

SESSION NOTES

8-9 February 2017

Roundtable on

**Due diligence in
the garment and
footwear sector**



■ Practical information

8-9 February 2017 | OECD Conference Centre, Paris, France

■ Chatham House Rule

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■ Contact

Jennifer SCHAPPERT | Jennifer.SCHAPPERT@oecd.org

Policy Analyst, OECD Directorate for Financial and Enterprise Affairs

Sama AL TAHER CUCCI | Sama.ALTAHERCUCCI@oecd.org

Events Coordinator, OECD Directorate for Financial and Enterprise Affairs

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■ Due diligence scenario workshop

9:00 — 12:00 Room CC1

Overview

During this session, participants will have the opportunity to discuss how a risk-based due diligence process may be applied to a series of example scenarios common in the sector, building on the recommendations from the OECD Garment and Footwear Guidance. Participants of this session will be split into smaller groups to discuss 2-3 scenarios. Teams will then have the opportunity to report back and learn from the discussions of other groups.

In preparation for this session, a series of sample scenarios were developed with input from multiple stakeholders.

Objective

The primary purpose of this session is to discuss how the due diligence recommendations of the OECD Garment and Footwear Guidance can be applied within a real-world context.

Discussions will enable participants to consider the role of various actors along the supply chain in carrying out due diligence within specific scenarios, reflect on what taking a 'risk-based' approach means in-practice, identify existing resources, and discuss points of potential collaboration in carrying-out due diligence.

Participants

Participants of the workshop will include representatives from business, government, trade unions and civil society.

■ Due diligence for the responsible employment of migrant workers

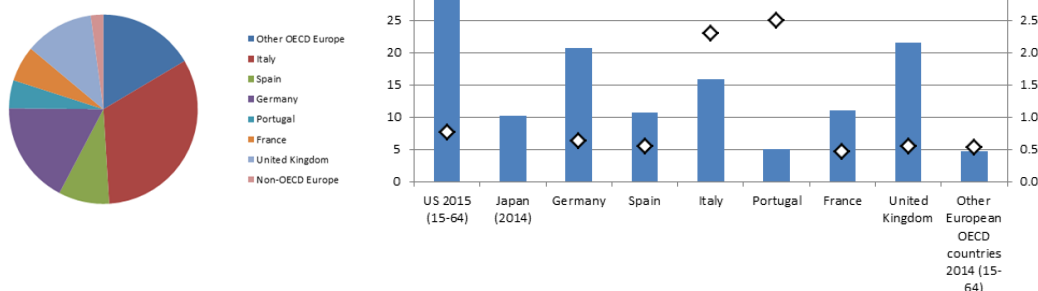
9:00 — 12:00 Room CC5

This session is co-organised with Initiative Clause Sociale



Background

Figure 1
Where are the 160 thousand foreign-born workers in the European textile industry?



Migrants play an intrinsic role in garment and footwear manufacturing globally. A significant proportion of workers in the sector are domestic migrants, meaning that they have moved within their own country, often from rural to urban locations. For example, in China there were approximately 277 million rural-urban migrants in 2015, accounting for approximately 36 percent of China's total workforce.¹

Foreign born migrants also contribute to the sector workforce in many OECD and non-OECD countries. For example, the sector in Jordan employs approximately 40,000 foreign migrant workers comprising 75 percent of the country's workforce in the sector.² There are approximately 160,000 foreign born workers in the European textile industry (see Figure 1). Within OECD countries, foreign born migrants may migrate for many different reasons and are generally seeking to stay and settle in the country. Within this context, the textile, garment and footwear sector can act as an important first port of entry into the formal workforce. In non-OECD countries, foreign migrants often migrate specifically to pursue employment in the sector for a short period of time. Refugees are also increasingly employed in the sector in both OECD and non-OECD countries.

Human rights and labour risks

The circumstances of recruitment, employment and the level of protection afforded foreign migrants are highly variable and greatly affected by policies in both sending and host countries. However, across sourcing contexts, low-income migrant workers and refugees are often marginalised economically, socially and geographically and therefore particularly vulnerable to exploitation. Some characteristics of the garment and footwear sector, notably at manufacturing, may increase this risk of exploitation.

¹ China Labour Bulletin, Accessed at <http://www.clb.org.hk/content/migrant-workers-and-their-children>

² ILO, Unified contract for migrant garment workers in Jordan unveiled at buyers' forum and IO-IFC Better Work Jordan, Accessed at https://docs.google.com/viewer?url=http%3A%2F%2Fbetterwork.com%2Fjordan%2Fwp-content%2Fuploads%2Ffacts-and-figures-1.pdf&hl=en_US&embedded=true

- **Low-wages:** Migrant workers may be provided different wage rates than domestic workers and may be paid rates well below wages necessary to meet their basic needs.³ Migrant workers are likewise vulnerable to delayed payments and illegal deductions.
- **Precarious work:** Workers without the legal right to work cannot enter into a legally binding employment relationship. The lack of a legal employment contract puts workers at high risk for abuse and exploitation due to a lack of resource if their rights are violated. Furthermore, workers without legally binding contracts often lack access to related benefits such as social security and healthcare.⁴
- **Child labour:** Children of migrant workers may face unique obstacles to accessing education and in many cases may end-up in child labour. In some cases children and minors are unaccompanied.
- **Sexual harassment and sexual and gender-based violence:** Women account for a majority of the labour force across many of the stages of the garment and footwear supply chain. Women who are low-income workers, migrant workers, and/or are employed informally are particularly exposed to risks of sexual harassment and sexual and gender-based violence in the workplace.⁵ Migrant workers that are reliant upon their employer to renew their work visas are particularly vulnerable to threats and reprisals. They likewise often lack information on where to turn in instances of harassment or violence.
- **Forced labour:** International migrant workers are more exposed to certain forms of forced labour, particularly those with an irregular status, whose vulnerability can be exploited through coercion. For example, migrant workers may be vulnerable to coercion through the withholding of documents, such as passports, work permits, identification cards, etc. Domestic and international migrant workers may also be vulnerable to debt-induced forced labour due to recruitment fees owed to private recruitment and employment agencies.⁶
- **Violations of the right to freedom of association:** Migrant workers who often hold short-term contracts often face a wide range of discriminatory policies against their right to freedom of association.

