resulting from the disposal of their own products. The WEEE directive also sets targets for collection and recycling. The Netherlands is one of the European Member States which has reached the targets outlined in the current WEEE directive. Although the WEEE directive has explicitly sought to provide electronics producers with an incentive for ecodesign, this ambition has not been realised with the implementation of the current WEEE. The only incentive provided by the current WEEE directive for producers is to make lighter equipment, but 'light' does not equal 'environmentally friendly'. This shortcoming is quite widely acknowledged among governmental, corporate and civil society actors.⁶⁵

In 2010, an EU proposal for amending the WEEE directive will be considered. The most important revision in the proposed directive is a new binding target for the collection of

⁶² <http://makeitfair.org/>

⁶³ <http://makeitfair.org/>

⁶⁴ <http://goodelectronics.org/>

⁶⁵ Ewaste policy paper, SOMO, December 2009. http://somo.nl/publications-nl/Publication_3289-nl/at_download/fullfile

electrical and electronic equipment by electronics producers. The collection target of 4 kg/inh/y did not properly reflect the situation in individual Member States. Under the proposal for a revised directive, Member States with higher consumption rates of electrical and electronic equipment will be required to collect more e-waste than others with smaller markets. In the proposal, the new collection target was set at 65% of the average weight of products placed on the market in the two preceding years. Furthermore, it was proposed to increase recycling targets by 5%, and to include re-using whole appliances into the recycling and re-use target. It was proposed that these targets become binding in 2016, thus giving Member States time to adjust. Numerous civil society organisations have been involved in the debate around the WEEE recast, including for example the European Environmental Bureau (EEB)⁶⁶, the European federation of environmental citizens' organisations, as well as SOMO.

All the issues researched and described in this report need to be urgently addressed by the EU industry and EU governments. Child labour, lack of freedom of association, loss of biodiversity, unfair price levels, and poor standards of living are all issues that cannot continue to be ignored. All of these issues require a specific approach, however. Child labour maybe less of a problem in the manufacturing phase of electronics production, it is however an extremely serious problem in the disposal of e waste in developing countries. This is mainly an informal sector where direct involvement of brand name companies and their suppliers is not the norm and nearly impossible. Freedom of association is considered an enabling right, which facilitates workers negotiating their fundamental labour rights, including wages, which relates directly to standards of living. Individual companies have direct influence on the extent to which freedom of association and the right to collective bargaining are respected in their own operations as well as in their supply chains, at least to the level of first tier or strategic suppliers. United in membership organisation EICC companies should be able to exercise joint leverage over joint suppliers at levels further down their supply chains. This however is not current practice

There are but few instances of pressure applied by the EU on the electronics sector to bring about improvements in the supply chain. Legislation regarding WEEE may be the clearest example.

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Appendix 2

Case studies

APPENDIX 2 – Case studies

I. State Duty to Protect

Case 1 – State efforts to enhance working conditions in Cambodian garment factories

Trade in nationally produced garments encompasses 70 % of the total Cambodian export. Hence, the garment industry is of vital importance to the country's economy. Since 2001 there has been a comprehensive programme, the so-called Better Factories Cambodia programme, to enhance the working conditions of employees of all exporting garment factories. The Better Factories Cambodia programme is coordinated by the International Labour Organisation (ILO). As such, it provides a good example of how international proclaimed labour rights can be realised through governmental cooperation.

Central pillar UN framework **Duty to protect**

Sector	Garment industry
Country	Cambodia
CSR issues	<ul style="list-style-type: none">• Adequate standards of living• Freedom of association and collective bargaining

1.1 Case description

The garment industry is important to Cambodia. It employs almost 300,000 people, about 5% of the country's work force, and accounts for 70% of the country's total exports. The most important destinations are successively the USA and the European Union (EU). Exports of clothing from Cambodia to the European Union comprised over 500 million Euro in 2009. In both markets corporate social responsibility (CSR) issues are of increasing importance.

The Better Factories Cambodia programme was established in 2001 as one of the outcomes of trade negotiations between the USA and Cambodia. Under the agreement the USA promised Cambodia better access to its markets in exchange for improved working conditions in Cambodian garment factories. Over the years, the programme has been funded by the Royal Government of Cambodia, international donors (including the French and Dutch government), Cambodian employers, and international buying companies. All the garment factories which have an export license are monitored by the programme. Participation is mandatory for exporting garment factories.

The programme is managed by the International Labour Organisation (ILO). Guidance is provided through a tripartite committee that consists of representatives of the Cambodian government, employers and trade unions.

The Better Factories Cambodia programme focuses on continuous improvement. Hence it is not intended to guarantee complete compliance with labour standards. Regulation and enforcement of labour standards remains the responsibility of the government.

Key elements of the programme

Key elements of the Better Factories Cambodia programme are independent monitoring, transparency, training, capacity building. Additionally the involvement of purchasing MNCs is also characteristic to the programme. Each element is explained below:

- **Monitoring**

All exporting garment factories are monitored through unannounced factory visits, conducted approximately every eight months. During the visits, auditors check compliance with a checklist based on Cambodian labour law and international labour rights. Interviews are conducted with workers (usually outside the factory), management, shop stewards (legally required elected worker representatives) and union leaders. Auditors also observe the workplace and examine documents. Evaluation reports with suggestions for improvement and corrective actions are made after each visit and communicated to the factory managers. Progress is monitored during succeeding visits and reported upon.

- **Transparency**

Through an electronic database the Better Factories programme communicates performance and major pending issues of all factories. The results are drawn up in synthesis reports which are published on the programme's website biannually. The reports include information on compliance and results in improving working conditions. The reports are produced in Khmer, English and Chinese.

- **Training**

Training and resources are provided on issues such as workplace co-operation between management and unions, dispute resolution, occupational health and safety and other issues relevant to improving working conditions. Training is conducted in Khmer, Chinese and English.

- **Capacity building**

The programme builds capacity amongst local stakeholders, including government staff and local organisations through providing training to the local industry.

- **Involvement of buying companies**

Buying companies also can gauge compliance in the factories they source from by subscribing to the programme's monitoring reports, thereby reducing the need for multiple factory audits and freeing up resources to implement solutions.

Improvements

While gaps in compliance remain, during the programme genuine progress has been made. According to research commissioned by ILO Better Work, compliance with correct

(lawful) payment of wages increased by 37% between 2001-2008 whilst over the past three years, compliance with minimum wage payments reached 93-100% for regular workers and 89% for casual workers. Compliance with freedom of association increased by 14% over the course of the programme, although there are still concerns regarding industry compliance on these rights.

Besides this, there are other challenges which still remain. Still no living wage is paid in the Cambodian garment industry. The programme has no mandate on living wages. With regard to supply chain responsibility, the programme does not have the authority to monitor sub-contractors of the exporting factories, unless the sub-contractors themselves register with the programme.

Replication of the programme concepts in other countries

The Better Factories Cambodia programme has served as a model for the global Better Work programme, which currently has programmes in four more countries (Jordan, Haiti, Vietnam and Lesotho). Programmes in Nicaragua and Indonesia are set to begin in the near future. The Better Work programme is a partnership of the ILO and the International Finance Corporation (IFC). It was launched in February 2007 with the goal of improving compliance with labour standards and competitiveness in global supply chains. Contrary to the Better Factories Cambodia programme, company participation in some of the Better Work Country Programmes is voluntary.

1.2 Analysis UN Framework

Protect

This good practice resides under the Protection pillar of the UN framework. What is special about this programme is that home states have stepped in to help the host state to meet its duty to protect the rights of the factory employees. The programme monitors Cambodian labour rights and internationally proclaimed rights such as freedom of association and health and safety at the work place. Through capacity building it is expected that the host state ultimately will be better able to fulfil its duty to protect. The programme has led to many improvements, but freedom of association and occupational safety and health remain a challenge. Finally, it is unclear to what extent the Cambodian government is fulfilling its duty to protect regarding the rights of factory employees, who are employed by non registered and non authorized sub-contractors of the exporting companies. The Better Factories Cambodia programme has no mandate on living wages.

Respect

The programme also resides under the Respect pillar. Cambodian export factories are stimulated, through the recommendations resulting from the audits, to respect the rights of employees. For international buyers the programme provides an opportunity to take steps to ensure their corporate responsibility with regard to respecting social issues in a coordinated and structured manner. Furthermore, it provides efficiency benefits by avoiding multiple audits and focussing on mitigating adverse impacts identified by the audits.

Remedy

While offering voluntary training and advisory services the programme itself does not include a mandatory remedy mechanism for individual cases. Nevertheless, through the involvement of trade unions and employees during monitoring visits, there is a valuable check on compliance. Information collected during interviews with workers is included in the monitoring reports of factories, and progress is checked during follow-up visits. Due to the monitoring efforts made and inclusion of interviews with workers during monitoring, therewith the need for employees to address their issue to an existing grievance mechanism may be reduced.

1.3 Lessons learned

The Better Factories Cambodia programme works for several reasons.

- It is aimed at improving working conditions in all exporting garment factories. This is unique, because usually supply chain responsibility is only performed by frontrunner buying companies covering only parts of the sector. A sector wide approach, with state involvement has the potential to raise the bar on a larger scale and ensure a level playing field at national level with positive international spin-offs.
- It is important that in Cambodia employers and trade unions are involved in the project; making it a multi-stakeholder approach. This adds a valuable compliance check and credibility to the programme, and ensures a long-term commitment from stakeholders.
- Buyers can be confident that there is independent, transparent and credible monitoring in the country. This way buyers know that risks are reduced, which could make them more inclined to enter into trade relationships with Cambodian exporters.
- The programme also learned that several issues are challenging to resolve, such as freedom of association and the establishment of a culture of occupational safety and health. Furthermore, the programme has no mandate on living wages and does not have the authority to monitor sub-contractors of the exporting factories.
- From an international point of view, the Better Work programme Cambodia is a recognized brand name in its field. It has been strongly supported by the U.S. government and companies based in the USA. In Europe, the French and Dutch governments have assisted the programme with an increasing interest from European companies to participate. The case study shows that other states can help

host states to meet their duty to protect the rights of the factory employees while assisting the country to develop their export market and alleviate poverty.

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Case 2 - Protecting price levels in Mozambique

In an global economic system dominated by free trade and globalisation, the state of Mozambique protects its home market of sugar cane to avoid cheap imports in order to rehabilitate the sector and to make it competitive to world market prices. Mozambique challenged the conflicting interests of international organisations like WTO and IMF and its own interest in local economic development and protection of the local market. This case study shows the dynamics between the Mozambique government and local industry and the difficulties a government may be facing in their attempt to rehabilitate a sector.

Central pillar UN framework	Duty to protect
Sector	Sugar from sugar cane
Country	Mozambique
CSR issues	<ul style="list-style-type: none">• Unfair price levels• Adequate standards of living

2.1 Case description

The aim of the World Trade Organisation (WTO) is “to liberalise world trade and place it on a secure basis, thereby contributing to economic growth and development”. To realise this, three major issues were negotiated for agriculture: (1) reduce or eliminate all forms of export subsidies; (2) improve market access by lowering tariffs; and (3) reducing quotas and reduce trade-distorting domestic support. Also the sugar market is affected by this development. The international sugar market is defined as one of the most distorted agricultural commodity markets. Raw and refined sugar markets are generally characterised by significant and widespread domestic support and trade distorting policies, such as guaranteed minimum payments to producers, production and marketing controls (quotas), state-regulated retail prices, tariffs, import quotas and export subsidies (Nyberg). After fierce and long debates, only recently the dominant EU sugar regime has been reformed.

In 1972 Mozambique was the world’s fourth-largest sugar exporter. However, after 16 years of civil war the entire infrastructure and production was ruined. As a result, the government of Mozambique decided in 1997 to intervene and protect the domestic sugar market. The pricing policy consisted of import tariffs and production subsidisation. The surcharge on sugar imports was based on an annual fixed reference price. The sugar producers were also paid the reference price. Domestic consumer prices reflect this reference price. Protection by the government was expected to last until 2012 (this was stated by the government in 2002). Justification for both instruments lay in the argument that the industry still is in its infant stage as well as in the structure of the international market.

In 2000 the IMF and the World Bank threatened to withdraw their support because of this protection, which would have been in line with agreements on world trade liberalisation. However, the government of Mozambique had a strong case in protecting its sugar industry, as it had significant importance to the country as a whole as well as other sugar producing countries who were protecting their domestic industry to a certain extent. The government of Mozambique reacted in a Letter of Intent to the IMF: “Acting” on the recommendations of a recent study by the Food and Agriculture Organization (FAO) for the sugar sector in Mozambique, the government has decided to maintain the level of import protection for sugar established in September 1999, and it will review this policy annually based on domestic and international sugar market developments⁶⁷. As a result from intense pressure from the Mozambican government, trade unions and business, and international campaign groups⁶⁸, the IMF permitted Mozambique to protect its expanding sugar industry. Allowing Mozambique to protect its two most important agro-industries (also the cashew industry) was a remarkable reversal by the international financial institutions.

A different story is the reaction of the local sugar using industry in accepting the sugar policy of the government. According to Arnaldo Ribeiro, the director of the National Sugar Institute (INA), the main industries that use sugar continued to import the commodity rather than buy the locally-made product in Mozambique. The major sugar-using industries are breweries and soft drink manufacturers, dominated by Cervejas de Mocambique (CDM) and the local branch of the Coca-Cola Bottling Company. Ribeiro said that the industries are dissatisfied with the price charged by Mozambican sugar producers. They have not abandoned Mozambican sugar entirely; but are continuing to import sugar from South Africa at the same time. CDM and Coca-Cola seemed willing to pay the extra import fee, as part of their pressure to force Mozambican sugar companies to lower their prices, according to observers⁶⁹. In total it took about six months to reach an agreement on a preferential price for industrial consumers⁷⁰.

The government of Mozambique was only partially successful in their quest to protect its home market of sugar cane. The IMF agreed with the arguments of the government of Mozambique to temporarily protect their market. Local industry on the other hand was not able to accept the price levels of the government of Mozambique. For industry the market mechanism outweighed the rehabilitation of the sugar industry in Mozambique.

2.2 Analysis UN Framework

Protect

⁶⁷International Monetary Fund website [online], [Accessed 30 August 2010], Available from: <http://www.imf.org/external/np/loi/2000/moz/02/index.htm>

⁶⁸Afrol news website [online], [Accessed 30 August 2010], Available from: http://www.afrol.com/News2001/moz004_cashew_sugar.htm

⁶⁹Panapress website [online], [Accessed 30 August 2010], Available from: <http://www.panapress.com/newslatf.asp?code=eng088983&dte=29/07/2005>

⁷⁰Afrol news website [online], [Accessed 30 August 2010], Available from: http://www.afrol.com/News2001/moz004_cashew_sugar.htm

The government of Mozambique has 'the state duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication'. For the intervention and protection of the domestic market the Mozambican Government had several reasons:

1. Comparative advantage at world level in terms of production costs.
2. Economic growth also in other related economic activities.
3. Creation of employment.
4. Improvement of the balance of trade.
5. Creation of local entrepreneurship.

At international trade level, the government of Mozambique was successful in protecting their internal sugar market. However, at the micro-economic level the government had no means to dictate the price level. Free market thinking and competition from countries in the neighborhood are leading elements in business.

Respect

Companies have the corporate responsibility to respect human rights, which means to act with due diligence to avoid infringing on the rights of others. This also counts for fair price-levels, although the determination of a fair price level is subjective and broadly discussed. In this case local industry does not respect the price policy of the government of Mozambique and has put pressure on the government of Mozambique to lower their price. This seems to be in contrast with formal policies on Corporate Social Responsibility. One company is part of a multinational that has a formal CSR policy related to the Global Compact Guidelines. These guidelines are based on ten principles for human and labour rights. Although there is no direct link to the issue of 'fair prices' it is questionable whether this kind of behaviour is in line with the policy on CSR.

Remedy

The third pillar of the UN framework is greater access by victims to effective remedy, judicial and non-judicial. In this case the government of Mozambique was successful in convincing the IMF of the necessity of the price policy to recover the sugar industry. Although the IMF is convinced of a liberal and free market, there are mechanisms in place to debate a countries local policy and strategy. Also at the level of the World Trade Organisation (WTO) possibilities exist to address inequalities in the trading system. As for the link between CSR related policies and policies at country level no formal institutes exist. The Global Compact Guidelines are voluntary and within this format no grievance mechanism exists for non compliance.

2.3 Lessons Learned

- Despite the agreements on world trade liberalisation, the government of Mozambique is successful in their strategy to protect their own sugar industry with a price policy at international level. However, at micro-economic level this price policy is not accepted. The local market mechanism and competition is dominated by 'free trade' . The local sugar buyers have a strong position and power to negotiate on price.

