

OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector

Draft version | February 2016

Context

The garment and footwear sector is one of the largest consumer goods sectors in the world and is very important for a number of countries in terms of trade, GDP and employment. Enterprises involved in the sector have the potential to generate growth, employment and skill development through their own operations and sourcing. However, adverse human rights, labour and environmental impacts are prevalent across the full length of the sector's supply chain. Therefore, in addition to the potential positive contributions, enterprises are also at risk of causing, contributing to, or being linked with adverse impacts in their supply chain.

The OECD is developing a Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector to help enterprises identify, mitigate and account for how they address their actual and potential adverse impacts in their supply chains. In this context, the OECD is hosting a month-long public consultation on the draft Guidance.

This guide is part of the work the OECD undertakes to create practical sectoral applications for the recommendations found in the OECD Guidelines for Multinational Enterprises.

Contact

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Find out more about OECD work on Responsible Supply Chains in the Garment and Footwear Sector at: <https://mneguidelines.oecd.org/responsible-supply-chains-textile-garment-sector.htm>

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Structure of this Guidance

Part 1. Introduction

This section opens with an **executive summary** of this Guidance that summarises the core elements of due diligence as applied to the garment and footwear sector.

It likewise includes an introduction to the **purpose, target audience, and nature** of the Guidance.

Key concepts that are referenced throughout the document—such as due diligence, severity of impact, and sourcing models—along with terminology used in the Guidance are explained under this section.

Part 2. Core Due Diligence Guidance

This section is organised around the core components of due diligence, **identify, prevent and mitigate, and account**, with supplemental information on the cross-cutting components that support due diligence, **management systems and remediation**. This section is intended to provide general due diligence guidance for enterprises operating across the supply chain within the sector and is applicable to due diligence for all risks of adverse impacts. Each section includes the expectations of due diligence and commentary on how an enterprise may implement those expectations in its supply chain.

Part 3. Annexes

The Annexes included in this Guidance provide recommendations on how an enterprise may apply the Core Due Diligence Guidance to specific business models and adverse impacts. The Annexes are not intended to be technical in nature, but rather provide considerations for enterprises when applying due diligence for adverse impacts that have been prioritised in the enterprise's supply chain risk assessment. Annexes likewise provide references to existing technical guidance where available.

Annexes are divided into two sections:

Guidance on how to apply due diligence to an enterprise's **sourcing models** (Annexes 1-3); and

Guidance on how to apply due diligence to known **adverse impacts** in the garment and footwear sector (Annexes 4-14).

Part 1. Introduction

Executive Summary

Enterprises involved in the garment and footwear sector have the potential to generate growth, employment and skill development through their own operations and sourcing. However, enterprises are also at risk of causing, contributing to, or being linked with adverse impacts in their supply chain.

The OECD Guidelines for Multinational Enterprises (OECD Guidelines) incorporate the expectation for enterprises to carry out **risk-based due diligence—the process by which enterprises identify, prevent, mitigate and account for how they address their actual and potential adverse impacts** as an integral part of business decision-making and risk management systems. The OECD Guidelines concern those adverse impacts that are either caused or contributed to by the enterprise, or are directly linked to their operations, products or services by a business relationship. In the context of the OECD Guidelines and this Guidance, ‘business relationships’ includes relationships with business partners and entities in the enterprise’s supply chain, including indirect business relationships beyond the first tier of sourcing. Due diligence should be risk-based, reasonable, dynamic and incorporate a process of learning.

This Guidance provides recommendations on how enterprises can apply due diligence in accordance with the OECD Guidelines.

- **Identify adverse impacts:** As an initial step, the enterprise should assess its exposure to adverse impacts across the full length of its supply chain by identifying and assessing risks inherent to the sector and related to the jurisdictions it sources from, its product lines, and sourcing models. The OECD Guidelines support a risk-based approach to due diligence. As such, based on all known information the enterprise should identify where in its supply chain adverse impacts are most severe and prioritise those sourcing areas and production processes for further due diligence. For potential adverse impacts that are linked to suppliers operating beyond stage-2 of an enterprise’s supply chain, the enterprise should prioritise adverse impacts of greatest severity as defined in Box 1 under ‘Key Concepts’. The enterprise should assess its suppliers operating in sourcing areas and at production processes that have been flagged as high-risk areas. While assessments are an important part of due diligence, this Guidance also recognises that ongoing assessment in of itself does not lead to effective prevention and mitigation measures. Therefore, where reasonable, assessments should be tailored to the country context or production cluster so as to effectively evaluate a risk while also taking initial steps in understanding how to prevent and mitigate future adverse impacts. The enterprise should likewise assess its own potential contribution to adverse impacts in its supply chain. For example, in the garment and footwear supply chain an enterprise’s purchasing practices and design decisions may contribute to adverse labour and environmental impacts.
- **Prevent and mitigate adverse impacts:** The enterprise should seek to prevent and mitigate future adverse impacts. In most cases, this will include supporting suppliers in measurable prevention and mitigation measures. The enterprise may continue to engage with its suppliers during such risk prevention and mitigation; however, in cases of adverse impacts of greatest severity, the enterprise should suspend orders until future impacts have been mitigated or prevented. Beyond supplier engagement, this Guidance recognises that in some cases, sustainable prevention and mitigation of an adverse impact will require broader engagement at a sector-wide level, engagement with the local community and/or engagement with the government. This Guidance likewise recognises that

it may be difficult for an enterprise to prevent and mitigate adverse impacts linked to upstream production (i.e. beyond stage-2). While the enterprise is not expected to support individual suppliers upstream in preventing and mitigating all adverse impacts, the enterprise should be able to account for how it is ensuring that adverse impacts of greatest severity are being adequately addressed. Therefore, the enterprise is encouraged to engage in traceability schemes or conduct assessments on the due diligence practices of mid-stream suppliers (see Box 4 for examples of control points) to ensure that risks of adverse impacts linked to upstream production (e.g. forced labour in cotton production) are being prevented. The enterprise should likewise consider how its own practices and sourcing models may be contributing to adverse impacts and seek to prevent and mitigate these contributions.

- **Account:** The enterprise should account for its due diligence practices. Firstly, the enterprise should seek to track impact over time. The enterprise should likewise report on its due diligence processes for responsible supply chains, including in relation to its due diligence management systems, its supply chain risk assessment and the measures it has taken to prevent or mitigate adverse impacts. The enterprise is not expected to disclose individual impacts identified but it should disclose general findings of adverse impacts in the supply chain. Formal reporting should indicate both what has been achieved and future plans to improve or introduce new processes.

Effective **management systems** and **processes to enable remediation** are cross-cutting supporting elements to due diligence. Enterprises are expected to provide for or co-operate in the remediation of adverse impacts where it has caused or contributed to that adverse impact.

This Guidance recognises that **small-and-medium-sized enterprises** (SMEs) face the same risks of adverse impacts in their supply chain as any other enterprise. However, while many enterprises in the supply chain struggle when it comes to implementing new and emerging due diligence expectations, SMEs face particular hurdles. One key challenge is that the resources, knowledge and capacity to implement due diligence may be more limited in SMEs compared to larger multinationals. At the same time, due diligence for SMEs can often be more straightforward, since they generally have smaller operations and fewer suppliers. The challenges that SMEs face can be met in a variety of ways including, but not limited to, cost-sharing within industry for specific due diligence tasks, participation in initiatives on responsible supply chain management and cooperation between industry members who share suppliers.

Introduction

Enterprises should...carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts...and account for how these adverse impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.

OECD Guidelines for Multinational Enterprises, Chapter II, Para. A.10

1. The garment and footwear sector is one of the largest consumer goods sectors in the world and is very important for a number of countries in terms of trade, GDP and employment. Enterprises involved in the garment and footwear sector have the potential to generate growth, employment and skill development through their own operations and sourcing. However, enterprises are also at risk of causing, contributing to, or being linked with adverse impacts in their supply chain, for example related to: labour and human rights (child labour, discrimination, forced labour, the right to join a trade union and representative worker organisation, occupational health and safety, wages, working hours), the environment (chemical use, water use, energy use) and bribery and corruption. While such impacts are common to the sector, the severity of these impacts varies considerably by sub-sector, production process, and country of production. An enterprise's sourcing model likewise affects its exposure to risks.

2. The OECD Guidelines for Multinational Enterprises (OECD Guidelines) incorporate the expectation for enterprises to carry out risk-based due diligence—the process by which enterprises identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems. The OECD Guidelines concern those adverse impacts that are either caused or contributed to by the enterprise, or are directly linked to their operations, products or services by a business relationship.¹

Purpose

3. The purpose of this Guidance is to support a common understanding of due diligence and responsible supply chain management in the garment and footwear sector. In doing so, this Guidance aims to help enterprises contribute to sustainable development.

4. This Guidance can also help governments, particularly National Contact Points (NCP), in their efforts to promote the OECD Guidelines and to clarify expectations of due diligence in the garment and footwear sector.

Target Audience

5. This Guidance is relevant for all enterprises operating in the garment and footwear supply chain, including but not limited to raw material and fibre producers, material manufacturers and processors (e.g.

1. "The term 'business relationship' includes relationships with business partners, entities in the supply chain and any other non-State or State entities directly linked to its business operations, products or services." OECD Guidelines for Multinational Enterprises, Chapter II, Commentary on General Policies, Para 14.

textile processors and manufacturers, rubber processors, etc.), components manufacturers (e.g. accessories manufacturers, heel and sole suppliers), footwear and garment manufacturers (e.g. cut-make-trim manufacturers), brands and retailers. This Guidance also applies to enterprises operating at various points along the supply chain including global merchandisers, buying agents, distributors, etc.

6. Additionally, the due diligence recommendations in this Guidance apply to industry-wide supply chain initiatives and multi-stakeholder initiatives that hold the objective of fulfilling collaborative due diligence.

Nature of this Guidance

7. This Guidance builds on and is consistent with the principles and standards contained in the OECD Guidelines for Multinational Enterprises. This Guidance was developed through a multi-stakeholder process building on the reports from the Italian National Contact Point and the French National Contact Point on responsible supply chains in the textile and garment sectors.² Two multi-stakeholder consultations were held to develop this draft Guidance. Observance of this Guidance is voluntary and not legally enforceable.

Benefits to enterprises

8. This Guidance will support enterprises to meet the due diligence recommendations contained in the OECD Guidelines and other relevant responsible business conduct (RBC) standards such as the UN Guiding Principles for Business and Human Rights (UNGPs), and in so doing, the expectations of governments, workers and civil society on responsible business conduct. In addition, this Guidance may also support enterprises to achieve regulatory compliance for doing business with jurisdictions that have enacted or are in the process of enacting legislation requiring due diligence for responsible business conduct, including reporting on non-financial risk.

9. Other expected benefits to enterprises implementing this Guidance include:

- a. Increased ability to meet expectations of customers on responsible garment and footwear supply chains;
- b. Increased cost-saving (in some cases), particularly in relation to environmental due diligence;
- c. Enhanced understanding, data collection and management of an enterprise's supply chain and sourcing strategies, to enable more informed and strategic decision-making;
- d. Improved reputation of participating enterprises and of the industry;
- e. Improved management of resources, including scarce resources; and
- f. Decreased disruptions in the enterprise's operations and supply linked to risks on matters covered by the OECD Guidelines.

2. See "NCP Report on the Implementation of the OECD Guidelines in the Textile and Clothing Sector" French National Contact Point for the Implementation of the OECD Guidelines for Multinational Enterprises; and "Report on Responsible Business Conduct in the Textile and Garment Supply Chain. Recommendations of the Italian NCP on Implementation of the OECD Guidelines for Multinational Enterprises," Italian National Contact Point for the Implementation of the OECD Guidelines for Multinational Enterprises.

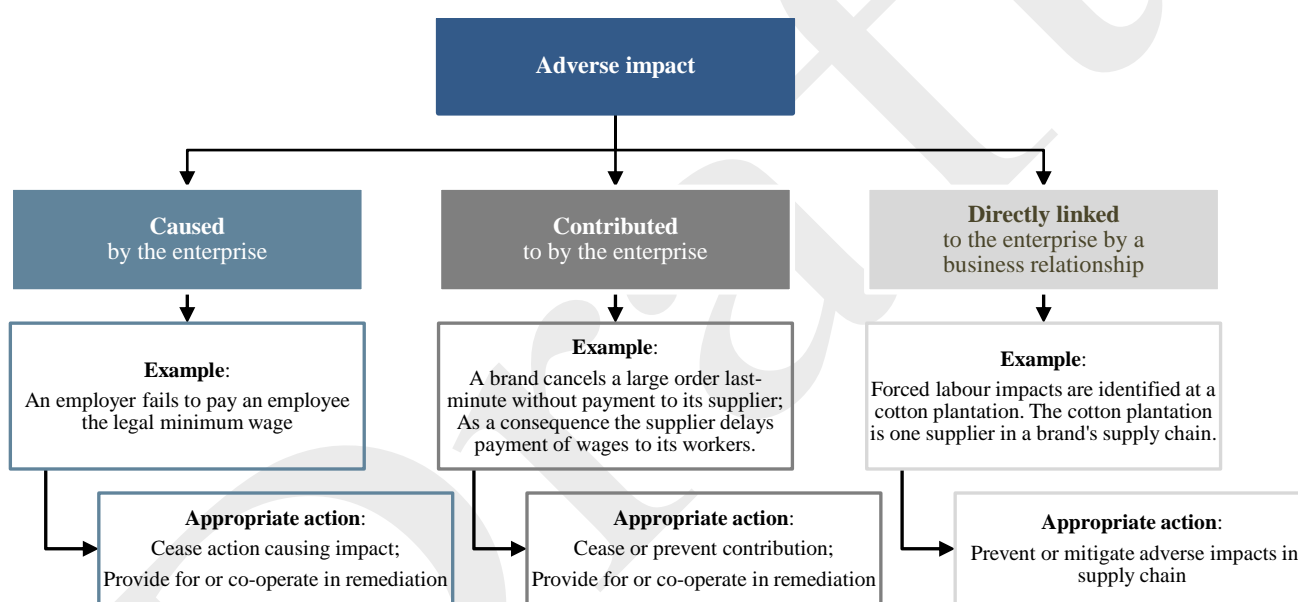
Key Concepts

Adverse impacts

10. Under the Guidelines, the due diligence provision uses the concept of ‘adverse impacts’ to mean adverse impacts on matters covered by the Guidelines, unless explicitly excluded, and so includes risks of adverse impacts related to disclosure; human rights; employment and industrial relations; environment; combatting bribery, bribe solicitation and extortion; and consumer interests.³ The term ‘risk’ therefore refers to risks of adverse impacts on matters covered by the Guidelines, and not to business risks, although the two are often interrelated. Due diligence can help enterprises avoid the risk of such adverse impacts.

11. The Guidelines concern those adverse impacts that are either **caused** or **contributed** to by the enterprise, or are **directly linked** to their operations, products or services by a business relationship.

Figure 1. ‘Cause’, ‘Contributed to’ and ‘Directly Linked’



- a. **Cause:** An enterprise ‘causes’ an adverse impact if there is causality between the operations, products or services of the enterprise and the adverse impact. Causation can occur through action as well as omissions, in other words, a failure to act. Where an enterprise causes an adverse impact, it is expected to take necessary steps to cease or prevent that impact and to provide for or co-operate through legitimate processes in the remediation of the adverse impact.
- b. **Contribute:** ‘Contributing to’ an adverse impact should be interpreted as a substantial contribution, meaning an activity that causes, facilitates or incentivises another entity to cause an adverse impact.⁴ An enterprise can also ‘contribute’ to an adverse impact if the combination of its activities and that of another entity result in an adverse impact. In cases where an enterprise identifies a risk of contributing to adverse impacts, it should take necessary steps to cease or

3. OECD Guidelines for Multinational Enterprises, Chapter II, Commentary on General Policies, Para. 14.

4. Ibid. 3

prevent that impact and use its leverage to mitigate any remaining impacts to the greatest possible extent. In cases where an enterprise identifies that it has contributed to an adverse impact, it should provide for or co-operate through legitimate processes in the remediation of the adverse impact.

- c. **Directly linked:** An enterprise is directly linked to an adverse impact when the enterprise has not contributed to that impact, but when the impact is nevertheless directly linked to its operations, products or services by a business relationship. This should be distinguished from directly sourcing. An enterprise does not have to be directly sourcing from a third party to be directly linked. Rather, an enterprise may be directly linked to an adverse impact that occurs upstream in an enterprise's supply chain, for example beyond its first tier. In cases in which an enterprise is directly linked to an adverse impact by a business relationship the enterprise is expected to use its leverage to seek to prevent or mitigate those impacts, but is not responsible for remediation.

Due Diligence

12. Due diligence is understood as the process through which enterprises can **identify, prevent, mitigate** and **account** for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems.⁵ Due diligence should be equally applied to an enterprise's own activities (e.g. human resources, marketing, retail, sale of products and services) and to the activities of its business relationships (e.g. suppliers, joint-ventures, licensees). Potential impacts are to be addressed through prevention or mitigation, while actual impacts are to be addressed through remediation.⁶ The principles of due diligence are not intended to shift the responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.⁷

13. Effective **management systems** and **processes to enable remediation** are cross-cutting supporting elements of due diligence.

14. Enterprises should make good-faith efforts to conduct due diligence. Below are key concepts regarding due diligence incorporated throughout the Guidance.

- a. Due diligence should be **risk-based**, meaning that the level of due diligence applied should correspond with the level of risk.⁸ It may not always be possible for an enterprise to address all adverse impacts in its supply chain immediately. The severity and likelihood of the adverse impact are the most important factors in determining the scale and complexity of the processes the enterprise needs to have in place in order to know and show that it is acting responsibly.⁹
- b. Due diligence efforts should be **reasonable**. The nature and extent of due diligence that is appropriate will depend on individual circumstances and be affected by factors such as the size of the enterprise, the location of its activities, the situation in a particular country, the number of business relationships it has, the sector and nature of the products or services involved.

While an enterprise's degree of leverage does not alter its responsibility to identify adverse impacts, **complexity** and **leverage** are key considerations used in this Guidance to help an enterprise tailor how it might prevent and mitigate adverse impacts. For example, a retailer may have limited influence over the cotton growers in its supply chain. The enterprise, however still

5. Ibid. 3

6. Ibid. 3

7. OECD Guidelines for Multinational Enterprises, General Policies, Paragraph A12.

8. OECD Guidelines for Multinational Enterprises, Chapter II, Paragraph A10

9. Severity is the most important factor in relation to human rights impacts.

holds a responsibility to prevent or mitigate adverse impacts in its supply chain. In this context, it may be most reasonable for the enterprise to conduct due diligence on a mid-stream supplier (e.g. global commodities merchandiser) to ensure that it is preventing adverse impacts of greatest severity at cotton growing.

- c. Due diligence should be **dynamic** meaning that it should be tailored according to the operating context or circumstances and should be applied with flexibility. For example, Country X and Country Y might both be high-risk for forced labour. However, the sector in Country X relies heavily on low-skilled migrant labour and private employment agencies, while, Country Y does not have high-rates of migrant workers but does include apprentice schemes through which workers are housed on-site. Although forced labour due diligence should be pursued in both contexts, the methods used to assess and prevent forced labour impacts will vary substantially between Country X and Country Y.
- d. Due diligence systems should include a **process of learning**, through constructive engagement with business partners, workers and stakeholders. When risks of adverse impact are brought to the enterprise's attention, due diligence systems should be adjusted accordingly to make it more likely to identify similar risks in the future. Due diligence on labour adverse impacts should be conducted in consultation and collaboration (where appropriate) with trade unions and representative worker organisations.
- e. Enterprises **retain individual responsibility** for their due diligence; however, in some contexts, supply chain due diligence may be more effective when conducted **in collaboration with others, including enterprises at a sector-wide level, workers, home and host governments, and civil society**. In cases in which an enterprise engages in an initiative to fulfil due diligence expectations, the enterprise should ensure that the initiative applies due diligence in accordance with this Guidance.
- f. An enterprise may not be able to implement all of the recommendations in this Guidance at once, but over time, should systematically work towards their full application. Enterprises should formally report on both what has been achieved and future plans to improve or introduce new processes.

Severity of adverse impacts

15. Throughout this Guidance, the severity of an adverse impact is understood as its scale, scope and irremediable character.

- a. **Scale** refers to the gravity of the adverse impact.
- b. **Scope** concerns the number of individuals that are or will be affected.
- c. **Irremediable character** means any limits on the ability to restore those affected to a situation at least the same as, or equivalent to, their situation before the adverse impact.

16. It is not necessary for an impact to have more than one of these characteristics to be reasonably considered 'severe', although it is often the case that the greater the scale or the scope of an impact, the less it is 'remediable'.¹⁰

10. See "The Corporate Responsibility to Respect Human Rights" Office of the High Commissioner on Human Rights.

17. This Guidance recognises that in the garment and footwear sector human rights, labour and environmental adverse impacts are well-documented and affect millions of workers and communities. Due to scope of impact (i.e. the number of individuals affected) these adverse impacts can often be considered severe. However, this Guidance also recognises that not all adverse impacts are of equivalent severity. This Guidance therefore also includes the concept of ‘adverse impacts of greatest severity’ to refer to adverse impacts in the sector that are likewise irremediable in character and/or grave. The characterisation of adverse impacts of greatest severity does not diminish the responsibility of the enterprise to address all adverse impacts in its supply chain, taking a risk-based approach. However, when taking a risk-based approach to adverse impacts that occur upstream in an enterprise’s supply chain (i.e. beyond stage-2), the enterprise should prioritise preventing and mitigating adverse impacts that are characterised as being of greatest severity.

Box 1. Adverse impacts of greatest severity

Adverse impacts of greatest severity are characterised by impacts that are irremediable in character and/or grave. Some examples include:

- a. Any forms of forced labour
- b. Worst forms of child labour
- c. Any forms of gender-based violence
- d. Severe physical harm
- e. Resource depletion in a geographic area (e.g. water catchment area)
- f. Physical harm or severe illness due to use of hazardous chemicals

Embedding gender considerations into due diligence

18. Women account for a majority of the labour force in the garment and footwear supply chain. Risks of adverse impact often differ for men than women, for example women are more likely to be paid lower wages than men. The unique position of women within a particular context therefore should be systematically considered at all stages of due diligence. Examples on how to ensure that the circumstances of women are considered and women are not excluded in the due diligence process are highlighted under each of the sections of the Core Due Diligence Guidance.

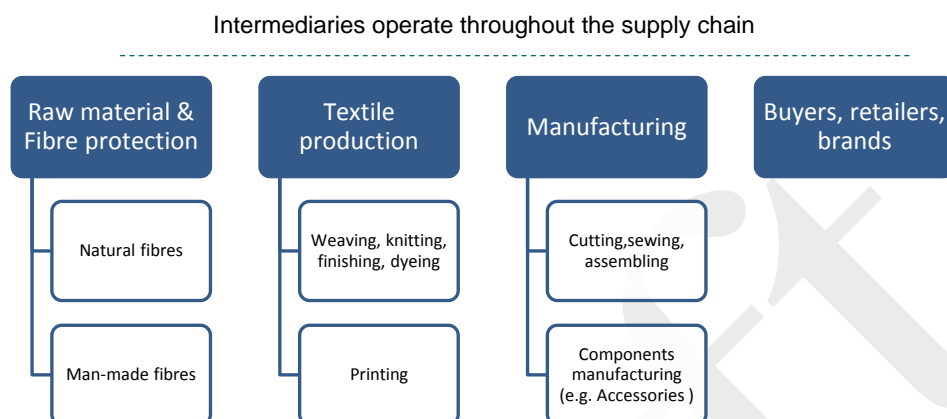
19. Low-income women workers are particularly exposed to gender discrimination in the workplace. This Guidance addresses sexual harassment and gender-based violence in Annex 5. However, discrimination is linked with many adverse impacts in the sector (e.g. wages, the right to join a trade union and representative worker organisation). Enterprises should therefore integrate due diligence on discrimination into core labour and human rights due diligence.

Garment and footwear supply chain

20. The garment and footwear supply chains are complex and include the entire production chain of transforming natural and man-made raw materials into end-user products. The garment and footwear supply chain is generally divided into stages, each consisting of enterprises with the same general functionality. Stages of the supply chain are characterised by production processes rather than an enterprise’s relationship with the supplier. For the sake of simplicity, this Guidance characterises the

garment and footwear supply chains into 4 key stages (see Figure 2 below): Raw materials, Materials/Textile production, Manufacturing (e.g. finished goods and components manufacturing) and Buyers. See Figure 2 for an example of stages of the garment sector.

Figure 2. Simplified stages of the garment supply chain



21. For the sake of simplicity, this Guidance defines ‘**supplier**’ as all business relationships that provide a product or service to the enterprise, either directly or indirectly. Suppliers may therefore include manufacturers, textile producers, farmers but may also include intermediaries, such as buying agents, logistical providers, and global commodities merchandisers and processors.

22. This Guidance refers to an **enterprise’s stage-1 and stage-2 suppliers**. For the purposes of this Guidance ‘stage-1 suppliers’ are any supplier working one stage upstream from the enterprise. For example, a brand’s stage-1 suppliers would include all garment manufacturers and components manufacturers in its supply chain. Similarly, a garment manufacturer’s stage-1 suppliers would include textile producers, while its stage-2 suppliers may include ginners. It is important to remember that stage is defined by value-added function rather than the nature of the business relationship. For example, in vertically integrated supply chains, one supplier may control more than one stage of the supply chain.

Sourcing models

23. For the sourcing of end products, retailers and brands in the garment and footwear sector use a range of sourcing models and business relationships. An enterprise’s sourcing model may impact how it applies due diligence.

24. For the sake of simplicity, this guidance characterises sourcing models in the following ways.

- a. Direct sourcing: An enterprise holds a direct contractual relationship with its supplier.¹¹
- b. Indirect sourcing: An enterprise sources products (e.g. raw materials, garment and footwear finished goods) from an intermediary. For example, agents may place orders with garment and footwear manufacturers on behalf of the retailer or brand.

11 . The term ‘direct sourcing’ should not be confused with ‘directly linked’. An enterprise does not have to be directly sourcing from a supplier to be directly linked to adverse impacts.

Key Terms

Adverse impact: For the purposes of this Guidance, ‘adverse impacts’ refers to impacts on matters covered by the Guidelines, unless explicitly excluded, and so includes adverse impacts related to disclosure; human rights; employment and industrial relations; environment; combatting bribery, bribe solicitation and extortion; and consumer interests.¹²

Adverse impacts of greatest severity: Impacts that are irremediable in character and/or grave.

Due Diligence: The process through which enterprises can **identify, prevent, mitigate** and **account** for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems.¹³

High-risk areas: High-risk areas in the context of this Guidance include higher-risk stages in the supply chain or higher-risk business models in locations (e.g. jurisdictions) that have been identified as higher-risk. For example, a high-risk area for hazardous chemicals could include all wet-processing in a production cluster identified as high-risk.

Stages of the supply chain (‘stages’): The garment and footwear supply chain is generally divided into stages, each consisting of enterprises with the same general functionality. Stages of the supply chain are characterised by production processes rather than an enterprise’s relationship with the supplier.

Stage-1 suppliers/ Stage-2 suppliers: This Guidance refers to an enterprise’s stage-1 and stage-2 suppliers. For the purposes of this Guidance stage-1 suppliers are any supplier working one-stage upstream from the enterprise.¹⁴

Risk: Throughout this Guidance, ‘risk’ refers to risks of adverse impacts on matters covered by the Guidelines, and not to commercial risks to the enterprise itself, although the two concepts are often interdependent, since external adverse impacts on matters covered by the Guidelines can often be coupled with reputational damage or exposure to legal liability.

Stakeholder engagement: Involves interactive process of engagement with relative stakeholders, though, for example, meetings, hearings or consultation proceedings. Effective stakeholder engagement is characterised by two-way communication and depends on the good faith of the participants on both sides.¹⁵

Supplier: For the sake of simplicity, this Guidance uses the term ‘supplier’ to include all business relationships that provide a product or service to an enterprise, either directly or indirectly. ‘Suppliers’ may therefore include manufacturers, textile producers, farmers but may also include intermediaries, such as buying agents, logistical providers, and global commodities merchandisers and processors.

12 . OECD Guidelines for Multinational Enterprises, Chapter II, Commentary on General Policies, Para 14.

13 . Ibid. 12

14 . For example, a brand’s stage-1 suppliers would include all garment manufacturers and components manufacturers in its supply chain. Similarly, a garment manufacturer’s stage-1 suppliers would include textile producers, while its stage-2 suppliers may include ginners. Stage is defined by function rather than the nature of the sourcing relationship. An integrated supplier may control more than one stage of the supply chain.

15 . OECD Guidelines for Multinational Enterprises, Chapter II, Commentary on General Policies, Para 25.