The conditions in which migrant workers are recruited and hired can heighten the above risks. Third party labour recruitment agencies and contractors often facilitate the recruitment and hiring of domestic and foreign migrant workers. Such labour brokers often operate in the informal economy without legally enforceable contracts or agreements regarding wages, benefits, provisions of work and without oversight. Migrant workers may also be vulnerable to exploitive debt schemes.

The use of illegal subcontracting can likewise heighten human rights and labour risks. In some cases undocumented workers and refugees are employed in small undocumented suppliers that act as subcontractors to first tier garment manufacturers. Due to the lack of visibility, illegal subcontracting can increase almost all human rights and labour risks including child labour, unsafe working conditions, forced labour, harassment and violence, etc.

³ The OECD Guidelines for Multinational Enterprises call on companies to “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.”(OECD Guidelines, V, 4b).

⁴ Fair Wear Foundation (2015) “Guidance for Affiliates, Risks related to Turkish garment factories employing Syrian refugees”, Fair Wear Foundation website.

⁵ ILO, Gender-based violence in the world of work: Overview and selected annotated bibliography, (2011).

⁶ Debt-induced forced labour is also commonly referred to as debt bondage.

Due diligence

The OECD recognises the role of host governments to facilitate integration and protect the rights of migrants regardless of their status. Recommendations for governments can be found in the [OECD Perspectives on Global Development 2017](#).

This session seeks to address the role that companies should play in respecting the rights of migrant and refugee workers. The OECD Guidelines for Multinational Enterprises calls on companies to avoid causing or contributing to adverse impacts through their own activities and to seek to prevent and mitigate adverse impacts in their supply chain. These recommendations are not intended to promote disengagement but rather responsible engagement. Companies should tailor their due diligence approach – the process by which they identify, prevent and mitigate and account of adverse impacts in their supply chains—to ensure that the employment of migrant workers and refugees is responsible.

The OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector provides a framework for due diligence which can be applied to the employment of migrant workers

OECD Garment and Footwear Guidance - Due Diligence Framework

Embed responsible business conduct in enterprise policy and management systems

- Adopt a policy that articulates the enterprise's commitments to responsible business conduct in its own operations and in its supply chain.
- Strengthen management systems in order to conduct due diligence on risks of harm in the enterprise's own operations and in its supply chain.

Identify potential and actual harm in the enterprise's own operations and in its supply chain

- Scope the risks of harm in the enterprise's own operations and in its supply chain
- Conduct a self-assessment of the enterprise's own operations
- Assess suppliers associated with higher-risks at the site-level
- Assess the enterprise's relationship to impacts

Cease, prevent or mitigate harm in the enterprise's own operations and in its supply chain

- Cease, prevent or mitigate harm in the enterprise's own operations and in its supply chain

Track

- Verify, monitor and validate progress on due diligence and its effectiveness in the enterprise's own operations and in its supply chain⁷

Communicate

- Communicate publicly on the enterprise's due diligence processes, including how the enterprise has addressed potential and actual harm
- Communicate with affected stakeholders

Provide for or cooperate in remediation when appropriate

- Establish a process to enable remediation in the enterprise's own operations
- Commit to hearing complaints against the enterprise that are raised through legitimate processes

⁷

The effectiveness of due diligence is measured by the extent to which actual and potential harm is prevented and mitigated in the enterprise's own operations and in its supply chain.

Discussion questions

A. Setting the context

9:00 — 9:30

- What are the categories of migrants working in the garment and footwear sector (e.g. domestic, international, refugees)?
- What are the existing and expected trends in domestic and international migration movements that affect the garment and footwear sector?
- Recognising that each country is unique, what are some of the variances across countries that should be considered in a discussion on the employment of migrant workers (e.g. variances in host and sending country regulations; variances in worker status; etc.)?
- What are concrete steps that host and sending governments can take to protect the rights of migrant and refugee workers?

B. Assessing human rights and labour risks at the country and site-level

9:30 — 10:15

- What are the human rights and labour risks facing domestic and international migrant workers?
- How can companies operating in or sourcing from a country that has high rates of migrant workers identify country –specific risks?
- How can buyers, intermediaries and suppliers effectively assess risks at the site-level?
- What do effective operational-level grievance mechanisms look-like when seeking to flag human rights and labour abuses and seek remedy? What is the role of trade unions and workers?

Break 10:15 — 10:30

C. Preventing and mitigating human rights and labour risks

10:30 — 12:00

- How can companies prevent and mitigate human rights and labour risks to promote the responsible employment of migrant workers?
- Where is collaboration necessary and between which actors to effectively protect workers from human rights and labour risks in the sector?
- Where do gaps in resources, research, tools, knowledge-sharing, etc. exist to enabling companies to carry-out due diligence?