- The issue of unfair price levels is not clearly defined in CSR related frameworks such as the UN Framework and is not directly linked to CSR guidelines as the Global Compact Guidelines. The UN Framework cannot be seen in isolation of basic principles and standards.
- At international level remedy mechanisms exist to find a balance between free and protected trade. At micro-economic level these mechanisms are not formalised.
- Within the Global Compact Guidelines there is no mechanism to sanction member companies for non compliance.
- Although neither the European Union nor European companies nor European NGOs have been involved in this case study, it serves as an example of a good practice for this research. This case study does relate to the liberalisation of the European sugar market and the effects of this system on the (least) developing countries (LDC) and African, Caribbean, Pacific (ACP) countries. The lessons learned in this case study could be relevant in future negotiations with developing countries on trade related agreements such as Everything But Arms (EBA).

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Case 3 – Race to the Bottom: States competing at the cost of workers' wages

East Asia is the powerhouse of the global garment business and the main exporter of garments to the European Union. Competition between Asian countries is fierce. The challenge for states in such a competitive global economy is to balance the desire to provide low production costs with the duty to protect the right of adequate standards of living for workers. This case on Bangladesh shows that the garment industry often shifts too much to reducing costs at the expense of workers' wages.

Central pillar UN framework **Duty to protect**

Sector	Garment industry
Country	Bangladesh
CSR issues	<ul style="list-style-type: none">• Freedom of association and collective bargaining• Adequate standards of living

3.1 Competition in the garment industry

In 2008, the European Union (EU) imported \$93 billion worth of garments and textiles. The top exporting countries to the EU were the Asian countries: China, Bangladesh, India and also Turkey. The garment industry consists largely of female workers and is characterised amongst others by low wages and excessive overtime. The supply chain is complex during the manufacturing stage. Various companies may have contributed to parts and stages of the exported product.

For the Asian countries the garment industry is important to their economy. Production can be shifted relatively easily to other countries with lower labour costs. For example, the garment industry in Bangladesh accounts for 80 percent of the country's exports and provides work to 3.5 million Bangladeshi. Due to the competition to attract foreign investors, countries can be unwilling or unable to enforce or implement regulations that protect the well-being of core labour and human rights and respect for the environment. Labour costs typically constitute only 1-3 percent for garment produced in the developing world. However, in a fiercely competitive business like the garment industry, labour costs, even when it constitutes such a small percentage of the total, are considered an important factor to success.

Living wages

The Asia Floor Wage Alliance is convinced that wages in the Asian garment industry are able to increase without Asia losing its world's dominance. The Asia Floor Wage Alliance

consists of dozens of unions, other NGOs and social scientists in Asia, Europe and North America. The alliance advocates for the payment of living wages.

Nowadays, almost all large European garment and retail companies have codes of conduct including social standards for the working conditions in their supply chain that are monitored by social auditing companies and/or through multi-stakeholder initiatives. A large number of codes of conduct include the notion of a living wage, for example the UK's Ethical Trading Initiative, Social Accountability 8000 and the Fair Wear Foundation.⁷¹

Article 23(3) of the United Nations Universal Declaration of Human Rights states "Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection." The International Labour Organization (ILO) defines a living wage as "The level of wages sufficient to meet the basic living needs of an average-sized family in a particular economy."⁷² To assist therein the ILO has adopted a number of Conventions concerning wages, taking particularly into account the needs of the workers.

Present working conditions

When introducing minimum wages in countries however, several economic indicators are considered in order to stay competitive. As a result, countries may choose to set minimum wages below that of living wages. A minimum wage is defined as "the lowest level of remuneration permitted [...] which in each country has the force of law and which is enforceable under threat of penal or other appropriate sanctions"⁷³.

Additionally, freedom of association is either not guaranteed by law or not implemented in countries like China, Bangladesh and India, and as a result wage levels and other working conditions cannot be negotiated through effective trade unions and collective bargaining. Living wages could also be established through RSCM by the buying companies. Firstly, by including the notion of living wages in their codes of conduct and secondly, by incorporating social costs in their purchasing practices and prices paid to suppliers that enable suppliers to pay their workers a living wage.

The case of Bangladesh

In Bangladesh, buying companies have a difficult time applying RSCM by paying higher prices. In March 2010, for instance, the main Bangladeshi employer organisation BGMEA strongly discouraged the brand companies buying garments in Bangladesh to pursue any activities regarding paying a higher wage than the State decided wage. BGMEA claimed that this would undermine and imbalance the smooth running of the sector.

Garment workers in Bangladesh generally work more than 60 hours per week, and have lower wages than their colleagues in China and India. However, on 29 July 2010 the tripartite Wage Board (government, employers and some trade unions) on garments in

⁷¹ <http://www.asiafloorwage.org/>

⁷² <http://www.ilo.org/public/libdoc/ILO-Thesaurus/english/tr4634.htm>

⁷³ <http://www.ilo.org/dyn/travail/travmain.howtouse>

Bangladesh raised the minimum wage, which will come into effect from November 2010 onwards, for the first time since 2006. A senior economist of the World Bank estimates that the associated increase in the average nominal minimal wage for workers would be 78%, from 2,409 taka (about 27 euro) to 4,290 taka (almost 49 euro) per month.

The minimum wage totalled 960 taka per month in 1996 and only ten years later it was increased to 1,662 taka and in November 2010 to 3,000 taka. According to Steve Grinter of the International Textile, Garment and Leather Workers Federation (ITGLWF) the real value of the minimum wage has devalued, due to price inflation particularly concerning essential commodities such as rice and dahl (vegetable) as well as house rent and transport costs.

Many garment workers and unions were dissatisfied with the proposed increase in wages, which will come into effective from November 2010. They claim the new wages fall short of what is considered a living wage. Therefore in August 2010, garment workers organised several protests, against many Bangladeshi garment factories who do not comply with mandatory standards on pay, working hours and conditions.

3.2 Analysis UN Framework

Protect

The challenge of this case study resides under the Protect pillar of the UN Framework. It is primarily the role of states to ensure that their workforce earns a living wage. When states are unwilling or unable to raise wages to a living wage level, EU companies are faced with a challenge when sourcing from these countries, how to raise the wages of the workers in their specific supply chain, in particular when other buyers do not place similar demands on the supplier and even more so when the state is actively urging buyers not to raise wages beyond the legal minimum.

Respect

Buying companies can contribute to the Respect pillar. They can do this by finding out if their supplier pays its employees the minimum wage as stipulated by the State and whether these wages match the living wages. When this is not the case, buying companies could ensure that their purchasing practices, including prices and delivery times, enable the supplier to provide decent working conditions and wages. However, paying higher prices for products to suppliers does not guarantee that the suppliers will actually raise wages, or just take higher profit margins. This case of Bangladesh particularly shows that even for well-intended buying companies application of RSCM can be challenging.

3.3 Lessons learned

- The European Union has a large trade relation with Bangladesh through the import of garments.
- Experiences shows that in the Asian garment sector fierce competition between countries is negatively influencing workers wages.
- The example of Bangladesh shows that this can lead to wages below living wages whereby increases in wages are considered as a threat to the competitiveness of the industry, even if paid for by buying companies.

- The garment industry is one of the industries where CSR initiatives have been in existence for many years. This case study shows that the application of RSCM by buyer organisations may not always be a solution to wages below the living wage in the case of the global garment industry. Especially not when RSCM is limited to appliance of local legislation regarding minimum wages.

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Bangladesh Garment Manufacturers and Exporters Association (BGMEA), "letter to all country managers / general managers / Heads of Liaison Office of Garment Buyers operating in Bangladesh", 31 March 2010.

Interview with Steve Grinter of the International Textile, Garment and Leather Workers Federation (ITGLWF) on 30 June 2010 (and final check on 10 November 2010).

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Standards on websites United Nations and International Labour Organisation

Case 4 – Child labour in sugar cane production in El Salvador

Although ILO convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour and ILO recommendation 190 require immediate action to eliminate worst forms of child labour, in practice this is not always the case. In 2004 Human Rights Watch challenged the social responsibility of the government of El Salvador and multinational corporations like Coca Cola on the issue of exploiting child labourers in the sugar cane fields of El Salvador.

Central pillar UN framework	Duty to protect
Sector	Sugar from sugar cane
Country	El Salvador
CSR issues	<ul style="list-style-type: none">• Child labour

4.1 Case description

Higher yielding sugar cane varieties, producing energy and alcohol/ethanol, investment in milling equipment to improve yields, additional access to the U.S. market and stable international prices all support a positive development of the sugar industry in El Salvador over the next 3 to 5 years (Hoff and Herrera 2010). For El Salvador sugar is the most important agricultural product after coffee in terms of foreign currency and employment. Around 35% of El Salvador's population works in sugar (Human Rights Watch 2004).

In contrast here to is the continuing association of the El Salvadorian sugar industry with child labour. In 2004 Human Rights Watch released a report (Human Rights Watch 2004) stating that "Businesses purchasing sugar from El Salvador, including The Coca-Cola Company, are using the product of child labour that is both hazardous and widespread". At least five thousand boys and girls were working in the sugar cane harvest in El Salvador based on a baseline study of the ILO's International Programme on the Elimination of Child Labour (IPEC) in 2003. Other studies concluded that another 25,000 children are "indirectly involved" (Human Right Watch, 2004).

Child labour in sugar cane cultivation ranks amongst the worst forms of child labor, as identified in ILO Convention No. 182.⁷⁴ ILO Recommendation 190⁷⁵ requires immediate action to eliminate prohibited labor including work with dangerous tools, work that

⁷⁴ ILO Convention No. 182: Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (the Worst Forms of Child Labour Convention).

⁷⁵ ILO Recommendation No. 190: Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (the Worst Forms of Child Labour Recommendation).

exposes children to dangerous substances, and work under particularly difficult circumstances.

The Coca Cola Company firmly opposes the use of child labour in an official statement and have formalised this in the Supplier Guiding Principles (SGP)⁷⁶ programme for direct suppliers to the Company. In the SGP child labour is prohibited and linked 'to minimum age provisions of applicable laws and regulations'. Coca-Cola's guidelines applies only to its direct suppliers and does not address responsibility to subcontractors. Therefore it is still feasible that child labour persists in the Coca Cola supply chain. In response to the Human Rights Watch report, the Ministry of Labour in El Salvador directed sugar plantations to remove child workers from the sugar cane harvest. Furthermore the sugar industry association⁷⁷ in El Salvador has begun to work with the International Labour Organisation (ILO)⁷⁷ on a more comprehensive approach to the problem of child labour. Coca Cola and their Salvadoran bottling partner engaged in a 'multi-stakeholder' effort with the Salvadoran Sugar Association, the government, local NGO's, the ILO (IPEC) and others, to develop a strategic long term national plan to reduce and eradicate child labour (see box lessons learned).

According to official statistics from the Ministry of Education in El Salvador, child labour in the sugar cane industry dropped by 70 percent between 2003 and 2008⁷⁸. While the 2008 numbers are encouraging and Human Rights Watch (HRW) presented the sugar case as a success story, HRW has pressurised the Ministry of Labour to do more to ensure that children are reintegrated into schools.

4.2 Analysis UN Framework

Protect

The government of El Salvador has 'the state duty to protect against human rights abuses, in this case child labour, by third parties, including business, through appropriate policies, regulation, and adjudication'. The Salvadoran labour law sets the minimum age for employment at 14 years. Children who have reached age 12 may be allowed to perform light work, if it does not hinder school attendance, health, or personal development. Children under 16 years are prohibited from working more than 6 hours per day, 34 hours per week, or 2 hours overtime in one day. Hazardous or unhealthy work is prohibited for all minors under the age of 18, including such activities as cutting or sawing. Forced labour is prohibited, except in cases of natural disasters and as specified by law.⁷⁹ The government has ratified both relevant ILO conventions in 1999 and 2000 respectively.

The government has sufficient policy in place but enforcement and monitoring has failed.

⁷⁶ The Coca-Cola Company website [online], [Accessed September 2010], Available from: http://www.thecoca-colacompany.com/citizenship/supplier_guiding_principles.html

⁷⁷ In the mid-90's the Sugar Association created a foundation to improve the living condition of grower's families. The foundation does some work in conjunction with government of El Salvador.

⁷⁸ Human Rights Watch website [online], [Accessed September 2010], Available from: <http://www.hrw.org/en/news/2009/09/16/child-labor-sugarcane-plantations-el-salvador-drops-70>

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Respect

Companies have the corporate responsibility to respect human rights, which means to act with due diligence to avoid infringing on the rights of others. Coca-Cola endorsed the Global Compact Principles which include principle 5: the effective abolition of child labour. Also in its own supplier guidelines Coca Cola states that direct suppliers “will not use child labour as defined by local law.” Coca Cola stated that they did not find any incidences of child labour in the refinery and supplying mills in 2003 but may have been aware of the possibility of child labour in the sector. As advised by Global Compact “be aware of countries, regions, sectors, economic activities where there is a greater likelihood of child labour and respond accordingly with policies and procedures”. In March 2010 Global Compact launched an initiative on Sustainable Supply Chains which encourages companies to deliver long-term value along the entire supply chain. In Coca Cola’s supplier guiding principles the responsibility towards child labour is related to the direct supplier and not to all members of the supply chain.

Remedy

The third pillar of the UN framework is greater access by victims to effective remedy, judicial and non-judicial. In this case the children that were working in the sugar industry had no access to effective remedy. Due to the report of Human Right Watch the subject of child labour in the sugar industry of El Salvador became a public issue and subsequently got on the agenda of the government, business organisation and other institutions.

4.3 Lessons learned

- Victims of child labour seem to have no access to effective remedy. ‘Name and shame’ strategy is needed to get attention.
- The issue of child labour is a complex issue that needs to be addressed in a multi-stakeholder way integrating all three aspects of the UN framework: protect, respect and remedy.
- The range of a company’s responsibility in the supply chain is unclear. There are guidelines in which companies are held responsible for the total supply chain including subcontractors; other guidelines link the responsibility to the direct supplier.
- Although neither the European Union nor European companies nor European NGOs have been involved in this case study, it serves as an example of a challenge for this research and provides us with relevant lessons learned. This case study could be relevant for the European Commission in further defining a law on child labour. In the conclusions on child labour of June, 14, 2010 the council states:
 - “The Council would welcome a future Commission Communication on CSR which addresses the issue of business and human rights in the global context and gives due consideration to the issue of child labour.” And In this context, the Council invites the Commission to organise a multi-stakeholder conference with representatives of the business community, civil society, international organisations, EU Institutions, and Member States, to discuss progress made and what further steps may be taken”.

- “The Council invites the Commission to study and report before the end of 2011 on the worst form of child labour and trade, taking into account international experience and the views of competent international organizations.”

Specific lessons learned from the development of the National Plan to eliminate child labour from the Salvadoran sugar industry (Ascoli and Feinberg 2010)

- Persistence and continuity: Addressing child labour is a long-term commitment. All involved sectors must be clear that child labour is a complex problem to address, and that its transformation requires continuous long-term efforts.
- Multisector partnerships. Partnering with public and private organizations, with civil society organizations, and with international agencies will strengthen the likelihood of success and ensure its sustainability.
- Adaptability and flexibility are essential. All responsible sectors must remain open to changes and be willing to make the adjustments needed in their work plans to reach the common goal of eradicating child labour.
- It is crucial to educate and raise the awareness of the public and the responsible sectors about the issue. All responsible sectors should communicate the same message but adapt it to the different audiences, such as decision-makers, sugar cane producers, rural communities, local leaders, parents, cooperatives, etc.
- The movement to eliminate child labour must obtain support from all members of the industry. In El Salvador the support of the industry is evidenced by the AAES Code of Conduct and the “zero child-labour tolerance” clause in the contracts between refineries and producers.
- The industry should communicate its efforts and the challenges faced. With the publication of the HRW report, the sugar industry realized that it needed to more effectively communicate its efforts and achievements to eliminate child labour. Preparing CSR reports on a regular basis is one way to inform the public.

- Gain the support of international companies. There are many multinational companies, such as Coca Cola, who seek out products that are free of child labour in their production chains. Socially responsible companies should seek the support of national and international markets that value products made in safe and responsible ways.

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II. Corporate Responsibility to Respect

Case 5 – Cotton Made in Africa

Cotton Made in Africa (CMiA) is an initiative that stimulates the production of sustainable cotton in Sub-Saharan Africa. It is a demand-driven initiative that combines a strong marketing proposal for the mainstream market with clear development objectives in terms of economic empowerment and poverty alleviation. Originating from a corporate initiative, it now operates with Public Private Partnership funds and operational structure.

Central pillar UN framework	Responsibility to Respect
Sector	Cotton
Country	Sub-Saharan Africa
CSR issues	<ul style="list-style-type: none">• Adequate standard of living• Loss of biodiversity• Unfair price levels

5.1 Case description

With 10-13% of the global cotton production, Sub-Saharan Africa (SSA) is a secondary producer in terms of international supply security. However, African cotton is a key source of export revenues for African countries (after coffee and cacao); it accounts for 35-75% of the agricultural export earnings for cotton producing countries in SSA. It is exclusively produced by smallholders (app. 3.5 million) and about 20 million people benefit directly or indirectly from cotton farming. In the last few years, African cotton competitiveness has been challenged as a result of low productivity, low market prices, cotton subsidies in industrial nations and revaluation of local currency against the dollar. As a result the economic conditions of African cotton farmers have been affected and the production area has decreased.

