



EU-US TRADE AND TECHNOLOGY COUNCIL

WORKING GROUP 10 – GLOBAL TRADE CHALLENGES

ROUNDTABLE ON DUE DILIGENCE

REPORT

Hybrid event

Date: 3 March 2023

Venue: Room 2.A, European Commission, **Albert Borschette Conference Centre**,
Rue Froissart 36, 1040, Brussels and **online via WebEX**

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I – INTRODUCTION

As agreed in the Paris-Saclay Joint Statement of the Trade and Technology Council (TTC) of 16 May 2022, TTC Working Group 10 on ‘Global Trade Challenges’ convened a roundtable discussion on 3 March 2023, under the work strand ‘Trade and Labour’, on the importance of carrying out due diligence on responsible business conduct in supply chains. This event aimed to allow EU and US government representatives, together with labour, business and other key stakeholders, to discuss recent developments, potential areas of cooperation and the role that stakeholders can play in meaningfully implementing due diligence in supply chains.

The focus of the roundtable was to promote, *inter alia*, labour rights in supply chains, including the eradication of forced labour, and the importance of multistakeholder engagement in trade policy. Both sessions of this event addressed: (a) legislative and non-legislative initiatives in the European Union and United States relating to labour rights in global supply chains; (b) strengthening collaborative stakeholder capacity by sharing best practices for conducting due diligence; and (c) supporting partner governments in translating commitments on due diligence in global supply chains into concrete actions.

II – OVERVIEW OF THE EU AND US DUE DILIGENCE FRAMEWORKS, AND THE KEY ROLE OF INTERNATIONAL COOPERATION

The roundtable on due diligence started with **an overview of the EU and US due diligence frameworks, and the key role of international cooperation** with strategic partners and international organisations such as the United Nations (UN), International Labour Organization (ILO) and Organisation for Economic Co-operation and Development (OECD) towards a transatlantic and global agenda on due diligence.

The EU due diligence framework is based on existing legislation regarding certain products, such as timber and conflict minerals. More recently, it has been marked by a surge in new due diligence legislation and proposals, including on deforestation and batteries, and beyond, a horizontal legislative proposal setting new standards on corporate sustainability due diligence. **The European Commission released a proposal for a directive on corporate sustainability due diligence in February 2022** in response to a call for harmonised due diligence rules and enhanced sustainability in Europe by civil society representatives, EU citizens, EU businesses and many business representatives. Moreover, the proposal aims to overcome the fragmentation of the single market based on the legislative actions of some Member States. Evidence stemming from extensive research pointed to that fact that voluntary action was not enough.

Based on this proposal, large EU companies and non-EU companies with a significant turnover in the EU are expected to address their adverse impacts on human rights and the environment in their own operations, and in their value chains both within and outside the EU. In this respect, the proposal is in line with the multilateral environmental conventions and human rights and labour standards, and refers to the conventions that are widely known and ratified. The termination of business relationships is required only as a last resort.

As to the enforcement of due diligence obligations, this is based on a combination of administrative sanctions and civil liability. The Commission is very much aware of the



importance of limiting the shift of the compliance burden to business partners, in particular to small and medium-sized enterprises (SMEs). Companies will therefore be supported in their compliance with due diligence obligations, based on guidelines and external action. In particular, the Commission is currently working on the creation of a one-stop shop for businesses and SMEs as a single entry point for advice and practical tools to understand and efficiently implement due diligence requirements. This will be further complemented by help desks and other measures in partner countries as part of the Team Europe initiative. Given that this horizontal EU directive would be the first of its kind globally, it is expected to trigger responsible business conduct spreading to value chains across the world. The law could enter into force in about three to four years.

The Commission also released a proposal for a regulation on forced labour, which it published in September 2022. The proposed regulation establishes a ban on placing products on the Union market that have been made using forced labour. While due diligence can be a helpful tool for companies to detect forced labour in their value chains, due diligence does not exempt them from a finding of forced labour. The Commission will develop tools to help implement the forced labour legislation, to ensure transparency and above all to stimulate coherence across the EU. In particular, a network of Member States' competent authorities will be established, supported by IT tools and a database with indicators of risks, as well as guidance for companies and competent authorities on a range of topics. The proposal emphasises the critical role of collaboration with third countries, particularly like-minded countries, such as bilateral discussions with the US Administration or initiatives across several partners, including the US and Canada. The importance of cooperating with international organisations, and of engaging with countries that have a high risk of forced labour, is also underlined.