Background documents

- OECD (2016), [International Migration Outlook, 2016](#), OECD, Paris.
- OECD Migration Databases, Online at <http://www.oecd.org/els/mig/oecdmigrationdatabases.htm>
- OECD (2017), [Perspectives on Global Development 2017, International Migration in a Shifting World](#), OECD, Paris.
- OECD (September 2016), [“Hiring refugees – What are the opportunities and challenges for employers?”](#), Migration Policy Debates, OECD, Paris.
- Dr. Emre Eren Korkmaz (2016), [Time to act in Turkey to promote legal and decent employment of refugees](#), ETI.
- Dr. Emre Eren Korkmaz (2016), BBC Panorama’s investigation and the Syrian refugee workers in the Turkish garment industry, International Migration Institute, University of Oxford.

■ OECD National Contact Point Mechanism: Promoting responsible business conduct and resolving issues in the garment and footwear sector

Lunch session

12:30 — 13:30 Room CC16

The OECD Garment and Footwear Guidance calls on companies to agree “to enter into mediation with the OECD National Contact Points (NCPs) when the NCP has determined that the issue is bona fide under the procedures of the OECD Guidelines.”⁸

While the Guidance explains the nature and purpose of the NCP mechanism, many companies in the garment and footwear sector are not aware of NCPs or of their unique nature and specific instance procedure. This lunch time session will be an opportunity to introduce the NCP mechanism to companies and other stakeholders and discuss some interesting outcomes in the context of specific instance related to the garment and footwear sector.

The OECD Secretariat will begin by introducing the panellists and describing the NCP mechanism and its unique features. It will provide analysis and statistics with respect to the number of specific instances handled and trends and outcomes in specific instances related to garment and footwear supply chains.

The German and Danish NCPs will be invited to present on their specific instances involving the garment sector.

Discussion questions

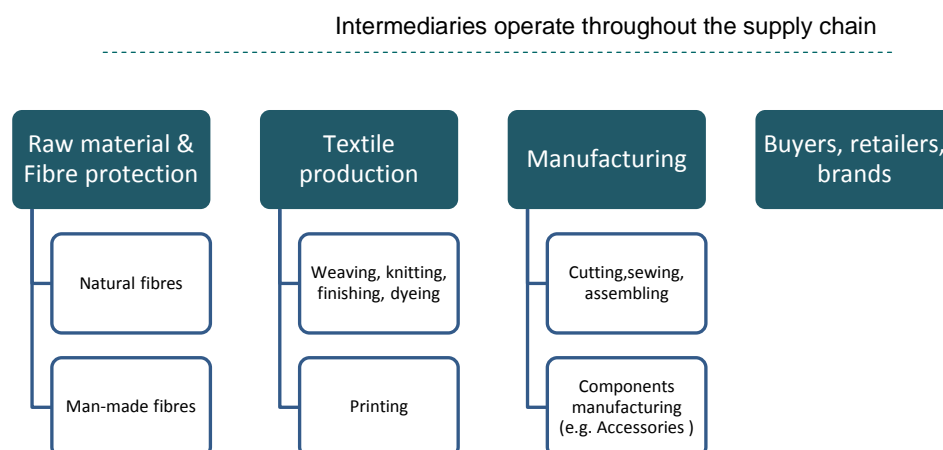
- For each case:
 - What was the specific instance about and who brought the case?
 - Was there a pre-existing legacy issue?
 - How did the parties to the specific instance first hear about the specific instance mechanism?
 - Describe the mediation process
 - What were some of the positive impacts of the mediation?
- What are some of the challenges with respect to handling issues arising in this sector?
- What advantages can the NCP system offer resolving issues in garment and footwear supply chains relative to other types of grievance mechanisms?
- How can the OECD Garment and Footwear Guidance help NCPs in handling specific instances arising in this sector?
- What advice would you offer to companies that may wish to engage with the NCP, or to companies that receive a case?
- What advice would you give to civil society representatives bringing forward a case?
- How else can companies engage with NCPs in their jurisdiction (e.g. requesting technical advice, learning about developments at the OECD etc.)?

⁸

OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector, section 7.2

Background

Figure 1. Simplified stages of the garment supply chain



The garment and footwear supply chain is generally divided into stages (also referred to as tiers).⁹ Each stage consists of companies with the same general functionality. However, unique stages in the supply chain or tiers in the supply chain are not fixed; differentiation between tiers in the supply chain is often fluid and a single tier may consist of one or many enterprises.¹⁰ Vertical integration, whereby a single enterprise owns and controls numerous processes within a single stage or across stages of the supply chain is increasingly common in the garment supply chain. Furthermore, the sector supply chain includes a wide range of intermediaries operating at all stages of the supply chain, including buying agents, traders, etc. Generally, in the garment and footwear supply chain, demand for products originates at the brand or retailer and is transmitted upstream along the supply chain.

The garment and footwear sector is highly complex and is characterised by short-term sourcing relationships and larger supplier bases spread across multiple countries. Downstream companies, such as brands and retailers, often have longer-term sourcing relations with a small portion of ‘strategic suppliers’, but may lack direct relationships and visibility of other tier-1 suppliers, preferring to source through intermediaries. Sub-contracting is a common practice in the garment and footwear sector whereby a supplier may sub-contract out some portion of the contract to a third-party, which allows for flexibility and specialisation in manufacturing, but also can reduce visibility up the supply chain. Furthermore, while there is an increased awareness amongst sector participants that companies should look beyond their tier-1 manufacturing, the ‘second tier’ of the supply chain (and third, fourth, etc.) remains largely unknown territory for most companies.