Cotton is associated with significant use of water and chemicals, loss of biodiversity and difficult economic and social conditions for smallholders. However, African cotton is generally rain-fed, cultivated as a rotation crop and with moderate use of pesticides. In such a context, the African cotton has the potential to offer a more sustainable alternative to cotton produced in the key growing regions (China, India, the USA are the 3 top producers).

Against this background, Cotton Made in Africa (CMiA) was initiated by Dr. Michael Otto (Otto group) in 2005.⁸⁰ It aims at creating an alliance of major retailers and international textile value chain actors that secure the demand for African cotton and promote socially and ecologically sustainable production. In order to ensure that high-quality cotton from

⁸⁰ <http://www.cotton-made-in-africa.com>

Africa is available in the long term, it attempts to ensure the income of small farmers and to improve productivity and health and safety. The main CMiA activities are: (1) building capacity for small scale farmers, (2) strengthening links between farmers and cotton companies, (3) enhancing supply and demand chain, and (4) increasing cooperation and best practice sharing along the production chain.

CMiA is now coordinated by the 'Aid by Trade Foundation' (AbTF) in Hamburg. Currently, it gathers 22 textile retailers and brands (the demand alliance partners), cooperation institutions of the German government (BMZ, DEG, GTZ), cotton companies operating in Africa (growers organisations, ginners and traders), NGO's and, in certain locations, local government agencies.

CMiA farmers are required to comply with sustainable production standards described in the CMiA Verification Criteria covering the following themes: worst form of child labour, human trafficking, bonded and forced labor, labor conditions, health and safety, logging of primary forest, soil and water conservation, crop rotation, monitored use of pesticides, Improved Pest Management (IPM), transparency, fiber quality, payment conditions. An independent verification system ensures compliance with these criteria at field and ginnery level.

The CMiA alliance partners commit to merchandising a specific amount of cotton, which assures sales volume for the farmers. The CMiA cotton is traded at a world price through a chain of selected intermediaries (there is no certified supply chain). The members of the alliance pay a licence fee which is reinvested in countries to assure training, community projects and, in the future, dividends to participating smallholders.

During the 2005-2008 period, pilot projects have been run in Benin, Burkina Faso, Mozambique and Zambia, involving 150,000 smallholders in trainings. Since 2009 CMiA has been working jointly with COMPACI (Competitive African Cotton Initiative) for a three-year period; this wider initiative aims at developing the competitiveness of cotton in African producing countries. Actors such as the Bill & Melinda Gates Foundation and the German cooperation institutions implement a programme to improve the living conditions of 265,000 cotton farmers in six countries of sub-Saharan Africa (4 CMiA countries plus Cote d'Ivoire and Uganda). The programme helps the farmers, among other things, to change to a sustainable cotton production and to boost the productivity. In practice, the farmers are given the support required to increase their income, to produce more staple food and to improve the equipment of their farm holdings by the end of the project in mid-2012. The support includes the smallholders' qualification in improved cultivation methods, pre-financing of inputs, the strengthening of cooperative structures and the marketing of cotton via the local cotton companies. At the same time, marketing channels, for instance via the CMiA, are opened to cotton produced in a sustainable manner. The aim is to increase the farmers' net incomes by 30 per cent over the project period from 2009 to 2012.

Currently about 130,000 small farmers are involved in the CMiA project and 85,000 tons of cotton are produced annually. The yields of participating farmers in Zambia more than doubled since the project was initiated. In Burkina-Faso, soil fertility improved. In Benin, farmers' incomes increased by 20% by reducing input costs and manpower, mainly using

IPM. For the year 2010, ten million items are to be marketed by retail companies in Europe and North America.

5.2 Analysis UN Framework

Protect

The Aid by Trade Foundation (AbTF) which runs the CMiA initiative has a Public Private Partnership (PPP) financial and managerial structure. However the public actors involved in these initiatives (the German governmental bodies and NGOs, and the Bill & Melinda Gates Foundation) are located in demand-countries and not in the African producing countries. The AbTF works together with the cotton companies in Africa and does not interfere in their relationship with their local governments. Some government members (in Benin for example) are in contact with the AbTF, but do not have any active role in the CMiA initiative. This means that in African countries (the area where the CMiA aims to promote sustainability) the “State duty to protect” pillar is not interacting with the “responsibility to respect” pillar. The “State duty to protect” is actually a result of the German international cooperation policy. This public involvement allows the CMiA to develop a financially acceptable CSR proposal for the allied companies: the licence fees that these companies pay to source CMiA cotton do not cover the farmer’s training and verification process.

The CMiA case shows how a European government facilitates the take-up of CSR practices at company level by means of public funds. It also demonstrates that such an ambitious initiative, even if demand-driven, is not financially viable for mainstream companies alone, as they can not absorb the cost of such an initiative. It can be expected that public funding will be less important to the development of CMiA as the demand for CMiA cotton reaches a critical volume or Break Even Point. The implication of external parties such as Western and African NGOs remains essential in the local implementation of sustainability objectives at farmer’s level.

Respect

In the case of CMiA, the “responsibility to respect” is taken up by international buyers of CMiA cotton and local African ginners and traders. As mentioned above, there is little interaction with the governments of the countries where the project is being launched. At the level of buying countries, the “State duty to protect” is a result of the German international cooperation policy that supports projects which promotes the ‘responsibility to respect’ at company level. .

5.3 Lessons learned

The CMiA initiative initially emerged from a strong will to address one’s corporate responsibility with regard to the primary producers. Currently, the AbTF operates as a one-stop-shop for CSR-oriented textile companies. The number of companies that joined the CMiA alliance illustrates the success of this initiative. Two factors to this success can be identified: (1) the demand-driven principle and (2) the PPP structure.

The demand-driven principle:

- The cotton / textile supply chain is complex: cotton comes from different origins to be processed into garments by several actors located in various international industrial zones. It is extremely complex and costly for textile companies to ensure that cotton is produced in a sustainable manner back to the farm level. Worldwide, only a handful of large textile brands or retailers can afford to monitor the production of sustainable cotton for their own needs.
- In this context the CMiA offers an attractive package of products and services to textile companies. Companies have little to invest to launch a collection of sustainably produced cotton articles. But most importantly, it is a project that fundamentally creates a good sense of business: it associates a clear B-to-B (business-to-business) and B-to-C (business-to-consumer) selling proposal (a good quality product with a good branding), by using regular supply chain structures, controlled pricing, capacity building at origin and an independent verification system.
- The CMiA is actually a low-entry one-stop-shop for sustainably produced cotton. The alliance partners drive the demand for CMiA cotton while they are allowed a lot of flexibility. Sourcing CMiA requires hardly any change for their internal operations. This initiative therefore represents an easy step for textile companies. Once this step is taken, it can be expected that companies gain knowledge on sustainably produced cotton, and on the way to source it. As this knowledge increases, it becomes easier for companies to work on options to extend their range of sustainable clothing, expectedly producing a ripple effect on the demand for sustainable cotton.

The PPP structure

- Another key success factor is the capacity of CMiA to create synergies, both from the private and public sector. Since the very beginning, the CMiA initiative has rapidly evolved into a PPP where different bodies perform well defined tasks both in developed and developing countries and at different levels of the chain. The linkage with COMPACI and its financial capacity obviously offers a strong leverage to relay the CMiA projects locally and support the implementation of its criteria at farmers' level. The fact that CMiA has been able to work with public funds and with local programmes is a major attribute to facilitating the implementation of companies CSR' ambitions in the textile sector.
- Without such public / private consortium and funds, one can assume that the CMiA would not have attracted so many textile companies. It can actually be presumed that the cooperation with the German cooperation agencies and the (extremely result-oriented) Bill & Melinda Gates Foundation reinforces the credibility and attractiveness of the CMiA for aspirant companies.
- The big absentees of this PPP consortium, i.e. African governmental bodies, can be deplored. However, without directly interacting with local institutional bodies, one can deduce that the AbTF has more freedom to run the CMiA in targeted countries with the flexibility that is necessary for the demand alliance partners.

- All in all, the CMiA construction seems to be an efficient type of public- private partnership in the sense that one of its founding principles is the promotion and facilitation of an increasing demand from textile companies. The CMiA products and services are designed with this objective in mind so that cotton can continue to be produced in a sustainable manner in Africa. With such a demand-driven angle, the public support proves to be an efficient vector of companies' CSR policies.

This case study provides a good example of how European companies or initiatives deal with sustainability issues in the cotton supply chain. Dr. Michael Otto set up the initiative and brought together several partners from businesses, governments, academia and NGOs to combat poverty and protect the environment in Sub-Saharan Africa. The project is twofold, on the one hand it supports farmers to improve their production practices and on the other hand it matches retailers and brand companies to the certified farmers. Resulting in more sustainable supply chains in EU trade and, simultaneously, in improved production practices, socially and environmentally, in local production.

This case study also provides an interesting example of how a European private-owned initiative can, with the support of national government entities, open up to competitors while it develops from a European level to an international level. Such an approach offers an interesting complement to the other sustainable cotton initiatives that exist in Europe, i.e. the NGO-driven initiatives (Fairtrade and organic cotton) and the multi-stakeholder platforms (the Better Cotton Initiative).

Recommendations (adapted from <http://www.odi.org.uk/resources/download/4851.pdf>)

- Public support (monitoring and evaluation (M&E) and investment funds) greatly facilitates the involvement of companies in CSR initiatives. Especially, in a sector where influencing the primary production is extremely complex for private companies.
- Donors can simultaneously support producers and hold companies to account, by supporting the establishment of strong M&E systems.
- Targeted projects can deliver benefits to poor producers, enabling them to access not only local but also international markets and generating increases in both yields and incomes. However, committed social entrepreneurs or socially responsible businesses are necessary to ensure export success.
- A flexible and progress-oriented approach helps enhance the economic, social and environmental sustainability of the cotton supply chain. This allows private sector actors to determine the most efficient and cost-effective way for achieving progress towards the sustainability targets.

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Case 6 – Transparency frontrunners garment industry

A number of brand companies in the footwear and garment industry initiated an openness policy with regard to their supply chain. They published a list of their global suppliers on their websites. Additionally, they made public independent audits on labour standards.

Central pillar UN framework	Responsibility to respect
Sector	Footwear and garment industry
Country	Global
CSR issues	<ul style="list-style-type: none">• Child labour• Freedom of association and collective bargaining• Adequate standards of living

6.1 Case description

Holding companies accountable for the social, environmental and economic conditions throughout their supply chains is often challenging due to a lack of transparency about the origins of products and materials and the conditions under which they are made, sourced or extracted. Information about, for example, labour conditions is often only known to the suppliers themselves and their buying companies. Fear of reputational damage as well as reasons of competition make most companies reluctant to be transparent about their suppliers and any possible violations that may be detected. The buying company may take supply chain responsibility, but stakeholders cannot assess the results of the efforts by the company, nor can they independently verify conditions at the supplier level.

There are few mandatory standards with regard to the quantity and quality of information companies should provide about their supply chain. The Global Reporting Initiative – the most comprehensive standard on sustainability reporting – is presently working on the improvement of its G3 Guidelines regarding disclosure on performance with respect to supply chains. However, these standards will mostly focus on standards for sustainability reporting, whilst practical and concrete ways of publishing suppliers and audit results might not be required.

A good practice, showing that more transparency is possible without negative consequences for the companies, is the fact that some leading brand companies in the footwear and garment industry initiated ways of providing the public transparency in their supply chain.

Transparency by publishing a list of suppliers

Some main footwear and garment brand companies (amongst others Nike, Adidas and Levi Strauss) have started revealing the names of all their first tier suppliers by listing them on their websites. The list of the big brand companies may comprise of up to a thousand factories, located across all main producing countries internationally.

By publishing the list, the companies make their supply chains visible to stakeholders, including the consumers of their products. Since the relation between the brand company and supplier has been made public, stakeholders are better able to relate any abuses at supplier level to buying companies. This may be regarded as a potential reputational risk however it enhances credibility to the efforts that brand companies take to improve sustainability throughout their supply chain.

The published list of suppliers is usually limited to first tier suppliers. These are obviously known to the company, while suppliers further down the chain may not always be known. This is challenging because the further down the supply chain, the more likely basic labour rights are violated. Full transparency, throughout the full range of stages of, for example “cut, make and trim” (CMT) in the garment industry, as well throughout the production of cotton, remains a challenge.

Transparency by making supplier audits public

Another form of transparency is that some multi-stakeholder initiatives publish the audits that have been conducted at several factories. One of the best examples in this respect is the US-based Fair Labour Association (FLA). FLA is a non-profit organisation dedicated to end sweatshop conditions in factories worldwide. It has a code of conduct with principles based on International Labour Organization (ILO) standards. Presently there are 32 brand-name companies participating, including some major European brands such as Adidas, Puma and Hennes & Mauritz. Each participant subjects its production facilities to unannounced monitoring visits. In 2009, FLA-affiliated companies reported that they sourced from 4,202 factories, totalling over 4 million workers. FLA conducts the external audits, amounting to 120 in 2009. The audits are published on the FLA website. In addition to the FLA, the EU-focused Fair Wear Foundation is to a large extent transparent regarding the results of its audits conducted amongst the suppliers of its members.

The publication of third party audits adds credibility to the efforts of footwear and garment companies conducting due diligence in their supply chain.

6.2 Analysis UN Framework

Respect

This good practice clearly resides under the Respect pillar of the UN framework. Professor Ruggie argues that a main purpose of human rights due diligence, comprises a demonstration to others that the company respects rights. In this respect, he speaks of a game-changer for enterprises: from “naming and shaming” to “knowing and showing”. Naming and shaming is a response by external stakeholders to the failure of enterprises to respect human rights. Knowing and showing is the internalisation of that respect by enterprises themselves through human rights due diligence.

Remedy

To some extent the practice of being transparent about the supply chain also contributes to better access to remedy. Affected workers, their representatives and other relevant stakeholders such as local NGOs may be better able to identify buyers of suppliers violating rights and seek remedies through company level grievance mechanisms or through the multi-stakeholder initiatives that the company in question is signed up for.

6.3 Lessons learned

The publication of a list of suppliers and audits enhances the credibility of the efforts of footwear and garment companies conducting due diligence in their supply chain. It allows stakeholders to assess the efforts of the companies and/or address the brand company with regard to the CSR-issues. In many other sectors, this transparency is not provided for. Transparency is a prerequisite for increasing public and consumer awareness about social and environmental conditions of the products they purchase. In order to create a level playing field throughout the European Union, supply chain transparency could be better regulated at EU level.

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Case 7 – Dominican garment workers receive a living wage thrice the local minimum wage

The focus of this multi stakeholder project is on paying workers of a garment factory in the Dominican Republic a living wage and allowing them to join unions. It involves an American garment company, a local trade union and an independent USA-based civil society stakeholder in a code-developing and monitoring role. This project is presented here as an example of a brand company respecting and implementing the workers' right to a living wage and the right to freedom of association in one of its factories.

Central pillar UN framework **Respect to responsibility**

Sector	Garment manufacturing industry
Country	Dominican Republic
CSR issues	<ul style="list-style-type: none">• Freedom of association and collective bargaining• Adequate standards of living
Other CSR issues	<ul style="list-style-type: none">• Women rights

7.1 Case description

Workers of the Knights Apparel-operated Alta Gracia factory in the Dominican Republic are paid a living wage. This provision is part of a code of labour standards developed for the Designated Suppliers Program (DSP), a proposal by USAS (United Students Against Sweatshops) and the Worker Rights Consortium (WRC) for supply chain reform in the North American university licensed apparel sector.⁸¹ The DSP has not been launched yet, but the Alta Gracia project represents a single firm voluntarily adopting equivalent standards at a single factory. The code is applicable to the factory under an agreement between WRC, Knights Apparel and the *Fédération Dominicaine de travailleurs de zones francas* (Dominican Federation of Free Trade Zone workers) Fedotrazonas. The living wage calculated by WRC is more than three times the standard industry wage in the Dominican free trade zone. Alta Gracia factory workers receive \$2.83 per hour, compared to the local minimum wage of \$0.83 an hour.⁸² The code also covers wages & benefits (such as vacation pay, holiday pay and severance), working hours, overtime compensation, child labour, forced labour, health & safety, non discrimination, harassment or abuse, freedom of association and collective bargaining, and women's rights, in other words all the ILO core conventions. WRC points out that the code standard on freedom of association goes beyond ILO standards, and traditional code standards, in requiring access for union organisers to the factory and an open attitude

⁸¹ USAS and WRC Designated Suppliers Program <http://workersrights.org/dsp/>.