Part 2. Core Due Diligence Guidance

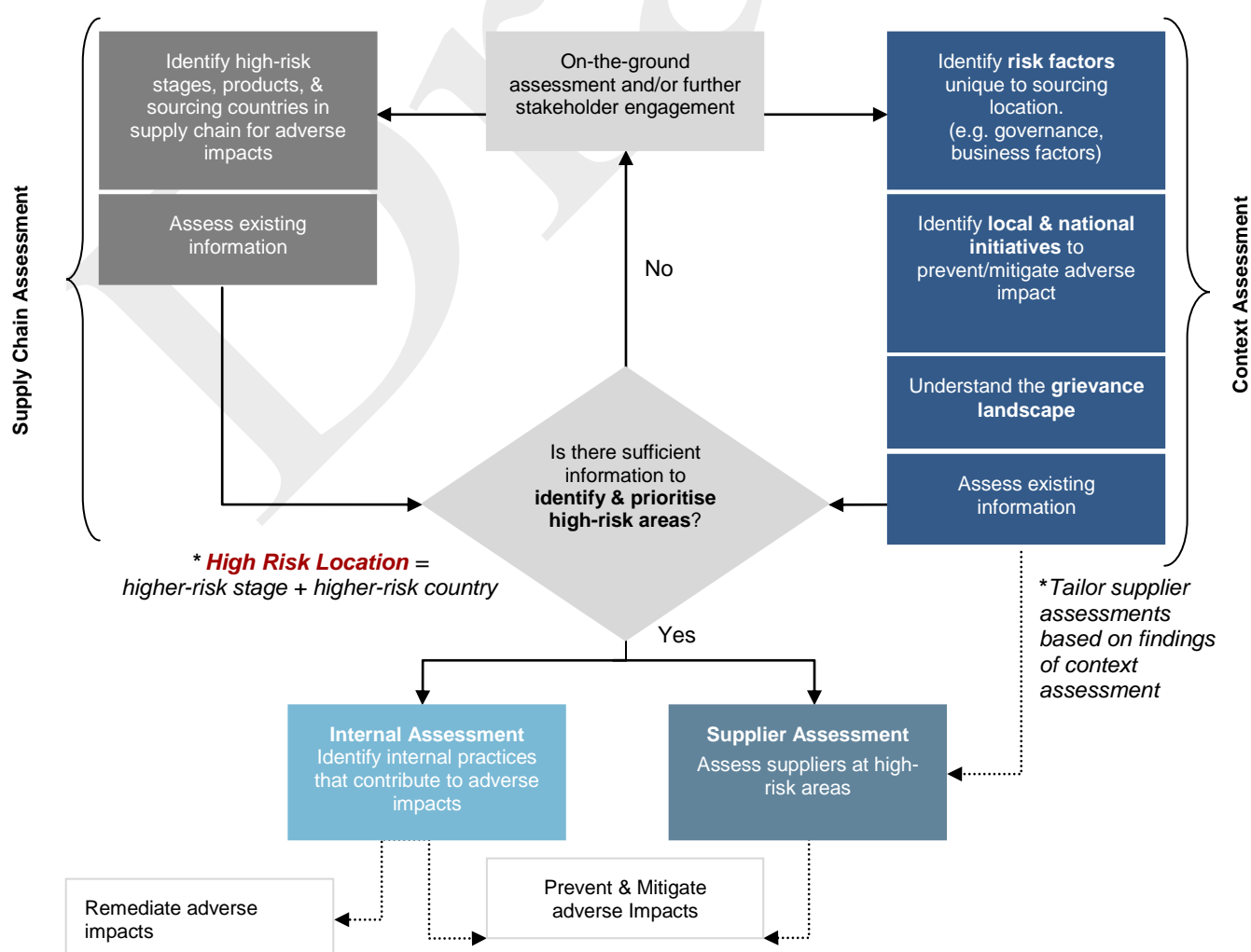
2.1 Identify actual and potential adverse impacts

Summary

25. The enterprise should identify actual and potential adverse impacts within its own operations and those linked to its operations, products or services by a business relationship. Based on all known information, the enterprise should assess the likelihood and severity of adverse impacts across its full supply chain. The enterprise should identify where in its supply chain adverse impacts are most severe and prioritise those sourcing locations and production processes for further due diligence. For potential adverse impacts that are linked to suppliers operating beyond stage-2 of an enterprise's supply chain, the enterprise should prioritise adverse impacts of greatest severity as defined in Box 1.

26. This Guidance recommends four assessments to support the above: (a) supply chain risk assessment, (b) context assessment, (c) supplier assessment and (d) internal assessment. The supply chain risk assessment and context assessment help the enterprise to identify and prioritise potential adverse impacts in its supply chain while supplier assessments are used to identify actual impacts linked to individual suppliers. The internal assessment helps the enterprise determine if and how it may be causing or contributing to the adverse impacts identified. The findings of the context assessments should also be used to tailor supplier assessments (as appropriate) and, importantly, to identify appropriate and effective measures to prevent and mitigate adverse impacts.

Figure 3. Process to identify adverse impacts in the supply chain



Process

A. Supply chain risk assessment

27. The enterprise should take a risk-based approach to due diligence, meaning that resources should be allocated to preventing and mitigating the most severe adverse impacts in its supply chain first. The **purpose** of the supply chain risk assessment, therefore, is to help the enterprise identify where in its supply chain adverse impacts are likely to be most severe and then prioritise those locations for further due diligence.

28. As a first step, the enterprise should identify external risks of adverse impacts. Risks can be categorised into four groups—sector risk, country risk, product risk, and risks linked to the enterprise’s sourcing model.

- a. **Sector risk:** Key characteristics of the garment and footwear supply chain—low-skilled labour intensive, dispersed production, short-lead times—make it higher-risk for certain labour and human rights adverse impacts. The extensive use of chemicals and water consumption at wet-processing (textiles and tanneries) and cotton growing increase its risk of environmental adverse impacts. The enterprise should therefore identify risk factors unique to both its sector (and sub-sector) and the particular stages of its supply chain. While the enterprise should stay abreast of emerging adverse impacts in the sector, common sector risks are well documented and are included in Box 2.

Box 2. Sector Risks

The most common adverse impacts in the garment and footwear sector are well documented and relate to the following.

Labour and human rights

- Child labour
- Discrimination
- Forced labour
- Restrictions on the right to join a trade union and representative worker organisation
- Occupational health and safety
- Low-wages
- Excessive hours of work

Environment

- Use of hazardous chemicals
- Water consumption
- Water pollution
- Energy use

Bribery and corruption

- b. **Country risk:** The enterprise should identify risk factors within a sourcing country that may increase the likelihood or severity of an adverse impact. Common risk factors which should be examined are the regulatory framework, its enforcement and socio-economic factors. See Box 3 for example risk factors for forced labour. Country risk factors may also be examined during the context assessment.

Box 3. Example Country Risk Factors for Forced Labour in the Garment and Footwear Sector

High employment of migrant workers;	Existence of credit-arrangements and debt;
Employment of refugees;	High rates of informal workers;
Use of private recruitment and employment agencies;	State-orchestrated forced labour;
On-site housing of workers;	Use of prison workers

See Annex 6 for more information

- c. **Product risk:** Certain product lines hold higher risk of adverse impact than others due to the materials used, the chemical dyes required, or the production processes employed to make the product. For example, products with beading, embroidery, and sequins are higher-risk for adverse impacts linked to homeworkers.
- d. **Risks linked to the enterprise's sourcing model:** When operating in a higher-risk country, certain business relationships can pose higher risks of adverse impacts. For example, subcontracting, reduces visibility into the enterprise's supply chain and therefore increases the risk of adverse human rights, labour and environmental impacts. Sourcing through agents may also pose higher risk when the enterprise has not conducted adequate due diligence on its agents. See Annex 1 for more information.

29. The enterprise may rely on desktop research and internal expertise; however, the enterprise should ensure that information is reliable, comprehensive and up-to-date. Where gaps in information exist, the enterprise should consult workers, experts and stakeholders on the ground. In instances in which there are major gaps in information (e.g. a new sourcing country), the enterprise should commission or participate in an on-the-ground assessment.

30. Based on all known information, the enterprise should assess the likelihood and severity of adverse impacts across its full supply chain. The enterprise should identify where in its supply chain adverse impacts are most severe and prioritise those sourcing locations and production processes for further due diligence. For potential adverse impacts that are linked to suppliers operating beyond stage-2 of an enterprise's supply chain, the enterprise should prioritise adverse impacts of greatest severity as defined in Box 1. See Commentary for further information on prioritisation of adverse impacts linked to suppliers beyond stage-2. The severity of an adverse impact should be judged by its scale, scope and irremediable character. **For the purposes of this Guidance, sourcing locations and production processes prioritised for further due diligence are called 'high-risk areas'.¹⁶**

31. At a minimum, enterprises should review their entire supply chain risk assessment every two-years. However, due diligence is not a static process. As such, enterprises should continuously update the information feeding into their supply chain risk assessment and should account for changing circumstances of the supply chain on an ongoing basis (e.g. change in political regime; increase in migrant labour, etc.).

B. Context Assessment

32. This Guidance recognises that adverse impacts manifest themselves very differently in one context from another. This is generally due to specific contextual factors, such as the local regulatory

16. For example, a higher-risk area for hazardous chemicals could include all wet-processing in a country identified as higher-risk. In cases where the risk of adverse impacts varies greatly between sub-national regions, production clusters may be a more appropriate identifier. In such cases, high risk locations would be considered higher-risk stages of the supply chain in high-risk production clusters.

framework and enforcement, traditional norms and attitudes, the composition of the workforce, the availability of services, etc. A context assessment is an assessment of the operating environment that provides the enterprise with a nuanced understanding of the particular risk-factors within a particular country or production cluster. The enterprise should conduct a context assessment for all high-risk areas.

33. Through the context assessment, the enterprise should:

- a. **Identify drivers of adverse impacts.** The enterprise should seek a more nuanced understanding of identified risk factors in order to understand *why* adverse impacts are occurring.
- b. Freedom of association is an enabling right in that it enables the promotion of other labour rights. Therefore, for labour adverse impacts, enterprises should have a preliminary understanding of the degree to which the **rights to join a trade union or representative worker organisation** are protected by the state and respected by business; and understand the extent to which trade unions are effectively operating within the context.¹⁷
- c. **Understand the grievance landscape.** The enterprise should seek to identify existing judicial and non-judicial grievance mechanisms. To the extent possible and reasonable, the enterprise should also seek to understand the extent to which existing mechanisms are rights compatible, how judicial and non-judicial mechanisms interface, and how any new mechanism may influence or impact existing systems.¹⁸
- d. **Identify and assess local and national initiatives** focused on preventing and mitigating adverse impacts. Such initiatives may be led by government, civil society, industry associations, trade unions, multi-stakeholder initiatives, international organisations, etc. Mapping existing initiatives, their objectives, and their general impact will help an enterprise to understand how it can feed into existing strategies to prevent or mitigate adverse impacts in its supply chain.

34. In many cases the context assessment will be conducted in parallel with the supply chain risk assessment. New information should continually feed into the enterprise's understanding of the context.

C. Supplier Assessment

35. The purpose of the supplier assessment is to (a) identify adverse impacts and risks of adverse impacts linked to suppliers; and (b) assess the capacity of suppliers to prevent and mitigate such adverse impacts.

36. The enterprise should:

- a. Conduct assessments (or review credible existing assessments) of all *existing* stage-1 suppliers that are operating at high-risk areas. For example, a brand should assess all garment manufacturers (or review credible existing assessments) that are operating in high-risk areas prioritised during the supply chain risk assessment.
- b. Conduct assessments (or review credible existing assessments) of all *potential* stage-1 suppliers operating at high-risk areas prior to the contract decision (pre-qualification of suppliers).

17. See Annex 9

18. See Doyle C. (ed.) *Business and Human Rights: Indigenous Peoples' Experiences with Access to Remedy. Case studies from Africa, Asia and Latin America* (Chiang Mai, Madrid, Copenhagen: AIPP, Almaciga, IWGIA, 2015)

- c. Conduct assessments (or review credible existing assessments) of potential and existing stage-1 subcontractors operating at high-risk areas on an annual basis. See Annex 1 for more information.
- d. Conduct assessments on the due diligence procedures of existing and potential intermediaries sourcing from stage-1 suppliers. See Annex 1 for more information.
- e. Work towards conducting assessments (or reviewing credible existing assessments) of all stage-2 suppliers operating at high-risk areas.¹⁹ In some cases, enterprises should prioritise stage-2 suppliers over stage-1 suppliers for assessments. This is the case when the severity of risks is higher at stage-2 than stage-1.²⁰
- f. Work towards conducting assessments (or reviewing credible existing assessments) of all suppliers operating beyond stage-2 at high-risk areas for adverse impacts of greatest severity. This Guidance recognises that it may be difficult for enterprises to identify and assess individual suppliers operating beyond stage-2. Within this context, this Guidance recommends that enterprises establish systems to ensure that such upstream suppliers are being assessed; however, enterprises do not hold the responsibility to conduct or review individual assessments themselves. Rather enterprises may choose to establish traceability schemes or assess the due diligence practices of enterprises operating at control points in the supply chain. See Commentary for recommendations on how to assess suppliers operating beyond stage-2.

37. See **Figure 4** for guidance on how to apply above recommendations based on the complexity of the enterprise's supply chain.

38. While the nature of assessments (e.g. inspection, audit, interviews, etc.) will vary based on the nature of the adverse impact, enterprises should apply the following principles when conducting supplier assessments:

- a. In all cases, supplier assessments should be **tailored** to the local context and build off of learnings from the context assessment. This is not to suggest that assessments be tailored to each individual supplier. Scalability is important. However, assessments may be tailored to countries or production clusters (as appropriate).
- b. Supplier assessments should provide **added value** and therefore should build on rather than duplicate what has already been conducted. Enterprises should therefore determine if a credible assessment has already been conducted in the last year. Credible in this case refers to assessments that meet the recommendations of this Guidance, including annexes. If a credible assessment has already been conducted, enterprises should review the findings of the assessment and move on to 2.2 Prevent and Mitigate.²¹
- c. Enterprises should ensure that individuals conducting supplier assessments for severe adverse impacts are **qualified**, meaning that they demonstrate the following competencies:

19 . In some contexts, enterprises should prioritise stage-2 suppliers over stage-1 suppliers for assessments. This is the case when the severity of risks are higher at stage-2 than stage-1.

20 . For example, wet-processing of textiles and leather is higher-risk for hazardous chemicals than garment manufacturing.

21 . There may be instances in which another assessment is necessary, for example due to significant changes in the context since the last assessment. In general, however, enterprises should avoid duplicating assessments and prioritise resources for prevention and mitigation.

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- Expertise of the adverse impact including extensive knowledge of risk factors, the best methodology for identifying potential and actual adverse impacts (e.g. through on-site or off-site worker interviews), and understanding of context;
- Knowledge of international and national standards related to the adverse impact;
- Capability to execute the assessment within the local context. For example, the third party should have the appropriate language skills required. He or she should have demonstrated competencies in conducting the on-site assessment including worker interviews, technical inspections, etc.

39. It is not likely that one person will have all of the above competencies across all adverse impacts and across all contexts. In light of this challenge, third parties conducting due diligence may include teams that have, together, all of the above competencies.

Figure 4. Identification of adverse impacts linked to business relationships

	Less complex		Very complex
Examples	<ul style="list-style-type: none"> • Enterprise has direct control over operations (e.g. partial ownership) • Direct licensee • Tier-1 supplier • Enterprise has long-term sourcing relationship with supplier 	<ul style="list-style-type: none"> • Enterprise sources indirectly from stage-1 (e.g. with a buying-agent) 	<ul style="list-style-type: none"> • Enterprise does not source directly from the supplier and the supplier is located beyond stage-2
Due Diligence	<p>Identify</p> <ul style="list-style-type: none"> • Map suppliers and supplier information; • Identify & assess adverse impacts linked to suppliers; • Assess internal practices to determine if and how the enterprise is causing or contributing to adverse impacts • Prioritise adverse impacts for prevention and mitigation 	<p>Identify</p> <ul style="list-style-type: none"> • Systematically work towards mapping supplier information and account for progress; • Systematically work towards identifying & assessing adverse impacts linked to suppliers and account for progress • Prioritise adverse impacts for prevention and mitigation 	<p>Identify</p> <ul style="list-style-type: none"> • Map country of origin for products/materials which hold risks of severe adverse impacts; • Conduct assessments of mid-stream supplier due diligence to determine whether severe adverse impacts are being prevented/mitigated ; or engage in credible industry or multi-stakeholder initiative to address risks linked to upstream suppliers

D. Internal Assessment

40. Enterprises should conduct an internal assessment to identify if and how the enterprise itself is causing or contributing to the adverse impacts in its supply chain. Poor purchasing practices are one of the

most common ways in which a brand, retailer, buyer or buying agent may contribute to adverse labour and human rights impacts in the garment and footwear supply chain. Poor design processes are one of the most common ways in which a brand may contribute to adverse environmental impacts. See Annex 2 for more information.

41. The enterprise should likewise evaluate its sourcing models (e.g. direct vs. indirect sourcing) and determine the level of control that it has over its supply chain. This Guidance does not advocate one sourcing model over another, however, if the enterprise does not hold direct sourcing relationships with its suppliers, it should ensure that either it is still conducting due diligence in accordance with this Guidance on its suppliers and/or that its intermediaries (e.g. buying agents) are conducting due diligence in accordance with this Guidance. See Annex 1 for more information.

Commentary

To what extent should an enterprise map its supply chain during a supply chain risk assessment?

42. Through its supply chain risk assessment, the enterprise may discover that it cannot yet determine its exposure to risk due to a lack of information on its supply chain. This may be due to a lack of transparency on where the enterprise is sourcing from. In this case, the enterprise should seek to gather information on its supply chain and business relationships first.

43. The enterprise should:

- a. First collect and record information regarding the ownership structure, location, size and nature of production of stage-1 suppliers and intermediaries operating at stage-one (e.g. buying agents).
- b. Work towards mapping all stage-2 suppliers and account for progress over time. This supply chain mapping should include information for subcontractors, to the extent possible.
- c. Work towards identifying the country of origin for all materials or components sourced from high-risk areas for adverse impacts of greatest severity (as defined by this Guidance) no matter where the risk of impact falls in the supply chain.
- d. In order to facilitate supply chain transparency and ease of conducting due diligence, the sector should work towards a unified approach to identifying suppliers.

44. Enterprises may seek to map control points in the supply chain for commodities or products linked to adverse impacts of greatest severity (i.e. beyond stage-2).

45. Enterprises are not expected to map individual homeworkers, however, in order to help conduct supply chain due diligence on the use of homeworkers, enterprises should flag stages and contexts in the supply chain (e.g. beading, embroidery, leather working) which have a higher likelihood of employing homeworkers.

Guidance for small-and-medium sized manufacturers

Manufacturers should prioritise the identification of adverse impacts in their own operations first. They should then work towards identifying and assessing adverse impacts linked with direct suppliers.

Guidance for small-and-medium sized retailers and brands

Where enterprises have limited resources due to their size, they are encouraged to:

- a. Consolidate the number of suppliers in their supply chain to the extent possible in order to increase

control over the supply chain;

- b. Prioritise mapping of stage-1 suppliers and work towards mapping stage-2 suppliers.
- c. Engage in industry or multi-stakeholder initiatives to address adverse impacts of greatest severity beyond stage-1.

Guidance for large retailers and brands

Where enterprises have numerous product lines, they are encouraged to prioritise mapping suppliers linked to product categories or lines that are core to the enterprise's business first.

Where enterprises have many suppliers, they are encouraged to:

- a. Consolidate the number of suppliers in their supply chain to the extent possible and reasonable in order to increase control over the supply chain;
- b. Prioritise mapping of stage-1 and stage-2 suppliers by first prioritising sourcing countries and stages in the supply chain that hold the most risk of adverse impact and then mapping suppliers operating at those locations or stages.

What methodology should be used in a supply chain risk assessment?

46. There are a number of ways in which an enterprise might assess its supply chain for levels of risk. For example, an enterprise may first identify higher-risk sourcing jurisdictions and then narrow-in on higher-risk activities/stages in those jurisdictions. Conversely an enterprise, may start by identifying higher-risk stages and then assess whether such activities take place in low or higher-risk jurisdictions for adverse impacts. Enterprise should take a reasonable approach based on the size, scale and location of their activities and should generally consider the sourcing country and activity together to determine their exposure to risk. Enterprises should be careful to identify activities that may traditionally be considered lower-risk but hold increased risk in higher-risk jurisdictions. For example, in countries with high rates of refugees working in the sector, any activity which employs refugees may be considered higher-risk for human rights and labour impacts.

What are key considerations when prioritising adverse impacts linked to suppliers operating beyond stage-2 of an enterprise's supply chain?

47. For potential adverse impacts that are linked to suppliers operating beyond stage-2 of an enterprise's supply chain the enterprise should prioritise adverse impacts of greatest severity as defined in Key Concepts (see Box 1). The scope of impact (e.g. number of people affected; extent of environmental damage) in an enterprise's supply chain may also be considered when prioritising risks linked to upstream suppliers.

48. For example, worst forms of child labour and forced labour are known risks linked to cotton growing in some high-risk areas. The garment and footwear sector accounts for a substantial share of global cotton production, thus accounting for a substantial share of adverse impacts at cotton growing. Consequently, enterprises operating in the garment and footwear sector that rely on cotton in their product lines should prioritise high-risk areas for cotton growing. Conversely, enterprises with limited to no cotton use in production lines may not prioritise cotton growing in their supply chains. Other raw materials may pose risks of adverse impacts of greatest severity. For example, the mining of minerals from conflict affected and high-risk areas, the processing of petrochemicals, the use of exotic animal skins etc. all hold high risks of severe adverse impacts. However, in these contexts, the enterprise should take a risk-based approach to due diligence and consider the scope of impact in the enterprise's supply chain. Evaluating the extent of the sector or sub-sector's use of raw materials can be a helpful place to start. It is important to

recognise that over time an enterprise's prioritisation of raw materials and high-risk areas may change based on shifts in the use of materials (e.g. increased use of plastics, etc.).

How can an enterprise assess suppliers operating beyond stage-2 (e.g. cotton production; leather tanneries)?

49. An enterprise may lack leverage with suppliers operating upstream in its supply chain (e.g. beyond stage-2). However, this does not diminish the enterprise's responsibility to identify, prevent and mitigate adverse impacts, particularly those considered to be adverse impacts of greatest severity. Enterprises are encouraged to establish mechanisms to ensure that upstream suppliers are adequately being assessed. Establishing traceability and/or assessing 'control points' are two potential mechanisms that an enterprise can use to identify adverse impacts linked to upstream production.

Traceability

50. For the purposes of this Guidance, 'traceability' is considered to be the process by which enterprises track materials and products and the conditions in which they were produced (in relation to matters covered by the OECD Guidelines) through the supply chain. Enterprises may engage in traceability schemes to manage risks of adverse impacts linked to upstream production processes. Traceability in **of itself does not fulfil due diligence expectations**; however, traceability, as a tool, can help an enterprise gain credible information about suppliers operating upstream.

51. Traceability may be achieved through a number of mechanisms.²²

- a. **Physical segregation:** Certified materials and products are physically tracked at each stage along the supply chain.
- b. **Mass balance:** Certified and non-certified materials can be mixed. However, the exact volume of certified material entering the value chain must be controlled and an equivalent volume of the certified product leaving the value chain can be sold as certified. This is a common scheme for products and commodities where segregation is very difficult or impossible to achieve.²³
- c. **Book and claim:** Book and claim does not seek to have traceability at each stage in the supply chain. Instead, the model relies on the link between the volumes of certified material produced at the beginning of the supply chain and the amount of certified product purchased at the end of the value chain. In this model, an enterprise can obtain a verification certificate for the volume of certified materials that it puts into the supply chain. Certified and non-certified materials flow freely throughout the supply chain. Certificates are then bought via a trading platform and can be issued by an independent body.²⁴

Engagement with 'control points'

52. For the purposes of this Guidance, 'control points' in a supply chain may be identified using a number of considerations, such as (a) key points of transformation in the supply chain; (b) stages in the supply chain that generally include relatively few actors that process or handle a majority of the commodity; or (c) stages in the supply chain with visibility, leverage or control over the circumstances of

22. For specific guidance on how to establish traceability mechanisms, see United Nations Global Compact's A Guide to Traceability, A Practical Approach to Advance Sustainability in Global Supply Chains. (2014)

23. United Nations Global Compact's A Guide to Traceability, A Practical Approach to Advance Sustainability in Global Supply Chains. (2014)

24. Ibid. 23

production and trade upstream. For example, rubber processing factories may act as a natural control point in the rubber supply chain. Similarly, global commodities merchandisers may act as a control point in the cotton supply chain. Enterprises ensure that suppliers operating at these control points in their own supply chain have due diligence processes in place in accordance with this Guidance. See Box 4 for example control points.

53. Example processes would therefore include:

- a. Enterprise identifies actual or likely control points
- b. Enterprise seeks to trace to the control points in its own supply chain that are sourcing from countries or regions that are known to be higher-risk for most severe adverse impacts. *For very complex manufactured products (e.g. for complex components in garment and footwear), enterprises who find it difficult to identify actors upstream from their direct suppliers may wish to engage with key upstream actors on an individual or industry-level basis and encourage their implementation of due diligence and participation in audits.*
- c. Enterprise verifies (e.g. through management audits) that control points are effectively conducting due diligence on their upstream suppliers (e.g. context assessment, on-site supplier assessments, prevention and mitigation) in accordance with the recommendations in this Guidance.
- d. Enterprises direct sourcing towards control points in the supply chain that are effectively applying due diligence in accordance with this Guidance.

Box 4. Example control points in the garment and footwear sector supply chain

Control points in a supply chain may be identified using a number of considerations, such as (a) key points of transformation in the supply chain; (b) stages in the supply chain that generally include relatively few actors that process or handle a majority of the commodity; or (c) stages in the supply chain with visibility, leverage or control over the circumstances of production and trade upstream. Enterprises may conduct due diligence on control points in their supply chain to prevent and mitigate the risk of adverse impacts of greatest severity in their supply chain. Example control points in the garment and footwear supply chain may include:

- Global commodities merchandisers (e.g. cotton and rubber)
- Exporters, processors, wholesalers (e.g. fragmented supply chains)
- Chemical plants (e.g. synthetic fibres)
- Smelters and refiners (e.g. metals)

54. In many cases, multi-stakeholder initiatives have developed mechanisms by which enterprises can establish traceability or direct sourcing towards mid-stream suppliers. However, both traceability and engagement with control points requires financial resources for their implementation. This Guidance recommends that enterprises build into supplier contracts an obligation to support supply chain due diligence of risks linked to upstream production (e.g. raw material production) where appropriate (e.g. obligation to direct sourcing towards control points that have demonstrated effective due diligence mechanisms). However, this Guidance does not recommend that enterprises mandate that suppliers engage in specific initiatives (e.g. specific multi-stakeholder initiatives) unless the enterprise is willing to absorb the cost of the supplier's participation and any associated premiums. Rather enterprises should accept a range of due diligence methodology so long as it conforms with this Guidance.

Embed gender considerations into due diligence

55. The enterprise should consider the following when identifying adverse impacts in its supply chain.

- a. Include women in the design of assessments;
- b. Seek to understand how women, men, girls and boys may be affected differently by adverse impacts;
- c. Consider the status of women who may be differentially or disproportionately affected by adverse impacts (e.g. women who are migrant workers, minorities, young, etc.)
- d. Ensure that women are proportionately included in assessments;
- e. Consider whether it is culturally important for interviews to be the same-sex as respondents;
- f. Collect data disaggregated by sex. It may also be important to disaggregate data by age.

2.2 Prevent and mitigate adverse impacts

Summary

56. The enterprise should seek to prevent and mitigate future adverse impacts in its supply chain. In most cases, this will include supporting suppliers in measurable prevention and mitigation measures. The enterprise may continue to engage with its suppliers during such risk prevention and mitigation; however, in cases of adverse impacts of greatest severity, the enterprise should suspend orders until future impacts have been mitigated or prevented. Beyond supplier engagement, this Guidance recognises that in some cases, sustainable prevention and mitigation of an adverse impact will require broader engagement at a sector-wide level, engagement with the local community and/or engagement with the government. The enterprise should likewise consider how its own practices and sourcing models may be contributing to adverse impacts and seek to prevent and mitigate these contributions.

Process

A. Integrate findings

57. The enterprise should integrate the findings related to adverse impacts in its supply chain across relevant internal functions and processes. The enterprise should assign responsibility for addressing impacts to the appropriate level and function within the business enterprise.²⁵ See ‘Management Systems’ for more information.

58. If an enterprise identifies that it has caused or contributed to an adverse impact in its supply chain, it should take the necessary steps to cease the impact and it should provide for or co-operate through legitimate processes in the remediation of the adverse impact.²⁶ Further guidance is provided under ‘Access to Remedy and Operational-level Grievance Mechanisms’.

B. Prevent and mitigate adverse impacts that the enterprise is directly linked to

59. The enterprise may manage risks in its supply chain while:

- a. Continuing to trade with the supplier throughout the course of measurable risk mitigation;
- b. Temporarily suspending trade with the supplier while the supplier pursues ongoing risk mitigation; or
- c. Disengaging with the supplier either after failed attempts at mitigation, when adverse impacts of greatest severity have been identified, or where the enterprise deems mitigation not feasible²⁷. In cases in which disengagement is appropriate, enterprises should take steps to ensure that disengagement is responsible.

60. When determining the above, the enterprise should consider the following factors:

25. United Nations Guiding Principle, 19 (i)

26. OECD Guidelines for Multinational Enterprises, Commentary on General Principles, Paragraph. 14; OECD Guidelines, Chapter IV, Human Rights, Paragraph. 6.

27. OECD Guidelines for Multinational Enterprises, Commentary on General Policies, Para 22.

- a. *Severity of the adverse impact:* The more severe the adverse impact, the more quickly the enterprise will need to see change before it takes a decision on whether it should end the relationship.²⁸ The potential severity of the adverse impact of suspending or disengaging with a supplier should likewise be considered (e.g. lost wages, unemployment).

Enterprises should immediately suspend or discontinue engagement with any supplier where a reasonable risk is identified that the enterprise is sourcing from, or linked to, any party committing adverse impacts of greatest severity as defined under Key Concepts (see Box 1).

- b. *Capability:* The enterprise and supplier should consider the cost and resources necessary to effectively prevent or mitigate future adverse impacts. In cases in which the supplier does not have the resources to adequately mitigate or prevent the adverse impact, the enterprise should consider whether it will contribute financing. If funding is not available, the enterprise should consider the severity of the adverse impact and whether to continue the relationship. However, for as long as the adverse impact continues and the enterprise remains in the relationship, it should be able to demonstrate its own ongoing efforts to mitigate the impact and be prepared to accept any consequences—reputational, financial or legal—of continuing the connection.²⁹
- c. *Supplier's will to prevent or mitigate adverse impacts:* An enterprise cannot force a business partner to mitigate or prevent adverse impacts. Therefore, the enterprise should consider the supplier's demonstrated intention to prevent or mitigate adverse impacts (e.g. its record of preventing and mitigating adverse impacts over time).
- d. *Relative importance of the supplier:* A relationship could be deemed *crucial* if it provides a product or service that is essential to the enterprise's business, and for which no reasonable alternative source exists. In this situation, ending the relationship raises particular challenges. For as long as the adverse impact continues and the enterprise remains in the relationship, it should be able to demonstrate its own ongoing efforts to mitigate the impact and be prepared to accept any consequences—reputational, financial or legal—of continuing the connection.³⁰
- e. *Leverage:* Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of the entity that causes the harm. The OECD Guidelines state that an enterprise may act alone or in co-operation with other entities, as appropriate, to use its leverage to influence its business partners. Enterprises should seek to use their leverage with existing suppliers or other business relationships to encourage them to prevent and mitigate adverse impacts. Where an enterprise does not have leverage, it should seek to increase that leverage taking into consideration the above factors (e.g. severity, capability, will and relative importance) in determining whether to continue to engage.

In the garment and footwear sectors, the extent of an enterprise's leverage with its suppliers is perhaps most affected by its sourcing model, whether the enterprise is directly sourcing from a supplier or sourcing through a buying agent and whether sourcing agreements are short term or longer-term. An enterprise's leverage is likewise substantially affected by the proportion of business the enterprise represents for the supplier (i.e. buying power). An additional leverage point is the enterprise's reputation and the harm to the supplier's reputation if the enterprise were to disengage.