Due diligence and mapping of the supply chain

The OECD Due Diligence Guidance does not provide prescriptive recommendations on what tier in the supply chain a company should map to. Rather the Guidance recognises that taking a risk-based approach—meaning that the procedures that a company implements are proportionate to the severity of

9 . This Guidance refers to “stages” and “tiers” interchangeably.

10 . Chandra, Charu, and Janis Grabis. *Supply Chain Configuration: Concepts, Solutions, and Applications*. Springer Publishing. (2007)

the harm—means that a one-size fits all model cannot be applied, even to traceability. Rather, the Guidance states that companies should identify suppliers and other business relationships to the extent that is necessary to carry-out due diligence.¹¹ Importantly, while this Guidance does not specify which tier in the supply chain the enterprise should map to, the enterprise is expected to justify how it conducts due diligence. In other words, an enterprise should be able to explain how it was able to identify risks in its supply chain and address those risks.

Figure 2. Summary of OECD Due Diligence process and corresponding information needed from suppliers

	Scope	Prioritise	Assess	Prevent & Mitigate	Account
Due diligence process	The company conducts a scoping exercise to identify the most significant risks of harm in its own operations and in its supply chain.	The company prioritises its most significant risks (based on likelihood and severity of harm)	The company assesses suppliers that are high-risk for prioritised issues. This includes suppliers that: Operate in a higher-risk country, and Are involved in production processes that are higher-risk	The company ceases activities which cause harm in its own operations; The company seeks to prevent and mitigate harm in its supply chain	To the extent possible and reasonable, the enterprise should seek assurances that the actions that it has or is taking are preventing and mitigating harm in its own operations and in its supply chain.
Example supplier information needed	Stages of the company's supply chain (e.g. manufacturing, finishing, etc.) Countries in the company's supply chain		Identification of suppliers operating at higher-risk stages of the supply chain that have been prioritised; Assessment data for suppliers operating at higher-risk stages of the supply chain;	Corrective action being taken to prevent/mitigate impacts	Monitoring data; verification & validation data at high-risk suppliers

Box 3 of the OECD Due Diligence Guidance acknowledges the challenges of identifying and addressing risks of harmful impacts upstream in a company's supply chain, for example beyond tier-2. The Guidance provides recommendations on how a company can address upstream risks by building on the methodology of the [OECD Due Diligence Guidance for minerals sourced from conflict affected and high-risk regions](#).

¹¹ OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector, Footnote 14.

OECD Garment and Footwear Guidance

Box 3. Mechanisms to assess and address risks of harm beyond tier 2 (e.g. raw materials)

It may be difficult for an enterprise to identify and assess individual suppliers operating upstream—for example at raw materials—due to a lack of visibility and leverage. This does not diminish the enterprise’s responsibility to identify harmful impacts upstream. Enterprises are encouraged to establish mechanisms that are fit-for-purpose. Establishing traceability and/or assessing ‘choke points’ are two example mechanisms that may be used to evaluate whether risks linked to harms upstream in an enterprise’s supply chain are being identified, prevented or mitigated. This is an area where collaborative approaches may be appropriate and are increasingly being used.

Traceability

Traceability is the process by which enterprises track materials and products and the conditions under which they were produced (in relation to matters covered by the OECD Guidelines) through the supply chain. It’s important to note that traceability as a tool may help an enterprise gain information on upstream actors, however, an enterprise cannot stop at traceability. The following subsequent steps in this Guidance—notably preventing and mitigating harm—are critical.

Engagement with ‘choke points’

‘Choke points’ may be identified using a number of considerations, such as:

- Key points of transformation in the supply chain
- Stages in the supply chain that generally include relatively few actors that process a majority of the commodity
- Stages in the supply chain with visibility and control over the circumstances of production and trade upstream

By definition, an enterprise shares some of the same upstream suppliers as the enterprise operating at a choke point in its supply chain. However, the enterprise operating at the choke point likely holds greater visibility or leverage over those upstream suppliers. If an enterprise can reasonably determine that enterprises operating at choke points in its supply chain are conducting due diligence on their upstream suppliers, then the enterprise can likewise reasonably determine that risks of adverse impact linked to its own upstream suppliers have been identified, prevented and mitigated.

The enterprise may:

- identify suppliers operating at choke points in its supply chain for products that are linked to severe impacts upstream (i.e. beyond where the enterprise has visibility); and
- Verify that enterprises operating at choke points are identifying, preventing and mitigating harms linked to their suppliers.

Example choke points in the garment and footwear supply chain may include:

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

Cost sharing

Implementing traceability and engagement with choke points requires financial resources. This Guidance recommends that enterprises build into supplier contracts an obligation to support supply chain due diligence of risks linked to upstream production where appropriate (e.g. obligation to direct sourcing towards choke points that have demonstrated effective due diligence mechanisms). However, this Guidance does not recommend that enterprises mandate that suppliers engage in specific initiatives

unless the enterprise is willing to support the cost of the supplier's participation and any associated premiums. Rather, enterprises should recognise a range of collaborative due diligence initiatives, tools, etc. that conform to this Guidance.

Collaboration

Enterprises are encouraged to collaborate, for example, through industry initiatives or multi-stakeholder initiatives, to implement the above. This is particularly important for the engagement of SMEs. The following are example steps that an enterprise or initiative may take to assess enterprises operating at choke points in the supply chain.

- Identification of actual or likely choke points in the supply chain
- Traceability to enterprises operating at choke points
- Verification (e.g. through management audits and random site-checks) that enterprises operating at choke points are applying due diligence on their upstream suppliers in accordance with the recommendations in this Guidance.
- Directed sourcing towards enterprises operating at choke points in the supply chain that are applying due diligence in accordance with this Guidance

Legislation

The UK Modern Slavery Act, Section 3017 of the US Tariff Act and the California Transparency in Supply Chains Act include expectations related to supply chain transparency.