⁸² Living wage analysis for the Dominican republic, WRC, October 2008

toward unionisation on the part of management.⁸³ WRC is charged with monitoring compliance with the code provisions, in particular the living wage standard. The project started in April 2010. In a Verification Report dated 16 July 2010, WRC concluded that “the factory is in full compliance with its living wage obligations” throughout the researched period.⁸⁴

The Alta Gracia factory is based in Villa Altagracia in the Dominican Republic and has about 133 employees. Alta Gracia is a new brand of Knights Apparel Inc (KA), a privately held American sports wear company. Knights Apparel is a leading supplier of college-logo apparel (t-shirts, sweatshirts) to American universities. According to the Collegiate Licensing Company (CLC), Knights Apparel is the largest supplier of collegiate apparel overall, including supplying to Walmart and the mass/discount retail channel in the USA. It is Nike’s largest competitor in the collegiate apparel market⁸⁵ and its brands include NBA, NCAA, ProEdge, NHL and ProPlayer Sport Apparel.⁸⁶

Autumn 2010, Alta Gracia commenced sales on over 200 university campus bookstores in the USA. The price of a T-shirt is \$18, around the price of Nike and Adidas shirts. T-shirts and hooded sweatshirts (fleece) will be available in 350-400 bookstores by the end of 2010.⁸⁷

University bookstores represent annual sales of more than \$1 billion and more than one third of all university logo sales in the US. In terms of the overall university logo products market, campus retail is as big a player, in the aggregate, as the mass/discount channel. The campus stores are also a particularly high-profile part of the US retail universe.⁸⁸

Market-basket analysis

WRC performed a comprehensive market-basket analysis in order to establish a living wage standard for free trade zone apparel workers in the Dominican Republic.⁸⁹ In conducting its analysis, the WRC took, as a starting point, the broad agreement among researchers that a living wage should cover the cost of meeting a family’s basic needs in the following categories of goods and services: food and water, housing and energy, clothing, health care, transportation, education and childcare as well as modest funds for savings and discretionary spending.⁹⁰ The WRC then developed, through consultations with workers’ representatives and local experts, the specific market basket of goods and services, in each of these categories, appropriate to the Dominican Republic. Consequently, the WRC measured the actual price of each item in the basket, as available in markets and from vendors and service providers accessible to workers. WRC’s analysis was completed in October 2008. The primary purpose of the analysis

⁸³ ‘As a result of these standards and the scrupulous adherence to them by KA and factory managers, workers were able to organize without management retaliation or interference.’ Email from WRC on November 11, 2010.

⁸⁴ Living Wage Verification report, WRC, 16 July 2010.

⁸⁵ The Collegiate Licensing Company Names Top Selling Universities and Manufacturers., CLC, 26 August 2010

⁸⁶ <http://www.knightsapparel.com/index.html>, visited 10 September 2010.

⁸⁷ Factory Defies Sweatshop Label, but Can It Thrive? The New York Times, 17 July 2010.

⁸⁸ Information provided by WRC, email dated 11 November 2010.

⁸⁹ Living wage analysis for the Dominican Republic, WRC, October 2008 (?)

⁹⁰ The WRC assumed a typical family size of four, based on demographic data provided by the World Bank. WRC also assumed that the family has an additional wage earner whose income covers one quarter of a family’s expenses., Ibid. page 2, note 3.

was to determine the minimum wage to be paid at Alta Gracia garment factory. The agreements between WRC and Knights Apparel regarding Alta Gracia, call for an annual cost-of-living adjustment (if there has been an increase in the cost of living). Accordingly, the WRC assessed inflation in the Dominican Republic after the one-year anniversary of the study's completion, in order to determine whether an upward adjustment was necessary. According to the WRC documentation, there was no inflation over the twelve month period, as reported by the Central Bank of the Dominican Republic.⁹¹ The standard has therefore been left unchanged. Inflation will be considered again in the next few weeks, based on inflation numbers from the Dominican government for October which will be released soon.⁹²

It is important to note that a living wage is a net (or take-home) wage: to achieve this standard, the employer must pay a gross wage that yields a living wage *after* mandatory deductions from a worker's pay. In the Dominican Republic, there are mandatory deductions for health care and retirement only (workers at this income level do not pay any income tax). In the aggregate, the deductions for health and retirement total 5.91 percent of a worker's gross pay. Thus, in order to meet the living wage threshold, the employer must provide a gross wage equal to the living wage plus 6.28 percent, according to the calculations of the WRC. Under Dominican Law, employers are required to pay an additional month's salary each year as an annual bonus, paid at Christmas time. This is a mandatory payment that is received by all workers regardless of job performance or level of production. Because all workers receive this payment, it is taken into account when determining the monthly pay needed to achieve the annual living wage threshold. Thus, the monthly pay level needed to achieve the threshold is one-thirteenth, rather than one-twelfth, of the annual total.⁹³

The free trade zone where the Alta Gracia factory is located is also the former site of BJ&B, a plant which produced college logo baseball caps for Nike and Reebok. A decade ago, BJ&B was owned by the MNC Yupoong Inc. At the time, the workers addressed the factory's management for better wages, better treatment and their right to unionise. In 2003, workers leading this union effort were fired. In support of the dismissed leaders, the USA campaigning organisation United Students Against Sweatshops (USAS) launched a campaign targeting Nike, Adidas and Reebok, the main brands sourcing from the factory.⁹⁴ Eventually, the dismissed workers won back their jobs, and a union contract was concluded with wages and benefits that the New York Times called "unheard of".⁹⁵ But the victory was short lived. Brands like Nike and Reebok began pulling out their business, and in 2007, the closure of the BJ&B plant was announced. The final closure of BJ&B left 3,500 workers jobless, although by the time of the actual closure, so many workers had already been laid off, that at the time of the final closure, but 360 remained. The community of Villa Altagracia was greatly affected by BJ&B's closing. Since then, USAS and Fedotrazonas campaigned to bring the jobs back. Now, after a decade, Knights Apparel agreed to open a factory in Villa Altagracia in the

⁹¹ Ibid, page 2.

⁹² Writes WRC in an email dated 11 November 2010.

⁹³ Ibid. Notes 4 and 5, page 6.

⁹⁴ After decade of struggle, Dominican Republic worker activists make college apparel again, USAS, 19 July 2010.

⁹⁵ Latin Sweatshops Pressed by U.S. Campus Power, David Gonzales, 4 April 2003.

building that once housed BJ&B and required management to provide a hiring preference to former BJ&B workers and adopt an open attitude toward unionisation. Many former BJ&B workers and union leaders are now working at Alta Gracia and have played a leading role in forming a union at the factory, which management has recognised.⁹⁶

7.2 Analysis UN Framework

Respect

This project is presented here as an example of a brand company respecting and implementing the workers' right to a living wage and the right to organise in one of its factories. The right to a living wage is seldom respected in the garment manufacturing industry or in other manufacturing industries. In this project a link is made between the right to a living wage, the freedom of association and the right to collective bargaining.

7.3 Lessons Learned

- The project of KA, WRC and the local union in Villa Altagracia, paying a living wage and allowing workers to join the trade union, reflects quite a new approach in the garment industry in the Dominican Republic. The Alta Gracia initiative represents a strategic opening and can impact the industry and the broader debate about labour rights in global supply chains.
- Enormous changes are taking place in workers' lives as a result of being paid a decent wage.
- The project demonstrates the viability of a living wage, unionised apparel production in the Global South – by showing that the cost impact at factory price of a 340% wage increase is a mere 80 cents on a T-shirt that retails for \$18. This project should encourage major brands to take action on living wages and union rights in their supply chains. The project will hopefully have an inspiring effect on Nike, Adidas and other university gear brands that source from the Dominican Republic as well as from other countries.
- With its Alta Gracia brand, KA may not be able to compete on price, as the company has to deal with the increased costs of higher wages and keep the plant operational. In this first season, the Alta Gracia products are carrying a price tag that is on par with competing leading apparel brands. Early sales reports from campus stores, however, are very encouraging and show that students are willing to pay the same price for clothing of the new Alta Gracia brand as they are paying for gear from well established brands as Nike and Adidas.⁹⁷ The Alta Gracia marketing campaign ("Take pride in clothes that make a difference") seems to appeal to students - showing them that fashionable college wear can be fairly produced. United Students Against Sweatshops is working to ensure that Alta Gracia is available at their universities and that students understand it is a non-sweatshop product, including organizing a four-week tour with Alta Gracia union leaders across three dozen

⁹⁶ Information provided by WRC in an email dated 11 November 2010.

⁹⁷ Information provided by WRC in an email dated 11 November 2010.

campuses educating students about the history of BJ&B, the Alta Gracia factory and the difference between Alta Gracia and other brands sold in college bookstores. If the consumer response is strong, this will lead to a major expansion of orders for Alta Gracia products from university stores and to other university brands agreeing to meet the same standards.

- If the project turns out to be successful, KA may expand the new approach and the Alta Gracia brand beyond the collegiate market.
- The relevance of this case for European companies, garment companies as well as companies active in other sectors, lies in the fact that it clearly demonstrates the viability of paying a living wage and unionised production. It shows that a tremendous and fundamental wage increase for workers may only have a minor cost impact at factory price level. Also, it is a most encouraging example of how one single company can set an example for an entire sector by agreeing to high standards, while breaking with substandard labour practices. Crucial in this case is the collaboration between the brand company and an independent civil society stakeholder in a code-developing and monitoring role, which reflects the collaboration between the local trade union and the local factory management. Last but not least, it shows that consumers, even students who may have limited budgets, have an interest to purchase responsibly made products.

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Case 8 – Workers health respected throughout the supply chain

This multi stakeholder project focuses on health training among female workers in Mexico. It involves a major brand company, two of its suppliers, a local health NGO, and an international NGO specialised in undertaking corporate responsibility projects with corporate partners. The objective of the project is to provide female workers an avenue to become spokespersons on behalf of other female workers to discuss important health topics with the factory management, as well as to improve the workers' understanding of preventable diseases. This project is presented here as an example of a brand company and its suppliers making an effort to respect female workers' health rights.

Central pillar UN framework	Responsibility to respect
Sector	Technology and electronics industry
Country	Mexico
CSR issues	<ul style="list-style-type: none">• Freedom of association and collective bargaining
Other CSR issues	<ul style="list-style-type: none">• Health and safety issues• Capacity building

8.1 Case description

In 2007, Business Social Responsibility (BSR)⁹⁸ started the Health Enables Return or HERproject. The core idea of this project is to promote investments of international companies in workplace programmes that link women's health to business value, acknowledging that investing in women has a positive return on investment. According to BSR⁹⁹, this project will also assist leading companies to understand that healthy, empowered workers are inextricably linked to higher productivity and sustainable supply chains. The HERproject uses peer health education and training programmes to improve the awareness of reproductive health issues, preventable diseases and access to health services amongst female factory workers. Participating companies are Hewlett-Packard (HP) and two of its suppliers (Pegatron Technology and Foxconn¹⁰⁰) in Mexico. Participating NGOs are BSR and the local health organisation Health and Community Development in Ciudad Juárez (FEMAP-SADEC)¹⁰¹. The project with HP and its suppliers, in Mexico, ran over a 12-month period beginning in July 2008.

According to HP, the initiative planned to address a variety of health issues including breast cancer, diabetes, hypertension, human papillomavirus, cervical cancer, obesity and nutrition, family planning and reproductive health education, domestic violence

⁹⁸ BSR is an international NGO specialised in undertaking corporate responsibility projects with corporate partners.

⁹⁹ Investing in women for a better world. BSR 2010 report on HERproject.

¹⁰⁰ HP advances women's health issues and empowers workers in the supply chain, April 2008.

¹⁰¹ http://www.femap.org/about_sadec.sstg.

prevention, and childcare, especially for single mothers. HP also launched the HERproject at three supplier sites in China during 2009 and 2010.¹⁰²

At the onset of the programme, the Pegatron Management said to be “committed to providing health and wellness programmes that empower our workers.” Gavin Chen, general manager at Pegatron Technology said that “by leading companies to augment worker’s health awareness, HP is giving companies and workers the tools to improve and increase workplace standards and workers’ lives.”¹⁰³

HP states that an initial survey was conducted on approximately 100 women representing all areas of the factory, to gain an understanding of what health issues were most critical. The resulting list of topics was used to design the training programme.¹⁰⁴

After successfully completing the training, women shared their knowledge with their female co-workers. Women used breaks, meal times, and factory-provided buses as opportunities to share information. To support the educational programme activities, the factory clinic provided check-ups such as diabetes screenings, breast and uterine cancer screenings, blood-pressure screenings, vaccinations, a health fair, and pregnancy and child-care counselling.¹⁰⁵

To evaluate the success of this project, BSR conducted quantitative surveys of 10 percent of the female factory population. In addition, Pegatron and BSR staff interviewed female factory workers, peer educators, the factory nurse, and factory managers to discuss their experiences with the HERproject. According to BSR, peer educators cited the knowledge they gained as the programme’s greatest benefits. Workers said that preventative care was the most important knowledge they gained, and many said that they would now visit the doctor more regularly as a result of the project. Again according to a BSR report, Pegatron’s human resources director recognised the business benefit from the lack of new employee disability claims for preventable diseases during the project period. Both the nurse and the human resources staff at Pegatron said the HERproject helped them to do their jobs better. The project improved worker relations and helped with recruitment. Clinic professionals learned how to communicate better with workers by observing how peer educators understood and shared health information with their colleagues.¹⁰⁶

SADEC mentioned to be responsible for the design and implementation of the programme, as well as for the evaluation before and after the intervention.¹⁰⁷ Further information by SADEC regarding this project is not available in the public domain.

Mexican labour rights group CEREAL comments upon this project by saying that the model of worker-to-worker education is best suited for promoting workers' participation in improving actions. CEREAL notes that the project has a limited outlook on labour issues

¹⁰² Information by HP, email dated 13 November 2010.

¹⁰³ HP advances women’s health issues and empowers workers in the supply chain, April 2008.

¹⁰⁴ Information by HP, email dated 13 November 2010.

¹⁰⁵ Investing in women for a better world, 2010.

¹⁰⁶ Ibid.

¹⁰⁷ Information by FEMAP-SADEC, email dated 21 October 2010.

as it does not address freedom of association. CEREAL also remarks that the project fails to look into other women's health issues.¹⁰⁸

Specific information about Foxconn's participation in, or views on this project was not found.

Female workers in the electronics sector

In the electronics sector, like in other manufacturing sectors, female workers constitute a large percentage of the work force. These women often come from rural communities and lack educational opportunities. Women juggling with overtime and family responsibilities are less prone to seek information about health issues and less likely to undergo medical treatment in their free time.¹⁰⁹

Electronics production works however pose many health threats. Several processes in electronics manufacturing involve working with hazardous substances. Reportedly, between 500 and 1000 different chemicals are used in the semiconductor industry, including carcinogens and heavy metals. Breathing in chemical fumes, vapours or metallic dust may cause burns, eye irritation and skin diseases. Ergonomic problems may arise as a result of strict working regimes that are oftentimes imposed on workers. Where 'standing operations' apply, for example, workers are not allowed to sit down during their long working days, causing foot and back aches. Specific for woman working in the electronic industry are the risks of inherent effects on the reproductive system and hence, damage to reproductive health.¹¹⁰

Moreover, with violent crimes against women and high levels of hypertension and diabetes, the Mexican city of Ciudad Juárez is a particularly dangerous and unhealthy place for young women.¹¹¹

Trade unions may be part of the solution. The situation in which the unions must operate however makes it difficult for them to adequately represent the right of the employees. In February 2010, for instance, the International Metalworkers' Federation (IMF) lodged a complaint against the Mexican Government to the International Labour Organisation (ILO) condemning Mexican laws which prevents freedom of association contravening ILO Convention 87, which guarantees core labour standards to all workers. Under Mexican law the vast majority of collective agreements are so-called "protection contracts" which force workers to join unions nominated by the company management rather than one of their own choosing. In practice, the laws mean only unions that have the support of companies and government can operate in Mexico. At the same time, the law does not require any democratic structure in which collective contract demands are discussed and decided upon or where collective contracts are submitted to a vote by the employees.¹¹²

¹⁰⁸ Information by CEREAL, email dated 12 November 2010.

¹⁰⁹ Investing in women for a better world, 2010.

¹¹⁰ Reset. Corporate social responsibility in the global electronics supply chain, page 40-41, October 2009.

¹¹¹ Investing in women for a better world, 2010.

¹¹² IMF lodges unprecedented complaint. International Metalworkers' Federation, February 2010.

8.2 Analysis UN framework

Protect

In Mexico independent trade unions are rare. Under Mexican law freedom of association is prevented, and the vast majority of collective agreements are so-called "protection contracts" which force workers to join unions nominated by company management rather than one of their own choosing.¹¹³ In this sense, it can be argued that the Mexican government is not fulfilling its duty to protect labour rights. This project is therefore important in the context of the Protect pillar of the UN framework, in the sense that it contributed, in a modest way, to alternative forms of workers-management communication.

Respect

Companies have the corporate responsibility to Respect human rights, which means to act with due diligence to avoid infringing on the rights of others. By means of this project, HP and its Mexico-based suppliers contributed to respecting female workers' right to health and safety and information.