The US due diligence framework is closely linked to the US government's commitment to a worker-centred trade policy aimed at a more inclusive and durable trading system. Trade should be used as a force for good for everyone. To best understand and reflect the needs, trust and goals of workers, the government has to listen to them. And businesses have a critical role to play in terms of ensuring that trade policy benefits everyone, protects worker rights, promotes good jobs and also protects the environment. The US due diligence framework comprises legislation, guidelines and tools. In particular, it covers: (a) Section 307 of the Tariff Act of 1930, which prohibits the importation of goods produced in whole or in part with forced labour; (b) the Uyghur Forced Labor Prevention Act (UFLPA), which establishes a rebuttable presumption that goods mined, produced or manufactured wholly or in part in Xinjiang, China, or by an entity on the UFLPA Entity List, are prohibited from US importation under Section 307; (c) the broader reasonable care guidance of the US Customs and Border Protection (CBP), which applies to the efforts of an importer working to ensure that all of the information about a specific item provided to the CBP is as accurate and compliant as possible; (d) research and reporting over more than 20 years by the international child labour and forced labour reports from the Department of Labor (DoL), and the human rights and trafficking reports from the Department of State, which have provided a solid foundation to be able to understand and address child labour, forced labour and human trafficking in global supply chains; (e) the Comply Chain tool of the DoL, which targets companies and industries seeking to develop a robust social compliance system for their global production; (f) the Responsible Sourcing tool of the Department of State, which is a free, open-source web platform created to help companies and consumers understand



the risks of human trafficking; and (g) the forthcoming release of the updated 2016 US National Action Plan on Responsible Business Conduct (RBC) led by the Department of State. The plan reflects the US government's commitment to promoting fair play, the rule of law and high standards for global commerce in line with the country's democratic values, and with the goal of helping US businesses be global leaders and promote respect for human rights and responsible business conduct in the communities in which they operate.

The EU and US due diligence frameworks differ in terms of scope, approach and enforcement. For instance, the US approach focuses on core labour rights, while the EU adopts a broader perspective covering human rights and the environment. These different regulatory frameworks show the **possible coexistence of multiple approaches and systems of due diligence**. They also invite further **engagement to explore opportunities to align responsible business conduct policies based on shared objectives, such as through the TTC and in multilateral forums**. The EU and US have been working together in the due diligence area, both bilaterally and internationally, over the past five to ten years. Most recently, the US and France co-chaired the last OECD ministerial meeting, at which ministers reiterated their countries' support for further promoting RBC through trade and investment policies. The EU and US have also adhered to the OECD recommendation on the role of government in promoting responsible business conduct, adopted in December 2022. More generally, the actions taken by OECD members, in particular the EU and US, relate to taking up – and supporting the uptake of – OECD due diligence guidance when developing new policies, and to using the OECD as a platform for enabling the further harmonisation of RBC approaches.

III – SESSION 1: MODERATED DISCUSSION ON HOW TO REINFORCE TRANSATLANTIC DUE DILIGENCE PRACTICES

The first session of the roundtable was a moderated discussion on **how to improve and reinforce transatlantic due diligence practices**. The panel was composed of representatives of large and smaller sectoral companies, trade unions and civil society. It addressed a wide range of topics, including data collection methodologies, multistakeholder partnerships to address the root causes of high risks across supply chains, the engagement of workers and worker representatives in due diligence, and government policy for regulating effectively forced labour issues.

Questions on how to improve due diligence centred on how to improve awareness raising and influence, partnerships and networks, information and data sources, financial resources, business incentives, and regulatory and enforcement cooperation.

Awareness raising and influence relate to 'engaging the unengaged', and the need for more businesses to get involved and take human rights and environmental protection in their supply chains seriously¹.

Partnerships and networks for effective due diligence and meaningful outcomes concern stakeholder engagement networks², and how they can be collectively strengthened to enable

¹ More specific questions relate to what and where the businesses involved in supply chain due diligence are; the best way to engage them; the lessons to be learned from other fields, such as behavioural science or public health campaigns; and how best to prepare future generations of business leaders.