UK Modern Slavery Act

Section 54 of the law requires that companies publish an annual statement on their efforts, if any, to tackle slavery or trafficking in their business or supply chain. The practical guidance for Transparency in Supply Chains mandated by the law and published by the UK Secretary of State emphasizes the business benefits of human rights due diligence: 'protecting and enhancing an organisation's reputation and brand; protecting and growing the organisation's customer base as more consumers seek out businesses with higher ethical standards; improved investor confidence; greater staff retention and loyalty based on values and respect; and developing more responsive, stable and innovative supply chains'.

United States

Section 307 of the Tariff Act of 1930 (19 U.S.C. § 1307) prohibits the importation of merchandise mined, produced or manufactured, wholly or in part, in any foreign country by forced or indentured child labour – including forced child labour. Such merchandise is subject to exclusion and/or seizure, and may lead to criminal investigation of the importer(s).

A February 2016 law closed a Tariff Act loophole that allowed import of goods derived from forced labour if U.S. demand exceeded domestic production.

California Transparency in Supply Chains Act requires retailers or manufacturers with business in California to disclose via "conspicuous link" on company's main website activities undertaken, if any, to address risks of slavery and human trafficking in supply chains. Activities to be covered: verification of product supply chains, audit of suppliers, certification of suppliers, internal accountability standards and procedures, training for employees and management.

Tools for traceability

A variety of solutions for recording, storing and retrieving data exist.

Barcodes

Use: Barcode technology is affordable, easy to handle, and accurate. These advantages make barcodes widely used in supply chain management and accepted across the world. If a product or the raw materials to create a product arrive at your facilities without a barcode, one can quickly be created, printed, peeled and applied to begin tracking its movements. Collaborative efforts using barcode technology already exists and the hope is that they will allow consumers to scan clothing labels at the point of purchase using smartphones.

Challenges: Lack of consensus in the sector. Initiatives have been moving very slowly.

RFID

Use: RFID uses electromagnetic fields to automatically identify and track tags attached to objects. The tags contain electronically stored information. Passive tags collect energy from a nearby RFID reader's radio waves. Active tags have a local power source such as a battery and may operate at hundreds of meters from the RFID reader. Unlike a barcode, the tag need not be within the line of sight of the reader, so it may be embedded in the tracked object.

Challenges: RFID has been inhibited by certain limitations including the tag cost and tag readability. The cost of RFID tags currently limits their economic justification for item level tagging or case-level tagging in the produce industry. Reading RFID tags also requires specialized equipment, limiting their usefulness for consumers today.

One-up-one-down (OUOD)

Use: The one-up-one-down approach was first developed by the food industry to facilitate food traceability and safety. The OUOD approach involves the ability to identify, at any specified stage of the food chain (from production to distribution) from where the food came (one step back) and to where the food went (one step forward), the so-called “one-up, one-down” system (OUOD). This necessitates that each lot of each food material is given a unique identifier which accompanies it and is recorded at all stages of its progress through its food chain.¹²

Challenges: OUOD requires supply chain participants to be capable of identifying, through records maintained by the company, the immediate supplier and customer of an identified food material. Additionally,

Blockchain

Use: Blockchains are an open ledger that can record transactions between two parties efficiently and in a verifiable and permanent way. Each block contains a timestamp and a link to a previous block. By design, blockchains are inherently resistant to modification of the data — once recorded, the data in a block cannot be altered retroactively, rather than relying on easy-to-forge paper documents.

Challenges: It has been reported that this new technology is very difficult to insert into established supply chain systems. Although it is promising, the technology is still in its infancy.

¹²

International Union of Food Science and Technology, IUFOST Scientific Information Bulletin (SIB) (March 2012), Food Traceability, <http://www.iufost.org/iufostftp/IUF.SIB.Food%20Traceability.pdf>

Mapping trade flows

Use: Where information exists, the enterprise may identify trade flows of raw materials to determine the likely country of origin of raw materials being sold to material processors in their supply chain (e.g. map where the majority of cotton is purchased for spinners operating in a given country). Various tools are available to help companies map trade flows, such as the OECD's [Compare Your Country](#), 'Trade in Raw Materials'.

Challenges: Sufficient data may not be available for all relevant commodities.

Discussion questions

To facilitate a focused discussion, panellists and participants will discuss traceability in relation to two scenarios.

Scenario 1: A garment brand is informed of a new report that highlights risks of worst forms of child labour in the spinning mill industry in Country A.

- How can the brand determine if it is sourcing from Country A and therefore further due diligence is necessary?
- If the brand is relatively confident that it is sourcing from Country A, how can it map to its tier-2 suppliers in practice? What technical solutions are available to facilitate the process?
- Where specifically do we already see collaboration and where could further collaboration help facilitate mapping?
- What business information about the supplier should the brand collect in order to contribute towards its due diligence process? Is there consensus on the specific business identification information that a company should collect? If not, where do the discrepancies currently exist and is there a need for further harmonisation?
- Mapping to a company's suppliers is a good first step, but mapping is not an end in of itself. In order to carry out due diligence, the company needs to assess for and then prevent and mitigate child labour in this scenario.
 - How can information about the supplier's performance be shared with the buyer in-practice and how can that information be updated over time (e.g. data related to monitoring)? What are the tools/methodologies available?
 - Where could further collaboration help facilitate this process?