28 . United Nations Guiding Principles, Guiding Principle 19, Commentary.

29 . Ibid.

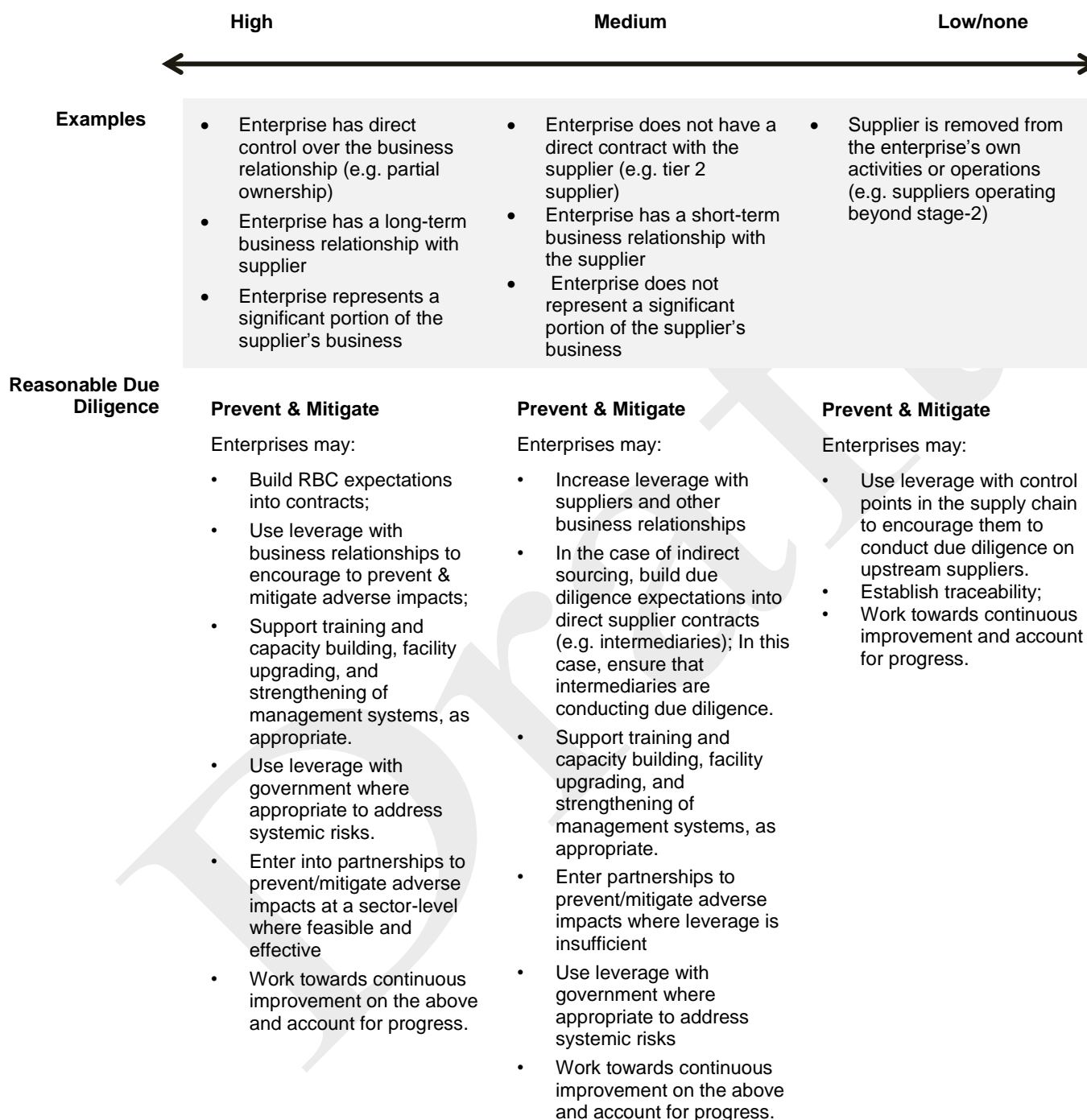
30 . Ibid.

While the extent of an enterprise's leverage does not change the expectation to prevent and mitigate adverse impacts, it may affect how an enterprise seeks to prevent or mitigate adverse impacts in its supply chain. See Figure 5 for general considerations on how to prevent or mitigate adverse impacts linked with suppliers in light of the enterprise's extent of leverage.

- f. *New Suppliers*: An enterprise may also be considering entering into a *new* relationship with a third party which it identifies has been involved in human rights, labour or environmental adverse impacts in the past. In this case, the enterprise should first assess whether it is likely to be able to use its relationship to mitigate the occurrence of such abuse and try to ensure, for example through the terms of the contract or its extent of purchasing and, that it has the leverage to do so. If it assesses that this is possible, then the risks of entering the relationship may be deemed acceptable, provided the supplier then pursues action to prevent or mitigate them. If it assesses that it will not be able to mitigate the risk of abuses by the other party or that the risks are simply too high, the enterprise should not enter the relationship.³¹

31 . (2012), *The Corporate Responsibility to Respect Human Rights, An Interpretive Guide*, UN OHCHR, p.54.

Figure 5 Appropriate action in preventing and mitigating adverse impacts in light of the enterprise's leverage



Prevention and mitigation measures

61. The enterprise should develop and implement a plan to prevent and mitigate adverse impacts in the supply chain. In many cases, an enterprise's strategy to prevent and mitigate an adverse impact will be primarily based on supporting a corrective action plan at the supplier-level. In this case, the corrective action plan should be developed in partnership between the supplier and the enterprise. Enterprise support may take many forms including funding or helping to provide access to financing, providing capacity building and training, establishing linkages with local service providers, establishing linkages with broader sector-wide initiatives or regional-initiatives, etc.

62. In other cases, a multi-prong approach by which the enterprise balances between preventing and mitigating adverse impacts through direct engagement with suppliers and workers and broader engagement with government, industry, and the community may be required. See Annex 4, Child Labour; Annex 6, Forced Labour; Annex 10, Wages; and Annex 12, Water.

63. In all cases, the enterprise should seek to apply the following principles when establishing a strategy to prevent and mitigate adverse impacts:

- a. Measures should be tailored to the local context (i.e. what is effective in one context may not be effective in another). Enterprises should therefore engage with stakeholders to ensure that prevention or mitigation measures are appropriate. Such engagement may occur during the context assessment and/or may be ongoing, as appropriate.
- b. Measures should be reasonable—meaning that they should be cost-effective and proportionate to the severity of the adverse impact.
- c. Measures should build on existing initiatives where relevant and where such initiatives have been demonstrated to be effective, timely, and feasible. Enterprises should seek to collaborate or coordinate with existing initiatives.
- d. Where reasonable, enterprises should seek to coordinate and collaborate at an industry level (with other buyers and suppliers) and at times across sectors within a particular geography to develop coordinated solutions to common adverse impacts.
- e. In relation to labour impacts, enterprises should incorporate the respect for freedom of association and collective bargaining as an important step in of itself in preventing and mitigating other labour impacts.
- f. Enterprises should consider engaging local or national government, where appropriate, to prevent and mitigate systemic adverse impacts to a particular geographic region. See Annex 10, Wages; and Annex 12, Water.
- g. The more complex the situation, the stronger is the case for the enterprise to draw on independent expert advice in deciding how to respond.
- h. The enterprise should be willing to pilot different initiatives and track performance over time to determine the most effective means of preventing or mitigating adverse impacts. Existing research from international organisations, governments, trade unions and civil society should feed into prevention and mitigation strategies.

Box 5. Cost sharing

Prevention and mitigation measures may be costly. Enterprises should negotiate commercial terms with their suppliers which ensure that it is financially feasible for the supplier to maintain safe workplaces that uphold decent working conditions. Enterprises may also choose to support suppliers in preventing and mitigating adverse impacts through:

- Direct financing;
- Low-interest loans;
- Guarantees of continued sourcing;
- Assistance in securing financing.

64. This Guidance recognises that it may be difficult for enterprises to prevent and mitigate adverse impacts linked to suppliers where it does not have leverage, for example beyond stage-2 (e.g. raw material production). Within this context, this Guidance recommends that enterprises establish systems to ensure that adverse impacts of greatest severity are being prevented and mitigated, however, enterprises are not held responsible to directly engage with these suppliers themselves. Rather, enterprises may establish traceability schemes or assess the due diligence practices of control points in the supply chain.

Guidance for manufacturers and raw material producers

Human rights and labour adverse impacts in the garment and footwear supply chain most often occur at production processes that are labour intensive and employ low-skilled workers. Environmental impacts in the garment and footwear supply chain most often occur at cotton growing and wet-processing (e.g. textiles and leather). Enterprises operating at these stages in the supply chain should take a risk-based approach and identify, prevent and mitigate adverse impacts in their own operations first, in accordance with the above guidance.

Enterprises operating at manufacturing or raw materials should then systematically work towards engaging with their stage-1 suppliers and subcontractors to prevent and mitigate adverse impacts.

Guidance for small-and-medium sized retailers, brands and intermediaries

SME retailers and brands may have limited resources to support their suppliers in the prevention and mitigation of adverse impacts. SMEs are encouraged to:

- a. Establish robust processes to select suppliers during the pre-qualification process that are at low-risk of severe adverse impacts to reduce necessary prevention/mitigation efforts necessary.
- b. Engage in sector-wide initiatives and multi-stakeholder initiatives where available and where such initiatives conduct due diligence in accordance with this Guidance;
- c. Engage with other retailers, brands and intermediaries sourcing from the supplier to support their prevention/mitigation efforts.

Commentary

How should the enterprise engage with suppliers to prevent or mitigate adverse impacts?

65. Annexes for recommendations tailored to specific adverse impacts. Generally prevention and mitigation measures will include a combination of the following:

- a. *Training*: Training should generally cover workers, upper management and line-managers as necessary. Training should be tailored to the audience and may include awareness raising and technical training on:
 - Enterprise and supplier policy related to the adverse impact;
 - International and national standards related to the adverse impact;
 - Supplier management systems to manage on-site risks, responsibilities of management and workers in managing risk, and how workers can actively participate in the on-going monitoring of risks of adverse impact;
 - Enterprise grievance mechanisms to report adverse impacts;

Those directly involved in the prevention and mitigation of impacts should generally receive comprehensive technical training.

Training may be conducted by trade unions or representative worker organisations, civil society, experts, supplier management or the enterprise itself depending upon the target audience of the training and cultural sensitivities.

- b. *Facility upgrading* – In some instances, notably in relation to occupational health and safety and environmental impacts, facility upgrading is necessary to adequately prevent adverse impacts.
- c. *Strengthening of management systems* – In some cases, enterprises lack management systems to adequately identify, prevent and mitigate adverse impacts on-site. Enterprises may contribute to the capacity development of suppliers, such as supporting the development of effective human resource management systems.
- d. *Respect for freedom of association and collective bargaining* – Workers play an important role in preventing adverse impacts on-site through collective bargaining agreements, on-going monitoring, and providing access to grievance mechanisms. For this reason, freedom of association and collective bargaining are considered enabling rights. Within this context, enterprises can manage labour risk broadly in their supply chain by ensuring that worker's rights (i.e. the right to join a trade union and representative workers organisations and bargain collectively) are upheld in the workplace. See Annex 9.

When and how should an enterprise engage with the government to prevent or mitigate adverse impacts?

66. While it is the role of businesses to act responsibly, it is the duty of government to protect against abuses by third parties, including business enterprises, through regulation, policymaking, investigation, and enforcement. In contexts in which the government is not fulfilling its duty to protect and risks cannot be effectively or sustainably managed through supplier engagement alone, enterprises may use their leverage with government (local or national) to encourage government to affect change. Example adverse impacts which may necessitate government engagement for effective prevention and mitigation of adverse impacts include low wages, child labour, forced labour, discrimination, and water stress and pollution. Enterprises

should consider the following when determining whether to use their leverage with governments to mitigate risks:

- a. Is the adverse impact systemic to the country or region?
- b. Could the adverse impact be mitigated through better government regulations or controls?
- c. Do international standards (e.g. ILO core conventions) exist related to the risk?
- d. Does the government demonstrate political will to establish controls over the adverse impact?
- e. Does the enterprise have leverage with the government, either alone or in collaboration with other businesses and stakeholders?
- f. Does the government participate in any relevant initiative or Forum (e.g. intergovernmental or multi-stakeholder) where these issues can be raised and possibly addressed?

67. Engaging in policy dialogues has an associated risk when not paralleled with transparency. Enterprises should disclose their intent in policy engagement with governments as well as the outcomes of the engagement itself. Enterprises may also consider joining multi-stakeholder initiatives focused on transparency and policy engagement, not only to benefit from shared expertise, but to send a very clear signal that the enterprises upholds and plans to maintain the highest ethical standards while engaging with government.

Box 6 Policy capture

Policy capture exists where organizations unduly dominate a policymaking process to an extent that excludes or subdues other stakeholder views, resulting in policy that favours narrow vested interests to the detriment of the public good. Processes of capture have the following features that can make them hard to identify, difficult to prove, and challenging to guard against:

- a. They tend to work through subtle rather than mechanistic, visible processes.
- b. They occur along a sliding scale of relative influence rather than as a binary state.
- c. They can be unconscious or conscious, intentional or accidental.
- d. They tend to involve thoughts and emotions rather than more tangible elements.
- e. The boundaries between legitimate lobbying and nefarious capture are blurred.
- f. There is sparse guidance on or academic study of the issue.

Enterprises should take steps to actively demonstrate that they are avoiding the risk of policy capture by being transparent in their intentions and engagement with government. Enterprises may seek to have their engagement activities with government reviewed by an external board when risks of corruption are high.

Source: (2010), *The CEO Water Mandate, Guide to Responsible Business Engagement with Water Policy*, The Global Compact.

When should an enterprise engage with the community to prevent or mitigate adverse impacts?

68. In some cases, notably in relation to labour and human rights impacts, the presence of socio-economic risk factors (e.g. cultural norms and beliefs, rates of poverty, access to education, gender norms) necessitate a holistic approach to risk management. Therefore:

- a. Enterprises should ensure that prevention and mitigation measures contribute to rather than detract from existing initiatives to address socio-economic factors.
- b. Where feasible, enterprise may seek to prevent and mitigate impacts in the supply chain by directly contributing to community-level engagement. For example, enterprises may contribute funding to organisations which contribute to the mitigation of risks at the community level (e.g. civil society organisations that promote access to education in context with high rates of child labour).

How can an enterprise effectively prevent the risk of causing or contributing to adverse impacts in its supply chain in the future?

69. If an enterprise has contributed to an adverse impact in its supply chain, it should take appropriate action. See 'Access to Remedy and Operational-level Grievance Mechanisms'. The enterprise should likewise take steps to ensure that it does not continue its contribution to adverse impacts in the future. Enterprises should:

- a. Seek feedback from suppliers on how the enterprise might prevent the risk of causing or contributing to adverse impacts and implement where feasible.
- b. Establish appropriate internal processes to control risks (e.g. establish functional alignment between business units; provide training for business units involved in supply chain processes on risks of adverse impact, etc.).
- c. Identify and track internal red-flags which signal an increased risk of causing or contributing to adverse impacts (e.g. Late placement of orders, Rushed orders placed during peak times or holiday in sourcing country). The presence of red-flags should trigger supplier engagement and further risk mitigation.

What is responsible disengagement?

70. This Guidance recognises that there are practical limitations on the ability of enterprises to effect change in the behaviour of their suppliers. In instances in which disengagement from a supplier is necessary, enterprises should take steps to ensure that disengagement is responsible, considering the social and economic impacts of disengagement. The enterprise's approach to disengagement should be planned, with clear rules, policies and commitments. In cases in which disengagement is necessary and the enterprise comprises a substantial percentage of a supplier's business, the enterprise should:

- a. Comply with national laws, international labour standards and the terms of collective bargaining agreements;
- b. See to mitigate the effects of job losses over the short, medium and long-terms; if retrenchments become necessary, prioritise the hiring of affected workers to other suppliers;
- c. Adopt a planned approach and work with the supplier concerned and with other buyers to mitigate the effects of a decision to withdraw;

- d. Conduct a risk assessment of the impact of a decision to withdraw orders from the supplier in question
- e. Give the supplier sufficient notice of the ending of the business relationship to allow for a retrenchment consultation procedure with the workforce, and monitor the consultation process;
- f. Provide detailed information supporting the business decision to management and to the union, where one exists;

Embed gender considerations into due diligence

71. Enterprises should consider the following when developing measures to prevent and mitigate adverse impacts:

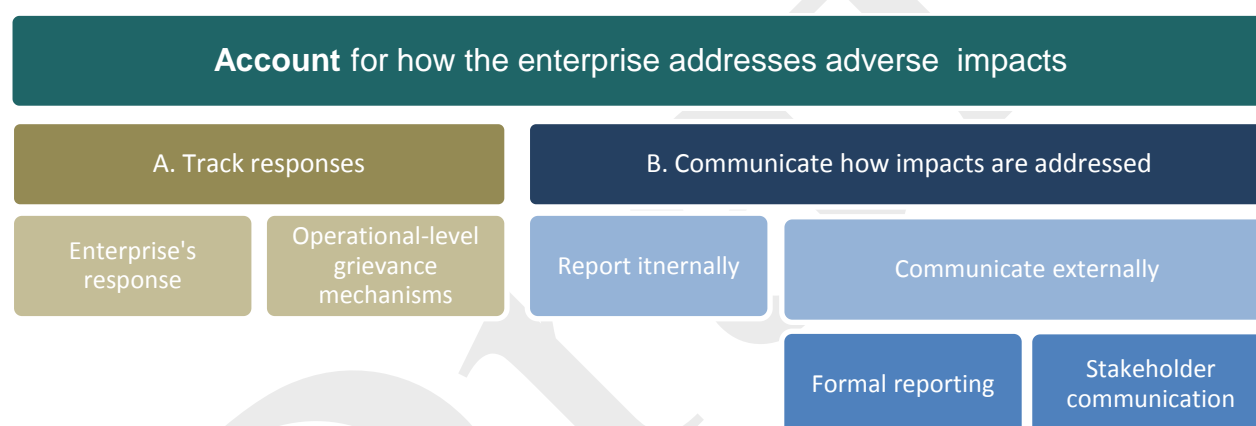
- a. Ensure that women are included in the design of prevention and mitigation measures;
- b. Consider and assess how women, men, girls and boys may be affected differently by prevention and mitigation measures and adjust programming appropriately.
- c. Consider women who may be differentially or disproportionately affected by adverse impacts (e.g. women who are migrant workers, minorities, young, etc.) in the design of prevention and mitigation measures.
- d. Ensure that a gender-equity objective is reflected in the development of procedures or policies;
- e. Consider whether a program or policy could have unintended consequences for women. Unintended consequences should be accounted for and mitigated.

2.3 Account for how impacts are addressed

Summary

The enterprise should account for its due diligence practices. Firstly, the enterprise should seek to track impact over time. The enterprise should likewise report on its due diligence processes for responsible supply chains, including in relation to its due diligence management systems, its supply chain risk assessment and the measures it has taken to prevent or mitigate adverse impacts. The enterprise is not expected to disclose individual impacts identified but it should disclose general findings of adverse impacts in the supply chain. Formal reporting should indicate both what has been achieved and future plans to improve or introduce new processes.

Figure 6: Account for how the enterprise addresses adverse impacts



Process

A. Track the effectiveness of prevention and mitigation measures

72. In order to verify whether adverse impacts are being addressed, enterprises should track the effectiveness of their prevention and mitigation measures. Tracking should:

- a. Be based on appropriate qualitative and quantitative indicators;
- b. Draw on feedback from both internal and external sources, including affected stakeholders.³²
- c. Be integrated into relevant internal reporting processes.³³ See 'Management Systems' for more information.

32 . See United Nations Guiding Principle 20.

33 . See Commentary on United Nations Guiding Principle 20.

73. Enterprises should develop qualitative and quantitative indicators to track the effectiveness of the enterprise's operational-level grievance mechanisms, where such mechanisms exist, to ensure that they are meeting their intended purpose.

74. In cases where adverse impacts of greatest severity have been identified, a formal assessment should also be conducted to evaluate the effectiveness of the enterprise's response. Formal assessments may take a number of forms; for example inspections, audits, management system audit. However not all forms of verification are appropriate for the evaluation of all adverse impacts. The verification process used should be tailored to the nature of the risk and be demonstrated to be effective in evaluating the prevention or mitigation of the adverse impact.

Box 7 Verification methodology

To date, the garment and footwear sector has relied substantially on compliance audits to verify that adverse impacts have been prevented and mitigated. While audits have proven to be an effective verification tool for some adverse impacts, they have demonstrated to be ineffective in other cases. In determining the methodology to verify the prevention or mitigation of impacts, enterprises should consult with issue-experts (e.g. forced labour experts), trade unions (for labour impacts), and other stakeholders as appropriate. Verification of labour and human rights impacts should rely substantially on worker interviews, focus group discussions, etc. Enterprises should consider the full extent of information available (e.g. assessment results, issues raised through grievance mechanisms, findings from ongoing monitoring, feedback from trade unions and stakeholders) in determining whether an adverse impact has been effectively mitigated or prevented.

B. Communicate how impacts are addressed

75. Enterprises should report findings from the supply chain risk assessment, supplier risk assessment, internal risk assessment and on-going monitoring to designated senior management. See 'Management Systems'.

76. Enterprises should make the Enterprise Responsible Business Conduct Policy publicly available. See 'Management Systems'.

77. Enterprises should report on their due diligence processes for responsible supply chains, including in relation to the following:

- a. *Enterprise's due diligence management systems*: The enterprise should explain the management structure responsible for the enterprise's due diligence and who in the enterprise is directly responsible; describe the enterprise's database and record-keeping system as well as the system to follow-up with identified risks. See 'Management Systems'.
- b. *Enterprise's supply chain risk assessment*: The enterprise should describe its risk assessment methodology to evaluate risks in its supply chain. The enterprise should disclose general findings of adverse impacts in its supply chain (e.g. low wages, use of hazardous chemicals); however the enterprise is not expected to reveal publicly all specific issues identified in its ongoing assessments of adverse impacts. The enterprise should report formally on how it addresses impacts of greatest severity.
- c. *Enterprise's risk management strategy*: The enterprise should describe its risk management strategy, including a summary report on the enterprise's approach to risk mitigation (e.g. internal risk management; supplier and worker engagement; government engagement; community

engagement). The enterprise should disclose its systems for monitoring and tracking performance over time. In cases in which enterprises have engaged with government as a means of mitigating risks of adverse impacts, the enterprise should disclose its intent to engage in policy as well as the outcomes of the engagement itself.

78. Formal reporting should indicate both what has been achieved and future plans to improve or introduce new process. Formal reporting should be conducted annually at a minimum and should be made publicly available.

Human Rights impacts

79. In order to account for how they address their human rights impacts, enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should:

- a. Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences;
- b. Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved;
- c. In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.³⁴

80. Beyond public and formal reporting, communication can take a variety of forms, including in-person meetings, online dialogues, and consultation with affected stakeholders. Communication needs to be appropriate to the enterprise's impacts and audience in terms of its form, frequency, accessibility, and the adequacy of information provided. Furthermore, informational needs may vary across stakeholder groups. Enterprises should engage with affected stakeholders to understand their specific informational needs.

Commentary

What methodologies should be used to track the effectiveness of prevention and mitigation measures?

81. Enterprises can employ a number of methods to track the effectiveness of their response to adverse impacts. The methodology selected should closely correspond to the nature of the adverse impact. In many cases a mixed methodology approach is most effective. For example:

- a. Enterprises, in collaboration with suppliers and workers, may identify indicators of effective risk mitigation and track them over time. In many cases, the supplier and workers can report directly to the enterprise on a regular basis. Enterprises should seek to harmonize indicators used at an industry-level, with input from workers and experts, to facilitate cooperation and coordination on prevention and mitigation measures.
- b. Effective grievance mechanisms can be a good indicator of potential and recurring adverse impacts; however, enterprises should likewise take steps to ensure that grievance mechanisms are effective.

34. See United Nations Guiding Principle 21.

- c. Context assessments provided by international organisations, civil society, government agencies, trade unions, or employer and business associations concerning the mitigation of risks of adverse impacts in a particular context (e.g. reports on reductions in child labour in a particular context) may likewise provide some evidence as to whether adverse impacts are effectively being mitigated or prevented within a particular geographic context. This is particularly relevant for sector-wide initiatives.
- d. Similarly, enterprises may track indicators over time in a particular geography to understand if and how prevention/mitigation measures are effective across a range of suppliers. This likewise may enable the enterprise to identify individual suppliers which may be performing abnormally well or abnormally poorly and investigate for further learnings. Understanding trends may also enable the enterprise to make informed decisions as to whether its prevention/mitigation measures are effective.

What is the timing and frequency of tracking that is expected?

82. Timing should correspond to the severity and nature of the adverse impact. Enterprises should consider the length of time necessary to prevent and mitigate adverse impacts.

83. Similar to supplier assessments, enterprises should not seek to continuously “verify” suppliers for prevention and mitigation of severe adverse impacts. Where credible verifications exist, enterprises should acknowledge these verifications. On-going monitoring, however, may be applied where appropriate (e.g. quarterly reporting of chemical emissions to water for one year), but due regard should be paid to ensure that tracking is harmonized across buyers and does not place undue burden on suppliers.

What is the appropriate response when negative results are identified?

84. In instances in which adverse impacts have not been effectively mitigated or prevented, enterprises should seek to understand why this is the case. There are a number of reasons why an adverse impact may not have been effectively mitigated or prevented, including that the measures taken to prevent or mitigate are not effective, insufficient time was provided to see progress, inadequate resources were allocated or lack of will. Enterprises should re-evaluate the steps under ‘Prevent and Mitigate’ to determine the most appropriate action forward.

How can an enterprise verify that its operational-level grievance mechanisms are achieving their purpose?

85. Table 1 includes example indicators which can help an enterprise to determine whether its grievance mechanisms are effective. No single indicator can provide a full picture; but rather indicators should be considered in total to form a comprehensive picture of the strengths and weaknesses of the system or process. If an enterprise participates in a third-party grievance mechanism, the grievance mechanism should be reviewed for its effectiveness. Reviewers may include a multi-stakeholder board of experts or an institutional body.

Table 1: Grievance Mechanism Indicators	
Indicator	Interpretation
# of complaints or grievances brought to the mechanism in the period after its establishment	<ul style="list-style-type: none"> - A high number of complaints indicate that the mechanism is publicised and accessible. - A high number of complaints may indicate that the mechanism is

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	<p>trusted.</p> <p>- A low number of complaints <i>may</i> indicate a lack of awareness of the mechanism's existence or a lack of confidence in the mechanism. Further investigation should be conducted to determine whether this is the case. See the following two indicators.</p>
% of complainants that indicate an awareness of the mechanism's existence as reported to independent third party	- A high percentage indicates that the mechanism is publicised and accessible.
% of complainants that indicate the perception that the grievance mechanism provides a credible and worthwhile process.	- A high percentage indicates that the mechanism is trusted.
% of grievances that receive acknowledgement	- A high percentage (e.g. 95 or higher) indicates that the mechanism is predictable in terms of process. Enterprises should work towards 100 percent.
% of grievances that receive a proposed course of action or interim update within the deadline set in the grievance mechanism.	- A high percentage (e.g. 95 or higher) indicates that the mechanism is predictable in terms of process. Enterprises should work towards 100 percent.
% of cases that are resolved without recourse to arbitration or NCP mechanism	- This is a partial indicator of complainants' satisfaction with the company's grievance procedures and negotiation practices. This indicator does depend upon the complexity of the dispute.
% of cases the complainants report to an independent party that they considered the process to be serious, fair and respectful.	- A high percentage indicates that the mechanism is working effectively (when accessed) even in cases where no settlement was reached. Watch for a correlation between instances where no settlement is reached and where the complainant does not feel the process was fair and restful.
# of changes made to the company's policies or processes based on learning (e.g. changes to the process for receiving and addressing complaints)	- No changes or few changes made to the company's policies may indicate that the enterprise is not adequately learning from its experiences.

Source: Adapted from (2008), *Rights-Compatible Grievance Mechanisms, A Guidance Tool for Companies and Their Stakeholders*, John F. Kennedy School of Government, Harvard University, pg. 4; See also (2013), *Assessing the Effectiveness of Company Grievance Mechanisms, CSR Europe's Management of Complaints Assessment (MOC-A) Results*, CSR Europe.

How does the above guidance relate to instances in which enterprises rely on collaborative initiatives to conduct due diligence?

86. When engaging in collaborative due-diligence (for example, through an industry association or multi-stakeholder initiative), the collaborative initiative should be reviewed for conformance with this Guidance. Reviewers may include a multi-stakeholder board of experts or an institutional body.

What constitutes appropriate instances of non-disclosure?

87. Companies should report with due regard to commercial confidentiality and other competitive or security concerns.³⁵ There may be legitimate reasons for non-disclosure of information, notably:

- a. Potential risks to affected stakeholders or staff (including arising from the disclosure of personal information)
- b. The legitimate requirements of commercial confidentiality which may include, for example:
- c. Commercially-sensitive information during negotiations regarding a significant business transaction;
- d. Information legally protected against disclosure to third parties;
- e. Sensitive investigations and internal discussions regarding alleged involvement in adverse impacts;
- f. The confidentiality required by legitimate law enforcement operations.

88. Where an enterprise judges it difficult to share information from its risk assessment (e.g. anti-bribery and corruption), the enterprise may provide assurance through other methods.³⁶

89. Examples include:

- a. Invite an independent third party to review the enterprise's assessment processes and report them publicly or to a relevant multi-stakeholder initiative.
- b. Participate in a credible multi-stakeholder due diligence initiative.

Embed gender considerations into due diligence

- a. Include women in the design of verification measures;
- b. Ensure that women are proportionately included in verification measures;
- c. Consider the status of women who may be differentially or disproportionately affected by adverse impacts (e.g. women who are migrant workers, minorities, young, etc.)
- d. Collect data disaggregated by sex. It may also be important to disaggregate data by age.
- e. Assess whether grievance mechanisms are equally accessible to women and men.

35 . Business confidentiality and other competitive concerns means price information and supplier relationships without prejudice to subsequent evolving interpretation.

36 . The OECD Recommendation on Further Combating the Bribery of Foreign Public Officials addresses reporting of suspicions of bribery by external auditors. Para B. iii) states that members should require external auditors to require reporting of suspicions of bribery by the external auditor to management. Para B. iv) states that members should encourage companies that receive such reports to actively and effectively respond to them. Para. B v) states that member countries should consider requiring the external auditor to report suspected acts of bribery to the law enforcement or regulatory authorities.