8.3 Lessons learned

- This multi stakeholder project brought a brand, its suppliers and a local health NGO's together on the basis of the shared recognition of the specific health issues of female workers. The focus of the project was to enable female workers to learn about health issues and risks and to communicate about this with the factory management. In this sense, the project is an example of a brand company and its suppliers making an effort to respect female workers' health rights and involving a number of parties in the process.
- Despite the positive aspects of this multi stakeholder initiative, some critical remarks seem justified. Traditionally, trade unions are concerned with assuring the health and safety of workers. In this project, the role that trade unions should be able to play in assuring workers' health and safety is not explicitly addressed. It is not known if HP's suppliers are unionised, or how such possible unions should be classified. This raises questions about the sustainability of the action. Setting up permanent health and safety committees at the suppliers' level has not been mentioned as an objective of the project.¹¹⁴
- The project focused on a specific set of health issues, but no explicit link to work-floor related occupational health and safety issues was made. Health issues

¹¹³ Ibid.

¹¹⁴ In response to this comment, HP pointed out that the programme established and/or strengthened existing health education programmes to facilitate a sustainable change in attitudes and behaviours among the target population, such as disease prevention, healthy living habits, and access to health care services. Information by HP, email dated 13 November 2010.

related to working conditions, working hours, work load, etc. were not explicitly part of the equation.¹¹⁵

- The project lacks a more holistic view on working conditions, worker-management communication and buyer-supplier relations. The role of HP as buyer and HP's purchasing practices are unquestioned. Possible work pressure resulting from short lead times or massive orders is not addressed. The management styles and practices of the suppliers are unquestioned in the context of this project. Possible stress among the workers resulting from a strict working regime is not taken into account. The quality of general communication between workers and management is not looked into.¹¹⁶

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http://herproject.org/downloads/BSR_HERproject_Investing_In_Women.pdf

Reset. Corporate social responsibility in the global electronics supply chain. GoodElectronics and the Dutch CSR Platform, October 2009. http://goodelectronics.org/publications-en/Publication_3248

Pegatron corporate website. <http://www.pegatroncorp.com/company/whoWeAre.php>.

Taiwan-based Pegatron, established on 1 January 2008, is a Design and Manufacturing Service company. With equity of US\$2.7 billion, Pegatron is developing diversified product lines covering motherboards, desktop PCs, notebooks, broadband, wireless systems, game consoles, networking, PBX, multimedia, LCD TV, and more.

Foxconn corporate website. <http://www.foxconn.com/CompanyIntro.html>. Foxconn Technology Group presents itself as a partner for joint-design, joint-development, manufacturing, assembly and after-sales services to global Computer, Communication and Consumer-electronics ("3C") leaders.

Business Social Responsibility website. <http://www.bsr.org/>.

Information on Sadec and its mission can be found at <http://www.femap.org/about.sstg>. The mission of Sadec in Mexico is to raise the quality of life among people living in poverty, through health services, environmental sanitation services, education, research, and economic and social development.

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Additional information provided by HP, email dated 13 November 2010.

¹¹⁵ In response, HP commented that workplace issues such as work hours, occupational health and safety, and labour rights are monitored through HP's Supplier Management System. Information provided by HP, email dated 13 November 2010.

¹¹⁶ In response to this, HP remarks that the company has implemented several capability building pilot programs designed to address worker-management communications, including a joint collaboration between HP and SACOM beginning in 2008. This supplier-based training program was launched at two supplier sites in China as a way of raising labour rights awareness among workers and improve existing worker-manager communication through a new grievance reporting system. Information provide by HP, in an email dated 13 November 2010.

Case 9 - Minerals tracing model at odds with mitigating human rights abuses

This case highlights recent industry initiatives of the electronics industry that focus on mapping the supply chain for tin, tantalum and cobalt used in electronics, as well as on developing a validation programme for tin and tantalum smelters. The focus of these initiatives is to a large extent on the Democratic Republic of Congo (DRC). The context in which electronics industry membership organisations Global eSustainability Initiative (GeSI) and the Electronics Industry Citizenship Coalition (EICC) are taking these initiatives is currently in motion. Recently passed US legislation regarding conflict minerals is generating market pressures. The recently revised OECD due diligence guidance for responsible supply chains of minerals from conflict-affected and high-risk areas is re-setting the parameters of the debate.

These initiatives are presented here as examples of the electronics industry making an effort to comply with due diligence requirements.

Important challenges remain, however. Critical voices, warn of the facile equation of mineral export wealth and the arms capacity of the warring groups within the DRC. Also the net effects for the local economy of the current initiatives may not be positive. Furthermore, there are concerns about the implementation of the electronics industry's initiatives, related to the insufficient levels of ownership and involvement of local stakeholders. Also, with the strong focus on conflict minerals, other outstanding environmental, social and labour issues that occur in the context of mining risk to be neglected.

Central pillar UN framework

Responsibility to respect

Sector

Electronics industry

Country

Democratic Republic of the Congo

CSR issues

- Right to adequate standards of living
- Biodiversity

9.1 Case description

In 2009, the Electronic Industry Citizenship Coalition (EICC) and Global e-Sustainability Initiative (GeSI) Extractives Workgroup commissioned Resolve (a USA-based public policy dispute resolution organisation) to create a transparency model by mapping the supply chain for tin, tantalum and cobalt used in electronics. The objective was to identify companies from original equipment manufacturers down to the mine. The purpose of the EICC-GeSI commissioned project was to 1) create a picture of the electronics supply chain for these metals; 2) assess suppliers' use of codes of conduct addressing social,

environmental, health and labour issues; and 3) identify the challenges of collecting this data and consider ways to enhance and maintain transparency of the supply chain.¹¹⁷

In April 2010, Resolve published "*Tracing a Path Forward: A Study of the Challenges of the Supply Chain for Target Metals Used in Electronics*" which concludes that "while today end-use companies have the potential to establish and have confidence in sources for some percentage of the metals in their products, they cannot assert 100% sourcing certainty about individual metals or the product as a whole without significant alterations and/or assurance mechanisms in their supply chains. Success requires confidence in supply chain relationships and new strategies, such as direct sourcing, or innovations, such as minerals tagging or fingerprinting. Movement is likely to come in a step-wise manner. With the above caveats, Resolve's research does demonstrate that supply chain transparency is possible in the future, potentially allowing end-use companies to certify target metals as originating from conflict-free sources."¹¹⁸

In 2010, EICC and GeSI Extractives Working Group continued to work on a validation programme to ensure socially responsible sourcing of tantalum and tin. EICC and GeSi have decided to address the issue of traceability of conflict minerals within the supply chain via audits at the smelter level. Reportedly, audits will be conducted once or twice a year. Audits will cover procurement practices, including business systems, and the smelter's ability to trace materials through their production lines. Audits will include different types and levels of information and documentation, including certificates of the mine of origin, transport documents, export licenses, etc. Audit results may range from non-compliance (when a smelter is found to be processing conflict minerals) to full compliance (when a smelter is found not to process any conflict minerals).

Reportedly, smelter audits will not include any information about costs. Furthermore, recycled metals that are processed by smelters will not be taken into account.

In May 2010, EICC and GeSi confirmed their ongoing support for the Tin Supply Chain Initiative (iTSCi) of the International Tin Industry Association (ITRI). The iTSCi project traces and tags minerals from two major cassiterite mines in the DRC. The iTSCi project has been made possible by the combination of support from a range of important sources, the tin trading and smelting sector, the tantalum industry, and downstream users of both tin and tantalum metal. Downstream users of tin and tantalum in the electronics sector make a substantial joint contribution of finance and/or products through EICC/GeSi (including companies such as Analog Devices, Apple, Cabot Supermetals, Dell, EMC Corporation, HP, IBM, Intel, Lenovo, Microsoft, Motorola Foundation, Nokia, Nokia Siemens Networks, Philips, RIM, Sony, Talison, Telefonica S.A., Western Digital and Xerox) in order to allow the project to work in conjunction with and in support of their activities in the extractives sector.¹¹⁹ The set-up of the EICC-GeSi smelter validation programme is such that in practice tin and tantalum sourced from the DRC can only be accepted when iTSCi tagged and certified.

¹¹⁷ Tracing a path forward. A Study of the Challenges of the Supply Chain for Target Metals Used in Electronics, April 2010.

¹¹⁸ Ibid. page 3.

¹¹⁹ Supply chains unite to start iTSCi mineral traceability project in DRC, 19 March 2010.
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Background

The background of the minerals supply chain mapping and smelter validation initiatives is the understanding that there is a link between mineral extraction, trading and conflict, and human rights abuses, particularly in areas such as the DRC and the broader Great Lakes region of Central Africa. The mobile phone industry and the electronics industry as a whole consume significant quantities of various minerals. Tin is used in solder and solder paste, tantalum (coltan) is used in capacitors and deposition targets, and cobalt is used in batteries and magnetic recording media. The current initiatives of the electronics sector look into tin and tantalum particularly.

In some cases these minerals are sourced from conflict areas. These natural resources are sometimes at the centre of disputes, directly or indirectly financing warring groups, resulting in violence or other human rights abuses. Conflict areas also appear to have limited attention to safety and environmental protection, which may lead to additional negative legacies.¹²⁰

In July 2010 the US Senate passed the Dodd–Frank Wall Street Reform and Consumer Protection Act which includes a section on Congolese “conflict minerals”. The aim of the law is to put an end to the import of minerals (tin, tantalum, wolframite and gold) originating from Congolese conflict areas by companies established on US territory. “It is the sense of Congress that the exploitation and trade of conflict minerals originating in the Democratic Republic of the Congo is helping to finance conflict characterised by extreme levels of violence in the eastern Democratic Republic of the Congo, particularly sexual- and gender-based violence, and contributing to an emergency humanitarian situation therein”. “Within 270 days, any person or enterprise required to register with the Securities and Exchange Commission (SEC) will be obliged to “disclose annually” whether “conflict minerals” used by it “did originate in the Democratic Republic of the Congo or an adjoining country”. If they did, a report is required including “a description of the measures taken by the person to exercise due diligence on the source and chain of custody of such minerals, which measures shall include an independent private sector audit of such report”, “a description of the products manufactured or contracted to be manufactured that are not DRC conflict free”, and “the facilities used to process the conflict minerals, the county of origin of the conflict minerals and the effort to determine the mine or location of origin with the greatest possible specificity”.¹²¹

In 2010, the OECD has revised due diligence guidance for responsible supply chains of minerals from conflict-affected and high-risk areas. This “guidance” provides a framework and detailed due diligence recommendations for companies in the supply chain of minerals to identify and address risks of financing conflict or fuelling conditions of conflict and successfully contribute to sustainable development through their mineral or metal sourcing practices. The guidance is the result of a wide, multi-stakeholder process with in-depth engagement from concerned stakeholders. The OECD will co-ordinate an implementation phase to offer the opportunity to all stakeholders to put in practice the recommendations contained in the guidance. A handful of willing companies diversified throughout the entire mineral supply chain of tin, tantalum, tungsten and gold,

¹²⁰ Tracing a path forward, page 1.

¹²¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, 21 July 2010.

in all relevant downstream sectors, would agree to implement the guidance within their supply chain. Participants should include local exporters, international concentrate traders & mineral re-processors, smelters/refiners, metal traders & exchanges, component & product manufacturers and original equipment manufacturers & retailers. Industry organisations would be encouraged, where possible, to participate to carry out joint initiatives to save cost and improve performance of supply chain due diligence. Civil society organisations would also be encouraged to participate in risk management by supporting efforts to establish community monitoring networks, work with ASM communities and build capabilities of locally-based upstream actors to effectively carry out due diligence.¹²²

The US legislation and the revised OECD Guidance have moved responsible sourcing of conflict minerals to the forefront of discussion within the IT sector. In fact, the US legislation, which includes new reporting requirements for companies using tin, tantalum, tungsten and gold in their products, will affect the majority of manufacturing industries.

On 11 September 2010, Congolese president Joseph Kabila proclaimed a ban on mining in the three eastern DRC provinces. The iTSCi project has currently been suspended for this reason.

Concerns

The recently passed US legislation (in particular) has met with divided reactions. It is pointed out that mineral exploitation is not the cause of conflict in the eastern part of the DRC, it is a consequence of it and of the lack of economic alternatives. Therefore ending or re-organising the mineral trade does not end conflict. It is argued that economic activity must be encouraged, not suppressed, so as to provide a greater variety of livelihoods which reduces the incentive or necessity for joining armed groups. If the trade in minerals or anything else stops, competition around other sources of survival will increase, which means greater conflict potential.¹²³

Critical voices including economic operators on the ground as well as local NGOs in the DRC, fear that the requirement for companies to track and trace the minerals they use down to the level of the mines will result in a de facto boycott of Congolese minerals. This, it is argued, will not contribute to peace and development in the DRC as the economy of Eastern DRC would collapse if mineral export revenues dried up. The region's economic dependency on the exploitation of its natural resources is due to increase in the years to come. This situation may be deplorable, but the population will not find peace by losing its only own sources of revenue - in fact, quite the opposite is likely, according to the local intercultural Pole Institute.¹²⁴

A business policy based on the paradigm "not buying from unsustainable sources" will not necessarily have positive net-effects. It is argued that if electronics companies decide

¹²² ICGLR-OECD Joint consultation on responsible supply chains of minerals from conflict affected and high-risk areas Discussion note on the implementation phase. <http://www.oecd.org/dataoecd/14/17/46080683.pdf>.

¹²³ Minerals and conflict in Eastern DRC. A Discussion Paper. Dominic Johnson, Pole Institute, July 2009. <http://www.pole-institute.org/site%20web/echos/echo114.htm>.

¹²⁴ Killing the economy in the name of peace? The new US "conflict minerals" legislation for the DRC, 19 July 2010

to source only from mines or mining corporations that are as clean and fair as possible, this policy – if not complemented by some safeguard mechanisms – will very likely only stimulate a rearrangement of supplier-customer relationships without changing the actual share of total unsustainable metal in the market. For virtually every ore, it is possible to identify mining sites that are managed in line with international standards. If the electronics industry starts sourcing from only these mines, it is quite likely that other customers will fill the gap and intensify their sourcing from dubiously managed mines. This does not contribute to economic development or peace building in the DRC.¹²⁵

This fear seems to be confirmed by current market-developments. The short deadlines of the US conflict minerals legislation has generated market pressures. It is likely that cassiterite and tantalum minerals from the central African region that are not tagged, and therefore which will not possess verifiable chain-of-custody data, will no longer be acceptable to the international tin or tantalum markets after March 2011. Considering this, ITRI has announced a target for full implementation of the iTSCi tagging system by the end of March 2011. The tagging requirement will be applicable not only to minerals produced in all provinces of the DRC but also those mined in adjoining countries such as Rwanda, Burundi and Uganda since these States are also implicated in the US legislation. ITRI noted, however, that with the resources available, it is unlikely that all cassiterite from the region can be covered by the system in time and many current production areas will unfortunately as a result be subject to an effective embargo by next April.¹²⁶

In looking at the responsible sourcing of minerals, the focus is now strongly on conflict minerals from the DRC, in particular from the Eastern part of the DRC. Other labour, social and environmental issues that occur in the mining of minerals used in electronics products may not receive the attention they require. Mining sites are often established in rural areas where people live and work. The rights and livelihoods of local communities are not necessarily well served with the introduction of such economic activities. Communities have been forcibly removed from their lands to make way for extractive or manufacturing activities. The social and environmental impact of mining can be most disrupting. Agricultural fields, forests and sources of water are destroyed by contamination, pollution or overuse. Often it concerns marginalised peoples, including in some cases indigenous peoples, with extremely inadequate access to social services, including poor access to justice. Land rights of (indigenous) people have been violated, their ancestral domains not being well protected. As a result, traditional livelihoods are endangered. Moreover, the arrival of well-resourced companies seeking to win over local communities can also lead to increased violence and social conflict, as some people are excluded from the benefits of economic development. This can be exacerbated by the lack of transparency in the way companies' award community contracts and payments. Affected communities are frequently denied access to information about the impact of company operations and excluded from participating in decisions that affect their lives, increasing insecurity and deprivation. When human rights abuses do occur, governments

¹²⁵ Letter by the German Institute for Applied Ecology.

¹²⁶ Tin and tantalum industries target 31st March 2011 for full implementation of iTSCi conflict mineral tagging, 8 November 2010.

http://www.itri.co.uk/pooled/articles/BF_NEWSART/view.asp?Q=BF_NEWSART_321354

cannot or will not hold companies to account. States have privatised many state services including the right to education, health, and water. However, states often fail to ensure that companies deliver these services without discrimination. In the case of large scale mining operations, small scale artisanal miners are often obliged to make way. Military and paramilitary oppression by state and private forces, acting on behalf of mining companies, is a serious issue. It happens that mining laws are changed to accommodate the interests of mining companies, while protocols protecting indigenous peoples and the environment continue to be diluted.¹²⁷

9.2 Analysis UN framework

Protect

The case has a strong link to the Protect pillar of the UN framework in the sense that the extractive and mining industry, in particular when it comes to large scale mining, depend highly on state's permission and licences to operate. In weak governance zones companies may risk fuelling wars or be complicit to human rights violations committed by the state, or by non-state entities.

The recently passed US legislation shows that government regulation can have huge direct impact on the sourcing and trade of conflict minerals. The US legislation has demonstrably sped up the development of the electronics' industry's initiatives towards sustainable sourcing of minerals.