Scenario 2: A new report highlights risks of forced labour in the sourcing of cotton in Country B.

- Building on the discussion under Scenario 1, does the location of the risk change the approach to mapping suppliers and gathering information about the supply chain?

Background resources

- OECD, [Compare Your Country](#), 'Trade in Raw Materials'
- BSR (2014), [A Guide to Traceability](#), UN Global Compact
- International Union of Food Science and Technology, IUFoST Scientific Information Bulletin (SIB) (March 2012), Food Traceability, <http://www.iufost.org/iufostftp/IUF.SIB.Food%20Traceability.pdf>

■ Measuring the impact of due diligence

13:30 — 15:00 Room CC5

Background

Under the OECD Guidelines and the UN Guiding Principles, companies are expected to account for adverse impacts in their own operations and in their supply chain. One component of ‘accounting’ is communicating about how the company is addressing risks in its supply chain. The second component of ‘accounting’ focuses on verifying, monitoring and validating progress on due diligence and its effectiveness. In short, companies are expected to be able to answer the questions: Are we taking action to prevent and mitigate risks, and is it working?

To date, verification processes in the garment and footwear sector have traditionally focused on the first of the above two questions. Companies conduct audits or assessments to determine if corrective action plans are being implemented within agreed upon timeframes. In some cases, this may be sufficient. For example, if a qualified structural engineer inspects a factory building and verifies that adequate corrective measures have been taken to make the building structurally safe, in the majority of cases this is sufficient to likewise state that structural integrity has been addressed.¹³

However, answering the question, ‘Is it working?’ becomes far more difficult in the context of labour and human rights risks that cannot be easily quantified and that require approaches that respond to the local context. Example challenges include:

- Defining indicators that point to outcomes rather than outputs;
- Designing impact frameworks that are both comparable across sites but likewise take into account the local context;
- Incorporating workers themselves into impact measurement and evaluation;
- Balancing between sufficient levels of information and feasibility in light of high numbers of suppliers in a single company’s supply chain.

This session recognises the complexity of measuring the impact of due diligence generally as well as the specific challenges within this sector. However, this session also recognises that extensive work has been conducted across a wide range of fields—including economics, development policy and programming, and academia—to measure impact and that learnings from these fields may be applied in the garment and footwear sector. This session, therefore, will seek to draw on the experiences of a range of experts working both within and outside of the sector and across disciplines.

Discussion questions

While panellists will be asked to share learnings within their own discipline, the discussions will seek to contribute to a broader discussion around the following questions.

- How can companies measure the impact of corrective actions that seek to address human rights and labour risks at the site-level?¹⁴
- How can information at the site-level feed into a broader picture to determine whether the company’s approach to addressing human rights and labour risks is effective across its supply chain?

¹³ This does not negate the need for ongoing monitoring.

¹⁴ Example corrective actions include trainings, management systems upgrading, etc.

■ Due diligence on sexual harassment

15:30 — 16:45 Room CC1

Nature of the session

This session will explore approaches to carrying-out due diligence on sexual harassment and sexual and gender based violence with a focus on identifying risks within a region and at the site-level, preventing harassment and responding when sexual harassment cases are raised. The discussion will draw on case studies from India and Jordan.

Background

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. It is discriminatory when the victim has reasonable grounds to believe that his or her objection would disadvantage him or her in connection with employment, including recruitment or promotion, or when it creates a hostile working environment. Men, women, boy and girls may be victims of sexual harassment.

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 and girls, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

A number of studies have shed light on the pervasiveness of sexual harassment and the risk of violence in the garment and footwear sector, notably at manufacturing and raw materials. **Recent research** conducted by Sisters for Change found that 1 in 14 women garment workers surveyed in Bangalore had experienced physical violence and 1 in 7 had been raped or forced to commit a sexual act. Over 60 percent of women surveyed had been intimidated or threatened with violence while between 40-50 had experienced humiliation and verbal abuse. An **ILO study** in the garment sector in Cambodia in 2012 found that harassment was experienced by more than half of the workers interviewed. **An earlier study** by the International Labour Rights Fund conducted an investigation to assess the extent of sexual harassment in the export processing zones in the Dominican Republic found that over 40 percent of interviewed workers had experienced sexual harassment in the workplace.

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.¹⁵ Some characteristics of the garment and footwear sector, notably at manufacturing, may increase the risk of sexual harassment and violence.

- **Low-income employment:** In general, workers in low-income employment are more vulnerable to requests for sexual favours in exchange for employment opportunities
- **Limited upward mobility:** In the garment and footwear sector, notably at manufacturing stages, it is common for women to comprise the majority of low-skilled labour and hold very few management or supervisor level positions. Women are more vulnerable to sexual harassment within these work environments. This is particularly the case when supervisors have are responsible for reporting each workers' productivity numbers and are also the ones who report a worker's absences and conduct.

15. (2011), *Gender-based violence in the world of work: Overview and selected annotated bibliography*, ILO.

- **Precarious employment:** Short-term employment contracts are common practice in many sourcing countries. This is particularly true for manufacturing and agriculture. Workers in precarious employment are more vulnerable to demands for sexual favours in exchange for employment security.
- **High turnover of workers:** Garment and footwear factories often face very high turnover rates of workers. Workplaces with high turnover of young women maybe at higher risk for harassment given that workers do not have a network of co-workers whom they know and trust.
- **High-pressure:** The ready-made garment industry is characterised by short-lead times, tight production schedules, and often excessive working hours. High-pressure environments have been demonstrated to be higher-risk for harassment and violence.
- **Location of workplace in relation to homes:** Export processing zones are often located far away from where workers live, exposing workers to harassment and violence on their return home from work. This is particularly true when workers are expected to work long hours and thus travel late at night.
- **On-site housing:** Young and non-married women workers often live in on-site dormitories that are overseen by male management. Young workers may be more exposed to harassment within these contexts.
- **Employment of migrant workers and minorities:** Minorities, including ethnic, religious and caste minorities are often much more vulnerable to harassment and violence due to their perceived 'lower status' . Minorities may also have more difficulty accessing grievance mechanisms and may lack networks of people whom they trust and can seek help from.