Cross-cutting elements to support due diligence

Management systems

A. Enterprise policy for responsible business conduct along the supply chain

90. The enterprise should adopt a clear enterprise policy on responsible business conduct pertaining to its own operations and the enterprise's supply chain (hereafter the enterprise RBC policy).³⁷ It can consist of one single policy or several stand-alone policies; however, the enterprise RBC policy should address all matters covered by the OECD Guidelines for which due diligence applies: disclosure, human rights, employment and industrial relations, environment, combating bribery, bribe solicitation and extortion and consumer interests. If long-standing policies are in place, a gap analysis can determine gaps in comparison with the OECD Guidelines and existing policies can be updated accordingly.

91. The enterprise RBC policy should:

- a. Stipulate the enterprise's expectations of employees, suppliers and other parties directly linked to their operations, products or services by a business relationship;
- b. Clearly articulate the enterprise's practices to identify, prevent, mitigate and account for how it address its actual and potential adverse impacts as an integral part of decision-making and risk management systems, consistent with the recommendations in this Guidance;
- c. Explicitly reference the international standards, including the OECD Guidelines for Multinational Enterprises, the UN Guiding Principles on Business and Human Rights, and may reference this Guidance;
- d. Be approved at the most senior level of the enterprise. Senior level responsibility should be assigned for its implementation;
- e. Be informed by relevant internal and external expertise, and as appropriate, stakeholder consultations;
- f. Be publicly available and communicated to all employees, business partners and other relevant parties;
- g. Be reflected in operational policies and procedures necessary to embed it throughout the enterprise;³⁸ and
- h. Be reviewed and adapted on a regular basis in light of the increasing knowledge about risks in the supply chain and international standards.

92. In addition to the above, the enterprise should incorporate into its RBC policy its expectations of its direct suppliers regarding use of subcontractors and homeworkers in the supply chain.

37. The enterprise RBC policy provides a framework for how the enterprise deals with risks of adverse impacts and provides a starting point from which the enterprise can better leverage responsible business conduct in its business relationships; Adapted from Recommendation 4.; Report on responsible business conduct in the textile and garment supply chain, Recommendations of the Italian NCP on implementation of the OECD Guidelines for Multinational Enterprises (2013)

38. OECD Guidelines for Multinational Enterprises, Chapter IV, Commentary 44;

B. Engage with suppliers on the enterprise RBC policy

93. The enterprise should:

- a. Establish a prequalification process for all potential direct suppliers (including intermediaries) and their subcontractors operating at high-risk areas.
- b. Communicate to suppliers and other business partners the enterprise's expectation of due diligence.
- c. Incorporate the expectations and requirements of suppliers and licensors regarding responsible business conduct into commercial contracts and/or written agreements which can be applied and monitored. Such agreements should include:
 - Supplier commitment to develop and implement policies aligned with the OECD Guidelines, ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, and the UN Guiding Principles on Business and Human Rights across all business ethics;
 - The enterprise's policy on subcontracting and relevant procedures in the event that subcontracting is permitted;
 - Expectations regarding disclosure of information;
 - Commitment from supplier regarding cancelled orders, changes in orders, and other relevant purchasing practices which may contribute to adverse impacts.

C. Establish information management systems to support due diligence

94. The enterprise should establish (or participate in) information management systems³⁹ that are capable of storing the full extent of information necessary to conduct effective risk-based due diligence. Information should be maintained in a way that is accurate, current, clear, user-friendly and enable all intended users to access information.

95. It is recommended that information management systems facilitate external cooperation and collaboration through data sharing, with due regard to competition law, with the purpose of: improving the access to information on risks of adverse impact linked to business relationships, reducing the duplication of assessments, and facilitating the collaboration between enterprises and business relationships, workers and stakeholders on the prevention and mitigation of adverse impacts in the supply chain.

96. Due diligence is an on-going, proactive and reactive process, and therefore information may be collected and progressively built with the quality progressively improved through various steps in this Guidance.

D. Establish functional alignment

97. Supply chain planning is a cross functional process. Due diligence should be integrated from the start in processes related to supply chain management across business units. Enterprises should seek to establish functional alignment between business units, particularly in cases in which the incentives of one

39. Informational management systems may be either internal or shared.

business unit contradict the RBC policy. The following includes example processes which may promote functional alignment within an organisation.

- a. Ensure that information provided to decision makers is adequate and appropriate. For example, not all organisational functions require the same information in order to make or be comfortable with a decision and the same information may need to be presented differently to different functions.
- b. Include multiple business units in validating a decision. This type of engagement has been demonstrated to lead to more thorough information collection and generally clearer presentation of data.
- c. Facilitate feedback and learning between business units.
- d. Integrate key performance indicators related to the enterprise's RBC policy across business units.⁴⁰

Access to remedy and grievance mechanisms

98. If an enterprise identifies that it has caused or contributed to an adverse impact in its supply chain it should provide for or co-operate through legitimate processes in the remediation of the adverse impact.⁴¹ Remediation is the process of providing a remedy for a harm.

99. The Guidelines recommend that enterprises have processes in place to enable remediation. Some situations require cooperation with judicial or state-based non-judicial mechanisms. In others, operational-level grievance mechanisms for those potentially impacted by enterprises' activities can be an effective means of providing for such processes. Such mechanisms can be administered by an enterprise alone or in collaboration with other stakeholders.⁴² Industrial relations processes involving management and trade unions are themselves a form of operational-level grievance mechanisms.

100. The core criteria of operational level grievance mechanisms include: legitimacy, accessibility, predictability, equitability, compatibility with the Guidelines and transparency, and are based on dialogue and engagement with a view to seeking agreed solutions. In order to fulfil these core criteria, this Guidance recommends that operational level grievance mechanisms:

- a. Provide clear procedures and be based on contractually binding obligations to ensure redress for violations;
- b. Complement the existing landscape of judicial and non-judicial mechanisms and include rapid escalation channels to them or to other mutually acceptable arbitration mechanisms (e.g. National Contact Points);
- c. Have a clear scope and ensure that independent advice is available to affected peoples;

40 . This approach has its limits. For managers, functional differentiation is a natural response to a limited span of surveillance that forces them to focus on only a portion of their total environment or the needs of only certain stakeholders. Losing this focus on legitimate stakeholders' needs could be detrimental to organizational performance. See See Rogelio and Watson, (2009), *Cross-Functional Alignment in Supply Chain Planning: A Case Study of Sales and Operations Planning*, Working Paper, Harvard Business School.

41 . OECD Guidelines for Multinational Enterprises, Commentary on General Principles, Para. 14; OECD Guidelines for Multinational Enterprises, Chapter IV, Para. 6.

42 . OECD Guidelines for Multinational Enterprises, Commentary on General Principles, Para. 14

- d. Be managed by people whom likely affected parties (e.g. workers) trust;
- e. Be gender sensitive and considerate of the rights and interests of women, youth and the elderly;
- f. Address grievances regardless of the means through which they are raised to the enterprise;

101. Grievance mechanisms should be dialogue-based, consisting of mediated solutions. Mutually acceptable legitimate, independent third-party mediation is also a viable option. Such third party involvement could either be triggered on an ad hoc basis, or a grievance mechanism could be established as a separate function with third-party oversight and operational responsibility.⁴³ To this effect, operational-level grievance mechanisms may include multipartite monitoring teams, which may include representatives of the community, their alliances or federations, NGOs, government bodies and other independent bodies acceptable to the communities. National Contact Points for the OECD Guidelines for Multinational Enterprises can provide such mediation.

102. Operational-level grievance mechanisms should not be used to undermine trade unions.

103. See “Remediation and Operational-Level Grievance Mechanisms” on the UN Guiding Principles for more information.

Commentary

When are enterprises responsible for providing remedy?

104. Enterprises should provide for or co-operate through legitimate processes in the remediation of adverse impacts when the enterprise identifies that it has caused or contributed to the adverse impact.

What is the role of the enterprise if there are numerous parties that have caused or contributed to an adverse impact?

105. In instances in which there are numerous parties (e.g. other buyers) that have caused or contributed to an adverse impact, the enterprise should seek to collaborate with other parties.

What are potential forms of remedy?

106. Remedy can take a variety of forms and it is important to understand what those affected would view as effective remedy, in addition to the enterprise’s own view. This may be an apology, provisions to ensure the harm cannot recur, compensation (financial or other) for the harm, cessation of a particular activity or relationship, or some other form of remedy agreed by the parties.⁴⁴

What are the primary principles of appropriate remedy?

107. The following include general principles for determining appropriate remedy:

43 . Adapted from, Doyle C. (ed.) *Business and Human Rights: Indigenous Peoples’ Experiences with Access to Remedy. Case studies from Africa, Asia and Latin America* (Chiang Mai, Madrid, Copenhagen: AIPP, Almáciga, IWGIA, 2015)

44 . (2012), *The Corporate Responsibility to Respect Human Rights, An Interpretive Guide*, UN OHCHR, p.64.

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- a. The remedy sought to restore the affected person or persons and was proportionate to the significance and scale of the adverse impact;⁴⁵
- b. The remedy meets national laws and international guidelines on remediation where available; where such standards are not available, the remedy provided is consistent with that provided through similar cases;
- c. The enterprise engaged with affected stakeholders in the determination of the remedy.
- d. In instances in which the adverse impact was caused or contributed to by more than one party, the enterprise has attempted coordination with other parties to ensure fair remediation.
- e. Enterprises should assess the level of satisfaction of those who have raised complaints with the process provided and its outcomes(s).⁴⁶

108. Final agreements and outstanding issues should be recorded and should be verified and validated by those present during the engagement activity. Such agreements should not preclude access to judicial or non-judicial grievance mechanisms (e.g. through waivers).

What is the role of the state in ensuring access to effective remedy?

109. This Guidance does not address the state's role in ensuring access to effective remedy; however, as part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.⁴⁷

110. See UN Guiding Principles 25, 26 and 27 for more information on the state duty to ensure access to effective remedy.

Gender considerations

111. Enterprises should seek to develop gender-response grievance mechanisms:

- Include women in the design of operational level grievance mechanisms.
- Ensure that the grievance mechanism is accessible to women equally to men.
- Individual serving as access points for the grievance mechanism should be trustworthy, trained, knowledgeable, and approachable regardless of the complainant's gender. Special attention should be paid to vulnerable women (e.g. women who are migrants, young workers, refugees, etc.).

45 . Guidance on good practice: remedies. Local Government Ombudsman. 2016.

46 . (2015), *United Nations Guiding Principles Reporting Framework*, Shift and Mazars.

47 . United Nations Guiding Principle 25

Part 3. Annexes

- Business models
- Human rights and labour impacts
- Environmental impacts
- Bribery and Corruption

Annex 1

Application of due diligence across sourcing models

Annex 1. Key Due Diligence Points

- An enterprise's sourcing model influences how it conducts due diligence.
- Enterprises that have direct and longer-term sourcing relationships with their suppliers are best positioned to identify, prevent and mitigate adverse impacts in the supply chain.
- Intermediaries that have direct and long-term sourcing relationships with their suppliers are also more likely to be able to identify and mitigate risks of adverse impacts over time than in short-term contractual relationships. Within this context, enterprises sourcing through indirect sourcing models should seek to source through intermediaries that have established direct and long-term sourcing relationships with their key suppliers, as feasible.

Enterprises that have direct *and* long-term sourcing relationships with their suppliers are best positioned to identify and prevent and mitigate adverse impacts in their supply chain because their knowledge of the supplier, the sourcing context and the risks of adverse impact associated with both is likely to increase over time. For example, enterprises are more capable to establish partnerships with direct suppliers by which the supplier and enterprise tracks impact of risk mitigation or prevention over time, leading to more effective impact mitigation-prevention strategies. Furthermore, in instances in which an enterprise has direct and long-term sourcing relationships with its key suppliers, the key supplier is more likely to have greater business security and therefore greater incentive and capacity to prevent and mitigate risks over time.

Intermediaries that have direct and long-term sourcing relationships with their suppliers are also more likely to be able to identify and mitigate risks of adverse impacts over time than in short-term contractual relationships. Within this context, enterprises sourcing through indirect sourcing models should seek to source through intermediaries that have established direct and long-term sourcing relationships with their key suppliers over time, as feasible.

Direct sourcing

The following recommendations are relevant to *any* enterprise sourcing directly from a supplier.

The enterprise should:

- a. Establish and implement a prequalification process for direct suppliers. The prequalification process should assess actual adverse impacts and risks of adverse impacts linked to the supplier. Based on all available information. The enterprise should determine whether to pre-qualify the supplier.

The following recommendations should be applied to prequalified direct suppliers.

- b. Integrate expectations of suppliers on matters covered by the OECD Guidelines into supplier contracts.
- c. Ensure capability to liaise directly with the supplier and workers regarding expectations on matters covered by the OECD Guidelines, risk identification, and risk mitigation.
- d. Ensure capability to monitor risk mitigation/prevention measures over time: e.g. through on-the-ground staff, credible industry or multi-stakeholder initiatives, credible third-parties.
- e. Build leverage with direct suppliers by increasing orders for suppliers that perform well in relation to quality of production and responsible business conduct.
- f. Develop a partnership approach with direct supplier management and workers to mitigate or prevent adverse impacts.
- g. Where feasible, continuously increase percentage of resources (i.e. financing and staff time) allocated towards risk mitigation and prevention in comparison to risk assessment. (This implies that the enterprise's understanding of risk is fairly comprehensive in a long-term supplier relationship).
- h. Establish feedback loops between suppliers and the enterprise regarding ways that the enterprise may be contributing to risks (e.g. through late payment of orders).

Measure the effectiveness of risk mitigation and prevention measures over time and revise measures accordingly.

Indirect sourcing

The following provides recommendations on how enterprise can apply due diligence when sourcing indirectly (i.e. sourcing through intermediaries). The following is only relevant in instances in which the enterprise relies on the intermediary to conduct supply chain due diligence. In such cases, enterprises should evaluate the capability of the intermediary to apply due diligence in accordance with this Guidance.

The enterprises should:

- a. Establish and implement a prequalification process for intermediaries. The prequalification process should assess the intermediary's capability to apply due diligence on its own supply chain. Enterprises should seek to understand the following:
 - The intermediary is a legitimate company with a proper license;
 - Whether or not the intermediary has its own infrastructure or whether it outsources to another company;
 - The total number of suppliers that the intermediary sources from and the geographic location of its suppliers;
 - Frequency with which the intermediary visits suppliers and the staff member functions that visit suppliers;
 - The average length of time the intermediary holds a relationship with its suppliers;

- Due diligence measures that the intermediary has in place to pre-qualify its suppliers and the alignment with the recommendations under “Direct sourcing models” above;
- Due diligence measures the intermediary has in place to manage risks linked to business relationships.
- Due diligence measures in place to verify that risks have been mitigated
- The intermediary’s track record for performance related to risk management, including client references.
- Disclosure of family relations with any suppliers.⁴⁸

The following recommendations should be applied to pre-qualified intermediaries.

- b. Integrate expectations of intermediaries on matters covered by the OECD Guidelines into contracts in accordance with this Guidance.
- c. Intermediaries should apply a prequalification process to their direct suppliers and intermediaries. The enterprise may prequalify a supplier through the same processes as it employs for its direct suppliers, or the intermediary may prequalify suppliers. In instances in which the intermediary itself conducts the prequalification process for its suppliers, the enterprises should ensure that the prequalification process of the supplier aligns with this Guidance and the expectations of the enterprise.
- d. The enterprise should be able to know at any time where its orders are currently located. Intermediaries should be prepared to disclose the following:
 - Selection of preapproved suppliers
 - Up-to-date information on the supplier
 - Supply chain due diligence process
 - Results of most recent supplier risk assessment and corresponding risk mitigation or prevention measures; most importantly, intermediaries should alert the enterprise to the identification of any risks of adverse impacts of greatest severity linked to suppliers immediately.
- e. Where feasible, intermediaries should establish long-term relationships with their direct suppliers to support the ongoing identification and effective mitigation of risks of adverse impacts.
- f. Enterprises should take steps to ensure that an intermediary is conducting business partner due diligence in accordance with this Guidance. There are a number of ways that this can be accomplished:
 - The intermediary undergoes a third-party assessment on an annual basis to identify strengths and weaknesses in its due diligence processes.
 - The intermediary participates in a multi-stakeholder initiative which is reviewed by a governing body for its adherence to this Guidance on due diligence.
 - The enterprise conducts assessments on a random sampling of pre-approved suppliers.

48 . If the intermediary does have a family relationship with the supplier, it should disclose this information and due diligence should be conducted by a third-party.

Business to business subcontracting

A subcontractor is a person or business that performs some service or material necessary for the performance of another's contract. Unauthorised subcontracting increases the risk of poor working conditions, labour violations, human rights abuses and environmental impacts (in some cases). Within the garment and footwear supply chain, subcontracting is commonly found at the cut-and-trim manufacturing stage and may include small-scale factories, vendors, middlemen, or unregistered household production units. Subcontracting to external printers is also common. If subcontracting is a common practice in an enterprise's supply chain, the enterprise should establish clear requirements regarding transparency and the selection of subcontractors.

Subcontracting is not authorised:

Subcontracting enables an enterprise to respond quickly to customer demand without increasing overtime when orders cannot be filled with the current worker base. Therefore, if an enterprise chooses to prohibit subcontracting, the enterprise should put in place controls to ensure that subcontracting does not continue on an illegal basis to unauthorised suppliers or that the placement of orders does not result in forced overtime or other adverse impacts.⁴⁹ For example, in instances in which the enterprise changes the specifications of orders, the lead time should likewise be amended to reduce the risk of unauthorised subcontracting.

Subcontracting is authorised:

If the enterprise permits subcontracting the enterprise should establish clear requirements for the selection of subcontractors and transparency.

- a. **Prequalification of subcontractors:** The enterprise prequalifies subcontractors through the same processes as it employs for its direct suppliers. In instances in which the supplier itself conducts the prequalification process for its subcontractors, the enterprises should ensure that the prequalification process of the supplier aligns with this Guidance. The subcontractor should disclose all supplier information as well as the processes that it will put into place to prevent or mitigate adverse impacts in its supply chain. Subcontractors should renew their approval process on a semi-regular basis (e.g. annual basis) to stay on the approved subcontractor list.
- b. **Contract process:** Direct suppliers may subcontract out to previously approved subcontractors. The enterprise should be able to know at any time where its orders are currently located. Direct suppliers should be prepared to disclose the following:
 - Intent to subcontract work;
 - Selection of pre-approved subcontractor;
 - Up-to-date information of subcontractor;
 - Size of contract allocation.

Where feasible, manufacturers should establish long-term relationships with their subcontractors to the ongoing identification and effective mitigation of risks of adverse impacts.

49. Banning the use of subcontracting may increase the likelihood that subcontracting continues but on an illegal bases to un-authorised suppliers. Risks of adverse impact are increased in this instance.

Annex 2

Application of due diligence to purchasing practices and product design processes

Annex 2. Key Due Diligence Points

Purchasing practices

- Enterprises should engage with suppliers and workers to seek their feedback on how the enterprise's activities may be contributing to adverse impacts at the site-level.
- Enterprises should track purchasing practices that are high-risk for contributing to adverse impacts.
- Enterprises should put in place controls to prevent purchasing practices that are higher-risk for contributing to adverse impacts.

Product design process

- As a component of due diligence, enterprises should take steps to understand the environmental risks linked to their products and adopt controls during the product design phase to reduce the environmental impact of high-risk product lines.

Purchasing practices

The following recommendations are targeted towards brands, retailers and intermediaries.

This Annex provides guidance on how enterprises can identify if and how they are contributing to adverse impacts in their supply chain through their purchasing practices and how to prevent future contributions.⁵⁰

Enterprises should:

- a. Review the findings of the supply chain risk assessment and context assessment of high-risk areas of the supply chain.
- b. Engage with suppliers and workers to seek their feedback on how the enterprise's activities may be contributing to adverse impacts at the site-level.
- c. Track practices that are high-risk for contributing to adverse impacts. Example practices include:
 - Late placement or payment of orders;
 - Change of orders;
 - Orders are cancelled;
 - Rushed orders are placed during peak times or holidays in sourcing country;

50 . See Ethical Trade Initiative Norway, *Suppliers Speak up*, (2014) for more information on how to mitigate the risk of contributing to adverse impacts through purchasing practices in the garment and footwear supply chain.

- Lead times are shorter than feasible production time.

If an enterprise identifies that the above practices are common, the enterprise should investigate why such purchasing practices are common. In some cases, the answer may be simple (e.g. purchasing teams are unaware of national holiday schedules) and in other cases the answer may be far more complex. Furthermore, poor practices may be primarily caused by the buyer or the supplier (e.g. due to poor communication). Teams responsible for the placement of orders should be included in the investigation.

Enterprises should likewise develop procedures for purchasing teams to follow in instances in which red-flags are raised that practices may contribute to adverse impacts (e.g. in instances in which orders must be placed late, there should be procedures in place to ensure that undue pressure is not placed on the supplier). See Table 2.1 for example indicators and risk prevention measures.

Table 2.1: Example indicators and risk prevention measures

Risk factor	Example Indicators	Example risk prevention measures
Lack of forecasting and information sharing from buyers delay supplier's ability to effectively plan production	- % of time suppliers are included in the forecasting process	- Share the purchasing plan with suppliers and communicate updates in sufficient time
Late placement of orders can result in overtime and subcontracting Changes made to orders after order confirmation increases the risk of production stop and delays Orders placed too late in peak season, late deliveries from material suppliers and delays in production sign-off may result in excessive overtime or forced overtime	- % of orders placed late - % of orders changed after order placement - # of days between the last change and shipment	- Set final order placement dates with the supplier - Communicate the deadlines to everyone in the buying team - In instances in which orders are placed late, confirm capacity with the supplier. - In instances in which orders are changed after order placement or order are place date, evaluate the probability of adverse impacts, excessive or forced overtime. Mitigate risks by a) paying for rushed order delivery b) changing the delivery date or c) providing list of pre-qualified subcontracts to fill a portion of the order

Source: Adapted from Suppliers speak up, How Responsible Purchasing Practices Can Improve Working Conditions in Global Supply Chains, Ethical Trade Initiative Norway

Product design process

The following recommendations are targeted towards those involved in the design of products (e.g. brands, retailers).

A significant portion of product-related environmental impacts can be influenced during the product design phase. As a component of due diligence, enterprises should take steps to understand the environmental risks linked to their products and adopt controls during the product design phase to reduce the environmental impact of high-risk product lines. In this regard, enterprises should consider the

environmental characteristics of a product alongside other features—feasibility, cost, demand—when assessing products for development.⁵¹

Annex 3

Application of due diligence to subcontracting to homeworkers

Annex 3. Key Due Diligence Points

- Homeworkers often contribute to a broad range of suppliers through intermediaries. In these instances, the enterprise should take steps to identify communities of homeworkers known to be contributing to the enterprise's supply chain broadly.
- The most important measure to prevent and mitigate adverse impacts is to support the formalisation of homeworkers over time.

This annex aims to minimise the risk of the marginalisation of homeworkers, particularly the victims of extortion, while promoting responsible supply chains, thereby creating economic and development opportunities for homeworkers. This annex proposes measures to build secure, transparent and verifiable garment and footwear supply chains from raw material to sale and enable due diligence for homeworkers to achieve these objectives, including through formalisation and legalisation efforts. This Guidance recognises that there are no quick fixes and on-size-fits-all solutions, it is also widely accepted that informality represents significant loss for the individual and his/her family.

Governments, international organisations, donors, enterprises in the supply chain and civil society organisations may consider the opportunity to explore collaborative ways to make use of these suggested options or other complementary approaches as they deem appropriate in accordance with national laws.

Framework for prevention and mitigation measures

The following provides information on the broader framework necessary for the mitigation and prevention of adverse impacts linked to homework. Enterprises should feed into the below framework when designing due diligence, however, enterprises are not responsible to implement all of the below recommendations on their own. Rather the following should serve as a reference to all stakeholders involved in the mitigation of risks of adverse impacts to homeworking in the garment and footwear supply chain. Specific recommendations for enterprises are provided below.

Homeworkers, no less than other workers, should be formalised in order to achieve good terms and conditions of employment. Homeworkers should be viewed as an intrinsic part of the workforce entitled to receive equal treatment. In the context of this Guidance, formalisation is the process by which workers are transitioned from informal jobs to formal jobs.⁵² Formalisation should be considered a process rather than a single step. Formalisation is therefore recommended through:

- 51 . The Materials Sustainability Index may be a useful tool in identifying risks linked to common materials in the garment and footwear sector. The MSI is a cradle-to-gate index informed by life cycle assessment (LCA) derived inventory data to engage designers and the global supply chain of garment and footwear products in environmental sustainability.
- 52 . The ILO/ICFTU international symposium on the informal sector in 1999 proposed that the informal sector workforce can be categorized into three broad groups: (a) owner-employers of micro enterprises, which

- a. Knowing the reasons for lack of formalisation in existing homeworker production systems in order to identify the best strategies for incentivising and enabling formalisation.⁵³
- b. Providing technical assistance to help formalise homeworkers and other informal workers
- c. Acknowledging the diversity in the types and sizes of homeworkers activity
- d. Creating and participating in collaborative initiatives to establish the modalities and financing of support funds to assist with the formalisation process.⁵⁴
- e. Promoting the legalisation of workers.

Legalisation of operations

Legal identity and recognition of worker and or entrepreneur status are often necessary first steps for the formalisation of workers⁵⁵; however the causes of informality are many and are generally unrelated to legality. It would therefore be ineffective to pursue formalization through legislative reform alone.⁵⁶ Within this context, enterprises, civil-society organisations and government can:

- a. Assist homeworkers to obtain contracts and other related authorisations through legitimate processes. Consider other regulatory measures to legalise operations of homeworkers.
- b. The legalisation of homeworkers should not impose expectations for homeworkers that cannot be met and therefore marginalise homeworkers further (e.g. the obligation to work in a particular centre may marginalise homeworkers who can only work from home).

Organisation, representation and social dialogue

Organising workers and entrepreneurs in the informal economy is the first step towards social dialogue and the development of tripartite solutions that take into account the contextual factors and diversity within the informal economy. Homeworkers should be organised in order to achieve good terms and conditions of employment.⁵⁷ Given the unique needs and circumstances of homeworkers, the organisation of homeworkers may look differently from other organised workforces. Given the predominance of women homeworkers in the garment and footwear sectors, trade unions should promote the inclusion of women and women organisers.

employ a few paid workers, with or without apprentices; (b) own-account workers, who own and operate one-person business, who work alone or with the help of unpaid workers, generally family members and apprentices; and (c) dependent workers, paid or unpaid, including wage workers in micro enterprises, unpaid family workers, apprentices, contract labour, homeworkers and paid domestic workers.

- 53 . It is imperative that any formalisation scheme takes the local context into consideration. This is a critical first step before taking any other action. See also ETI Homeworker Guidelines.
54. When the applicable legal framework is not enforced, or in the absence of such a framework, the good faith efforts of homeworkers and enterprises to operate within the applicable legal framework (where it exists) as well as their engagement in opportunities for formalisation as they become available (bearing in mind that in most cases, homeworkers have very limited or no capacity, technical ability or sufficient financial resources to do so should be taken into account.
55. (2007), *The informal economy: enabling transition to formalization*, ILO
- 56 . Ibid.
- 57 . Ibid.

Special services that could be provided by trade unions for informal economy workers include information on their legal rights, educational and advocacy projects, legal aid, medical insurance, credit and loan schemes and the establishment of cooperatives. There is also a need to develop positive strategies to combat all forms of discrimination, to which informal economy workers are particularly vulnerable.⁵⁸

Recommendations for retailers, brands, intermediaries, and manufactures linked to homeworking

I. Identify actual and potential adverse impacts

As a first step enterprises should identify product lines which may include the involvement of homeworkers and sourcing countries which are known to have high rates of homeworkers. Similarly, manufacturers should identify product lines that are outsourced to homeworkers.

If the enterprise assesses that homeworking is likely a part of its supply chain, the enterprise should take steps to prevent and mitigate adverse impacts.

II. Prevent and mitigate adverse impacts

- a. In instances in which retailers, brands, intermediaries or manufacturers source consistently from the same homeworkers (e.g. for luxury goods or artisanal work), retailers, brands, intermediaries and manufacturers should seek to establish transparency to identify homeworkers and assess conditions of employment with recommendations in this Guidance.
- b. In instances in which the enterprise sources indirectly through complex business relationships from homeworkers, the enterprise should seek to establish preliminary transparency of the supply chain. The purpose of transparency is to identify the most appropriate intervention point for prevention/mitigation measures (e.g. training of intermediaries).
- c. In some instances, identifying the specific homeworkers contributing to an enterprise's supply chain at any one given time is neither cost effective nor realistic. Homeworkers often contribute to a broad range of suppliers through intermediaries. In these instances, the enterprise should take steps to identify communities of homeworkers known to be contributing to the enterprise's supply chain broadly. The enterprise may then seek to:
 - Identify local initiatives promoting the formalisation of homeworkers and their protection against exploitation. Local initiatives may focus on a number of areas important to the protection of homeworkers from exploitation including, but not limited to: rights training, skill straining, and legalisation (e.g. through contracts), and service provision. Engage with (e.g. through financial support) credible initiatives where they exist and avoid duplication. Where no credible initiatives exist, collaborate with local government and/or local civil society to establish credible programming.
 - Support the establishment of a grievance mechanism, and take steps to enable homeworkers to access this mechanism so that they may alert the enterprise and/or government authorities of adverse impacts.
- d. Enterprises may also seek to engage with government to address root causes of adverse impacts. Enterprises may engage with the local or national government in a number of ways, examples include:

58 . (2007), *The informal economy: enabling transition to formalization* , ILO

- Promote the coverage of the law to extend to workers in the informal economy;
- Draw attention to the underlying causes of informality and encourage government to remove underlying barriers to entry into mainstream economic and social activities;
- Promote the extension of social security coverage, by promoting access to health care and education, to informal workers, including homeworkers where not already provided for. The formalities required for social security coverage can constitute a first step towards the formalisation of workers and the realisation of their civil, economic and social rights.⁵⁹

Resources

OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Annex.

(2007), *The informal economy: enabling transition to formalization*, ILO.

ETI Homeworker Guidelines. Ethical Trade Initiative.