Respect

The EICC and GeSi initiatives to develop a transparency model by mapping the supply chain for tin, tantalum and cobalt used in electronics industry and to develop a smelter validation programme are presented here as examples of the electronics industry making an effort to comply to due diligence requirements. The electronics industry has accepted the principle of bearing responsibility for possible human rights issues down its supply chain. As smelters are an important hub in the extractives supply chain, the emphasis on smelter validation is likely to increase the impact of the initiative.

9.3 Lessons learned

- It is promising that important membership organisations as EICC and GeSi representing a fair number of brand name companies and major manufacturers are leading the electronics industry in taking steps towards sustainable sourcing of minerals. At the same time, it is far too early to really assess what the outcomes of these initiatives will be.
- The initiatives discussed here, as well as other initiatives, suffer from an overly facile equation of mineral export wealth and war-fighting capacity. Reforming the natural resource sector in the DRC to prevent the trade in conflict resources or bringing it under government control, does not equal building peace. Conflict is ended by addressing the root causes, which in this case include competing claims

¹²⁷ Reset. Corporate social responsibility in the global electronics supply chain. Dutch CSR Platform and GoodElectronics, October 2009, page 28.

to nationality, to land use rights and trade routes. This is also a political issue, not only an economic one.¹²⁸

- The involvement and strengthening of local stakeholders is crucial when it comes to the successful implementation of the initiatives described above. The ownership of local/regional initiatives that will be developed should lie, at least for a major part, with the local population. Some concrete suggestions are related to education and capacity building for civil servants who will be involved in tracing and certification projects. Support and capacity building for traders and buying houses is needed to help them adapt to new demands. Soldiers and police need to be better paid if they are no longer to pose a threat locally. Additional support to artisanal miners and local people living around the mining areas is urgently needed.¹²⁹
- With the strong focus on conflict minerals, other environmental, social and labour issues that occur in the context of mining, risk to be neglected. The electronics industry should also find ways to address further social, labour and environmental issues related to mining. Monitoring of compliance with relevant internationally agreed standards throughout the supply chain needs to be extended.
- The US legislation has sped up the development of the initiatives of the electronics industry regarding sustainable minerals sourcing. This is a clear example of the powerful potential of government legislation towards making international supply chains more sustainable. It should be noted, however, that the situation on the ground in the DRC is extremely complex, and this particular piece of US legislation may sort effects (as a de facto embargo) that will not be beneficial in the longer term, as discussed above.

¹²⁸ Minerals and conflict in Eastern DRC. A Discussion Paper.

¹²⁹ Voices from the inside, page 35.

- This case study provides incentives for European electronics companies to commit to initiatives that deal with responsible supply chains of minerals. The case study hopes to provide relevant lessons learned for improving these initiatives and for the effective implementation of these and similar initiatives.

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Case 10 - Precarious employment: a mechanism through which workers rights can be denied

Precarious employment has become one of the principal mechanisms through which transnational corporations are able to deny workers their human rights. According to the International Metalworkers' Federation, employers in the electronics industry are using various forms of precarious employment to prevent workers from joining trade unions and bargaining collectively.

The right to organise and bargain collectively are called enabling rights because they give workers tools to monitor their own workplace and to negotiate with management on the improvement of working conditions. There are many obstacles in organising workers which are especially applicable to precarious workers. Most of all workers fear losing their jobs if they join a trade union. The complex phenomenon of precarious work is presented here as a challenge to the responsibility of companies to respect labour rights.

Central pillar UN framework	Responsibility to respect
Sector	Metal industry including the electronics and automotive industry
Country	Export zones and special economic zones (in Mexico, China, Korea and other nations).
CSR issues	<ul style="list-style-type: none">• Freedom of association and collective bargaining
Other CSR issues	<ul style="list-style-type: none">• Working times• Job security• Discrimination

10.1 Case description

Precarious work is the result of employment practices by employers designed to limit or reduce their permanent workforce to a minimum, to maximize their flexibility and to shift risks on workers. Resulting jobs typically are non-permanent, temporary, casual, insecure and contingent. Workers in such jobs often are not covered by labour law and social security protections. The employment practices associated with precarious work include¹³⁰:

- Direct hire on temporary labour contracts for fixed or limited term or fixed task;
- Hiring in labour via employment agencies or labour brokers;
- Contracting out functions to other companies (off-site or on-site);
- Personal labour contracts as bogus 'self employed' workers;

¹³⁰ Survey on Changing Employment Practices and Precarious Work, IMF, 2007.

- The replacing of regular contracts by renewable, short term contracts. A company may for example employ a minimum of skilled workers and hire other workers, often less skilled and cheaper, on a contractual basis, dealing with fluctuations by adding workers on a short term basis;
- Abusive probationary periods;
- Disguised employment training contracts;
- On call/daily hire;
- Illegal or involuntary part-time work;
- Homework

Precarious work threatens the survival of stable employment and collective bargaining, yet collective bargaining remains one of the few mechanisms through which workers can obtain a genuine voice regarding their working conditions. Excluding precarious workers from collective bargaining not only denies them their human rights, it takes away one of the few opportunities to improve their employment conditions.¹³¹

Precarious work

Precarious work is found across all metal industries with the electronics and automotive industries currently the most affected. It disproportionately impacts young workers, migrant workers and female workers and makes a significant contribution to the gender pay gap.

Together with the automotive industry, the electronics industry was hit the hardest by the 2008 economic crisis. On top of job losses, wage freezes and reduction in hours, unions reported how companies used the crisis as a means to structurally change and increase the precarious workforce. A situation that has gained relevance with more multinational companies continuing their policies of outsourcing and the movement of production from high wage to low wage countries, putting downward pressure on wages and working conditions and increasing precarious work.¹³²

In so-called export processing zones (EPZs) or special economic zones (SEZs), government regulation may be lifted, in an effort to attract foreign investment. Increasingly, electronics manufacturing is found in such zones.¹³³ It is argued that freedom of association and the right to collective bargaining are increasingly at risk, in law and in practice, in such zones. Whether this threat is brought about by law or by lack of enforcement of existing laws, the result for workers is the same. EPZs are often set up in economically deprived areas where labour is cheap and workers are more fearful of losing their jobs if they make demands. The workers pool in EPZs generally has a large share of women, migrant, young and temporary workers, in short, workers in precarious positions. Largely unorganised, these workers have little or no access to unions. In some cases, physical barriers in the form of fencing, gates, guards and razor wire prevent

¹³¹ Precarious Work: Undermining Human Rights, IMF, May 2010.

¹³² Organizing, Trade Union Rights and Sustainability for the ICT, Electrical and Electronics industries, IMF, April 2010.

¹³³ Reset. Corporate social responsibility in the global electronics supply chain, page 68-69, October 2009.

union organisers from making contact with workers.¹³⁴ A survey published in 2008, also compiled information on a number of issues prevailing to SEZs, such as legal restrictions on unionisation and union membership, blacklisting of union officials, interference in the affairs of workers' organisations, refusal to negotiate, harassment, violence and reprisals, legal restrictions on industrial action including prohibition by classifying SEZs as 'essential services', as well as exemptions and ambiguity regarding the application of labour law and access to zones.¹³⁵

Research points out that migrant workers are most likely to end up in precarious employment, be paid less than local workers and face obstacles to accessing their rights, including the right to join a trade union. The number one obstacle to organising migrant workers is the workers' fear of joining a trade union. Migrant workers lose their jobs, and are even being deported, for attempting to exercise their rights. Undocumented migrant workers face an even more difficult situation, and are effectively forced to accept whatever pay and conditions their employer is willing to give, in order to avoid instant dismissal and a high risk of deportation. Korean unions have had some success at organising migrant workers and have found that this leads to decreased discrimination and better working conditions for migrants in plants where they are unionised. Similarly in Malaysia, migrant worker salaries are reasonable where there is a union, but most migrants work in non-unionised areas.¹³⁶

Worried about the enduring effects of the 2008 crisis on collective bargaining rounds, structures and agreement results throughout Europe, the European Metalworkers Federation (EMF) is pursuing a bargaining agenda for the coming years that addresses the negative consequences of precarious work. The EMF formulated a clear demand, 'For more secure employment, against precarious work', based on the following points¹³⁷:

- secure employment, avoiding plant closures and redundancies;
- an active wage policy aimed at a strong increase in real wages and income support, for only with a secure income can internal demand within the EU be stabilized and risks of deflation rejected;
- stronger European coordination of collective bargaining since the undercutting of wages must be avoided at all costs;
- stronger European cooperation at company level;
- stabilizing lowest incomes by minimum wages where relevant;
- enlarging and defending the coverage rate of collectively bargained wages.

¹³⁴ Creating conditions for collective labour relations to improve labour rights in the electronics industry, Jenny Holdcroft, 2009.

¹³⁵ Latest trends and policy developments in EPZs, ILO, March 2008.

¹³⁶ Migrant Workers as Precarious Workers, IMF, November 2009.

¹³⁷ Jobs, Rights and Collective Bargaining, EMF, November 2009.

10.2 Analysis UN Framework

Protect

National governments have a duty to protect workers from human rights abuses. In alignment with the state duty to protect workers from human rights abuses, it can be argued that national governments have a role in preventing or resolving the negative aspects of precarious work. Governments should ensure proper labour legislation is in place and put into effect. Unfortunately, there are several examples of important electronics producing countries that have not ratified fundamental labour conventions. The USA, China, India, Thailand, South Korea, to name a few, have not ratified the ILO convention regarding freedom of association, for example.¹³⁸ Moreover, trade unions may not always be independent. The All China Federation of Trade Unions (ACFTU) for instance cannot be considered an independent trade union. Similarly, Mexican laws prevent freedom of association. Under Mexican law the vast majority of collective agreements are so-called "protection contracts" which force workers to join unions nominated by company management rather than one of their own choosing. In practice, the laws mean only unions that have the support of companies and government can operate in Mexico.¹³⁹

Respect

In this context, the responsibility of companies to ensure human rights are respected becomes very critical. In an environment characterised by weak labour laws, or weak enforcement of laws, corporate responsibility is of great importance. Part and parcel of this responsibility is that companies should refrain from lobbying governments to obtain special favours in the form of suspended labour regulations.

10.3 Lessons learned

Compliance with all applicable laws, nationally and internationally accepted standards on employment security, whichever offer greater protection, is the first principle for companies to go by. Freedom of association and right to collective bargaining are enabling rights that allow workers to defend their interests and rights. In order to combat the harmful aspects of precarious work, companies could make specific efforts to guarantee these rights, with a focus on vulnerable groups of workers, such as women and migrants, as well as on specific high risk countries and regions, including SEZs and EPZs.

- New forms of employment are increasingly seen in the labour intensive manufacturing industry, in particular in Asia, which have not been able to adequately address CSR-issues.
- There is a need to ensure that suppliers have legal contracts and recognised employment relationships with their employees that are in accordance with their

¹³⁸ Ratification of the ILO Freedom of Association and Protection of the Right to Organise Convention, No 87.

¹³⁹ IMF lodges unprecedented complaint. International Metalworkers' Federation, February 2010.

national law and good practice. Factories could also benefit from a more stable workforce, since training is only required once for example.

- CSR initiatives should include provisions stipulating that casual or temporary workers be treated equally to regular workers. Through their CSR commitment, companies could be encouraged to commit to converting temporary contracts into regular contracts.
- Restrict the use of temporary and or contract employment to cases of genuine need. Potential or actual fluctuations in production do not automatically sanction the use of temporary and or contract work. Setting a proportional maximum of contract workers may be necessary.
- Employment agencies are often excluded from codes of conduct and other CSR initiatives, and therefore are not covered by the requirements in these codes, posing a compliance challenge.
- The relevance of this case study for EU companies resides in the precise recommendations regarding the abolition of the various forms of precarious employment described.

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III. Access to Remedy

Case 11 – Fair Wear Foundation

The Fair Wear Foundation (FWF) is a European frontrunner initiative within the garment and textile industry. Business, trade unions and NGOs work together to achieve lasting workplace improvements for Asian workers. While FWF can be considered as a good practice in general, this description focuses on its verification component which includes access to remedy. Particularly this component can be regarded as a state-of-the-art model that deserves to be duplicated in multi-stakeholder initiatives in other industries.

Central pillar UN framework **Access to remedy**

Sector	Garment and textile industry
Country	Bangladesh, China, India and Turkey
CSR issues	<ul style="list-style-type: none">• Child labour• Freedom of association and collective bargaining• Adequate standards of living

11.1 Case description

The Fair Wear Foundation (FWF) has been in existence since 1999. By the end of 2009, FWF membership comprised fifty-one brand companies based in seven European countries: Belgium, Denmark, Germany, Sweden, The Netherlands, Switzerland and the United Kingdom. Together they represent almost 1,200 factories employing 300,000 garment workers. FWF focuses most of its efforts on Bangladesh, China, India and Turkey. This is where 80 percent of its member’s production occurs and where the main problems regarding labour rights exist within the supply chain. FWF is also active in other regions and countries, such as Eastern Europe and Tunisia.

The highest decision-making body of FWF is the board, of which 50 percent comprises business associations and 50 percent trade unions /NGOs. FWF is funded by business associations, member companies, governments, development NGOs and trade unions.

When a company joins FWF, it commits to implement the FWF Code of Labour Practices in its supply chain. The code is derived from ILO Conventions and the UN Universal Declaration of Human Rights. One of the eight elements of the code is a clause for a living wage. A living wage is a wage sufficient to provide minimum satisfactory living conditions for the worker’s and their family, which is often not provided in producing countries. In its annual report 2009, FWF shows that many companies have persistent compliance problems with regard to the payment of a living wage. Other elements of the code which face compliance challenges are mainly freedom of association and, to a lesser extent, excessive overtime working hours. FWF states that, despite the complexity of these issues, also progress is made regarding these pertaining issues.

Compliance on other elements of the code (freely chosen employment, no discrimination, no child labour, safe and healthy working conditions, a legally-binding employment relationship) appears to be less problematic: though many instances of noncompliance are regularly detected, they are easier to solve.

Other, comparable, multi-stakeholder initiatives that aim for better working conditions in the sector are the US-based Fair Labor Association (FLA), the UK-based Ethical Trading Initiative (ETI) and the US-based Workers Rights Consortium (WRC). FWF cooperates with these initiatives, yet there are also differences. The FLA does not prescribe a living wage in its Workplace Code of Conduct. The ETI does not conduct audits and is a best practice sharing instrument. WRC does not have company members.

Fair Wear Foundation's verification component

In March 2010 FWF published a booklet called "the Fair Wear formula". In this booklet FWF outlines its approach that comprises seven components. To achieve its overall objective, FWF believes that all components are necessary. This good practice focuses on its verification component. FWF's verification component exists at three levels:

- **Management system audits (MSA)**- In total 16 clothing brands underwent audits of their management systems in 2009. These MSAs help evaluate the extent to which members have adapted their buying practices, pricing policies and sourcing strategy for the benefit of good labour practices. The MSA-reports are put on the FWF-website, and include information on FWF's factory audits and incoming complaints, as far as applicable for the member company.
- **Factory audits**- In 2009, 63 factory audits in nine countries were conducted by FWF, including unannounced site visits, meetings with management, and offsite worker interviews.
- **Complaints procedure**- FWF's complaints procedure provides access to non-judicial remedy. It functions as a safety net for when MSAs and factory audits are not fully effective. The existence of the complaints procedure is communicated through posters in the factories and during factory audits. FWF has placed complaints handlers in the countries where FWF is active. The handlers speak the local language and seek to build a relationship of trust and confidence with workers. When a complaint is filed by a factory worker, manager, local trade unionist or NGO worker, the FWF informs the member sourcing from the factory and investigates the complaint. When the investigation is complete, the member is asked to formulate a response and a preliminary report is published on the FWF's website. Once the entire procedure is closed and the verification process is concluded, the final report is published on the FWF-website. Worker complaints in 2009 focused largely on issues of excessive overtime, wage irregularities, discrimination and verbal abuse. Twelve complaints were filed and evaluated.

11.2 Analysis UN Framework

Respect and Remedy

The Fair Wear Foundation resides under the Respect and Remedy pillars of the UN framework.

The Respect and Remedy pillar are both served through FWF's verification component. Both pillars are interrelated and work complementary to each other.

The Respect part of FWF's verification component helps the Remedy pillar. The audits in FWF's verification component add to the fulfilment of the Respect pillar, but also reduce necessary moves to the remedy mechanism.

The Remedy part of FWF's verification component helps the Respect pillar. The complaints procedure provides for access to remedy, and also adds to compliance verification within the Respect pillar.

Ruggie (2010) argues that a main purpose of human rights due diligence also comprises a demonstration to others that the company respects rights. This is taken care of by FWF through the publications of MSA-reports for each of the member companies.