Due diligence

The OECD Due Diligence Guidance includes a module on sexual harassment due diligence. Information and recommendations from the Guidance on how companies can identify sexual harassment risks in their supply chain as well as prevent and mitigate harassment and violence are included below.

OECD Garment and Footwear Guidance

The participation of workers and trade unions and representative organisations of the workers' own choosing is important at every step of the due diligence process.

Identify risks of sexual harassment and violence

Challenges

At a country level, risks of sexual harassment and sexual and gender-based violence can be particularly difficult to identify due to a lack of reliable country-level and sector-level data.

Similarly, it can be difficult for a site-level assessment to identify specific incidents of sexual harassment in the workplace; workers may fear reprisal or may not understand what constitutes sexual harassment and sexual and gender-based violence. Furthermore, cultural norms may restrict women and men from discussing or reporting their experiences related to sexual harassment and sexual and gender-based violence.

Approach

In the context of sexual harassment, enterprises should make the assumption that if sexual harassment is a high risk in a particular sourcing location, it is a high-risk within the workplace.

Companies are encouraged to make good faith efforts to identify high-risk sourcing countries for sexual harassment and sexual and gender-based violence. Where gaps in information exist, companies are encouraged to consult stakeholders and/or experts on-the-ground.

Worker interviews and focus-group discussions are critical components of a supplier assessment.

Companies are encouraged to engage with trade unions and local experts tailor assessments so that they are appropriate within the context.

Prevent and mitigate sexual harassment and violence

Training

Workers are often unaware of what constitutes sexual harassment and sexual and gender based violence.¹ Training should therefore raise awareness amongst workers on what constitutes harassment and violence and should inform workers on processes that are available to them to raise complaints both within and outside of the workplace (where such channels exist).

Training should target women and men, workers, supervisors, management, and others who are in positions of authority.

Track

Within its own operations, a company should seek assurances that the actions that it has or is taking are preventing sexual harassment in its own operations. A company may seek to monitor, for example through simple surveys, peer-discussions, or other forms of worker engagement the following:

- the extent to which workers know what constitutes sexual harassment and sexual and gender-based violence and the consequences for breaking the enterprise's policy against such conduct;
- the extent to which workers know how and where to report sexual harassment, violence or threats of violence, and feel they may do so without fear of reprisal (i.e. including alternative avenues for filing a complaint); and
- the extent to which workers believe that management will or did respond appropriately if they report an incident.

Within their supply chains, companies are encouraged to partner with their suppliers, workers and trade unions and representative organisations of the worker's choosing to assess whether corrective action measures are effective. For example, companies may review the aggregate results of worker surveys with its suppliers, or it may conduct focus-group discussions at periodic intervals amongst workers across different suppliers within a sourcing hub to determine whether prevention measures, such as training, are preventing harassment in the workplace or whether further efforts are needed.

Provide for or co-operate in remediation

It is important that operational level grievance mechanisms enable a worker to report harassment, violence or threats of violence without fear of reprisal or criticism; to points of contact beyond company and union representatives; and anonymously and confidentially.

In general, employers should provide for or contribute towards the provision of remediation to victims of sexual harassment and sexual and gender-based violence.² In some contexts, employers may also be mandated by law through vicarious liability to provide for such remediation.

1. 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.
2. 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.

Discussion questions

- We know that sexual harassment and violence are vastly underreported. What recommendations do you have for brands, retailers, etc. that are seeking to identify hot spots for sexual harassment across their supply chain as well as at the factory level?
- Each of your organisations has developed training on sexual harassment. What are your key learnings for sexual harassment training at the factory? What are the key challenges?
- Much of the focus when it comes to preventing sexual harassment is on training, but training in of itself may not be sufficient to address some of the systemic challenges. What additional measures are important to address sexual harassment beyond training?
- One of the biggest challenges in relation to sexual harassment and violence in the workplace is the underreporting of cases due to fear of reprisals. How can operational-level grievance mechanisms be established in practice so that workers can report harassment or violence without fear of reprisal?
- Sexual harassment and violence are crimes in some contexts. How can and should training and grievance mechanisms link to judicial mechanisms? What systems should be established to support workers in instances in which harassment and violence are criminalized but laws are not adequately enforced?
- When cases are raised, what have we seen to be effective remedy?

Resources

ILO (2015), [Action-oriented research on gender equality and the working and living conditions of garment factory workers in Cambodia](#), ILO, Geneva.

Better Work, [Case Study: Addressing sexual harassment in Jordan's garment industry](#), ILO-IFC.

Better Work, [Research Brief: Garment Factory Characteristics and Workplace Sexual Harassment](#), ILO-IFC.

Fair Wear Foundation, [Gender-based violence in global supply chains: Resource Kit](#), Amsterdam

Fair Wear Foundation, [Brand Performance Check Guidance 2016](#), Online.

Pantaleon L. and Dominican F. (2003), [Sexual Harassment in the Export Processing Zones of the Dominican Republic](#), International Labor Rights Fund and Rights for Working Women Campaign.