59. Ibid.

Annex 4

Child Labour

Annex 4. Key Due Diligence Points

- Regardless of whether specific incidents of child labour impacts have been identified, the enterprise should support its suppliers in preventing child labour if risk-factors for child labour have been identified and adequate controls are not already in place to prevent child labour.
- In recognition that child labour impacts are rarely unique to a particular supplier, enterprises should seek to take a sector-wide approach within a particular geographic location (e.g. production-cluster). In practice, this means that the enterprises operating in the sector have a harmonized strategy for training, capacity building, tracking of results and stakeholder engagement.
- In recognition that child labour is rarely unique to one sector within a particular geographic region, but is often found in a range of sectors, and that the removal of children from one sector may increase the risk of the child simply finding employment in another, enterprises should seek to coordinate and collaborate with other sectors operating in the same geographic region.

Select International Instruments

OECD Guidelines for Multinational Enterprises, Chapter IV, Human Rights and Chapter V, Employment and Industrial Relations

Minimum Age Convention, 1973 (No. 138), ILO

Worst Forms of Child Labour Convention, 1999 (No. 182), ILO

I. Identify actual and potential adverse impacts

Supply chain risk assessment & context assessment

- a. Identifying and prioritising high-risk areas for child labour impacts often requires an understanding of the local context. As such, enterprises may choose to conduct the supply chain risk assessment and context assessment in parallel as appropriate.
- b. Enterprises are encouraged to consult existing reports put forth by governments, international organisations, and credible institutions for guidance on materials and production processes at higher risk for child labour as well as sourcing countries which have been flagged as high-risk for child labour impacts.⁶⁰ Enterprises are likewise encouraged to cooperate with governments, workers, international organisations, and other stakeholders to identify high-risk stages of the supply chain and high-risk areas for child labour impacts. This can be done at an international or local level.⁶¹

60 . For example, the United States Department of Labor, List of Goods Produced by Child Labor or Forced Labor includes a list of processes and materials which hold higher risk of child labour impacts.

61 . See IOE and ITUC Child Labour Platform.

- c. In the garment and footwear sector, relevant risk factors for child labour impacts include the following. See Table 4.1 for risk-factors pertaining to different stages of the sector.
- Poor enforcement of child labour laws;
 - High rates of informal employment within the sector;
 - High rates of household poverty;
 - Poor access to and/or poor quality of education⁶²;
 - Child education is not valued; Education of girls is not valued;⁶³
 - Child labour is considered to be culturally acceptable;
 - Use of apprentice schemes in the sector;⁶⁴
 - High rates of subcontracting to low-skilled workers;⁶⁵
 - Use of private recruitment or employment agencies;⁶⁶
 - High rates of migrant labour;
 - Use of seasonal work;
 - Tasks which are considered to be better performed by children (e.g. hand-picked crops, beading, embroidery);
- d. Enterprises should identify and assess existing local and national initiatives to combat child labour. Such initiatives may be government-led, civil-society led, or both. Mapping existing initiatives, their objectives, and their general impact will help an enterprise to understand how it can feed into existing strategies to prevent child labour impacts in its supply chain.

62 . A failure of access to school or quality of schooling could lead to children not going to school. For example, if there are no schools nearby, children will not be able to attend school and thus are more likely to work. If school quality is poor, parents will not see a value in sending their children to school. If school fees are prohibitive, parents will not send their children to school. See Jensen, (2000), *Development of Indicators on Child Labor*, A Report to the International Program on the Elimination of Child Labor at the International Labor Organization.

63 . In a context in which child labour is valued, efforts to increase access to education may not have a great impact on reducing child labour unless cultural norms and values are also addressed in an appropriate way.

64 . Children who are considered to be apprentices may not receive adequate compensation and may be subjected to long hours of work which interfere with their education.

65 . Use of subcontracting reduces visibility into labour standards thus increasing the risk of child labour impacts;

66 . The urgency to hire employees can result in a dependence on labour recruiters and their agents, which in turn creates layers of separation between the employer and the worker. This disconnects means that employers may be unaware of the hiring practices of their operations, leaving worker exposed to exploitation. See, (2015), *Trafficking in Persons Report*, Department of State, United States of America.

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- e. In recognition that child labour impacts often affect more than one sector in a region, enterprises should identify other sectors which are likewise at risk for child labour impacts in the region and identify existing sector-led measures to prevent child labour impacts.

Table 4.1: Risk factors for child labour in the garment and footwear sector

Examples included in Table 4.1 do not cover all existing situations of child labour, but are intended to help enterprises gain a better understanding of the ways in which child labour impacts may be present in their supply chain.

Stage of supply chain	Risk factors
Cotton	<ul style="list-style-type: none"> – When hand-picked, cotton may be more likely than mechanically harvested cotton to be linked with child labour impacts. – Cotton harvesting often employs seasonal workers thus increasing the risk of child labour impacts. – Cotton harvesting employs large percentages of informal workers in many contexts. – In some cases, children migrate through established family or community “kinship” systems to work on cotton plantations. However, although children may migrate voluntarily they may be exploited upon arrival.¹
Garment / Textile manufacturing	<p>Textile production</p> <ul style="list-style-type: none"> – In some contexts, such as knitting and weaving, children are employed through “apprentice” schemes or similar employment schemes. In such contexts, children are at higher risk of adverse impacts related to long working hours, lack of adequate pay, and interference with education. <p>Garment manufacturing:</p> <ul style="list-style-type: none"> – The use of subcontracting is prevalent in ready-made-garment manufacturing. Use of subcontractors reduces the visibility into the labour standards of the supplier and increases the risk of child labour impacts. – In some contexts, short-term workers are employed during peak seasons or to respond to rush orders. Employment of children to meet urgent demands for labour is an increased risk. <p>Garment manufacturing and Textile production</p> <ul style="list-style-type: none"> – Private employment and recruitment agencies are used in many countries producing garments and footwear. Without adequate controls in place, the use of such agencies decreases the control of the enterprise over hiring standards and increases the risk of child labour impacts. – In some cultures and contexts, children are thought to be better at certain skills. For example, children are thought to be more skilled at beading and embroidery in some contexts.

1. See (2015), *Strengthening Protections Against Trafficking in Persons in Federal and Corporate Supply Chains*, Verite .

Supplier Assessment

Enterprises are encouraged to rely on existing guidance by credible organisations on how to assess child labour where such assessments account for the following.

- a. In recognition of the high variance in the drivers, severity, and nature of child labour across contexts, assessments should be tailored to the findings of the context assessment to the extent

feasible and reasonable. For example, assessments may be tailored to a particular country or production cluster.

- b. In recognition that traditional document assessments are often not sufficient in assessing child labour, supplier assessments should rely heavily on worker, management and stakeholder interviews. Enterprises should consult with workers and other stakeholders as to whether assessments should take place only within the workplace setting or also offsite.
- c. In recognition that traditional interviews are not always effective in engaging children, enterprises are encouraged to consider participatory methods of assessment where high risks of child labour are flagged and traditional interviews are not demonstrating to be effective.⁶⁷
- d. In recognition that children employed in worst forms of child labour may be afraid to respond to interviewers, enterprises should engage qualified experts during the supplier assessment where high risks of worst forms of child labour are flagged.

Internal Assessment

Enterprises should take steps to determine if their own actions are contributing to child labour. Enterprises should seek to track the following:

- a. Frequency of last-minutes style changes;
- b. Frequency of late placement of orders;
- c. Frequency of last-minute orders;
- d. Frequency of the above during national holidays or peak seasons;
- e. Other indicators which may indicate contribution to child labour.

Table 4.2 Example actions and associated child labour risks

Example Actions	Potential child labour risk
Late placement of orders	Hire of children to fill employment gaps;
Changes made to orders without change in delivery date	Unauthorised subcontracting to suppliers who employ children illegally
Orders placed too late in peak season	Increased working hours of young workers beyond those permitted by law

II. Prevent and mitigate adverse impacts

Government has a duty to protect against child labour impacts. However, in contexts where gaps in governance exist, the enterprise still holds a responsibility to prevent against child labour impacts in its supply chain.

⁶⁷ . Example participatory methods of assessment include role-play, asking the child to draw a picture and describe it; showing the child photographs to elicit comments; asking a child who knows how to write to share a narrative or account; and showing the child a diagram or map and asking questions about it (always remembering that diagram and map reading are also learned abilities).

If the enterprise identifies—for example through supplier assessments—instances of child labour, it should ensure that appropriate remedy is provided for by the employer.⁶⁸ The enterprise should then support its supplier to prevent any future instances of child labour. However, regardless of whether specific incidents of child labour impacts have been identified, the enterprise should support its suppliers in preventing child labour if risk-factors for child labour have been identified and adequate controls are not already in place to prevent child labour.

Enterprises are encouraged to rely on existing guidance by credible organisations on how to prevent child labour impacts. In many cases, prevention measures are built around the following components:

- a. Building the capacity of the supplier to prevent child labour impacts, for example, through worker training, human resource training, pre-qualification process of private recruitment and employment agencies⁶⁹, and formalisation of worker contracts;
- b. Reducing business incentives for child labour by addressing purchasing practices which may contribute to child labour impacts;
- c. Engaging in existing initiatives (e.g. identified during the context assessment) to prevent child labour impacts.

Enterprise should likewise take the following into consideration when establishing measures to prevent child labour impacts in its supply chain.

- a. In recognition that child labour impacts are rarely unique to a particular supplier, enterprises should seek to take a sector-wide approach within a particular geographic location (e.g. production-cluster). In practice, this means that the enterprises operating in the sector have a harmonized strategy for training, capacity building, tracking of results and stakeholder engagement.
- b. In recognition that child labour is rarely unique to one sector within a particular geographic region, but is often found in a range of sectors, and that the removal of children from one sector may increase the risk of the child simply finding employment in another, enterprises should seek to coordinate and collaborate with other sectors operating in the same geographic region. In practice, this may mean that cross-sector regional dialogues are established to address specific risks of child labour within a particular geographic region. It may also mean, sharing training resources, indicators and results across sectors.⁷⁰
- c. In recognition that the most effective prevention measures often require addressing systemic and root causes of child labour (e.g. lack of access to education), enterprises should seek to feed into existing initiatives which have demonstrated impact in addressing child labour (e.g. government initiatives, multi-stakeholder initiatives⁷¹, civil society initiatives).

68 . The enterprise should provide for or co-operate through legitimate processes in the remediation of adverse child labour impacts when the enterprise identifies that it has caused or contributed to the adverse impact.

69 . See (2012), *Employment and Recruitment Agencies Sector Guide on Implementing the United Nations Guiding Principles on Business and Human Rights*, European Commission.

70 . See IOE and ITUC Child Labour Platform.

71 . See the ILO-IOE Child Labour Guidance Tool for Business, Hard Question 5 for practical questions to consider when evaluating the role that an MSI is intended and able to play in preventing and mitigating adverse child labour impacts.

III. Account for how adverse impacts are addressed

Enterprises should consider the following:

- a. Enterprises should include feedback from external stakeholders in tracking worst forms of child labour impacts.
- b. Where workplace-based child monitoring committees are established, such committees should coordinate with community-level child monitoring programs (where such programs are active and effective).
- c. Enterprises should harmonize methodologies and indicators for tracking child labour impacts across the sector within a given region. This may enable more effective impact measuring over time.
- d. Where child labour affects more than one sector within a particular region, enterprises should consider coordinating and collaborating across sectors to harmonize methodologies and indicators for tracking child labour impacts. This may enable the sector to flag whether child labour is simply being shifted from one sector to another.

IV. Cross-cutting elements to support due diligence

Grievance mechanisms

Enterprises should consider the following when establishing operational-level grievance mechanisms for child labour impacts:

- a. Children should not be expected to access grievance mechanisms themselves. Grievance mechanisms should therefore be accessible to those who can raise concerns on behalf of the child, such as committees tasked with monitoring child labour, trade unions, community members, procurement staff, local civil society and government officials.⁷²
- b. Outreach on the use of grievance mechanism should be incorporated into community training on child labour. In order to facilitate this, enterprises may provide training to local civil society on use of the grievance mechanism for civil society to then incorporate into their training.

Access to remedy

The enterprise should provide for or co-operate through legitimate processes in the remediation of adverse child labour impacts when the enterprise identifies that it has caused or contributed to the adverse impact

Remedy should seek the betterment of the child and ensure that the child is not being pushed into a more precarious situation.

Enterprises and their suppliers should consider developing operational guidelines which detail the approach towards remediation of child labour. Such guidelines should take into account the local

72 . See *Report 2010-2011, Business practices and lessons learned on addressing child labour*, Child Labour Platform.

context and may refer to nominated in-country trade unions, experts or NGOs which could be contacted in instances of child labour.⁷³

When the child is **below the legal working age**, the goal of remediation should be the withdrawal from employment and to ensure that alternatives are in place. The process of remediation should include consultation with the caregivers of the child and seek to enrol the child in school without damaging their welfare or the child of his/her family. Examples include:

- a. The child is removed from the workplace and the employer pays the school fees of the child while the child is enrolled in school (until the minimum ages of schooling);
- b. The child is removed from the workplace and a member of the child's family is hired in his/her stead;
- c. The child is removed from the workplace and enrolled in a transitional schools for children who have fallen behind their peer group;
- d. The child is removed from the workplace and the child's family is enrolled in an existing program to help address root causes of child labour (e.g. income gaps).

Where they exist, enterprises should seek to engage with credible initiatives in the community to help children make the transition from work to school.

If a child is engaged in hazardous work, the child should be immediately removed from hazardous tasks. Worst forms of child labour situations may be a crime that needs to be reported to relevant authorities. The employer should consult external experts (e.g. doctors) to identify any adverse impacts (e.g. health impacts) due to the child's employment in hazardous tasks and all adverse impacts should be appropriately remedied.⁷⁴

In instances in which the child is at or above the legal working age, the child should have the option to continue his or her employment on appropriate tasks.

Monitoring is critical to ensure that the former child labourer is adequately protected and has not returned to work or been placed in a more precarious situation. The employer and enterprise should follow-up with both the supplier and external stakeholders as appropriate.

73 . Ibid.

74. See *Standard Guidance, Child Labour*, Responsible Jewellery Council.

Resources

Identify

- *Trafficking in Persons Report*, Department of State, United States of America.
- *List of Goods Produced by Child Labor or Forced Labor*, Department of Labor, United States of America.
- (2005), *Manual on Child Labour Rapid Assessment Methodology, Statistical Information and Monitoring Programme on Child Labour (SIMPOC)*, ILO and UNICEF.
- (2015), *Strengthening Protections Against Trafficking in Persons in Federal and Corporate Supply Chains*, Verite.

Prevent and Mitigate

- *Report 2010-2011, Business practices and lessons learned on addressing child labour*, Child Labour Platform.
- (2012), *Employment and Recruitment Agencies Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights*, European Commission.
- (2007), *Guide Two: How Employers Can Eliminate Child Labour*, ILO.

Account

- “Grievance Mechanisms”, *Report 2010-2011, Business practices and lessons learned on addressing child labour*, Child Labour Platform.
- “Remediation of Child Labour”, *Report 2010-2011, Business practices and lessons learned on addressing child labour*, Child Labour Platform.
- (2005), *Guidelines for Developing Child Labour Monitoring Processes*, ILO-IPEC.

Policy

- (2015), “C1, Developing a Policy Commitment and Embed it Throughout the Organisation”, *Child Labour Guidance Tool for Business*, ILO-IOE.

Standards

- ILO Helpdesk

ANNEX 5

Discrimination – Sexual harassment and gender-based violence

Annex 5. Key Due Diligence Points

- Sexual harassment and gender-based violence can be particularly difficult to identify due to a dearth of country-level and sector-level data on the prevalence and severity of adverse impacts.
- In the context of sexual harassment, enterprises should make the assumption that if sexual harassment is a high-risk at a particular geographic location, it is a high-risk within the workplace. This is true even if specific instances of sexual harassment have not been reported on-site.
- Workers should be provided avenues outside of their employer for filing a complaint so they do not have to complain to the harasser or to someone with whom they do not feel comfortable.

Select International Instruments

Equal Remuneration Convention, 1951 (No. 100)

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

1998 Declaration on Fundamental Rights and Principles at Work (ILO)

Declaration on the Elimination of Violence against Women, adopted by the United Nations General Assembly (A/ RES/48/104), New York, 20 December 1993

Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence against women (Eleventh session, 1992), U.N. Doc. A/47/38 at 1 (1993), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 243 (2003).

Convention on the Elimination of All Forms of Discrimination against Women, New York, 18 December 1979, United Nations

Definitions

Violence against women: Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. (United Nations)

Sexual harassment: Sexual harassment includes such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment. (United Nations)

I. Identify actual and potential adverse impacts

Supply chain risk assessment and context assessment

Women account for a majority of the labour force across most stages of the garment and footwear supply chain. As often low-income workers, migrant workers and/or women working in the informal economy, women in the garment and footwear supply chain are particularly exposed to risks of sexual harassment and gender-based violence in the workplace.⁷⁵

Sexual harassment and gender-based violence can be particularly difficult to identify due to a dearth of country-level and sector-level data on the prevalence and severity of adverse impacts.⁷⁶ Enterprises are therefore encouraged to make reasonable efforts to identify high-risk sourcing locations for sexual harassment and gender based violence. See Table 5.1 for common risk factors for higher risks of sexual harassment or gender-based-violence.

Table 5.1 Example risk factors for sexual harassment and gender-based violence

Examples included in Table 5.1 do not cover all possible risk factors for sexual harassment and gender-based violence, but are intended to help enterprises gain a better understanding of the ways in which sexual harassment impacts may be present in their supply chain.

Risk Categories	Risk Factors
Country risks	<ul style="list-style-type: none"> – Strong traditional views of women can be a risk factor for sexual harassment and gender-based violence towards women who work.² – Sexual harassment and/or gender based violence is not criminalized
Vulnerable groups	<ul style="list-style-type: none"> – Girls and boys in child labour – Forced and bonded labourers – Migrant workers – Workers in precarious employment are more vulnerable to demands for sexual favours in exchange for employment opportunities. – Refugee women are likely to have limited opportunities for work, leaving them vulnerable to demands for sexual favours in exchange for employment opportunities. – Young women who have most recently entered the workplace are more likely to respond to the pressures and bribes of their superiors inside the factory. The worker's inexperience, lack of information and inability to trust any co-worker increase her exposure to sexual harassment.
Workplace risks relevant to garment/footwear sector	<ul style="list-style-type: none"> – Low-income women workers are more vulnerable to demands for sexual favours in exchange for increased benefits or wages.¹ – Women are more vulnerable to sexual harassment and in workplaces (e.g. garment manufacturing, textile processing) where women make up the majority of workers but hold very few jobs with actual decision-making power. – Similarly, workers are more vulnerable in contexts where line supervisors are

75. (2011), *Gender-based violence in the world of work: Overview and selected annotated bibliography*, ILO.

76. Due to fear of reprisals, workplace based sexual harassment and gender-based violence is underreported in most contexts.

	<p>predominantly men, and are responsible for reporting each worker's productivity numbers and are also the ones who report a worker's excused or unexcused absences, tardiness and conduct. Within this context, the supervisors have leverage to demand sexual favours.</p> <ul style="list-style-type: none"> – Workplaces with high turn-over of young women workers may be at higher risk given that workers do not have a network of co-workers whom they know and trust; – Settings where trade unions do not exist or are ineffective increase the risk of sexual harassment and abuse due to the lack of possibility to address the problem collectively including through collective bargaining.
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1. See (2003), *Rights for Working Women Campaign, Sexual Harassment in the Export Processing Zones of the Dominican Republic*, International Labor Rights Fund.
2. In some contexts, women who work are perceived to be more independent and welcoming of sexual advances and therefore are at higher risk of sexual harassment and violence.

Document reviews may not be sufficient in prioritising high-risk areas for supplier assessments. Where gaps in information exist, the enterprise should consult stakeholders on-the-ground to determine the prevalence of sexual harassment and gender-based violence within a particular region and activity. Enterprises or their associations may seek to conduct a series of focus-group discussions with workers and consultations with worker organisations, civil society, government, etc. In the context of sexual harassment, enterprises should make the assumption that if sexual harassment is a high risk a particular geographic location, it is a high-risk within the workplace. This is true even if specific instances of sexual harassment have not been reported on-site. Similarly, if sexual harassment has been identified amongst a set of suppliers within a particular region, it can be assumed that sexual harassment is a risk amongst similar suppliers within the region unless express measures have been taken to prevent sexual harassment at the workplace.

To protect women who may have been affected by violence or harassment, qualified experts should be employed in interviews with workers regarding sexual harassment and abuse. This applies to both the context assessment and supplier assessment.

In contexts in which sexual harassment and gender-based violence have been flagged as high-risk, the enterprise should seek to understand trends regarding when sexual harassment or violence is occurring in order to identify effective intervention points for prevention measures.

Finally, in order to develop effective measures for preventing sexual harassment and gender-based violence in the workplace, enterprises should seek to understand the following during the context assessment:

- a. What reporting channels and grievance mechanisms already exist? Are grievance mechanisms viewed by workers as being effective in protecting the worker and providing access to remedy without fear of reprisal or criticism? Are women expected to report to potential aggressors (e.g. supervisors) or those who may hold influence over the worker's job, wages, working-hours, benefits, etc.?⁷⁷
- b. What judicial and non-judicial access to remedy is available to women or men who have been harassed or abused? Do women and men view judicial and non-judicial remedy accessible and reasonable?⁷⁸

77. Research has found that those responsible for protecting workers are sometimes the ones initiating harassment. Aggressors may be supervisors, colleagues or even trade unionists.

78. One study found that there was a general assumption among women that few victims who seek legal remedy are successful with their cases, thus leading to non-reporting of incidents.

- c. Is sexual harassment and gender-based violence discussed amongst men and women generally in society?⁷⁹
- d. Is there a general awareness of what constitutes sexual harassment and gender-based violence amongst women, men and youth? What are the attitudes towards sexual harassment and gender-based violence?
- e. Do initiatives exist within the community to prevent sexual harassment and gender-based violence and provide access to remedy? Initiatives may be government, civil-society, industry, or union-led.

Supplier Assessments

Enterprises should assess all stage-1 and stage-2 suppliers operating at high risk areas for sexual harassment and gender-based violence. Assessments should seek to determine whether or not the supplier has implemented measures to prevent sexual harassment and gender-based violence in the workplace (as described under “Prevent and Mitigate” of this annex) and their effectiveness. It can be difficult for an assessment to identify specific incidents of sexual harassment in the workplace. Worker interviews and focus-group discussion are a critical component of supplier assessments. Enterprises should seek input from trade unions and representative worker organisations. In many cultures, women and men do not feel comfortable discussing sexual harassment or gender-based violence. Enterprises are therefore encouraged to engage with local experts (e.g. civil society organisations) to assess suppliers, where appropriate. Enterprises should likewise consider whether it is most appropriate for assessors to be women based on the context assessment.

Assessments should include an emphasis on understanding:

- a. The extent to which workers know what constitutes sexual harassment and gender-based violence and the consequences for breaking the organisational standards against such conduct;
- b. The extent to which workers know how to report an incident of sexual harassment and are encouraged and supported in doing so;
- c. The extent to which workers believe that management will respond appropriately after an incident, including provision of access to remedy where appropriate;
- d. The extent to which workers know how and where to report sexual harassment, violence or threats of violence, without fear of reprisal (i.e. including alternative avenues for filing a complaint).

II. Prevent adverse impacts

Enterprises should support their stage-1 and stage-2 suppliers in establishing prevention measures in high-risk areas. The participation of workers and their representatives is crucial in implementing solutions that are tailored to the local context. While prevention measures will vary by context, in most contexts, certain measures are core to prevention.

The employer should establish a **policy on sexual harassment** and gender-based violence. The supplier should establish a zero-tolerance response to gender-based violence and strict measures against harassment. See Box 5.1 for example components of a supplier policy on sexual harassment and gender-based violence.

79. Traditional social and cultural conceptions about women at times restrict women from discussing or reporting their experiences related to sexual harassment.

Box 5.1 Example components of supplier policy on sexual harassment and gender-based violence

A supplier policy on sexual harassment and gender-based violence should include:

- a. Ethical commitment from employer and employees to foster an environment free from bullying;
- b. Outlining which kinds of actions are acceptable and which are not;
- c. Stating the consequences of breaking the organizational standards and values, and the sanctions involved;
- d. Indicating where and how victims can get help
- e. Commitment to ensure “reprisal-free” complaining;
- f. Explaining procedure for making a complaint;
- g. Clarifying the role of manager, supervisor, contact/support colleague, trade union representative;
- h. Details of counselling and support services available for victim and perpetrator; and
- i. Maintaining confidentiality

Source: Chappell, Duncan and Vittorio Di Martino, *Violence at Work*, ILO, 3rd edition.

Training is another core component of any strategy. A significant problem in addressing the issue of sexual harassment is that many women and men are not able to recognize sexual harassment.⁸⁰ Training should raise awareness amongst workers of what constitutes harassment and violence and inform workers of their action to recourse within the workplace. Training should likewise inform workers of their legal rights to complain outside of the workplace and existing channels for doing so. Training should be targeted towards women and men. Training should likewise target supervisors and those in positions of authority. In many cases training may be most effective when conducted by an external organisation or institution that provides services (e.g. access to remedy, resources, etc.).

Finally, prevention measures should ensure that workers:

- a. Know what constitutes sexual harassment and gender-based violence and the consequences for breaking the organisational standards against such conduct;
- b. Know how to report an incident of sexual harassment and are encouraged and supported in doing so;
- c. Have access to training, work environments and procedures to enable them to respond confidently in situations where they are at risk;

80 . In a study conducted in the Dominican Republic, respondents were surprised to learn that some behaviours they had always encountered in their places of work were considered harassment, and that they could take action against it. Even those who are familiar with the term have different connotations of what it entails and what they are legally protected against. See (2003), *Rights for Working Women Campaign, Sexual Harassment in the Export Processing Zones of the Dominican Republic*, International Labor Rights Fund.

- d. Know that their responses will be supported by management;
- e. Know that management will respond appropriately after an incident, including provision of access to remedy where appropriate;
- f. Have recourse, e.g. grievance mechanisms, in the event that management does not respond appropriately.

Example additional components include:

- a. Establishment of peer groups within the workplace to help women access appropriate resources and/or grievance mechanisms.
- b. Provision of transportation to and from the workplace in contexts where women experience abuse on their way to and from work.
- c. Establishing a formal connection with local organisations working to prevent sexual harassment and gender-based violence in the community to provide training, awareness raising, resources, etc.
- d. Suppliers may incorporate trainings into new-hire orientation of workers and supervisors.

III. Account for how adverse impacts are addressed

Employers themselves should take ownership in tracking incidents of sexual harassment and gender-based violence:

- a. While maintaining confidentiality, the supplier should collate records about the type, pattern and incidence of all forms of workplace harassment and violence;
- b. It is recommended that reporting extend to all incidents, including both minor and potential incidents.

The enterprise should maintain information collected during the context assessment and initial supplier assessment as a baseline. The enterprise should consider all available information to track impact over time, including information collected during follow-up assessments (e.g. on an annual basis), information gathered through grievance mechanisms, on-going monitoring, follow-up context assessments, etc.

IV. Cross-cutting elements to support due diligence

Grievance Mechanisms

It is critical that grievance mechanisms enable a worker to report harassment, violence or threats of violence without fear of reprisal or criticism. As such, workers should be provided avenues outside of their employer for filing a complaint so they do not have to complain to the harasser or to someone with whom they do not feel comfortable.

Access to remedy

Sexual harassment and gender-based violence may be a crime that needs to be reported to relevant authorities.

PUBLIC CONSULTATION

In general, employers should provide for or contribute towards the remediation sexual harassment and gender-based violence impacts.⁸¹ In some contexts, employers may also be mandated by law through vicarious liability to provide for such remediation.

For incidents of sexual harassment and gender-based violence, it is recommended generally that counselling be incorporated as an option into post-incident responses. Some victims, especially in the case of major violent incidents, may need long-term support. Depending on the specific situation, such support will include extended professional counselling to help such victims come to terms with the long-term effects of the incidents and enable them to return to work.⁸²

Resources

Prevent and Mitigate

- Chappell, Duncan and Vittorio Di Martino, *Violence at Work*, ILO, 3rd edition.

Remediation & Grievance Mechanisms

- Chappell, Duncan and Vittorio Di Martino, *Violence at Work*, ILO, 3rd edition.

Additional Resources

- (2003), *A Report on Sexual Harassment in the Workplace in Mexico*, International Labor Rights Fund.
- (2003), *Rights for Working Women Campaign, Sexual Harassment in the Export Processing Zones of the Dominican Republic*, International Labor Rights Fund.

Standards

- ILO Helpdesk

81 . In some cases, if an employer can demonstrate that it has taken reasonable steps to prevent sexual harassment and gender-based violence, its contribution to remedy may be diminished.

82 . See Chappell, Duncan and Vittorio Di Martino, *Violence at Work*, ILO, 3rd edition.

ANNEX 6

Forced Labour**Annex 6. Key Due Diligence Points**

- Enterprises are encouraged to consult existing credible reports to identify materials and production processes associated with forced labour as well as areas which have been flagged as higher-risk for forced labour impacts.
- Qualified assessors should be used to assess suppliers that have been flagged for forced labour impacts.
- In cases in which forced labour is linked to the use of private recruitment agencies, enterprises should extend due diligence to such agencies and/or should incorporate assessments of the supplier's due diligence of private recruitment agencies.
- In cases in which forced labour is linked to upstream production processes (e.g. cotton growing), the enterprise (if more than two stages removed) is not expected to assess individual suppliers. However, enterprises should be able to demonstrate that upstream suppliers have indeed been assessed. The enterprise may choose to engage in a transparency scheme or conduct due diligence on mid-stream suppliers (e.g. global commodities merchandisers and processors) to demonstrate that mid-stream suppliers are conducting due diligence in accordance with this Guidance.
- Forced labour is considered to be an adverse impact of greatest severity and therefore enterprises should suspend orders in cases in which forced labour has been identified until adequate prevention measures have been implemented. This likewise applies to instances of state-sponsored forced labour.
- Forced labour is highly complex and takes numerous forms. Enterprises should adopt measures that are tailored to local circumstances. Extensive stakeholder engagement is necessary to determine the most appropriate methods of preventing forced labour impacts.

Select International Instruments

ILO, Forced Labour Convention, 1930 (No. 29)

ILO, Abolition of Forced Labour Convention, 1957 (No. 105)

ILO, Protocol of 2014 to the Forced Labour Convention, 1930 and Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)

Supply Chain Legislation

UK Modern Slavery Act (2015)

California Transparency in Supply Chains Act of 2010

Definition

Forced labour is all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily. (ILO, Forced Labour Convention, 1930 (No. 29))

I. Identify actual and potential adverse impacts

Supply chain risk assessment and context assessment

Forced labour takes a number of forms in the garment and footwear supply chain. In light of the complexities of forced labour, the enterprise should consider the following when conducting a supply chain risk assessment and context assessment for forced labour.