11.3 Lessons learned

- The experiences of the FWF show that even when serious CSR-efforts are made, compliance problems remain with regard to the code elements living wages, freedom of association and, to a lesser extent, excessive overtime working hours. Responsible supply chain management under the umbrella of FWF has only partly offered a solution to these three issues, though progress has been made. In general, it can be concluded that living wages, freedom of association and excessive overtime working hours are the most persistent labour rights problems in the garment industry.
- A lesson learned from the verification component (audits and complaints procedure) of the comprehensive Fair Wear formula is that it is mutually reinforcing the Respect and Remedy pillar. Its verification component is truly a role model for the garment sector and other industries.
- Compared to other multi-stakeholder initiatives in the garment sector, the Fair Wear Foundation does seem to have the most comprehensive approach towards lasting workplace improvements for garment and textile workers. This comprehensive approach sets an example for EU companies, governments and NGOs engaging in multi-stakeholder initiatives.

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Case 12 – National Contact Points

The OECD Guidelines for Multinational Enterprises' unique and added value – amongst the plethora of CSR initiatives and instruments – in its function as a potential grievance mechanism for affected communities and workers seeking redress. The case study highlights the opportunities for the OECD and some of the challenges the OECD is facing.

Central pillar UN framework	Access to remedy
Sector	n/a
Country	n/a
CSR issues	<ul style="list-style-type: none">• Child labour• Freedom of association and collective bargaining• Adequate standards of living• Biodiversity

12.1 Case description

The OECD Guidelines are recommendations addressed via governments to multinational enterprises operating in or from adhering countries. They provide voluntary principles and standards for responsible business conduct in areas such as employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition and taxation.¹⁴⁰ Governments adhering to the OECD Investment Declaration¹⁴¹ are required to set up a National Contact Point (NCP) that gathers information on experiences with the Guidelines, promotes them, deals with enquiries, discusses matters related to the Guidelines and assists in solving problems that arises in matters covered by the Guidelines. The complaint mechanism, through which parties can raise a “specific instance” when MNEs have allegedly violated the OECD Guidelines, has often been referred to in the context of the third pillar of the UN Framework: Remedy. As Professor Ruggie has stated: “The 40 States adhering to the OECD Guidelines for Multinational Enterprises must provide a National Contact Point (NCP) whose tasks include handling grievances. The NCPs are potentially an important vehicle for providing remedy. However, with a few exceptions, experience suggests that in practice they have too often failed to meet this potential.”¹⁴²

The challenge to provide effective remedies is particularly relevant for issues prevailing throughout the supply chains of OECD based MNEs. The OECD Guidelines include a

¹⁴⁰ http://www.oecd.org/department/0,3355,en_2649_34889_1_1_1_1_1,00.html

¹⁴¹ The OECD Guidelines are part of the OECD Investment Declaration.

¹⁴² United Nations Human Rights Council, A/HRC/8/5, 7 April 2008 Protect, Respect and Remedy: a Framework for Business and Human Rights: Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie

paragraph referring to supply chain responsibility, which states that “Enterprises should encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the Guidelines.”¹⁴³ However, this provision was narrowed down by a clarification from the OECD in 2003 that the scope of the Guidelines is limited to “investment-like” relationships only. As a result, a majority of cases filed by NGOs and trade unions over the past ten years dealing with issues in supply chains of MNEs were rejected by NCPs on the basis of this argument.¹⁴⁴ In other words, many of the key issues addressed in this report, occurring mainly in the supply chains of European companies, remain unaddressed through this instrument.

In recent years, some good practices have started to emerge in a number of countries, such as the Netherlands, using a broader interpretation of the supply chain provision. For example, a case involving alleged labour rights violations of an Indian supplier to a Dutch garment brand was accepted in 2007.

Another aspect that prevents the OECD Guidelines to be an effective tool to provide remedies, is the lack of “teeth” of the instrument. Because of its voluntary nature, NCPs are unable to compel companies to change their behaviour or remedy the situation in cases where breaches of the OECD Guidelines were found. Therefore, a remedy can only be provided if the company agrees to do so.

A final challenge, in particular in relation to the EU, is the fact that not all EU Member States (i.e. Cyprus, Bulgaria, Estonia, Latvia, Lithuania, Malta, Romania and Slovenia) are adhering to the OECD Investment Declaration. In these countries there is no NCP and affected communities, workers and their representatives and NGOs promoting sustainable development are unable to seek remedy through this instrument altogether.

12.2 Analysis UN Framework

The OECD Guidelines for MNEs relate to all three pillars of the UN framework.

Protect

Despite the voluntary nature of the OECD Guidelines for MNEs, OECD adhering governments are obliged to set up NCPs and promote the instrument. As such, it is part of the duty of the state to protect and to ensure effective implementation of the OECD Guidelines. Furthermore, the state duty to protect comes into play in case of wholly or partly state owned enterprises. Finally, in the interest of policy coherence, the OECD Guidelines as government endorsed principles, may be referenced in trade and investment agreements, public procurement policies, and made conditional for receiving public support such as investment insurance or guarantees.

Respect

¹⁴³ OECD Guidelines for MNEs, Chapter II, General Policies, paragraph 10

¹⁴⁴ OECD Watch (2010) Ten Years On, Assessing the contribution of the OECD Guidelines to responsible business conduct.

The OECD Guidelines outline expectations of behaviour of OECD based MNEs, and as such provide a comprehensive set of standards and principles outlining the responsibility to respect.

Remedy

Finally as mentioned above, the complaint mechanism attached to the instrument is often referred to as a non-judicial grievance mechanism for providing remedies. However, the current lack of enforcement mechanisms limits the ability of NCPs to compel companies found to be in breach of the OECD Guidelines to remedy those adversely affected. Successful mediated outcomes could include agreements for remediation.

12.3 Lessons learned

The case study shows that the OECD Guidelines for MNEs includes a broad range of CSR issues, including freedom of association, child labour, adequate standards of living and biodiversity. The provision on business relations and suppliers provide the potential to address these issues throughout the supply chains of European MNEs. The complaint mechanisms provide the potential for remedies. However, different parties including NGOs, trade unions, policy makers as well as businesses have experienced challenges in effectively using this CSR instrument to provide a solution to the issues prevailing in supply chains.

In June 2010, the forty-two adhering governments have publicly launched the Update of the OECD Guidelines. This Update provides a valuable opportunity to strengthen the instrument to reach its full potential, by enhancing the supply chain provision of the Guidelines on the basis of the concepts such as due diligence, impact and influence to define the boundaries of the corporate responsibility to respect throughout supply and value chains.

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Appendix 3

**International and EU regulation and
legislation**

APPENDIX 3 – International and EU regulation and legislation

I International Conventions

Child labour

The abolition of child labour is considered as one of the core labour rights. According to the International Labour Organisation (ILO) child labour is a violation of fundamental human rights and has been shown to hinder children's development, potentially leading to lifelong physical or psychological damage.

In principle all general human rights apply to adults as well as to children since the Universal Declaration of Human Rights does not feature a minimum age. However, several international conventions and norms have been adopted that specifically target the rights of the child and aim to abolish child labour. The main conventions are:

UN Conventions on Rights of the Child (CRC) - 20 November 1989

This Convention declares that children must be protected from violence, exploitation, discrimination and neglect. Amongst others it stresses that the best interest of the child shall be a primary consideration in all actions concerning children (article 3). So far this Convention is the only human rights treaty which has been globally signed by the majority of UN-States. Only ratification by Somalia and the United States of America are still outstanding. However, both countries have indicated their support by signing the treaty.¹⁴⁵

ILO Minimum Age Convention No 138 – 26 June 1973

This Convention declares that Members that have ratified the Convention need to “*ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons*”.¹⁴⁶ The Convention contains a minimum age of 15 years. However, a Member whose economy and educational facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years. Children of 13 are even allowed to do some light work if this does not damage their health, education and development.

The Convention entered into force on the 19th of June 1976 and has been ratified by 154 countries on the 31st of December 2009.¹⁴⁷

¹⁴⁵ Unicef 2009: Celebrating 20 years of the Convention on the Rights of the Child [online], [Accessed 28 April 2010], Available from: http://www.unicef.org/rightsite/sowc/pdfs/SOWC_Spec_percent20Ed_CRC_Main_percent20Report_EN_090409.pdf

¹⁴⁶ Minimum Age Convention 1973, Office of the UN High Commissioner for Human Rights. Available from: <http://www2.ohchr.org/english/law/ageconvention.htm>

¹⁴⁷ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_123773.pdf (29 April 2010)

ILO Worst Forms of Child Labour Convention No 182 – 1 June 1999

In this Convention a child is defined as a person under the age of 18. After ratification of the conventions, members need to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour urgently. As worst forms of child labour the convention takes into account all forms of slavery or practices similar to slavery; child prostitution, use of children for illicit activities and work which is likely to harm the health, safety or morals of children. This rather new Convention entered into force on the 19th of November 2000 and has already been ratified by 170 countries on the 31st of December 2009.¹⁴⁸

International Covenant on Economic, Social and Cultural Rights – 16 December 1966

This multilateral treaty was adopted by the United Nations General Assembly in 1966 and was enforced ten years later. Amongst others it declares that “*children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.*” Now, this Covenant has 160 parties and 69 signatories. Although all Member States of the European Union have ratified this treaty, not all Member States have signed the covenant, namely the Czech Republic, Estonia, France, Greece, Latvia, Lithuania, Slovakia and Slovenia.¹⁴⁹

UN Millennium Development Goals

In 2000, the United Nations agreed on the so-called Millennium Development Goals. The second goal relates to an unsolved consequence of universal education for children. Ambitiously the UN stressed that all children will be able to complete a full course of primary education by 2015. According to the United Nations more than 90 percent of children in developing countries are enrolled in primary schools and 54 percent now attend secondary school.¹⁵⁰

OECD Guidelines on Multinational Enterprises

In 2000, the Organisation for Economic Cooperation and Development (OECD) adopted the most recent version of the Guidelines, which are a set of voluntary recommendations to multinational enterprises in all the major areas of business ethics.. Besides 30 member countries of the OECD¹⁵¹ there are 12 non-members¹⁵² that adhere to the Guidelines, which committed themselves to promote these Guidelines among multinational enterprises operating in or from their territories.¹⁵³ Amongst others the enterprises are stimulated to contribute to the effective

¹⁴⁸ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_123773.pdf (29 April 2010)

¹⁴⁹ http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en

¹⁵⁰ <http://www.mdgmonitor.org/goal2.cfm> (28 April 2010)

¹⁵¹ Member countries of the OECD are [Australia](#), [Austria](#), [Belgium](#), [Canada](#), [Czech Republic](#), [Denmark](#), [Finland](#), [France](#), [Germany](#), [Greece](#), [Hungary](#), [Iceland](#), [Ireland](#), [Italy](#), [Japan](#), [Korea](#), [Luxembourg](#), [Mexico](#), [the Netherlands](#), [New Zealand](#), [Norway](#), [Poland](#), [Portugal](#), [Slovak Republic](#), [Spain](#), [Sweden](#), [Switzerland](#), [Turkey](#), [United Kingdom](#), [UnitedStates](#).

¹⁵² Non-member countries of the OECD but adhering to the Guidelines are Argentina, Brazil, Chile, Egypt, Estonia, Israel, Latvia, Lithuania, Morocco, Peru, Romania and Slovenia.

¹⁵³ http://www.oecd.org/document/28/0,3343,en_2649_34889_2397532_1_1_1_1,00.html

abolition of child labour. Today 19 Member States of the European Union have committed themselves to the Guidelines, those Member States that have not (yet) adhered are: Cyprus, Bulgaria, Estonia, Latvia, Lithuania, Malta, Romania and Slovenia.

Freedom of association

Universal Declaration on Human Rights

Amongst others this Declaration holds an Article on the freedom of association; it declares that “everyone has the right to freedom of peaceful assembly and association and no one may be compelled to belong to an association.”¹⁵⁴

International Covenant on Economic, Social and Cultural Rights (ICESCR) – 16 December 1966

Regarding freedom of association and collective bargaining the United Nations General Assembly adopted the ICESCR in 1966 This Covenant recognizes the right of workers to freely form or join (international) trade unions and to strike. Both rights can however be restricted because of prescribed law or national security, public order or the protection of rights and freedoms of others.

International Covenant on Civil and Political Rights (ICCPR)– 16 December 1966

The United Nations General Assembly adopted these rights in a multilateral treaty on the 16th of December. Ten years later it entered into force and today it has 165 parties and 72 signatories.¹⁵⁵ Just like the Covenant on ESC Rights all EU Member States have ratified this Covenant but not all have signed it.¹⁵⁶

Amongst others this Covenant recognizes the right of peaceful assembly and freedom of association, including the right to form or join trade unions.

ILO Freedom of Association and Protection of the Right to Organise Convention No 87 - 9 July 1948

This Convention declares that ratified countries shall undertake effective measures such as, that a worker and an employer have the right to establish and join organisations of their own choosing.¹⁵⁷ Moreover, workers’ and employers’ organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities, and to formulate their programs, all without interference from public authorities.

The Convention entered into force on the 4th of July 1950 and has been ratified by 149 countries on the 31st of December 2009.¹⁵⁸

ILO Right to Organise and Collective Bargaining Convention No 98 – 1 July 1949

¹⁵⁴ Art. 20 of the Universal Declaration on Human Rights

¹⁵⁵ http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en

¹⁵⁶ http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en

¹⁵⁷ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C087> (29 April 2010)

¹⁵⁸ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_123773.pdf (29 April 2010)

Shortly after the ILO Convention's on Freedom of Association and Collective Bargaining was agreed, the ILO adopted an additional, however also fundamental, Convention on the Right to Organise, and Collective Bargaining. This Convention stresses amongst others that workers "*shall enjoy protection against acts of anti-union discrimination in respect of their employment*". Besides this, national conditions should promote voluntary negotiations between employers' and workers' organisations with a view to establishing collective agreements.

The Convention entered into force on the 18th of July 1951 and has been ratified by 159 countries on the 31st of December 2009.¹⁵⁹

ILO Workers' Representatives Convention No 135 - 1971

Contrary to all other examined ILO Conventions in this study, this Convention is not indicated as a fundamental Convention of the ILO. However, the Convention highlights important issues such as the protection of workers' representatives in undertakings. On the 31st of December 2009, 24 EU countries ratified this Convention. However, three European countries have not (yet) ratified this Convention, namely Belgium, Bulgaria and Ireland. Moreover, at a global level around 83 countries have ratified this Convention, which entered into force on the 30th of June 1973.

OECD Guidelines on Multinational Enterprises

The countries that adhere to the Guidelines have committed themselves to promoting enterprises operating in their territory to "*respect the right of their employees to be represented by trade unions and other bona fide representatives of employees, and engage in constructive negotiations, either individually*".¹⁶⁰

Biodiversity

The Earth's biological resources are vital to humanity's economic and social development. As a result, there is growing recognition that biological diversity is a global asset of vital importance at present, and for future generations. At the same time, the threat to species and ecosystems has never been as fundamentally important as it is today. The extinction of species caused by human activities continues at an alarming rate.

Six international conventions focus specifically on biodiversity issues: the Convention on Biological Diversity (year of entry into force: 1993), the Convention on Conservation of Migratory Species, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (1975), the International Treaty on Plant Genetic Resources for Food and Agriculture (2004), the Ramsar Convention on Wetlands (1971) and the World Heritage Convention (1972).

Convention on Biological Diversity (CBD)

The objectives of the CBD, known as the Biodiversity Convention, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising from commercial and other utilization of genetic resources. In other words, its objective is to develop national strategies for the conservation and sustainable use of biological

¹⁵⁹ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_123773.pdf (29 April 2010)

¹⁶⁰ OECD Guidelines on Multinational Enterprises

diversity. It is often seen as the key document regarding sustainable development. The agreement covers all ecosystems, species, and genetic resources. It is an international, legally binding treaty that was adopted in Rio de Janeiro in June 1992. The convention's governing body is the Conference of the Parties (COP), consisting of all governments (and regional economic integration organizations) that have ratified the treaty. This ultimate authority reviews progress under the Convention, identifies new priorities, and sets work plans for members. The COP can also make amendments to the Convention, create expert advisory bodies, review progress reports by member nations, and collaborate with other international organizations and agreements. Most of the Parties have established National Biodiversity Strategies and Action Plans (NBSAP) to implement the convention. In accordance with Article 26 of the Convention, Parties prepare national reports on the status of implementation of the Convention.

Convention on the Conservation of Migratory Species of Wild Animals

The CMS, or the Bonn Convention aims to conserve terrestrial, marine and avian migratory species throughout their range. Parties to the CMS work together to conserve migratory species and their habitats by providing strict protection for the most endangered migratory species, by concluding regional multilateral agreements for the conservation and management of specific species or categories of species, and by undertaking co-operative research and conservation activities.

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

The CITES aims to ensure that international trade in specimens of wild animals and plants does not threaten their survival. Through its three appendices, the Convention accords varying degrees of protection to more than 30,000 plant and animal species.