Fair Wear Foundation (2015), [Setting up Anti-harassment committees and violence prevention systems](#).

■ Due diligence on purchasing practices

15:30 — 16:45 Room CC5

Nature of the session

This session will include a case study on ACT. ACT is an initiative that brings together brands and retailers, trade unions and manufacturers to address wages and working conditions in the garment and footwear sector at manufacturing. ACT aims to improve wages in the industry by establishing industry collective bargaining in key garment and textile sourcing countries, supported by world class manufacturing standards and linked to responsible purchasing practices.

This session will provide an opportunity for participants to hear about the steps that ACT participants are taking to develop mechanisms to link purchasing practices to the outcomes of industrial bargaining in order to support and enable manufactures to meet international standards on responsible business conduct.

Background

The purchasing practices of retailers, brands and their buying intermediaries have been demonstrated to contribute to harmful impacts—such as excessive and forced overtime and low wages—in some cases. This is most notably the case when orders are changed, cancelled, placed late, rushed (particularly during peak times or holidays) or when lead times are set shorter than feasible. Late or delayed payment for products may also contribute to suppliers delaying payment of wages to their workers. A company's price negotiations may contribute to cost-cutting and therefore labour, human rights or environmental impacts.

Due diligence

During the due diligence process, companies identify harmful impacts (e.g. child labour, excessive overtime, etc.) in their own operations and also in their supply chain. As a component of this due diligence process, companies should also make good faith efforts to understand whether they have caused, contributed to or are directly linked to these harmful impacts. Identifying a company's relationship to impacts is a difficult and sometimes conceptual task. However, it is important in terms of the expectations of the company's response. Companies are expected to provide or cooperate

In the garment and footwear sector, one of the ways in which companies may contribute to harm in their supply chains is through poor purchasing practices. In light of this, Box 4 of the OECD Due Diligence Guidance for the sector includes recommendations for retailers, brands and their buying intermediaries on how companies can assess and improve their purchasing practices. Specifically, the enterprise is encouraged to assess whether its purchasing practices are contributing to harm, implement control measures and track red-flags for risk of harm.

OECD Garment and Footwear Guidance

Box 4. Prevent contribution to harm through responsible purchasing practices

Recommendations for retailers, brands and their buying intermediaries

The purchasing practices of retailers, brands and their buying intermediaries have been demonstrated to contribute to harmful impacts—such as excessive and forced overtime and low wages—in some cases. This is most notably the case when orders are changed, cancelled, placed late, rushed (particularly during peak times or holidays) or when lead times are set shorter than feasible. Late or delayed payment for products may also contribute to suppliers delaying payment of wages to their workers. An enterprise's price negotiations may contribute to cost-cutting and therefore labour, human rights or environmental impacts. The enterprise should strengthen its management systems to prevent contributing to harm through its purchasing practices. Specifically, the enterprise is encouraged to assess whether its purchasing practices are contributing to harm, implement control measures and track red-flags for risk of harm.

Assess whether purchasing practices are contributing to harm

- The enterprise is encouraged to engage with its supplier to understand if and how its purchasing practices may be contributing to harm. Recognising that suppliers may be reluctant to provide such feedback candidly, the enterprise may seek to collect information from its suppliers anonymously (e.g. annual survey) or partner with a third party that aggregates the data and presents findings.
- The enterprise should track relevant indicators of actions that lead to harm. Examples include: % of orders placed late, % of orders changed after order is placed; # of days between the last change and shipment. Systems should be established to track such information on an on-going basis.*
- If the enterprise identifies through its tracking that the above practices (e.g. changes in orders) are common, it should seek to identify why. Team members responsible for the placement of orders should be included in the analysis.

Control measures to prevent contribution to harm

- The enterprise is encouraged to implement control measures to prevent contributing to harm through its purchasing practices regardless of whether it has identified specific contributions to harm.
- The enterprise should develop pricing models that account for the cost of wages, benefits and investments in decent work. The above considerations should be reflected in freight on board (FOB) prices together with traditional pricing considerations such as quantities being purchased, cost of materials, skill requirements, etc.
- Additional control measures may include:
 - Set final order placement dates with the supplier.
 - Communicate the deadlines to everyone in the purchasing teams.
 - Share the purchasing plan with suppliers and communicate updates in a timely manner.
 - Improve forecasting alignment, which involves coordination across geographies, categories and product designs to get the right information and decisions made at the right time.
 - Optimise 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.*

Red-flag systems

The enterprise should develop procedures for purchasing teams to follow in instances in which practices could contribute to harm. For example, in instances in which orders are changed after order placement or orders are placed late, the enterprise may mitigate risks by a) paying for rushed order delivery b) changing the delivery date or c) providing a list of pre-qualified subcontracts to fill a portion of the order.

* Recommendations are adapted from ETI (2014), *Suppliers speak up, How Responsible Purchasing Practices Can Improve Working Conditions in Global Supply Chains*, Ethical Trade Initiative Norway.

Discussion questions

- What do we mean by purchasing practices?
- What activity have we seen in the sector in relation to addressing purchasing practices since Rana Plaza?
- What is ACT, what are its objectives and what is the context in which ACT was formed?
- One of the objectives of ACT is to link purchasing practices with the objectives of collective bargaining. Could you start by first clarifying what we mean by purchasing practices in the context of ACT?
- How are purchasing practices and industrial relations linked?
- What are the specific outputs that ACT is working towards, or already has, in relation to promoting responsible purchasing?
- What were some of the challenges to sector-collaboration and how is ACT overcoming those challenges? Is competition law a constraint to collaboration?



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