- a. Employees tasked with overseeing the supply chain risk assessment should have an understanding of what constitutes forced labour, common forms of forced labour, vulnerable workers, and international standards.⁸³
- b. Enterprises are encouraged to consult existing reports put forth by governments, international organisations, and credible institutions to identify materials and production processes associated with forced labour as well as sourcing areas which have been flagged as higher-risk for forced labour impacts.⁸⁴ Enterprises are likewise encouraged to cooperate at a sector-wide level with governments, workers, international organisations, and other stakeholders to identify higher-risk activities and areas for forced labour impacts.
- c. Forced labour is a crime. Enterprises should identify legal remedies available and their effectiveness for victims. As part of the context assessment the enterprise should likewise identify whether governments have set-up the provision of effective remedies in accordance with ILO Recommendation No. 23.
- d. In the garment and footwear sector, example risk factors for forced labour impacts include:
 - Employment of migrant workers;
 - Employment of refugees;
 - Use of private recruitment and employment agencies;
 - On-site housing of workers;
 - Existence of credit-arrangements and debt;
 - High rates of informal workers;

83 . See (2015), Combating forced labour: a handbook for employers and business / International Labour Office.-- 2nd ed. - Geneva: ILO.

84 . For example, the United States Department of Labor, List of Goods Produced by Child Labor or Forced Labor, includes a list of processes and materials associated with forced labour.

- State-orchestrated forced labour;
- Use of prison workers.

See Table 6.1 for example risks of forced labour at various stages in the garment and footwear supply chain.

Table 6.1: Example risks of forced labour in the garment and footwear sectors

Examples included in Table 6.1 do not cover all existing situations of forced labour, but are intended to help enterprises gain a better understanding of the ways in which forced labour impacts may be present in their supply chain.

Stage of supply chain/ Sub-sector	Risk factors
Cotton	<ul style="list-style-type: none"> – Labor intensive crops, particularly those that are hand-picked, may be more likely than mechanically harvested crops to be linked with forced labour impacts.¹ – In some sourcing contexts it is common for farmers to finish a crop cycle without enough money to purchase inputs for the following year, leading them to take on increasing loans with high interest rates.¹ – Migrant workers are more exposed to certain forced labour impacts. For example, in some cases children migrate through established family or community “kinship” systems to work in cotton plantations. However, although children may migrate voluntarily they may be exploited upon arrival.¹ – In some countries forced labour in cotton production is state orchestrated.
Garment / Textile manufacturing	<ul style="list-style-type: none"> – Rushed orders, changes in orders, poor production planning (amongst other events), may lead to forced overtime. In some contexts, workers who protest may be fired and blacklisted; – Children who are considered to be “apprentices” or learning skills may be drastically underpaid, or not paid at all, and many face long hours of work; – In many countries, the garment and footwear sectors are highly dependent on internal and international migrant workers. Migrant workers are more exposed to certain forced labour impacts, for example: document retention (e.g. passports being withheld), debt-bondage due to recruitment fees owed to labor brokers, threat of deportation so international migrant workers do not use grievance mechanism;² – The use of dormitories to house workers is very common within many contexts. Freedom of movement may be restricted in some cases; – In some countries, prison labor is used to produce garments including federal contracts for military uniforms, thus increasing the risk of exploitation of prison labour¹; – In some countries, refugees are informally employed in the sector. Refugees often lack representation or access to grievance mechanisms and therefore are more exposed to exploitation. – Use of subcontracting reduces the visibility into the labour standards of the supplier, thus increasing the risk of forced labour impacts. – The use of recruitment agencies increases the risk of forced labour impacts in the sector. For example, workers recruited by agents are often indebted due to high recruitment fees. In cases in which orders are dropped, the debt-bondage and situation of the work is likely to decline.^{1, 2}
Transportation &	<ul style="list-style-type: none"> – Transport workers (notably truck drivers) are often misclassified as independent contractors and therefore more vulnerable to forced overtime.

Warehousing	<ul style="list-style-type: none"> – Shipping transport workers are vulnerable to abuse, abandonment and trafficking. – Transportation workers employed by outsourced logistics firms report higher rates of core labour violations. – Workers are often employed through labour brokers or employment agencies (e.g. seafaring transport). Within some contexts, these jobs are viewed as favourable leading to high recruitment fees and indebtedness in some contexts.¹
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1. (2015), *Strengthening Protections Against Trafficking in Persons in Federal and Corporate Supply Chains*, Verite
2. (2009), *False Promises, Migrant Workers in the Global Garment Industry-Discussion Paper*, Clean Clothes Campaign.

Supplier Assessments

Supplier assessments for forced labour impacts should apply the following principles:

- a. Qualified assessors should be used to assess suppliers that have been flagged for forced labour impacts;
- b. In recognition that traditional document assessments are generally insufficient in assessing forced labour impacts, supplier assessments should rely heavily on worker, management and stakeholder interviews.
- c. In recognition that forced labour takes many forms, assessments should be tailored to the sourcing country context or production cluster and to the particular forced labour impact.
 - For example, in contexts in which apprenticeship schemes are common to a particular region, the supplier assessment should take into account the unique risks associated with apprenticeship schemes in that region.
 - For example, in cases in which private recruitment agencies are used, enterprises should extend assessments to private recruitment agencies and/or should incorporate assessments of the supplier's due diligence of private recruitment agencies.
- d. Enterprises should be able to account for how assessments have taken into consideration the fear that some workers may experience in responding honestly to questions regarding forced labour impacts. There are a number of ways in which enterprises might do so, such as conducting assessments off-site, using non-traditional methods of assessment (e.g. focus group discussions, participatory methods of assessment).
- e. In cases in which forced labour is linked to upstream production processes (e.g. cotton growing), the enterprise, if operating more than two stages away, is not expected to assess individual suppliers. However, enterprises should be able to demonstrate that upstream suppliers have indeed been assessed. The enterprise may choose to engage in a transparency scheme or conduct due diligence on mid-stream suppliers (e.g. global commodities merchandisers and processors) to demonstrate that mid-stream suppliers are conducting due diligence in accordance with this Guidance.

Enterprises are encouraged to rely on existing guidance by credible organisations on how to assess forced labour impacts where such assessments incorporate the above.

II. Prevent and mitigate adverse impacts

It is ultimately the responsibility of the government to protect against human rights abuses by third parties, including business enterprises, through regulation, policymaking, investigation, and enforcement. However, enterprises still hold a responsibility to prevent forced labour impacts in their supply chain.

Forced labour is highly complex and takes numerous forms. Enterprises should adopt measures that are tailored to local circumstances. Extensive stakeholder engagement is likely necessary to determine the most appropriate methods of preventing forced labour impacts. This Annex does not provide technical guidance on how to prevent forced labour impacts once a risk has been identified. However, enterprises are encouraged to apply the recommendations and practices put forth in guidance published by credible organisations that incorporate the following.

- a. Forced labour is considered to be an adverse impact of greatest severity and therefore enterprises should suspend orders in cases in which forced labour has been identified until measurable prevention measures have been implemented.
- b. For stage-1 and stage-2 suppliers, enterprises should seek to prevent future adverse impacts by building the capacity of suppliers. For example, enterprises may:
 - Build the awareness of suppliers on forced labour, including what constitutes forced labour.
 - Support trade unions and representative worker organisations to build awareness amongst workers on their rights in relation to contracts, working hours, freedom of movement, etc.
 - Support tailored training for management and staff involved in the hiring of workers on national and international standards regarding forced labour and importantly, the company's policies and processes.
 - Support suppliers to establish a pre-qualification process for private recruitment agencies for employment (where relevant).
- c. In cases in which subcontracting is contributing to forced labour impacts, establish a strong policy on subcontracting. See Annex 1 for recommendations on how to do so.
- d. Enterprises may seek to address business drivers for forced labour. For example, enterprises may seek to improve efficiencies in production and thereby reduce the supplier's demand for forced labour. Example interventions include:
 - Improve efficiencies in production and thereby reduce the supplier's demand for forced labour.
 - Pay sustainable prices for goods, meaning that prices pay a return that enables suppliers to reinvest in their business and workers (thus reducing the demand for cheaper labour).
- e. Trade unions play a central role in monitoring and preventing forced labour. Therefore, as a core component of due diligence, enterprises should support the right to join a trade union and representative organisations of the worker's own choosing within their workplace and supply chain. See Annex 9.
- f. If the enterprise identifies that forced labour impacts may in some way be linked to their final product (and may or may not know how to prevent or mitigate that adverse impact), the enterprise should seek to raise awareness at a sector-level to promote a sector-wide approach to addressing

the risk. This should be done as an invitation to jointly work towards preventing and mitigating the risk.⁸⁵

- g. In order to actively facilitate such engagement, industry associations may seek to form organised consultations with trade unions and stakeholders to ensure a coordinated and holistic approach to tackling forced labour. This platform could prove beneficial for increasing information regarding the context, raising concerns related to particular business relationships, and identifying risk mitigation strategies.
- h. In recognition that forced labour, in some contexts, is prevalent across sectors, enterprises should consider coordinating and cooperating with other sectors operating in the region to support a coordinated strategy. This also reduces the risk that forced labour is simply *transferred* from one sector to another.
- i. In recognition that in many cases, forced labour requires a multi-stakeholder approach to adequately address impacts, the enterprises should make relevant information available to local and international human rights organisations and international organisations (as relevant) identified during the context assessment. Enterprises should likewise seek to feed into existing effective initiatives on-the-ground to reduce the risk of duplication.
- j. In recognition that in many cases, forced labour impacts are heightened due to a lack of formalisation in the workforce, enterprises should encourage formalisation of the workforce throughout the supply chain. See Annex 3 for specific recommendations on how to encourage formalisation of the workforce.
- k. In contexts in which forced labour is state-sponsored (e.g. through regulatory framework) and/or in instances in which the state is not effectively upholding its duty to protect, enterprises should consider engaging with government to encourage government to meet regulatory gaps in relation to protecting workers from forced labour impacts. Engagement with government can be a long-process. Enterprises should suspend any orders from a supplier (even in the context of state-sponsored forced labour) if forced labour impacts have been identified until measureable prevention measures have been implemented.
- l. In instances in which forced labour impacts are identified more than two stages away from the enterprise, the enterprise still holds a responsibility to account for how they are preventing and mitigating forced labour impacts. In this case, the enterprise may establish traceability or engage with control points in the supply chain. Example control points in the cotton supply chain are global commodities merchandisers and processors.

Enterprises are encouraged to rely on existing guidance by credible organisations on how to prevent and mitigate forced labour impacts where such guidance incorporates the above.

III. Account for how adverse impacts are addressed

Ongoing monitoring

Effective on-going monitoring of forced labour is a crucial component of due diligence in high-risk areas for forced labour. However, identifying the most effective monitoring mechanism within a particular

85 . See “Step 3” of (2014), *Addressing Forced Labor in Artisanal and Small Scale Mining (ASM)*, Responsible Jewellery Council.

context may take time. Furthermore, what works in one context may not work in another. Enterprises should partner with trade unions, suppliers, and civil society to design an effective monitoring mechanism.

- a. Trade unions and civil society can act as effective monitors of forced labour.
- b. Community members likewise can act as important informants of forced labour. However, a degree of community awareness is imperative for community-level monitoring to be effective. Awareness raising can be conducted through civil society, trade unions or government. Enterprises may support such initiatives, for example through grants or capacity building, etc.

In order to actively facilitate community-led monitoring, industry associations within a particular context may seek to form organised consultations with stakeholders regarding the risk of forced labour within a particular context. This platform could prove beneficial for increasing information regarding the context, raising concerns related to particular business relationships, and identifying risk mitigation strategies.

Follow-up assessments and verification

Follow-up assessments and verification should consider all known information:

- a. Interviews with workers and stakeholders;
- b. Review of prevention measures;
- c. Review of cases brought through grievance mechanisms or through ongoing monitoring;
- d. Identify emerging risks;
- e. Identify gaps in data collection and work towards improved coordination and collection of information.

Follow-up assessments and tracking should be conducted by qualified experts. Enterprises are encouraged to conduct such assessments at a sector-level within a production cluster.

Resources

Identify—Supply Chain and Context Assessments

- *Trafficking in Persons Report*, Department of State, United States of America.
- *List of Goods Produced by Child Labor or Forced Labor*, Department of Labor, United States of America.
- (2015), *Strengthening Protections Against Trafficking in Persons in Federal and Corporate Supply Chains*, Vertie.

Identify—Supplier Assessments

- (2015), *Combatting Forced Labour: A Handbook for Employers and Business*, ILO.

Standards

- ILO Helpdesk

ANNEX 7

Hours of work**Annex 7. Key Due Diligence Points**

- In addition to assessing compliance with national legislation and ILO standards on working time, the enterprise should seek to understand the drivers of excessive working hours (e.g. production inefficiencies; demand from workers; factors controlled by the buyer).
- Prevention measures should directly correspond to the drivers identified in the supplier and context assessments.

Select International Instruments and Conventions

Hours of Work (Industry) Convention, 1919 (No.1)

Weekly Rest (Industry) Convention, 1921 (No. 14)

Forty-Hour Week Convention, 1935 (No. 47)

Holidays with Pay Convention (Revised), 1970 (No. 132)

Reduction of Hours of Work Recommendation, 1962 (No. 116)

Night Work Convention, 1990 (No. 171) and its Recommendation, 1990 (No. 178)

This annex recognises the complexity of working hour compliance. This annex therefore provides high-level recommendations. Further research is needed to better understand the link between working hours and production, wages and purchasing practices. Enterprises may engage in such research as a component of their due diligence.

I. Identify actual and potential adverse impacts

Enterprises should:

- Identify and prioritise higher-risk stages in their supply chain for excessive working hours. For most enterprises operating in the garment and footwear supply chain, the highest risk is found at finished-goods manufacturing (garment manufacturing and footwear manufacturing).
- Identify higher-risk jurisdictions in the supply chain. Excessive working hours, particularly at garment manufacturing and footwear manufacturing, is a risk across most sourcing contexts.
- Assess suppliers operating at high-risk areas. In addition to assessing compliance with national legislation and ILO standards on working time, the enterprise should seek to understand the drivers of excessive working hours. See Box 10.1 for information regarding drivers of working hours at manufacturing.

Box 7.1 Various drivers of excessive working hours

There are a number of factors which may contribute to excessive working hours at garment and footwear manufacturing.

- a. In many parts of the world, there is a significant link between low wages and excessive working time. Within this context, excessive working hours are facilitated by the demands of workers; workers prefer to work overtime to earn an extra income. This has been demonstrated to often be the case in instances in which workers are rural-urban migrants with a responsibility of sending money home to their families.
- b. In some instances the customer's actions (i.e. retailers, brands, intermediaries) may contribute to excessive overtime. Examples of this include last-minute style changes and the setting of unreasonable lead times, notably for re-orders. Some studies have found that a large number of different styles are linked to excessive working hours.
- c. In other instances, the factors contributing to excessive working hours are controlled by the manufacturer. For example, over-booking, poor production planning and inefficiencies in production may result in excessive overtime. Overbooking remains a challenge in the sector often due to the lack of consistency in orders. Suppliers may be reluctant to expand their production capacity without confidence that demand will remain high. To account for this uncertainty, in some cases, suppliers hire a limited number of skilled workers as regular workers, and then rely on excessive working hours, temporary contract workers, and subcontracting to manage the shifts in demand.

Initial supplier assessment may be conducted during the pre-qualification process and on an annual basis with current suppliers. All assessments should include worker interviews as a key component. However, those conducting the assessment should be aware that workers may be trained on information to provide. Assessment teams should therefore identify the most appropriate form of interview (e.g. focus groups, participatory methods of assessment) to learn about a worker's working day. In cases in which there are suspicions that interviews are not revealing accurate findings, the assessment team should revise their methodology.

Internal Assessment

Enterprises should take steps to determine if their own actions are contributing to excessive working hours. Enterprises should seek to track the following:

- a. Number of styles produced by a single supplier;
- b. Frequency of last-minutes style changes;
- c. Frequency of last-minute orders;
- d. Frequency of the above during national holidays or peak seasons;
- e. Other factors which may indicate contribution to excessive overtime.

In instances in which low-wages are driving demand for excessive working hours, enterprises should review their wage due diligence. See Annex 10.

II. Prevent and mitigate adverse impacts

This Guidance recommends that enterprises continue to engage with suppliers during measured risk mitigation. Prevention measures should directly correspond to the drivers identified in the supplier and context assessments. Possible prevention measures are expanded upon below. In many cases, a multi-prong strategy is required.

Supplier engagement

Example prevention measures include:

- a. **Production:** Changing the setup and engineering of the production system may limit the need for overtime. In an inflexible line system, bottlenecks easily occur, making planning more difficult. More flexible systems are better adapted to deal with small difficulties without hampering planning.⁸⁶
- b. **Workers' rights training** should be a component of any risk mitigation strategy. Training should include an understanding of the legal limits regarding regular working hours, overtime and related compensation. Training should be provided to all workers on an annual basis. Trade Unions and representative worker organisations can play a key role in training workers, as can human resource management. While training is an important component of a rights-based approach, rights training is not sufficient in of itself.⁸⁷
- c. **Human resource management:** In many cases suppliers do not know how many hours workers have worked. In these cases, a first step is to track the number of working hours per worker. This can be achieved through a number of mechanisms. Human resource representatives should be held responsible for flagging instances in which workers are at risk of working more than the permitted regular and overtime hours.⁸⁸

Internal management

Enterprises should take steps to address internal practices which may contribute to excessive working hours. Examples include:

- a. Improve forecasting alignment, which involves coordination across geographies, categories and product engines to get the right information and decisions made at the right time.⁸⁹
- b. Optimize sourcing base to handle fluctuations in capacity and to adopt and implement the technologies needed to respond to the demand for emerging styles and products.⁹⁰
- c. Provide training across business units to increase awareness on internal drivers of non-compliance and mitigation strategies.

86. (2005), Stoop, Sjef. *Overtime and excessive overtime, Legal requirements, compliance situations and opportunities for the Turkish (Istanbul) garment industry*, Fair Wear Foundation.

87. Ibid. 86

88. Ibid. 86

89. See Sustainable Business Performance Summary, Nike Inc. FY10/11.

90. Ibid. 89

- d. In many cases increased coordination and communication between enterprises and their suppliers is essential to on-going monitoring and effective risk mitigation. Enterprises and suppliers should establish feedback mechanisms whereby suppliers provide honest feedback on buyer's practices which contribute to non-compliance. Systems should be established which enable constructive communication (e.g. reporting through a third-party).

Resources

General

- (2014), *Wages and Working Hours in the Textiles, Clothing, Leather and Footwear Industries*, ILO.
- (2005), Stoop, Sjöf. *Overtime and excessive overtime, Legal requirements, compliance situations and opportunities for the Turkish (Istanbul) garment industry*, Fair Wear Foundation.

Standards

- ILO Helpdesk

ANNEX 8

Occupational Health and Safety**Annex 8. Key Due Diligence Points**

- For risks of adverse impacts of greatest severity—structural integrity, fire safety, electrical safety, use of hazardous chemicals with high health risks, amongst others—the enterprise should ensure that the supplier has undergone a qualified inspection against national and international standards. In contexts in which state inspections have been identified to be inadequate or non-existent, enterprises should ensure that the supplier has been assessed by a qualified professional (e.g. structural engineers, fire protection specialists, electrical engineers) who have the demonstrated competencies to evaluate the site.
- Enterprises should negotiate commercial terms with their suppliers which ensure that it is financially feasible for the supplier to maintain safe workplaces and implement adequate prevention and mitigation measures.
- Enterprises should not place new orders and should suspend existing orders until immediate and critical dangers have been adequately addressed.
- Qualified professionals (e.g. structural engineers, fire protection specialists, electrical engineers) should assess the implementation of corrective action plans and verify corrective actions within the agreed upon timeframe.
- Workers should be trained and engaged to conduct on-going monitoring (where appropriate) of risks of adverse impacts and should have recourse through grievance mechanisms to trigger alarms in instances in which risks of severe adverse impacts arise and require external qualified professional attention.

I. Identify actual and potential adverse impacts**Supply chain risk assessment and context assessment**

- a. Each stage of the supply chain in the garment and footwear sector holds unique and well documented risks of health and safety impacts. Enterprises should review existing reports and identify high-risk stages for occupational health and safety impacts in their supply chain.
- b. Sourcing areas may likewise pose unique occupational health and safety risks. For example, the quality of inspections, building height, the extent of urban planning, the quality of the air, etc. all affect the health and safety risk characterisation. See Table 8.1 for example factors to consider during the supply chain and context assessments.

Table 8.1 Factors to consider when classifying risk

Factors	Questions to consider
Regulatory Framework	Do country/state/regional codes (e.g. fire, building, electrical, etc.) align with international standards?
Enforcement	<ul style="list-style-type: none"> – Are regulations and building codes adequately enforced? – Are inspections conducted by state inspectors and/or by third parties? – If inspections are conducted by third parties, what are the checks and balances placed on third parties? – What are the qualification requirements of inspectors (either state-based or third-parties)? How do these qualifications compare with international benchmarks? – What are the consequences to inspectors in cases of known violations (e.g. acceptance of bribes)? Are the above requirements enforced? – Are there reasonable risks of bribery in the country/region related to government inspections?

Supplier Assessments

- a. For risks of severe adverse impact—structural integrity, fire safety, electrical safety, use of hazardous chemicals, amongst others—the enterprise should ensure that the supplier has undergone a qualified inspection against national and international standards. In some contexts, a state inspection is sufficient; however, in contexts in which state inspections have been identified to be inadequate or non-existent, enterprises should ensure that the supplier has been assessed by a qualified professional (e.g. structural engineers, fire protection specialists, electrical engineers) who has the demonstrated competencies to evaluate the site.
- b. Risks that do not pose severe harm to persons, communities or the environment, including minor maintenance of machinery, may be assessed by trained professionals.
- c. Enterprises may rely on existing guidance put forth by reputable organisations on how to conduct supplier assessments. It is recommended that enterprises take a sector-wide approach within a geographic area (e.g. jurisdiction, country, production cluster) to assessing suppliers to ensure minimal burden on suppliers and to promote a level playing field for quality of inspections, effective use of resources, and harmonized inspection standards.

Box 8.1 Supplier pre-qualification

Enterprises should assess suppliers, or review verified and qualified assessments where they exist, prior to the contracting stage. If an enterprise determines that a site has risks of severe adverse impacts—structural integrity, fire safety, use of hazardous chemicals etc.—it should not place orders or approve the supplier for placement of orders until the site is assessed to be safe for workers. The enterprise may support the potential supplier in the prevention and mitigation of adverse impacts, but it does not hold a responsibility to do so.

II. Prevent and mitigate adverse impacts

Corrective Action Plans (CAPs) that detail what actions will be taken with clear timelines and a financial plan should be developed following site inspections and signed off by the owner of the site and the enterprise.

- a. For risks of adverse impacts of greatest severity (e.g. structural integrity, electrical safety, fire hazards, use of hazardous chemicals with high risk to health etc.) CAPs should be developed in collaboration with qualified professionals (e.g. structural engineers, fire protection specialists, electrical engineers, etc.). In all cases, corrective action plans should be aligned with international standards and guidance on accident prevention, preparedness and response. See Resources for information.
- b. Enterprises should support their suppliers in the implementation of CAPs. Enterprises should negotiate commercial terms with their suppliers which ensure that it is financially feasible for the supplier to maintain safe workplaces and comply with the prevention and mitigation requirements.⁹¹ However, the implementation of CAPs may be very costly. In cases in which neither the supplier nor the enterprise can feasibly afford upgrades individually, the enterprise should support the supplier in seeking financing. In cases in which neither the enterprise nor the supplier can secure adequate financing to prevent or mitigate the adverse impact and/or in cases in which prevention is not feasible, the enterprise should weigh the risk of continuing to engage and disengage if necessary.
- c. Enterprises should ensure that CAPs are supported by training of staff (including technical staff) and worker safety committees at the site. Extensive guidance exists on the training of staff and the establishment of worker safety committees.

In cases in which an inspection identifies immediate and critical danger to the health and lives of workers (e.g. due to weakness in the structural integrity of the building), enterprise should ensure that the owner removes workers from danger immediately. In cases in which risks cannot be isolated, this may mean that the site is evaluated and production is suspended until the building is determined to be safe for re-occupancy. Enterprises should not place new orders and should suspend existing orders until immediate and critical dangers have been adequately addressed.

Disengagement should be a last-resort. However, in cases in which neither the enterprise nor the supplier can secure adequate financing to prevent or mitigate the severe adverse impact and/or in cases in which prevention is not feasible, the enterprise should disengage. See 'Responsible Disengagement'.

Box 8.2 Note on Outsourcing

Outsourcing can greatly increase the risk of uncontrolled hazards and high risks in an enterprise's supply chain. Enterprises should therefore develop a comprehensive policy on outsourcing as a means of preventing and mitigating adverse impacts. See Annex 2 for more information.

91. Adapted from Accord on Fire and Building Safety in Bangladesh, "Remediation".

III. Account for how adverse impacts are addressed

For severe adverse impacts:

- a. Qualified professionals (e.g. structural engineers, fire protection specialists, electrical engineers) should assess the implementation of the CAP and verify corrective actions within the agreed upon timeframe.
- b. Workers should be trained and engaged to conduct on-going monitoring (as feasible) of risks of adverse impacts and should have recourse through grievance mechanisms to trigger alarms in instances in which risks of severe adverse impacts arise and require external qualified professional attention.
- c. In cases in which workers, or other stakeholders, raise red-flags of adverse impacts through a grievance mechanism, the supplier and enterprise should ensure that the grievance is inspected in a timely manner by a qualified professional⁹²

For adverse impacts that do not pose severe harm to persons, communities or the environment:

- a. The approach to monitoring should be systematic and should correspond with the level of risk. In this regard, a monitoring plan should be developed at each site that is “owned” and primarily implemented by management and workers.
- b. Workers should be trained and engaged to conduct on-going monitoring (as feasible) of risks of adverse impacts and should have recourse through grievance mechanisms to trigger alarms in instances in which risks of adverse impacts are not addressed. Technical guidance exists on the monitoring of risks of adverse impacts at the site-level. See Resources for more information.

Where feasible, industry should consider creating a system for improving the exchange of information and experience among workers and management overseeing the monitoring of activities at sites in a given region, in order to improve knowledge sharing. This could include, for example and as appropriate, joint visits or regional safety-committees.

92 . The above assumes that grievance mechanisms are operational and effective. Enterprises should assess the grievance mechanism that they engage with on an annual basis to ensure that it is effective. See Paragraph 85.

Box 8.3 Small-and-medium sized enterprises (SMEs)

All sites should comply with the same overall expectation of health and safety irrespective of size, location or other factors.

SMEs generally share a number of characteristics that raise concerns about the risks of accidents. For example: they generally have a less formal operating structure than larger enterprises; they tend to employ few engineers and safety specialists; and they tend to rely on business partners and other outside sources for information related to occupational health and safety.

SMEs may also have strengths which enable them to enact recommendations. For example, they may be in a position to implement procedural changes more quickly than larger companies, and they are more likely to have open communication channels.

Recommendations for SME manufacturers and producers

A multifaceted approach is needed in which a variety of entities and programmes address the various concerns and limitations of SMEs. SMEs should undertake to:

- a. recognise the importance of safety as an integral part of their business operation and commit themselves to safe operations;
- b. actively seek information on safety;
- c. enter into partnerships with public authorities and/or other enterprises with the objective of improving safety;
- d. create “mutual aid” response groups with other enterprises; and
- e. join professional organisations.

Buying enterprises and suppliers (where suppliers are not SMEs themselves) should make an effort to assist SMEs to reduce risks of accidents, as may be needed, through provision of information, guidance and assistance.

Recommendations for SME buyers

For the identification of adverse impacts, including context assessments and supplier assessments, SMEs are encouraged to engage in industry associations and multi-stakeholder initiatives which facilitate both a regional and sector-wide approach.

Source: Adapted from OECD Guiding Principles for Chemical Accident Prevention, Preparedness and Response (2003)

IV. Cross-cutting elements to support due diligence

Management systems

Extensive guidance exists on the establishment of management systems for occupational health and safety risks.

Access to remedy

Enterprises should provide for or co-operate through legitimate processes in the remediation of adverse impacts where they identify that they have caused or contributed to these impacts. In cases in which the enterprise has not caused or contributed to the impact, it should use its leverage with its suppliers to ensure that appropriate remediation is provided to victims.

Compensation is often an appropriate form of remedy for occupational health and safety impacts. Example compensation includes:

- Medical care and related expenses;
- Missed work time or other lost income;
- Pain and other physical suffering;
- Permanent physical disability or disfigurement;
- Loss of family, social and educational experiences;
- Emotional damages resulting from the above.

Resources

- (2003), *OECD Guiding Principles for Chemical Accident Prevention, Preparedness and Response, Guidance for Industry*, OECD.
- (2007), *Environmental, Health, and Safety Guidelines for Textile Manufacturing*, International Finance Corporation (IFC)
- Health and Safety Executive website;
- Zero Discharge of Hazardous Chemicals website

Standards

- ILO Helpdesk

Annex 9

Right to join a trade union and representative organisations of the worker's own choosing and the right to bargain collectively

Annex 9. Key Due Diligence Points

- Enterprises should conduct due diligence to identify and prevent anti-trade union policies and activities within their supply chain. Enterprises do not have a responsibility to ensure the operational effectiveness of trade unions. Rather, enterprises should refrain from interference in the function of trade unions
- The enterprise should use its leverage with a supplier to prevent anti-worker policies in its supply chain. However, if the enterprise does not show measureable improvement after 6-months, the enterprise should suspend orders until the supplier has demonstrated measurable improvement.

Select International Standards

OECD Guidelines for Multinational Enterprises, Chapter V. Employment and Industrial Relations

ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

ILO Workers' Representatives Convention, 1971 (No. 135)

I. Identify actual and potential adverse impacts

Supply chain risk assessment and context assessment

Unlike other adverse impacts in the supply chain, restrictions on the right to join a trade union and representative organisations of the workers choosing are generally not linked to specific product-lines or stages of the supply chain.⁹³ Rather adverse impacts are predominantly a result of the regulatory framework and enforcement within sourcing countries.

In recognition that anti-trade union policies and associated adverse impacts can occur at any stage in the supply chain, the enterprise should prioritise suppliers operating at stage-1 and stage-2 first.

During the supply chain risk assessment and context assessment, enterprises should seek to:

- a. Understand the extent and adequacy of laws and legal structure to protect the right to form a trade union and representative organisations of the workers own choosing;
- b. Identify the extent to which the government creates an enabling environment for the right to form a trade union and representative organisations of the workers own choosing;
- c. Identify legal remedies available and their effectiveness for victims of violence, abuse, unlawful due to engagement with trade unions;

93 . Note that some sub-sectors may be better protected than others within a given country.