The International Treaty on Plant Genetic Resources for Food and Agriculture

The objectives of the Treaty are the conservation and sustainable use of plant genetic resources for food and agriculture, and the fair and equitable sharing of the benefits arising from their use, in harmony with the Convention on Biological Diversity, for sustainable agriculture and food security. The treaty covers all plant genetic resources for food and agriculture, while its Multilateral System of Access and Benefit-sharing covers a specific list of 64 crops and forages. The Treaty also includes provisions on Farmers' Rights.

Convention on Wetlands (popularly known as the Ramsar Convention)

The Ramsar Convention provides the framework for national action and international cooperation for the conservation and careful use of wetlands and their resources. The convention covers all aspects of wetland conservation and careful use, recognizing wetlands as ecosystems that are extremely important for biodiversity conservation in general, and for the well-being of human communities.

World Heritage Convention (WHC)

The primary mission of the WHC is to identify and conserve the world's cultural and natural heritage, by drawing up a list of sites whose outstanding values should be preserved for all humanity and to ensure their protection through closer co-operation amongst nations.

Whilst each convention stands alone (with its own specific objectives and commitments) inter-linkages between the issues each addresses, and potential complementarities in their monitoring and implementation processes, provide a basis for cooperation. With the target of achieving a significant reduction in the current rate of biodiversity loss by 2010, set by the Strategic Plan of the Convention on Biological Diversity, and later endorsed by the World Summit on Sustainable Development and incorporated into the Millennium Development Goals; the need to promote cooperation among the biodiversity-related conventions by reducing duplication of effort has become increasingly relevant.

The governing bodies of each Convention have set out specific mandates for cooperation amongst the biodiversity-related conventions. In line with these mandates, reference to cooperation is made in a number of decisions from these governing bodies, and has led to the development of memoranda of cooperation and joint work programmes between the conventions. These provisions have resulted in a wide range of cooperative activities being undertaken by the Conventions in support of shared goals.

To further enhance cooperation, in 2002, a Biodiversity Liaison Group comprising the executive heads of the six biodiversity-related conventions was established. Options for advancing cooperation have been put forward at the meetings of the Biodiversity Liaison Group and other meetings.¹⁶¹

Unfair price levels

International instruments dealing with competition law and policy can be categorized as follows:

- Bilateral or tripartite competition law enforcement cooperation agreements
- Free trade, customs union or common market agreements
- Multilateral instruments

The bilateral or tripartite agreements and the free trade, customs union or common market agreements are discussed in 1.4 National instruments, and therefore only for those countries selected in this study (selected for the focus sectors).

WTO

A first international institution that adopted agreements and legislation regarding business competition is the World Trade Organization (WTO). The organization officially commenced on January 1, 1995 under the Marrakech Agreement, replacing the General Agreement on Tariffs and Trade (GATT), which commenced in 1948. The WTO deals with the global rules of trade between nations. Its main function is to ensure that trade flows as smoothly, predictably and freely as possible.

WTO negotiations produce general rules that apply to all 153 members States, and specific commitments made by individual Member governments. More than two thirds of WTO Members are developing countries.¹⁶²

¹⁶¹ <http://www.cbd.int/blg/>

¹⁶² The WTO recognizes as "least-developed countries" those given the designation by the United Nations. There are currently 49 least-developed countries on the UN list. Thirty of them are WTO members: Angola, Bangladesh, Benin, Burkina Faso, Burundi, Central African Republic, Chad, **Democratic Republic of the**

General rules are stated in the Final Act of the Uruguay Round of Multilateral Trade Negotiations (Marrakech, April 1994). It contains legal texts which spell out the results of the negotiations since the Round was launched in Punta del Este, Uruguay, in September 1986. In addition to the texts of the agreements, the Final Act also contains texts of Ministerial Decisions and Declarations which further clarify certain provisions of some of the agreements. The Uruguay Round agreements are legally binding and backed by strong dispute settlement mechanisms.

The specific commitments are listed in documents called “schedules of concessions”, which reflect specific tariff concessions and other commitments that they have given in the context of trade negotiations, such as the Uruguay Round. For trade in goods in general, these usually consist of maximum tariff levels which are often referred to as “bound tariffs” or “bindings” (GATT Article II).

In the case of agricultural products, these concessions and commitments also relate to tariff rate quotas, limits on export subsidies, and some kinds of domestic support.

The (GATT and) WTO agreements are lengthy and complex but they have a number of simple, fundamental principles which are the foundation of the multilateral trading system: trade without discrimination; freer trade; stability and predictability; promoting fair competition; and encouraging development and economic reform. The following WTO agreements address the problems of Unfair Price Levels, directly or indirectly (by hurting the industry, disturbing trade, etc.):

WTO Agreement on Implementation of Article VI (Anti-dumping)

The WTO does not pass judgment on whether dumping is unfair competition. The focus is on how governments can or cannot react to dumping: it disciplines anti-dumping actions. The WTO agreement allows governments to act against dumping where there is genuine (“material”) injury to the competing domestic industry. In order to do this the government has to be able to show that dumping is taking place, calculate the extent of dumping (how much lower the export price is compared to the exporter’s home market price), and show that dumping is causing injury or threatening to do so¹⁶³.

National anti-dumping legislation dates back to the beginning of the 20th century.

WTO Agreement on Subsidies and Countervailing Measures

Subsidies may play an important role in developing countries and in the transformation of centrally-planned economies to market economies. This agreement does two things: it disciplines the use of subsidies, and it regulates the actions countries can take to counter the effects of subsidies.

The agreement also introduces the concept of a “specific” subsidy — i.e. a subsidy available only to an enterprise, industry, group of enterprises, or group of industries in the country (or State, etc) that gives the subsidy. The disciplines set out in the agreement only apply to specific subsidies. They can be domestic or export subsidies.

Congo, Djibouti, Gambia, Guinea, Guinea Bissau, Haiti, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Myanmar, Niger, Rwanda, Senegal, Sierra Leone, Solomon Islands, Tanzania, Togo, Uganda, Zambia. Ten more are applying for WTO membership: Bhutan, Cambodia, Cape Verde, Ethiopia, Laos, Nepal, Samoa, Sudan, Vanuatu, and Yemen. They are observers. Furthermore, Equatorial Guinea, and Sao Tome and Principe are also WTO observers without yet formally applying for membership.

¹⁶³ http://www.wto.org/english/docs_e/legal_e/ursum_e.htm#Agreement

All countries had to eliminate import-substitution subsidies (i.e. subsidies designed to help domestic production and avoid importing) by 2003.

WTO Agreement on Safeguards

A WTO member may restrict imports of a product temporarily if its domestic industry is injured or threatened with injury caused by a surge in imports. Here, the injury has to be serious. The WTO agreement prohibits “grey-area” measures, and it sets time limits on all safeguard actions. The agreement says members must not seek, take or maintain any voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or the import side.

An import “surge” justifying safeguard action can be a real increase in imports (an absolute increase); or it can be an increase in the imports’ share of a shrinking market, even if the import quantity has not increased (relative increase).

Other agreements addressing Unfair Price Levels, but which are not further discussed here are the Agreement on Trade Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods; the Agreement on Agriculture (under which the ‘Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries’ is monitored); the Agreement on Technical Barriers to Trade, and the Agreement on Trade Related Aspects of Investment Measures.

UNCTAD

The work of the United Nations Conference on Trade and Development (UNCTAD) is also relevant in terms of unfair price levels. One of the main activities of UNCTAD is the program on International Trade, which aims to promote the development of developing countries through international trade; to provide support for their participation in international trade negotiations; to strengthen service-sector capacities in developing countries; to promote the integration of trade, environment and development; to analyse issues related to competition law, policy and development; and to enhance the contribution of the commodity sector to development through diversification and risk management.

The UNCTAD is the depository of international competition legislations and the United Nations Set of Principles on Competition (The UN Set).

The UN Set, the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices was adopted by General Assembly resolution 35/63 on the 5th of December 1980. The UN Set is the only multilateral agreement on competition policy that provides a set of equitable rules for the control of anti-competitive practices. It recognizes the development dimension of competition law and policy and provides a framework for international operation and exchange of best practices. This framework also provides vital technical assistance and capacity-building for interested member States so that they are better equipped to use competition law and policy for development.

Each year, an Intergovernmental Group of Experts (IGE) on Competition Law and Policy meets to monitor the application and implementation of the UN set. UNCTAD hosted the Sixth Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices in Geneva from 8 to 12 November 2010.

OECD

Besides the WTO and the UNCTAD also the Organization for Economic Cooperation and Development (OECD) is dealing with competition law and policy, through several recommendations and guidelines:

Recommendation of the OECD Council on restrictive business practices affecting international trade, including those involving multinational corporations (20 July 1978).

Recommendation of the OECD Council for cooperation between member countries in areas of potential conflict between competition and trade policies (C(86)65(Final), 23 October 1986).

Recommendation of the OECD Council, “minimizing conflicting requirements: approaches of moderation and restraint” (1987).

Revised recommendation of the OECD Council concerning cooperation between member countries on anti-competitive practices affecting international trade (27 and 28 July 1995 (C(95)130/FINAL)).

Recommendation of the OECD Council concerning effective action against hard-core cartels (13-May-1998, C(98)35/FINAL).

OECD Guidelines for Multinational Enterprises, adopted by the Governments of the 29 Member countries of the OECD and of Argentina, Brazil, Chile and Slovakia at the OECD Ministerial Meeting on 27 June 2000. These will be revised in 2010.

Recommendation of the OECD Council on merger review (25 March 2005, C(2005)34).

International Competition Network

Finally, the International Competition Network (ICN)¹⁶⁴ addresses the issue of Unfair Price Levels in its operations. For example, through the Guiding Principles for Merger Notification and Review, 29 September 2002.

The ICN encourages the dissemination of anti-trust experience and best practices, promotes the advocacy role of anti-trust agencies and seeks to facilitate international cooperation in these topics. The ICN seeks close cooperation on anti-trust issues with other international bodies working in the same field, such as, in particular, the WTO, UNCTAD, and the OECD.

Through several working groups the ICN addresses cartels, mergers, unilateral conduct, and competition advocacy.

¹⁶⁴ <http://www.internationalcompetitionnetwork.org/>

II European Union legislation and norms

Child labour

Besides the fact that all Member States of the European Union have ratified the ILO Conventions on child labour]¹⁶⁵ and the Convention on Rights of the Child, the European Union adopted its own Convention and additional norms and laws to combat child labour.

Charter of fundamental rights of the European Union

This charter contains three important articles in relation to child labour, namely article 5 on slavery and forced labour, article 24 on the rights of the child and article 32 on child labour. Article 5 is similar to the relative article in the European Convention on Human Rights while, article 24 is in the spirit of the principles of the United Nation Convention on Rights of the Child. The provisions on child labour are explicit in article 32, which States explicitly that “*the employment of children is prohibited*” with the addition that the minimum age of admission to employment may be lower than the minimum school-leaving age.¹⁶⁶ The Charter applies to all European institutions when acting and to Member States when implementing community law.

European Convention on Human Rights

Just like the Universal Declaration of Human Rights, this European Convention also applies automatically to children. Besides this, the Convention holds a specific article on the prohibition of slavery and forced labour. Since article 4 of the Conventions stresses that “*no one shall be required to perform forced or compulsory labour*”, this applies to children who shall not be forced to work.

European directive on the protection of young people at work (94/33/EC)¹⁶⁷

In 1994, the European Union adopted the directive on the protection of young people at work. The first article of this directive clearly States that “*Member States shall take the necessary measures to prohibit work by children*”. Moreover, the minimum employment age for working in the European Union shall not be lower than the minimum age at which compulsory full-time education ends as imposed by national law or at 15 years in any event.

European directive on public procurement (2004/18/EC)

Public authorities within the EU have spent the equivalent of 17 percent of the EU GDP or 2,088 billion euro in the year 2007. In order to guarantee competition and efficient spending the EU has agreed on public procurement in 2004. Amongst others, these rules on public procurement allow taking into account child labour issues. It is noted that child labour may provide grounds for

¹⁶⁵ Although EU countries have ratified the all fundamental conventions of the ILO (including those on child labour), there are large differences between EU countries in the number of ILO Conventions they have ratified and into force.

¹⁶⁶ http://www.europarl.europa.eu/charter/pdf/text_en.pdf

¹⁶⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31994L0033:en:HTML>

possible exclusion of tenders during the selection stage of a procurement process. Moreover, child labour could also be addressed as condition during the performance of the contract.¹⁶⁸

EU action plan on children's rights in external relations

As a policy, the European Union has adopted an action on children's rights in its external relations. The EU has indicated that improving the situation of children makes it possible to prevent state fragility and ensure long-term sustainable development, stability and human security at regional, national and global levels. Amongst others combating child labour is considered an important challenge. Useful tools to tackle this challenge concern the European enlargement process, political dialogue with developing countries and its humanitarian aid programs and the EU trade policy. Considering the latter, the EU stresses it must be consistent with the protection and promotion of children's rights. As a result, the EU seeks commitment on the ratification and effective implementation of ILO core labour standards, including two ILO conventions on child labour, in bilateral trade agreements. Besides this, the European Union's trade policy has a so-called generalized system of preferences. In 2005, the Commission introduced the GSP+ of which its beneficiaries must have ratified and effectively implemented 27 specified international conventions in the fields of core human and labour rights (incl. those on child labour), sustainable development and corporate governance. The EU assumes that this programme has helped to speed up the ratification of the ILO core labour standard convention in a number of partner countries.¹⁶⁹

Freedom of association

All Member States of the European Union have ratified the two fundamental ILO Conventions on freedom association and collective bargaining. Moreover, the European Convention on Human Rights and the European Charter on Fundamental Rights refers to these principles.

European Convention on Human Rights

Article 11 of this Convention explicitly proclaims that everyone has the right to freedom of peaceful assembly or association with others including the right to form and join trade unions without restrictions other than those prescribed by law or necessary in "*democratic society*".¹⁷⁰

Charter on Fundamental Rights in the European Union

This Charter, which is legally binding thanks to the reference in the Lisbon Treaty, holds two relative Articles, namely article 12 and 28. Article 12 is rather similar with the relative article in the European Convention on Human Rights. However, this Article in the Charter explicitly adds the freedom of association regarding political, trade union and civic matters. Especially the latter, where in particular NGOs and civilian society movements operate, is remarkable as this goes beyond traditional international norms.

Lisbon Treaty

¹⁶⁸ European Commission staff working document, Combating child labour, 2010

¹⁶⁹ European Commission staff working document, Combating child labour, 2010

¹⁷⁰ <http://www.echr.coe.int/nr/rdonlyres/d5cc24a7-dc13-4318-b457-5c9014916d7a/0/englishanglais.pdf> (29 April 2010)

The Lisbon Treaty explicitly States that European Commission needs to encourage cooperation between Member States and facilitate coordination in amongst others the rights of association and collective bargaining between employers and workers (Article 156).¹⁷¹

Biodiversity

Over the last 25 years the EU has built up a vast network of nearly 26,000 protected areas covering all the Member States and a total area of more than 850,000 km², representing approximately 18 percent of the total EU terrestrial area. This vast array of sites, known as the Natura 2000 network, is the largest coherent network of protected areas in the world.

Habitat Directive

The legal basis for the Natura 2000 network comes from the Birds Directive which dates back to 1979 and the Habitats Directive from 1992. Together these Directives constitute the backbone of the EU's internal policy on biodiversity protection.

The Habitats Directive is built around two pillars: the Natura 2000 network of protected sites and the strict system of species protection. All in all the directive protects over 1.000 animals and plant species and over 200 so called "habitat types" (e.g. special types of forests, meadows, wetlands, etc.), which are of European importance.

The Habitats Directive prescribes that if, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the EU Commission of the compensatory measures adopted.¹⁷²

Environmental Liability Directive

Next to the Habitat Directive there is the Environmental Liability Directive, which seeks to achieve the prevention and remedying of environmental damage. The first EU legislation whose main objectives include the application of the "polluter pays" principle, this Directive establishes a common framework for liability with a view to preventing and remedying damage to animals, plants and natural habitats protected by EU law, water resources (covered by Community water management legislation), and damage affecting the land. The liability scheme applies to certain specified occupational activities and to other activities in cases where the operator is at fault or negligent. It sets out requirements that EU member States must enact to prevent and remedy environmental damage. The public authorities are responsible for ensuring that the operators responsible take or finance the necessary preventive or remedial measures themselves.¹⁷³

¹⁷¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:FULL:EN:PDF>

¹⁷² http://ec.europa.eu/environment/nature/index_en.htm

¹⁷³ http://europa.eu/legislation_summaries/enterprise/interaction_with_other_policies/l28120_en.htm

Unfair price levels

The common commercial policy is a pillar for the external relations of the European Union. It is based on a set of uniform rules under the Customs Union and the Common Customs Tariff and governs the commercial relations of the Member States with Non-EU Member Countries. The purpose of the instruments of trade defence and market access is mainly to protect European businesses from obstacles to trade. The EU has evolved during the process of globalization by aiming for the harmonious development of world trade and fostering fairness and sustainability. It actively encourages the opening of the markets and the development of trade in the multilateral framework of the World Trade Organization (WTO). At the same time, it supports developing countries and regions through bilateral relations with a view to involving them in world trade using preferential measures.



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