- d. Understand the composition of trade unions as well as the attitudes towards trade unions within the sourcing context.

Enterprises should engage with international trade unions and local trade unions to determine the above.⁹⁴

Table 9.1: Factors for consideration when assessing level of risk

Risk Areas	Risk factors and other factors for consideration
Regulatory Framework	<p>Risk factors</p> <p>Very few states prohibit freedom of association entirely, however, certain national laws may restrict the right to form a trade union and representative organisations of the workers own choosing. Examples include:</p> <ul style="list-style-type: none"> – Laws that require workers to become members of government-run federations, that place extensive prohibitions on bargaining, or that ban strikes altogether or in “essential” industries so as to support a particular national economic policy are markers of a lack of commitment to freedom of association and the right to collective bargaining. – Laws that permit government interference, for example, by allowing the government to dissolve unions without legal recourse, to impose burdensome union registration procedures, limit the formation of national unions, prohibit or limit multiple unions within a single plant (including minority unions), or restrict who may serve as a union member, official or advisor. – National laws and constitutions that restrict unions’ political activities, either by establishing close relationships between unions and political parties or by prohibiting union contributions to parties and candidates.
Enforcement and access to remediation	<p>Enterprises should distinguish between what the government claims to be doing and what is being implemented in practice. Example risk-factors include:</p> <ul style="list-style-type: none"> – Lack of adjudication bodies to support Freedom of Association rights and provide effective remedy; – The extent to which union organisers are jailed or exiled by the government, or fired, injured, or murdered without prompt and effective prosecution on the part of the government; – The extent to which strikers suffer retaliation without prompt and effective prosecution on the part of the government; – Whether there are defects in the government’s complaint process, such as excessive delays or expenses, light penalties, or non-punishment of offenders; – Government actions to combat labour-related corruption (such as control of unions by criminal figures for use as a protection racket or for financial skimming) without prompt and effective prosecution.
Enabling environment	<p>The following indicators may indicate a lower-risk of adverse impacts within a sourcing location. However, indicators should not be considered in isolation. Enterprises should also distinguish between what the government claims to be doing and what is being implemented in practice.</p> <ul style="list-style-type: none"> – The efforts of national, state or provincial and municipal authorities to educate workers

94 . The OECD is partnering with TUAC to develop a map of trade union organisations in the garment and footwear sector to help facilitate engagement.

	<p>about their rights and remedies and of the effectiveness of those efforts</p> <ul style="list-style-type: none"> – The efforts on the part of national, state, or provincial and municipal authorities to engage in capacity-building for government officials with responsibility for labour matters and of the effectiveness of those efforts; – Government actions in hindering or facilitating the formation and functioning of labour-advocate NGOs and of independent labour inspection, monitoring, and certification organizations; and – Government actions in encouraging and enabling utilization of domestic and international channels about problems, difficulties, or violations of freedom of association and effective recognition of the right to collective bargaining.
Composition of trade unions; Attitudes towards trade unions	<p>Considerations during context assessment</p> <ul style="list-style-type: none"> – Attitudes towards trade unions – Gender composition of trade unions; percentage of women in trade union decision making positions – Nature of trade unions; State-based, independent, etc. – Union density

1. For further examples of risk factors and recommended indicators, see (2004), Monitoring International Standards: Techniques and Sources of Information, Committee on Monitoring International Labor Standards, National Research Council of the National Academies, the National Academies Press.
2. Union density might be considered a good objective indicator of compliance with freedom of association, but the information must be considered in context and cannot simply be used alone. First, union density numbers are often not reliable. High union density may not be indicative of genuine freedom of association because national governments or political parties may exercise control over membership. Low union density in countries where freedom of association is respected could occur if workers have simply not opted for union representation or where other forms of worker-management interaction are prevalent. Similar critiques apply to other overall measures. Extent of coverage of collective agreements may, or may not, be an accurate measure of the right to bargain collectively. Master agreements when imposed by government-run unions can hold wages below the outcome that would result from free bargaining. See NAP (2004).

Supplier Assessment

The purpose of the supplier assessment is to identify whether anti-worker policies and practices are being promoted by the supplier. Enterprises may rely on existing guidance put forth by reputable organisations on how to assess suppliers for the right to form a trade union and representative organisations of the workers own choosing. However, in all cases, supplier assessments should incorporate the following:

- a. Assessments should rely predominantly on worker, management and stakeholder interviews. Traditional document assessments are insufficient.
- b. Enterprises should be able to account for how assessments have taken into consideration the fear that some workers may experience in responding honestly to questions regarding anti-union policies. There are a number of ways in which enterprises might do so, such as conducting assessments off-site, using non-traditional methods of assessment (e.g. focus group discussions, participatory methods of assessment).
- c. Enterprises should seek to understand the percentage of work contracted out to subcontractors and informal workers and the implications on the rights of direct-employees to join trade unions and bargain collectively.⁹⁵

95 . In some cases workers lose their trade union recognition and their collective bargaining relationship when their work is contracted out to another business enterprise.

- d. Enterprises should seek to understand the percentage of workers classified as self-employed through employment agencies and the restrictions on those workers ability to engage in trade unions and collective bargaining.⁹⁶

In addition to identifying anti-worker policies at individual suppliers, the enterprise should identify systemic or organized employer opposition and hostility to trade unions.

II. Prevent and mitigate adverse impacts

- a. The enterprise should send a clear message to its suppliers that it will not tolerate anti-worker policies and actions.
- b. The enterprise should suspend or discontinue its engagement with a supplier in cases in which adverse impacts of greatest severity have been identified (e.g. physical abuse of trade unionists, threats of violence to trade unionists);
- c. The enterprise should use its leverage with a supplier to prevent anti-worker policies in its supply chain. However, if the enterprise does not show measureable improvement after 6-months, the enterprise should suspend orders until the supplier has demonstrated measurable improvement;
- d. The enterprise may consider establishing a protocol on freedom of association in contexts where freedom of association is not adequately supported and enforced by the regulatory framework. See Box 7.1.

Box 9.1. Protocol Agreements

A freedom of association protocol details explicit expectations of enterprises, retailers, brands and suppliers in upholding and respecting the rights of freedom of association and collective bargaining. Freedom of association protocol agreements may take many forms. For example, such agreements may be established between a single brand, supplier and its workers (See Honduras Labour Framework as an example) or at a regional and sector-wide level between a group of buyers, suppliers and their workers (See Indonesia Freedom of Association Protocol as an example). In all cases, enterprises should consider the following when establishing protocol agreements.

- a. All parties should enter the negotiation of the protocol agreements with best faith efforts;
- b. The protocol agreement should take into considerations local context;
- c. Brands should provide business incentives for suppliers to comply in the way of longer-term sourcing contracts

96 . Workers who are employed through intermediaries, such as employment agencies, can be denied the right to bargain collectively with the enterprise due to the controls on the conditions of their employment.

Dispute resolution

The effectiveness of the protocol relies partially on the establishment of an operational and effective dispute resolution mechanism. Protocols should, therefore, establish mutually acceptable protocols for resolving disputes through, for instance, the appointment of private conciliators, mediators or arbitrators. Principles for non-judicial dispute resolution mechanisms include:

- a. The members of the bodies entrusted with such functions should be impartial and be seen to be impartial.
- b. Include equal representation of employers and workers;
- c. Be free and expeditious;
- d. Provision should be made to allow the parties to enter into conciliation voluntarily or upon the initiative of the conciliation authority.
- e. It is recommended that parties refrain from strikes or lockouts while conciliation or arbitration procedures are in progress, without limiting the right to strike. (Voluntary Conciliation and Arbitration Recommendation, 1951, No. 92)
- f. Where efforts to resolve the dispute fail, there should be a possibility for final settlement either through the procedures set out by collective agreement, through conciliation or arbitration by the competent public authorities, through recourse to a labour court or other judicial authority, or through any other procedure which may be appropriate under national conditions. (Examination of Grievances Recommendation, 1967, No. 130, Paragraph 17).

III. Cross-cutting elements to support due diligence

Management systems

As part of their RBC policy commitment, enterprises should:

- a. Recognise and affirm a commitment to uphold the right to freedom of association as part of the body of universal human rights; Commit to uphold national laws as well as international laws in countries where the enterprise sources from.
- b. Recognise the existence of issues and problems in the implementation of freedom of association for workers in many contexts in the garment and footwear sector which impact upon workers' other rights.⁹⁷

97 . Adapted from the Indonesia Freedom of Association Protocol.

Resources**Identify**

- (2010) *The Global State of Worker's Rights*, Freedom House, includes an assessment of the Freedom of Association in 165 countries.
- NAFTA Labor Secretariat has produced substantive analysis of workers' freedom of association in member countries.
- (2004), *Monitoring International Standards: Techniques and Sources of Information*, Committee on Monitoring International Labor Standards, National Research Council of the National Academies, the National Academies Press.

Prevent and Mitigate

- Example protocol agreements: Honduras Protocol Agreement; Indonesia Freedom of Association Protocol

Standards

- ILO Helpdesk

Wages

Annex 10. Key Due Diligence Points

Enterprises should conduct due diligence on both wage compliance with national law and that wages satisfy the basic needs of the workers and their families.

Wage compliance

- Given the propensity of wage non-compliance in the sector, the enterprise should assess all suppliers operating at stage-1 (and work towards stage-2 suppliers) in high-risk areas for wage compliance.

Wages satisfy the basic needs of workers

- Where feasible and reasonable, enterprises should prioritise further due diligence in jurisdictions with the greatest discrepancy between the actual wages and the wage necessary to satisfy basic needs.
- In recognition that bilateral engagement with suppliers that are compliant with national law regarding basic needs of workers is generally ineffective in of itself, the enterprise in consultation (and collaboration where appropriate) with trade unions and other enterprises, should consider whether to engage at a national or sector-wide level to demonstrate support for effective wage fixing and enforcement mechanisms.

Select International Standards

OECD Guidelines for Multinational Enterprises, Chapter V, Paragraph 4.b.

ILO Protection of Wages Convention, 1949 (No. 95) and Recommendation, 1949 (No. 85)

ILO Minimum Wage Fixing Convention, 1970 (No. 131) and Recommendation, 1970 (No.135)

ILO Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173) and Recommendation, 1992 (No. 180)

Enterprises should conduct due diligence on the following:

- a. Wage compliance with national law;
- b. Wages satisfy the basic needs of the workers and their families.⁹⁸

98. The OECD Guidelines, Chapter V, Para 4.b state that “When multinational enterprises operate in developing countries, where comparable employers may not exist, provide the best possible wages, benefits and conditions of work, within the framework of government policies. These should be related to the economic position of the enterprise, but should be at least adequate to satisfy the basic needs of the workers and their families.” Enterprises operating in global supply chains are considered to be

Wage Compliance with National Law

This annex recognises the complexity of wage compliance in the garment and footwear sector. This annex likewise recognises that extensive resources exist regarding supplier assessments and prevention and mitigation measures.

I. Identify actual and potential adverse impacts

- a. Wage non-compliance is a risk at all stages of the garment and footwear supply chain that are labour intensive and employ low-income workers. Non-compliance may be further heightened where:
 - Workers have high illiteracy rates and/or low-levels of education;
 - Workers are paid piece-rate;
 - High rates of migrant workers are employed;⁹⁹
 - High rate of informal workers are employed;
 - Workers live on-site¹⁰⁰
 - Employers employ high rates of young workers and or apprentices
- b. All jurisdictions that do not have strong regulatory enforcement of wages should be considered high-risk for wage non-compliance.
- c. Given the propensity of wage non-compliance in the sector, the enterprise should assess all suppliers operating at stage-1 (and work towards stage-2 suppliers) in high-risk areas for wage compliance. Enterprises may prioritise sourcing locations that hold higher risk of non-compliance of wages due to contextual factors, e.g. lack of labour inspectorates, multiple rates for minimum wages, history of non-enforcement, high rates migrant workers etc., but should systematically work towards the assessment of all suppliers operating at stage 1 through stage 2 in high-risk areas or production clusters.
- d. Enterprises may rely on existing credible guidance on how to assess suppliers. Those conducting assessments should have a strong understanding of national labour laws. Assessments should not only seek to understand whether wages are compliant with national legislation (including in relation to overtime payments), but also whether workers are adequately informed of their wages, payments are made on-time, workers are provided with clear wage statements that they can read; workers are free to choose how they spend their wages; deductions are reasonable and in accordance with national law and collective agreements; legally required leave is paid (e.g. annual, sick and parental leave); and all relevant social security contributions are paid, collected and submitted.¹⁰¹

multinational enterprises, as such, enterprises should conduct due diligence on their suppliers in relation to the above.

99 . Migrant workers may lack knowledge of domestic laws and recourse to raise grievances.

100 . Deductions in payments for onsite housing may increase the risk that workers are not paid legal wage limits.

101 . See Better Work, Guidance Sheet 5: Compensation.

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- e. In recognition that subcontracting at manufacturing greatly increases the risk of wage non-compliance, enterprises should establish strong subcontracting policies and assess and approve all potential subcontractors (for stage-1).
- f. In recognition that an enterprise's own purchasing practices may contribute to non-wage compliance, enterprises should conduct an internal assessment to determine if and how their own practices contribute to non-compliance.
 - Assess the enterprise policies for price negotiations to determine whether real labour costs, including negotiated or legal wages, are calculated into price models;
 - Track how frequently payments to suppliers are delayed;
 - Track how frequently orders are cancelled.

II. Prevent and mitigate adverse impacts

Enterprises should seek to prevent non-compliance of wages in their supply chain by:

- a. Directing sourcing towards suppliers that have demonstrated that they are adhering to national minimum wages or negotiated wages. Similarly, enterprises should responsibly disengage from suppliers that consistently fail to pay wages in compliance with national labour law. This recommendation includes direct suppliers and subcontracted suppliers.
- b. Building the capacity of suppliers to:
 - Integrate effective production planning into management systems;
 - Integrate effective financial management and planning into management systems;
 - Calculate appropriate wages and benefits and track data related to both;
 - Establish effective payment mechanisms which reduce the risk of fraud in payments (e.g. automated payments);
- c. Supporting the training of workers on how to read a payslip and how to calculate wages and benefits;
- d. Conducting due diligence on the rights to join a trade union and representative worker organisation in accordance with Annex 7.
- e. Enterprises should establish mechanisms to ensure that their own practices are not contributing to non-compliance of wages.
 - Ensure that legal wages or negotiated wages (where they exist) are calculated into price models;
 - Ensure that payments to suppliers are paid on-time;
 - Incorporate into supplier contracts adequate terms of compensation in cases in which orders are cancelled last minute.

Wages satisfy the basic needs of workers and their families

I. Identify actual and potential adverse impacts

- a. Enterprises should identify jurisdictions in their supply chain where wages have been identified as not meeting the basic needs of workers and their families (i.e. high-risk areas).

Box 10.1 Assessment of wages

Assessing adverse impact can be challenging. Countries often have several rates for minimum wages, which can vary by region, age of worker, economic activity or professional occupation. This can make it difficult to estimate one minimum wage level per country per sector. Enterprises may consider the most relevant minimum wage, which is defined as the rate applicable to the largest number of workers within the sector in a given country.

Enterprises may also compare minimum wages to wages in the middle of the country wage spectrum (the so-called median wage²). Median rather than mean earnings provide a better basis for international comparisons as it accounts for differences in earnings dispersion across countries.

- b. In order to assess the severity of adverse impact, enterprises should take into consideration factors which may exclude workers from accessing minimum or negotiated wages:
 - Percentage of workers in the sector employed through the formal economy versus the informal economy.
 - Percentage of workers that are international migrant workers and wage regulations for migrant workers versus domestic workers.
 - Existing disparities between men and women in the sector.
 - Percentage of workers employed through piece-rate versus hourly wage.
- c. Where feasible and reasonable, enterprises should prioritise further due diligence in countries with the greatest discrepancy between the actual wages and the wage necessary to satisfy basic needs.

II. Prevent adverse impacts

Within the context of wages, there is evidence that bilateral engagement with suppliers in of itself is not an effective measure of increasing access to wages that cover the basic needs of workers. Within this context, enterprises in consultation (and collaboration where appropriate) with trade unions and other enterprises, should consider whether to engage at a national or sector-wide level to demonstrate support for effective wage fixing and enforcement mechanisms.

Enterprises should consider the following factors in making this determination:

- a. Severity of risk of wage discrepancy between actual wage and wage necessary to satisfy basic needs;
- b. Political will of the government;
- c. Effectiveness of existing wage-setting mechanisms;

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- d. Leverage of industry broadly with government (e.g. % of economy's total merchandise exports)

Broader engagement may take a number of forms and the nature of engagement should reflect the specific context. Example engagements include:

- a. Collaborate with other enterprises to jointly engage government:
 - In support of minimum wage outcomes that uphold a wage that satisfies the basic needs of workers;
 - In support of industry-wide collective agreements be registered and legally enforceable under national laws;
 - In support of enforcement mechanisms.
- b. Engage with suppliers to encourage them to negotiate towards a wage that meets basic needs.
- c. Commit to continued sourcing in a high-risk area if wages are negotiated and incorporated into national law to support wages that meet basic needs.

Enterprises are encouraged to develop strategies for joint action in relation to the above. However, engagement with government can be a long-process. Enterprises should focus on compliance with national law and the right to join a trade union and representative organisations of the workers choosing and the right to collective bargaining while continuing to engage government on the above.

Resources

General

- (2014), *Wages and Working Hours in the Textiles, Clothing, Leather and Footwear Industries*, ILO.
- “Guidance Sheet: Compensation”, Better Work, ILO-IFC.

Standards

- ILO Helpdesk

Chemical use

Annex 11. Key Due Diligence Points

- The enterprise should work towards identifying all suppliers operating at higher-risk stages of the supply chain for hazardous chemicals. For most enterprises operating in the garment and footwear supply chain, the highest risk is found at wet-processing (textile and leather).
- The enterprise should support the development of and adopt a common Manufacturing Restricted Substances List (MRSL) for the sector based on available scientific evidence.
- The enterprise should support the development of and adopt a common Research List for the sector based on available scientific evidence.

Select International Standards

- OECD Guidelines for the Testing of Chemicals
- OECD Principles of Good Laboratory Practice (GLP)
- OECD Guidelines for Multinational Enterprises, Chapter VI. Environment.
- REACH (European Union)

Definitions

Hazard (chemical): Inherent property of a substance having the potential to cause adverse effects when an organism, system, or population is exposed, based on its chemical or physical characteristics (OECD SAAToolbox)

Risk: The probability of harm to human health or the environment posed by exposure to a substance or material of concern. Risk is a function of hazard and exposure, and as the severity of the hazard and/or exposure increases, risk increases (OECD, Current Landscape of Alternatives Assessment Practice: A Meta-Review, 2013)

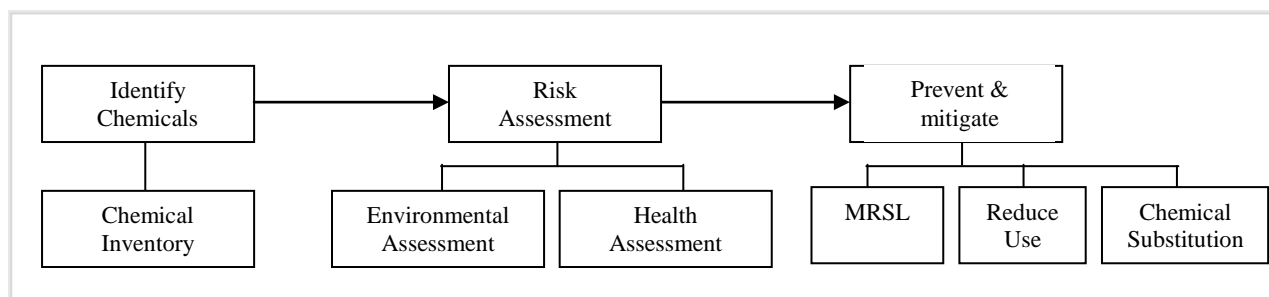
Exposure: Contact, inhalation, or ingestion of a chemical, which may occur during chemical production, handling, manufacturing, use and disposal of a product containing that chemical

Chemical substitution: The process of replacing a chemical of concern with a safer chemical, material or product, or technology/process that eliminates the need to use that chemical.

Alternatives assessment: A process for identifying and comparing potential chemical and non-chemical alternatives that can be used as substitutes to replace chemicals or technologies of high concern.

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Figure 11.1 General chemical management



Recommendations for brands, retailers and other buyers

The following includes recommendations for brands, retailers and other buyers (e.g. buying agents).

I. Identify actual and potential adverse impacts

The enterprise should:

- a. Gain an understanding of the chemicals commonly used in the production of goods within its sub-sector, with an emphasis on identifying harmful and hazardous chemicals and restricted chemicals. Enterprises are encouraged to rely on existing materials. See Resources.
- b. Work towards identifying all suppliers operating at higher-risk stages of the supply chain for harmful and hazardous chemicals. For most enterprises operating in the garment and footwear supply chain, the highest risk is found at textile production and tanneries.
- c. Establish an inventory of chemicals being used in the production and manufacturing of the enterprise's products.
 - As a starting point, the enterprise may identify the most common chemical groups used in the production of its products; however, the enterprise should work towards establishing a full inventory of chemicals over time.¹⁰²
 - For an enterprise with numerous and diverse product lines, it may prioritise the assessment of products at higher risk of hazardous chemicals first and systematically work towards establishing an inventory of chemicals for all products.
- d. Identify higher-risk jurisdictions for use of hazardous chemicals. Higher-risk jurisdictions include those that do not adequately regulate the use of chemicals or enforce existing regulations.
- e. Assess or review existing credible assessments of higher-risk suppliers (e.g. textile producers, tanneries) operating in higher-risk areas.
 - Assessments should include on-site visits, chemical tests and quality certificates.
 - Enterprises may rely on existing guidance and may engage in existing credible industry initiatives to assess suppliers.

102 . The inventory should contain the commercial name, the chemical composition, hazardous chemicals, the annual consumption, information on biological degradation and elimination, content of nitrogen, phosphorous and heavy metals.

- Assess whether printing or other processes that are higher-risk for use of hazardous and harmful chemicals are subcontracted.

II. Prevent and mitigate adverse impacts

The enterprise should:

- a. Support the development of and adopt a common Manufacturing Restricted Substances List (MRSL) for the sector based on a credible scientifically-based assessment of hazards (environmental risk assessment and health risk assessment).
 - An environmental risk assessment includes hazard identification, hazard characterisation, exposure assessment, and risk characterisation. The first two steps are regarded as the process of hazard assessment. The methodology of the environmental risk assessment should align with OECD guidance.¹⁰³
 - A human health risk assessment also includes hazard identification, hazard characterisation, exposure assessment, and risk characterisation. The methodology of the health risk assessment should align with the World Health Organisation guidance.¹⁰⁴ Health risks are also addressed in Annex 8, Occupational Health and Safety.

Box 11.1 Difference between MRSL and RSL

A Restricted Substance List (RSL) sets concentration limits for substances in materials or **finished products** to comply with product regulation and safety standards. An RSL ensures that products are safe for consumer use, legally compliant and safe for environment upon disposal at end of life.

Manufacturing Restricted Substances List (MRSL) establishes concentration limits for substances in **chemical formulations used within manufacturing facilities**. While an MRSL includes all restricted substances found on an RSL, it likewise includes process chemicals that are used to produce materials but that may not end up in the finished product. (ZDHC)

- b. Communicate the MRSL (and any additional expectations regarding chemical use) with all suppliers operating at higher-risk stages of the supply chain. This includes suppliers operating in lower-risk countries.
- c. Support the development of and adopt a common Research List for known harmful or hazardous chemicals that have not yet been restricted through regulation and for which no viable substitute has yet been found. Enterprises should not use harmful or hazardous chemicals on the Research List indefinitely but should aim to phase out chemical use as viable alternatives are not identified within a reasonable amount of time. Research Lists should be communicated with chemical suppliers.
- d. Partner with suppliers operating at higher-risk stages of the supply chain to prevent or mitigate adverse impacts.

103 . See OECD Environmental Risk Assessment Toolkit.

104 . See International Programme on Chemical Safety, WHO Human Health Risk Assessment Toolkit: Chemical Hazards.

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- Provide training on risks of use of hazardous chemicals to suppliers (as necessary);
 - Identify substitutes for chemicals on the MRSL based on scientific data and internationally accepted methodology for assessing hazard and risk. The enterprise may use existing credible substitution lists. The enterprise should ensure that trade-offs with other potential impacts (e.g. water or energy) are evaluated before adopting substitutes.
 - Promote innovative business models (e.g. chemical leasing) where appropriate and feasible to reduce use of harmful chemicals;
 - Promote a credible chemical management plan at the site-level.
- e. If subcontracting (e.g. printing) is common, the enterprise should establish a policy on subcontracting to mitigate the risk of adverse impacts in subcontracted suppliers. See Annex 1 for recommendations regarding subcontracting.
- f. The enterprise is encouraged to continue to engage with its supplier during measurable risk prevention and mitigation. However, if the supplier continues to not comply with limits or usage bans for hazardous chemicals on the MRSL, the enterprise should suspend order or disengage until the supplier has stopped using restricted substances.

Recommendations for enterprises operating at higher-risk stages of the supply chain

The following includes recommendations for textile producers, tanneries and other enterprises operating at higher risk stages of the supply chain.

I. Identify potential and actual adverse impacts

The enterprise should assess the risk associated with its chemical use (both current use and expected use).

- a. Establish an inventory of all chemicals being used on-site and collect known information about chemicals. This should contain the commercial name, the chemical composition, hazardous chemicals, the annual consumption, information on biological degradation and elimination, content of nitrogen, phosphorous and heavy metals.
- b. Determine the extent of risk management necessary on-site.
- c. Support the development of and adopt a common Manufacturing Restricted Substances List (MRSL) for the sector based on available scientific evidence.
- d. Support the development of and adopt a common Research List for the sector based on available scientific evidence.
- e. Communicate expectations to chemical suppliers and identify substitutes.

II. Prevent and mitigate adverse impacts

The enterprise should:

- a. Provide training to management and workers on chemical use, storage, etc.
- b. Stop using banned chemicals on the MRSL immediately;

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- c. Identify and use substitutes for chemicals on the MRSL based on scientific data and internationally accepted methodology for assessing hazards. The enterprise may use existing credible substitution lists.
- d. Implement a robust chemical management plan at the site-level. The enterprise is encouraged to rely on existing standards for chemical management. See Resources.

The enterprise may:

- a. Assess if the business model in place provides incentives for know-how exchange and resource efficiency, or rather stimulates resource overconsumption and chemicals' misuse. The enterprise may choose to implement innovative business models (e.g. chemical leasing) where appropriate to reduce use of harmful chemicals.

Resources

Identify

Environmental Assessment

- Environmental Risk Assessment Toolkit, OECD.
- *Enterprise-level indicators for resource productivity and pollution intensity*, UNIDO / UNEP RECP Programme.
- Chemical Hazard Assessment Guidance, ZDHC.

Health Assessment Methodology

- World Health Organization (WHO) Human Health Risk Assessment Toolkit.

Select Regulatory or Chemical Assessment Programmes

- (2011), SIDS Manual for the Assessment of Chemicals, OECD.
- REACH, European Chemicals Agency
- The Globally Harmonized System of Classification and Labelling of Chemicals (GHS), United Nations.

Hazard Information

- OECD eChem Portal
- OECD Pollutant Release and Transfer Register
- OECD Portal on Perfluorinated Chemicals
- European Chemical Substances Information System (ESIS)
- Environment and Climate Change Canada, Clearing House, Textile Mills and Clothing Manufacturing
- Chemical Guidance Sheets (ZDHC)

Supplier Assessment

- Audit protocol report (ZDHC)

Prevent and mitigate

Manufacturing Restricted Substances List

- ZDHC Manufacturing Restricted Substances List (MSRL)

Substitution

- OECD Substitution and Alternatives Assessment Toolbox (OECD SAAToolbox)
- Frameworks and Guides for Substitution of Chemicals, OECD Meta-Review (OECD)

Chemical Leasing

- Global Chemical Leasing Programme (since 2004), Chemical Leasing Toolkit, 2015 (UNIDO)

Chemical Management Guidance

- GIZ Practical Chemical Management Toolkit
- Chemical Management Systems Guidance Manual (ZDHC)

Additional Guidance and Sector information

- Emission Scenario Documents (OECD)
- Greening Value Chains – For Sustainable Handicrafts Production in Viet Nam, 2013 (UNIDO)
- Textile Guide, Chemsec
- ZDHC website

ANNEX 12

Water

Annex 12. Key Due Diligence Points***Water consumption***

- Any higher-risk activity, including cotton growing and textile production, that is based in a water stressed region should be considered a high-risk area and flagged for further assessment.
- In the garment and footwear supply chain, the most common high-risk stages include cotton growing and textile production (pre-treatment, dyeing/printing, finishing).
- Enterprises may either prevent the risk of contributing to water stress by choosing not to source textiles and cotton from water stressed regions or by mitigating the risk by promoting water efficiency.

Water pollution and wastewater management

- In the garment and footwear supply chain, the most common higher-risk stages include cotton growing and wet-processing (textile and leather).
- Enterprises should support suppliers in implementing existing technical guidance, which generally includes responsible chemical management (including fertilizers and pesticides in cotton growing), effective wastewater management and operations training (for wet-processing); optimisation of water use and irrigation (for both cotton growing and wet-processing); and implementation of local best available techniques (as feasible).

Select International Standards

OECD Guidelines for Multinational Enterprises, Chapter VI. Environment.

OECD Principles on Water Governance

(2003), Best Available Techniques Reference Document for the Textiles Industry, European Commission.

(2013), Best Available Techniques Reference Document on the Tanning of Hides and Skins, European Commission

Definitions

Water pollution: the degradation of water quality due to substances entering water bodies, such as lakes, rivers, and oceans.

Water stress: Water stress occurs when the demand for water exceeds the available amount during a certain period or when poor quality restricts its use. Water scarcity, water quality, environmental flows and the accessibility of water impact water stress.

This annex provides guidance for due diligence in relation to the following:

- a. Water consumption
- b. Water pollution and wastewater management

Water consumption

I. Identify actual and potential adverse impacts

Supply chain risk assessment

- a. The enterprise should identify stages in its supply chain that are most dependent upon water consumption. In the garment and footwear supply chain, the most common high-risk stages include cotton growing and textile production (pre-treatment, dyeing/printing, finishing).
- b. The enterprise should determine whether cotton growing and textile production (and all other water-intensive processes) in its supply chain is occurring in water stressed areas. Enterprises are encouraged to use existing resources to identify water stressed areas (e.g. OECD, Securing Water Sustainability Growth Report). See resources for more information on identifying water stressed areas important to the garment and footwear sector.
- c. Any higher-risk activity, including cotton growing and textile production, that is based in a water stressed region should be considered a high-risk area and flagged for further assessment.
- d. Enterprises should establish traceability to high-risk stages of the supply chain that are located in high-risk regions or trace to control points in the supply chain (e.g. global commodities merchandisers).

Context Assessment

Enterprises may either prevent the risk of contributing to water stress by choosing not to source textiles and cotton from water stressed areas or by mitigating the risk by promoting water efficiency. The purpose of the context assessment is to determine whether the enterprise will be able to operate within a high-risk area responsibly. Within this context, the enterprise should seek to understand the nature, strengths and weaknesses of relevant water policy and management systems. Questions to consider include:

- a. What is the formal (legal and regulatory) water management framework and decision-making and implementation process, and where do statutory duties and power lie?
- b. Is this framework adequate (e.g., includes appropriate standards, allocation mechanisms, and public participation elements) and functional (sufficient resources, legitimacy and license to enforce rules, process permits and licenses, etc.)?
- c. What are the key determinants of water policy performance? Is poor performance linked to a lack of resources, funding, or technical capacity? Is there a lack of political support or evidence of negligence or corruption? Are lines of responsibility and accountability clear, or do overlapping mandates restrict action?
- d. Has adequate stakeholder engagement been conducted feeding into water policy and management? Were all vulnerable stakeholders consulted?

- e. Who has what type of water access and use needs and to what extent are these met? What is the outlook for these needs being met in the future? Are there underrepresented or poorly represented interests?
- f. What major reform initiatives or investment programs are in the pipeline?

Based on the findings of the context assessment, the enterprise should determine whether it can source from water stressed areas responsibly by promoting water efficiency. In instances in which the enterprise cannot source from water stressed areas responsibly, it should move sourcing to non-water stressed areas. In determining the above, enterprises should consider any future expansion and net increase in water demand.

In cases in which the enterprise determines that it can source from water stressed areas responsibly by promoting water efficiency, it should assess existing and planned higher-risk suppliers (e.g. textile production and cotton growing) operating in water stressed areas for current water consumption levels and efficiency measures. Enterprises may rely on existing assessment methodologies. See Resources.

- a. A textile producer, manufacturer, brand, retailer (or other buyer) may find it difficult to identify and assess cotton growers. Enterprises are therefore encouraged to assess mid-stream suppliers sourcing cotton to ensure that they are adequately assessing cotton growers in water stressed areas and taking appropriate steps to prevent or mitigate adverse impacts in accordance with this Guidance.
- b. A brand, retailer or other buyer may find it initially challenging to identify textile producers in their supply chain. In this case, the enterprise is encouraged to work towards the identification of textile producers through collaboration with tier-one suppliers, such as manufacturers. The enterprise should demonstrate progress towards identification of suppliers over time.

II. Prevent and mitigate adverse impacts

Supplier engagement

In cases in which the enterprise determines that it can source from water-stressed areas responsibly, it should support the supplier in the development and implementation of water efficiency plans. Example methods of increasing water efficiency include:

- a. Investment in water saving equipment
- b. Water re-use
- c. Reduced water usage (e.g. in dyeing)
- d. Enterprises are also encouraged to adopt best available techniques (BAT).¹⁰⁵ In some contexts, locally-identified BAT may be appropriate. See Box 12.1 for more information.

Awareness raising and training is an important component of supporting an effective water efficiency programme. Enterprises should ensure that suppliers understand why water efficiency is important to the community and to their business. Enterprises should likewise ensure that workers tasked with managing water efficiency at the site are well trained.

105 . Best Available Techniques Reference Document for the Textiles Industry (2003)

Extensive guidance exists on how to promote water efficiency at textile production and cotton growing. Enterprises are encouraged to rely on existing resources. See Resources.

Government engagement

In high-risk areas where government water policy and management is considered to be insufficient, enterprises may seek to engage with government to support more equitable and effective policies. Responsible policy engagement may take various forms, such as direct advocacy or advocacy in collaboration with other companies and stakeholders, on a range of key public policy issues, such as water pricing, demand-side management, green infrastructure development, the human right to water, and the promotion of sustainable communities through improved access and infrastructure, among other issues.¹⁰⁶ All of these efforts should help create greater political support for progressive water legislation and implementation.

Engaging in policy dialogues has an associated risk when not paralleled with transparency.¹⁰⁷ The nature of water management inherently predisposes the sector to corruption and other types of manipulation.¹⁰⁸ Disclosure of a company's intent in policy engagement, as well as the outcomes of the engagement itself, helps ensure alignment with specific water policy goals.¹⁰⁹ Enterprises may also consider joining multi-stakeholder initiatives focused on transparency and water policy engagement, not only to benefit from shared expertise, but to send a very clear signal that the enterprises upholds and plans to maintain the highest ethical and probity standards while engaging on water issues.¹¹⁰ See Box 6 for more information on policy capture.

Water Pollution and Wastewater Management

I. Identify actual and potential adverse impacts

- a. The enterprise should identify stages in its supply chain that are higher-risk for water pollution. In the garment and footwear supply chain, the most common higher-risk stages include cotton growing and wet-processing (textile and leather).
 - **Cotton growing:** Conventional production practices for cotton involve the application of substantial fertilizers and pesticides. Runoff of such pesticides and fertilizers from cotton fields affect biodiversity by immediate toxicity or indirectly through long-term accumulation.¹¹¹
 - **Textile wet processing:** Waste water mainly results from wet processing (pre-treatment, dyeing/printing, and finishing) containing high loads of organic compounds (e.g. sizing agents, preparations, surfactants, chelating agents, non-fixed dyestuffs, etc.) and of inorganic compounds (e.g. caustic soda, sodium chloride and sodium sulphate, dithionite and sulphite, urea, phosphates etc.). If the waste water is not neutralised (pH adjustment), fibres removed

106 . (2010), *The CEO Water Mandate, Guide to Responsible Business Engagement with Water Policy*, The Global Compact

107 . WWF. *Water Stewardship, Perspectives on Business Risks and Perspectives on Water Challenges* (2013)

108 . (2010), *The CEO Water Mandate, Guide to Responsible Business Engagement with Water Policy*, The Global Compact

109 . Ibid

110 . (2010), *The CEO Water Mandate, Guide to Responsible Business Engagement with Water Policy*, The Global Compact, pg. 42; Examples initiatives include the Water Integrity Network (WIN)

111 . WWF, *Sustainable Agriculture, Cotton Impacts*.

and biologically treated at sufficient food-to-microorganisms ratio and decolourised, and resulting sludge is not properly disposed of severe pollution can be caused.

- **Leather tanneries:** The leather industry is highly water-intensive and produces large quantities of wastewater with high levels of biological oxygen demand (BOD), chemical oxygen demand (COD), dissolved solids, salts, sulphides and chromium. Sludge is an inevitable by-product in most wastewater treatment processes.¹¹²
- b. The enterprises should determine whether wet processing for textiles and leather are occurring in higher-risk areas. Elements to consider include:
 - Does the jurisdiction (or production cluster) have adequate wastewater infrastructure?
 - Does the country have adequate regulations in relation to the enforcement of wastewater regulations (e.g. credible inspections)?
 - It is important to recognise that country-level data may not be sufficient in determining the above. Rather, local-level conditions should be taken into account (e.g. risk of leakage to soils and aquifers; the dilution capacity and the sensitivity of the receiving body).
- c. The enterprise should determine whether cotton growing is occurring in upper catchments and therefore at high-risk for contamination of the water basin.¹¹³ Enterprises should likewise determine if cotton growing is occurring in jurisdictions with poor regulation of and enforcement of chemical use (e.g. fertilizers and pesticides) in cotton growing.
- d. Enterprises should assess suppliers operating at high-risk stages of the supply chain (e.g. wet-processing of textiles and leather, and cotton growing) and operating in high-risk areas. Enterprises may rely on existing assessment methodologies.
 - **Cotton growing:** A textile producer, manufacturer, brand, retailer (or other buyer) may find it difficult to identify and assess cotton growers. Enterprises are therefore encouraged to assess mid-stream suppliers sourcing cotton to ensure that they are adequately assessing cotton growers operating in water catchment areas and taking appropriate steps to prevent or mitigate adverse impacts in accordance with this Guidance.
 - **Wet processing:** A brand, retailer or other buyer may find it initially challenging to identify wet processors in their supply chain. In this case, the enterprise is encouraged to work towards the identification of wet processors through collaboration with manufacturers. The enterprise should demonstrate progress towards identification of wet-processors over time.

II. Prevent and mitigate adverse impacts

Supplier engagement

Extensive guidance exists on how to prevent or mitigate (where prevention is not possible) water pollution at cotton growing, textile production and tanneries. See Table 12.1 for common key components of these

112. Sweden Textile Water Initiative, Guidelines for Sustainable Water Use in the Production and Manufacturing Processes of Textiles, 2015.

113. UNEP, Sick Water, The Central Role of Wastewater Management in Sustainable Development; A Rapid Response Assessment.

measures. Enterprises should support suppliers in implementing existing technical guidance. Support may include technical capacity building and/or financial support for technical upgrades.

Table 12.1 Common core components of prevention and mitigation measures

Production Stage	Common core components of prevention and mitigation measures
Cotton Growing	<ul style="list-style-type: none"> – Responsible chemical management of fertilizers and pesticides – Optimisation of water use, irrigation practices – Implementation of best available techniques (where feasible) – Farmer training and capacity building
Wet processing (Textile and Tanneries)	<ul style="list-style-type: none"> – Responsible chemical use (see Annex 11); – Effective wastewater management—effective, operation and maintenance of effluent treatment plant (ETP) – Technical training of operators on operation and maintenance of ETP on basic water flow within the factory, function of wastewater treatment steps, measurement of wastewater and sample collection and analysis.¹ – Support water management that results in zero liquid discharge or water recycling (where feasible) – Implementation of best available techniques (where feasible)

1. Sources: Sweden Textile Water Initiative, Guidelines for Sustainable Water Use in the Production and Manufacturing Processes of Textiles, (2015); Best Available Techniques Reference Document for the Textiles Industry (2003); Best Available Techniques Reference Document on the Tanning of Hides and Skins (2013)

Box 12.2. Best Available Techniques

Enterprises should encourage suppliers to implement best available techniques (BAT) as defined by Best Available Techniques Reference Documents for the sector or sub-sector (e.g. Integrated Pollution Prevention and Control, Best Available Techniques Reference Document for the Textiles Industry, 2003).

In the majority of cases, enterprises should adopt BAT. However, research has demonstrated that in some cases, BAT defined in Europe are not economically or technically viable in the context of developing economies. Techniques may require high investments or additional costs compared to traditionally used methods. In such cases, and where feasible, the industry may consider applying the BAT concepts and IPPC approach to the local context to identify locally-relevant BAT. (see Sustainability 2013).

Resources

Identify

- (2015), *Stakeholder Engagement for Inclusive Water Governance*, OECD Studies on Water, OECD Publishing, Paris.
- (2015), “Securing Water, Sustaining Growth”, *Report of the GWP/OECD Task Force on Water Security and Sustainable Growth*, OECD.
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Prevent and Mitigate

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- (2015), *Guidelines for Sustainable Water Use in the Production and Manufacturing Processes of Textiles*, Sweden Textile Water Initiative.
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Energy consumption and CO2 emissions

Annex 13. Key Due Diligence Points

- The highest-risk stages in the garment and footwear supply chain generally include stages with high rates of water consumption (i.e. textile production: pre-treatment, dyeing/printing, finishing).
- Enterprises should partner suppliers operating at higher-risk areas to prevent and/or mitigate adverse impacts. Enterprises are encouraged to rely on existing technical guidance on energy conservation and management at the site-level.

I. Identify actual and potential adverse impacts

The enterprise should:

- a. Gain an understanding of higher-risk stages for energy consumption and CO2 emissions in its supply chain. A useful place to start is by understanding high-risk areas for energy consumption and CO2 emissions in the enterprise's sector and/or sub-sector. See Resources.
- b. Work towards identifying all suppliers operating at higher-risk stages for excessive energy consumption and CO2 emissions. The highest-risk stages in the garment and footwear supply chain generally include stages with high rates of water consumption (i.e. textile production: pre-treatment, dyeing/printing, finishing) and transportation.
- c. Identify higher-risk jurisdictions for energy consumption and CO2 emissions.
- d. Assess or review existing credible assessments of higher-risk suppliers (e.g. textile producers, tanneries) operating in higher-risk areas. Enterprises may rely on existing guidance and may engage in existing credible industry initiatives to assess suppliers. Enterprises may rely on existing internally accepted benchmarks for energy consumption.

II. Prevent and mitigate adverse impacts

The enterprise should

- a. Communicate the enterprise's expectations with suppliers operating at higher-risk stages of the supply chain;
- b. Provide training on energy use and CO2 emissions to higher-risk suppliers (as necessary);
- c. Partner with poorly performing suppliers operating at higher-risk areas to prevent and/or mitigate adverse impacts. Enterprises are encouraged to rely on existing technical guidance on energy conservation and management at the site-level. Measures generally include the following components:
 - Energy efficiency measures (e.g. energy conservation technology, optimisation of steam generation and pressurised air, waste heat recovery from waste water and waste gas, process optimisation, low liquor ratio, etc.)

- Development of process-specific techniques on energy conservation (e.g. implementation of energy saving through improvements in the process and reaction conditions)¹¹⁴
 - In addition to the above energy conservation measures (which should form the foundation of an energy management strategy), measures include the efficient use of physical space, and improvements in production processes to reduce failure rates (e.g. and therefore reduce need for reprocessing)
 - Energy management plan at the site-level that include company-wide coordinated measures for energy management.¹¹⁵
- d. If subcontracting (e.g. printing) is common, the enterprise should establish a policy on subcontracting to mitigate the risk of adverse impacts in subcontracted suppliers. See Annex 1 for recommendations regarding subcontracting.
- e. The enterprise is encouraged to continue to engage with its supplier during measurable risk prevention and mitigation.

III. Account for how impacts are addressed

- a. Enterprises should support their suppliers in installing and operating accurate meters and/or measuring software as fundamental steps to benchmarking performance and to initiating efficiency improvement.
- b. Energy consumption figures should be derived on an annual basis. Therefore the shortest frequency of tracking impact should be one-year.¹¹⁶

Resources

- (2003), Integrated Pollution Prevention and Control (IPPC), *Best Available Techniques Reference Document for the Textiles Industry*, European Commission.
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- (1992), “Output of a Seminar on Energy Conservation in Textile Industry”, UNIDO
- (2010), “NRDC’s Ten Best Practices for Textile Mills to Save Money and Reduce Pollution”, Clean by Design, National Resource Defence Council.
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- Hasanbeigi, A. (2010), *Energy-Efficiency Improvement Opportunities for the Textile Industry*

114 . In some cases it has been found effective to separately consider general management techniques for reducing energy consumption and process-specific techniques to be developed in each specialised technical field (UNIDO, pg. 12).

115 . Since energy management is relevant to a wide range of departments within a company, it is necessary to enhance the awareness, improve the knowledge and obtain the participation and cooperation of everybody involved in the production process. See UNIDO, pg. 12.

116 . Shorter periods are not recommended as production may also vary throughout the year.

Bribery and corruption

Annex 14 Key Due Diligence Points

- Enterprises should take a risk-based approach to anti-bribery and corruption due diligence. The OECD Foreign Bribery Report (Dec 2014), which analyses completed cases of the bribery of foreign public officials from 1999 to mid-2014, shows that the Manufacturing Sector accounted for 8% of foreign bribery cases during that period, and the Agriculture Sector accounted for 4% of cases. In addition, wholesale and retail trade accounted for 4% of such cases. Other service activities, such as leasing, accounted for 1% of cases.
- Risk assessment should include an internal risk assessment to examine the extent to which internal structures or procedures may themselves add to the level of risk
- Anti-bribery due diligence measures to prevent and mitigate risk should incorporate good practices as set forth by the OECD Good Practice Guidance on Internal Controls, Ethics and Compliance.

Select International Standards

The OECD Guidelines for Multinational Enterprises, VII. Combating Bribery, Bribe Solicitation and Extortion.

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the Anti-Bribery Convention)

2009 Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions (the 2009 Anti-Bribery Recommendation)

2009 Recommendation on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions

2006 recommendation on Bribery and Officially Supported Export Credits

Legislation

UK, Bribery Act 2010

US Foreign Corrupt Practices Act of 1977 (FCPA)

All Parties to the OECD Anti-Bribery Convention have criminalised the bribery of foreign public officials.

This Annex recognises that bribery and corruption are gateway crimes for many other forms of wrongdoing addressed in this Guidance, including: child labour, forced labour, discrimination, violation of health and safety standards, and environmental standards.

I. Identify actual and potential adverse impacts

Enterprises should take a risk-based approach to anti-bribery and corruption due diligence. The OECD Foreign Bribery Report (Dec 2014), which analyses completed cases of the bribery of foreign public officials from 1999 to mid-2014, shows that the Manufacturing Sector accounted for 8% of foreign bribery cases during that period, and the Agriculture Sector accounted for 4% of cases. In addition, wholesale and retail trade accounted for 4% of such cases. Other service activities, such as leasing, accounted for 1% of cases.

Enterprises should conduct a supply chain risk assessment to identify and prioritise the potential external and internal bribery and corruption risks it faces. Commonly encountered risks can be categorised into six broad groups—country, sectorial, transaction, business opportunity and business partnership.¹¹⁷ The enterprise should likewise consider factors such as the size of the organisation, and the nature, scale and complexity of the organization's activities. It is also essential that the risk assessment looks at the nature and frequency of interactions with domestic or foreign public officials, and, perhaps most importantly, the enterprise's existing and potential types of business relationships.¹¹⁸

Table 14.1. Example external risk factors

Risk areas	Risk factors
Country risks	Enterprise is operating in high-risk jurisdiction for bribery and corruption: <ul style="list-style-type: none"> a. Perceived high levels of corruption in the public and/or private sector b. Absence of effectively implemented anti-bribery legislation, including bribery offences in the criminal law, and absence of corporate liability for such offences c. Failure of foreign government, media, local business community and civil society effectively to promote transparent procurement and investment policies
Sector risks	The Enterprise is linked to high-risk sectors. Relevant examples for the garment and footwear sector include: <ul style="list-style-type: none"> a. Transportation and storage³ b. Wholesale and retail trade² c. Manufacturing: Inspections by local agencies in high-risk countries may pose increased risk
Transaction risks	When operating in a high-risk jurisdiction, certain transactions involving public officials can give rise to higher risks of bribery: <ul style="list-style-type: none"> a. Public procurement², customs clearance, favourable tax treatment, licenses and authorisations, b. Interaction with SOE officials, law enforcement, customs, transportation, local government, environment, and procurement officials, and tax authorities

117. See “Principle 3, Risk Assessment”, The Bribery Action 2010 Guidance, Ministry of Justice.

118. The OECD Foreign Bribery Report (2014) shows that between 1999 and mid-2014, 71% of completed foreign bribery cases involved bribery using intermediaries, including agents, legal advisors, corporate vehicles, associates, and accountants.

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Business partnership risks	<p>When operating in a high-risk jurisdiction, certain business arrangements can pose higher risk of bribery:</p> <ol style="list-style-type: none"> Use of local business partners in transactions with foreign public officials (e.g. joint venture partners, agents and consultants, consortia, intermediaries to establish business in foreign market). Public-private partnerships
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- See Transparency International, Corruption Perceptions Index; See Transparency International, Bribe Payers Index;
- Wholesale and retail trade accounted for 4% of concluded cases of foreign bribery between 1999 and mid-2014. OECD Foreign Bribery Report.
- Transportation and storage accounted for 15% of concluded cases of foreign bribery between 1999 and mid-2014. OECD Foreign Bribery Report.
- Public procurement was involved in 57% of concluded cases of foreign bribery between 1999 and mid-2014. OECD Foreign Bribery Report.

Risk assessment should likewise include an internal risk assessment to examine the extent to which internal structures or procedures may themselves add to the level of risk. Commonly encountered risk factors during an internal assessment are included in Table 14.2.

Enterprises should assess the extent to which internal controls are implemented in accordance with the OECD Good Practice Guidance on Internal Controls, Ethics and Compliance.¹¹⁹

As the enterprise's business evolves, so will the bribery risks it faces and hence so should its risk assessment. For example, the risk assessment that applies to a commercial organisation's domestic operations might not apply when it enters a new market in a part of the world in which it has not done business before.¹²⁰

Table 14.2 Example internal risk factors

Examples included in Table 14.2 do not cover all existing red-flags or situations, but are intended to help enterprises gain a better understanding of the ways in which their internal structures and lack of procedures may increase the enterprise's exposure to bribery impacts in its operations.

Risk Areas	Risk Factors
Policy & training	<ul style="list-style-type: none"> – Lack of clear anti-bribery message from the top-level management – Lack of clear message that bribery of foreign public officials is prohibited, and not just bribery at home. – Limited policies and programs are in place to support compliance with anti-bribery laws – Deficiencies in relevant employee training, skills, and knowledge of bribery risks in the enterprise's operations – Lack of rules and procedures regarding requests for facilitation payments from public officials – Lack of clarity in the organisation's policies on, and procedures for, gifts, meals and entertainment provided to those with whom the enterprise does business with in foreign markets – Lack of clear rules on political and charitable donations – Lack of clear financial controls (e.g. How are the enterprise's bank accounts, petty case

119 . See "Principle 3, Risk Assessment", *The Bribery Action 2010 Guidance*, Ministry of Justice,

120 . Ibid.

	<p>fund and inventory monitored in foreign markets, particularly high-risk countries? What controls are in place with respect to these assets?)</p> <ul style="list-style-type: none"> – Lack of clear controls for monitoring contract compliance – Lack of whistle-blower channels, and protections from retaliation for those who report wrongdoing – Lack of training and awareness raising for business partners
Transaction risks	<ul style="list-style-type: none"> – Limited monitoring and associated controls of enterprise's bank accounts, petty cash funds and inventory in foreign markets. – Limited monitoring of contract compliance. – Categories of expenses in the company's books and records that could be used to hide bribe payments. – Lack of an independent external audit.
Business risks	<ul style="list-style-type: none"> – Lack of control over business partners – Retail outlets are maintained overseas – Enterprise has limited control over foreign operations – Apparent lack of qualifications or resources on the part of a joint venture partner or representative to perform the service offered – Gifts, meals and entertainment are provided to those with whom the enterprise does business in foreign markets – Unusual payment patterns, unusually high commission structures or special financial arrangements involving the enterprise or its foreign subsidiaries and related third parties – Business relationships with state-owned business enterprises, foreign governments (e.g., public-private partnerships), foreign municipalities, foreign legislative bodies, foreign political parties and/or royal families or families with close connections to the political elite – Employment of foreign officials

1. Adapted from Protiviti Flash Report, Even Retailers and Consumer Products Manufacturers Must Manage Compliance with the U.S. Foreign Corrupt Practices Act and Other Anti-Bribery Laws; and the UK Ministry of Justice, The Bribery Action 2010 Guidance

II. Prevent and mitigate adverse impacts

Due diligence procedures to prevent and mitigate the risk of bribery should be proportionate to the identified risk. Anti-bribery due diligence measures to prevent and mitigate risk should incorporate good practices as set forth by the OECD Good Practice Guidance on Internal Controls, Ethics and Compliance.¹²¹

- a. Ethics and compliance programmes or measures designed to prevent and detect bribery, including the bribery of foreign public official, applicable to all directors, officers, and employees, and applicable to all entities over which a company has effective control, including subsidiaries, on, *inter alia*, the following areas:

121. Although the measures in the OECD Good Practice Guidance apply specifically for the purpose of detecting and preventing the bribery of foreign public officials, they can be applied equally to detect and prevent all forms of bribery. However, it is important to explicitly state in relevant documentation, and in awareness-raising and training programs, that bribery includes the bribery of foreign public officials, as this is not necessarily self-evident.

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- Gifts, hospitality, entertainment and expenses;¹²²
 - customer travel;
 - political contributions;
 - charitable donations and sponsorships;
 - facilitation payments; and
 - solicitation and extortion;
 - acceptance of goods¹²³
- b. Ethics and compliance programmes or measures designed to prevent and detect bribery, including the bribery of foreign public officials, applicable, where appropriate and subject to contractual arrangements, to third parties such as agents and other intermediaries, consultants, representatives, distributors, contractors and suppliers, consortia, and joint venture partners (hereinafter “business partners”), including, *inter alia*, the following essential elements:
- properly documented risk-based due diligence pertaining to the hiring, as well as the appropriate and regular oversight of business partners;
 - informing business partners of the company’s commitment to abiding by laws on the prohibitions against foreign bribery, and of the company’s ethics and compliance programme or measures for preventing and detecting such bribery; and
 - seeking a reciprocal commitment from business partners.¹²⁴
- c. A system of financial and accounting procedures, including a system of internal controls, reasonably designed to ensure the maintenance of fair and accurate books, records, and accounts, to ensure that they cannot be used for the purpose of bribery, including the bribery of foreign public officials, or hiding such bribery;
- d. Measures designed to ensure periodic communication, and documented training for all levels of the company, on the company’s ethics and compliance programme or measures regarding bribery, including the bribery of foreign public officials, as well as, where appropriate, for subsidiaries¹²⁵;
- e. Appropriate measures to encourage and provide positive support for the observance of ethics and compliance programmes or measures against bribery, including the bribery of foreign public officials, at all levels of the company;

122 . Enterprises are encouraged to establish thresholds appropriate to the local environment.

123 . See (2000), *Fighting Corruption in the Supply Chain, A Guide for Customers and Suppliers*, United Nations Global Compact, pg. 25.

124 . For example, enterprises may incorporate anti-bribery or anti-corruption compliance language in all third-party contracts and require that high-risk suppliers have in place adequate procedures to prevent bribery.

125 . Face-to-face interaction, which provides opportunity for supplier personnel to ask questions and provide feedback, is preferable, but when in-person training is not cost-effective or practical, web-based training is a useful alternative. See (2000), *Fighting Corruption in the Supply Chain, A Guide for Customers and Suppliers*, United Nations Global Compact, pg. 21.

- f. Appropriate disciplinary procedures to address, among other things, violations, at all levels of the company, of laws against foreign bribery, and the company's ethics and compliance programme or measures regarding bribery, including the bribery of foreign public officials;

In addition to the above, enterprises are encouraged to:

- a. Implement a process to evaluate corruption risk prior to entering into a customer supplier relationship (e.g. pre-qualification) when operating in high-risk countries. The enterprise should establish clear rules and procedures for choosing a supplier and for establishing "preferred supplier" relationships.
- b. Join and actively participate in collective anti-bribery initiatives and multi-stakeholder processes at the sector level where relevant¹²⁶;

See 'Resources', for due diligence guidance regarding specific bribery and corruption risks (e.g. supply-chain, joint-venture, etc.).

III. Account for how adverse impacts are addressed

Track the effectiveness of prevention measures

Enterprises may use a range of mechanisms to provide insights into the effectiveness of procedures designed to prevent bribery and corruption in their own operations and in their supply chain.

- a. Staff surveys, questionnaires and feedback from training can provide an important source of information on effectiveness and a means by which employees and other associated persons can inform continuing improvement of anti-bribery policies.¹²⁷
- b. Enterprises may also consider formal periodic reviews and reports for top-level management.¹²⁸
- c. Enterprises may seek some form of external verification or assurance of the effectiveness of anti-bribery procedures.¹²⁹

Communicate how adverse impacts are addressed

Enterprises should make statements in their annual reports or otherwise publicly disclose their internal controls, ethics and compliance programmes or measures, including those which contribute to preventing and detecting bribery¹³⁰

IV. Cross-cutting elements to support due diligence

Management systems

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- 126 . For example, the Maritime Anti-Corruption Network is a network of maritime companies and their clients that promote good corporate practice in the maritime industry for tackling bribes, facilitation payments, and other forms of corruption.
 - 127 . Ministry of Justice, The Bribery Action 2010 Guidance, Principle 6, Monitoring and Review
 - 128 . Ibid. 127
 - 129 . Ibid. 127
 - 130 . Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. OECD.

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Enterprises should consider the good practices put forth in the OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance, including:

- a. Strong, explicit and visible support and commitment from senior management to the company's internal controls, ethics and compliance programmes or measures for preventing and detecting bribery, including the bribery of foreign public officials;¹³¹
- b. A clearly articulated and visible corporate policy prohibiting bribery, including the bribery of foreign public officials;
- c. Oversight of ethics and compliance programmes or measures regarding bribery, including the bribery of foreign public officials, including the authority to report matters directly to independent monitoring bodies such as internal audit committees of boards of directors or of supervisory boards, is the duty of one or more senior corporate officers, with an adequate level of autonomy from management, resources, and authority.

Resources

Identify

- OECD, Country Reports on the Implementation of the OECD Anti-Bribery Convention (<http://www.oecd.org/daf/anti-bribery/countryreportsonteimplementationoftheoecdanti-briberyconvention.htm>)
- OECD, Regional anti-corruption programmes (<http://www.oecd.org/corruption/regionalanti-corruptionprogrammes.htm>)
- OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones
- OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials
- Transparency International, Bribe Payers Index
- Transparency International, Corruption Perceptions Index

Prevent and Mitigate

- OECD Good Practice Guidance on Internal Controls, Ethics and Compliance

Emerging Markets

- Arnold & Porter LLP, Anti-Corruption Compliance in Emerging Markets: A Resource Guide (Part 1)

131 . OECD Good Practice Guidance on Internal Controls, Ethics and Compliance.

Resources (continued)*Facilitation Payment:*

- Ministry of Justice, The Bribery Action 2010 Guidance, Case Study 1—Principle 1,
- BSR, Maritime Anti-Corruption Network (MACN)

Supply Chain:

- Ministry of Justice, The Bribery Action 2010 Guidance, Case Study 4—Principle 4, Due diligence of agents provides
- (2000), *Fighting Corruption in the Supply Chain, A Guide for Customers and Suppliers*, United Nations Global Compact,; *See*
 - Case Study, Corruption During the Vendor Selection Process
 - Scenario 8: Supplier submits false invoice for work done or employee work hours
 - Scenario 9: Customs official demands bribe through customs or to pass nonconforming goods through customs
 - Scenario 10: Supplier bribes government official to pass health and safety inspections
 - Scenario 11: Supplier offers bribe to auditor to pass audit for quality, labor standards, environment. etc.