² Effective stakeholder engagement should enable businesses to prioritise (e.g. supply chain segments, countries or



businesses to identify and access stakeholders in specific regions and sectors with mutual trust, as well as partnerships to address the root causes of risks³.

Information and data sources concern the need to obtain and access comprehensive, current and comparable information on supply chains and risks: on the one hand, the ‘weights and measures’ problem⁴, and on the other hand, sources of information and data on supply chains and risks⁵.

Financial resources relate to the costs of the green transition and the realisation of decent work, in particular the question of who pays at the end, including the risk of cascading requirements up the chain (e.g. by putting pressure on companies that are often in developing countries), the kinds of financial products that can support improvements in the supply chain (e.g. sustainability-linked loans or supplier trade financing, insurance, social or other bonds, and surety)⁶, and whether governments can do more to de-risk private sector financing in weak governance zones.

Business incentives concern how governments can better leverage public procurement, access to public finance, tax benefits, trade facilitation (e.g. the Customs Trade Partnership Against Terrorism (CTPAT), ‘trusted trader’) and other diplomatic and trade support.

Regulatory and enforcement cooperation relates to how governments can better cooperate on emerging regulation and the enforcement of supply chains to reduce compliance costs and focus company resources on impact.

Multistakeholder collaborations are essential to address the root causes of risks throughout supply chains, and for any systemic change to happen. For instance, an existing industry-led collaborative initiative in the high-risk cocoa sector shows that companies are willing to come together and share best practices and adopt the same sourcing principles with respect to a high-risk commodity. An informal EU-level multistakeholder coalition in the cocoa sector has also been established to request that the EU adopt a mandatory regulation on corporate sustainability due diligence, which should strive towards the most ambitious denominator. It has been underlined, however, that **the burden of the sustainable transition should be a shared cost and responsibility**, and that **more agency should be granted to producers**. The latter need a living income that should be regarded as a basic human right in due diligence. Tools used by larger companies that could give the means and capacity to SMEs to comply with the obligations already exist and are usable. Sharing the costs across sectors, or a pool of companies, could also be interesting. In other words, the partnership model should include the kind of finance that can

risk issues), obtain on-the-ground information, and support monitoring of due diligence implementation (e.g. worker-led monitoring) and disclosure of risks.

³ More specific questions on partnerships to address the root causes of risks relate to which partnerships have proved to be effective and why, as well as what governments can do to foster more effective partnerships.

⁴ Questions regarding the ‘weights and measures’ problem concern notably whether we have a common understanding and ontology of how to define supply chain information (e.g. supply chain segments, tiers, facilities, transporters, raw materials, and intermediary and final products); and what is needed, and how this will help implementation and enforcement.

⁵ Questions on sources of information and data on supply chains and risks concern notably which government sources are the most useful (e.g. DoL list and customs data); and whether these sources should be expanded.

⁶ A related question concerns how to connect green financing and financing associated with the UN Sustainable Development Goals to company due diligence.




be granted to producing countries that participate in such multistakeholder programmes.

The involvement of workers and their representatives is key, including to strengthen due diligence. If ILO conventions and declarations are taken seriously, it is submitted that labour is not, cannot and should not be considered a commodity. Workers, worker representatives and trade unions should be recognised as the constituencies of businesses, and should be legitimate as such to be informed and consulted and to participate in good business governance. The right of association and collective bargaining should therefore be respected and promoted to make sure that standards and decent working conditions are put in place, and that the price of a product is not based on the abuse and violation of basic human rights at the workplace. **The reinforcement of due diligence practices should also be based on mandatory legislation** as opposed to voluntary and unilateral approaches, as human rights are universal and should therefore be binding on everyone, including states and economic actors.

The mapping, traceability and transparency of value chains are key to further strengthening due diligence and the prevention of forced labour. Transparency of trading data is very important for tracing the relationships between buyers and producers on the ground, identifying and addressing possible situations of forced labour. It was noted that while customs data is easily available in the US, the Union Customs Code (UCC) is currently being revised at the EU level. **The existence of fully functioning grievance mechanisms and regular dialogue with stakeholders, in particular with local organisations and trade unions, is also underlined as essential to the prevention of forced labour,** which is the extreme of a continuum of labour exploitation.

Moreover, **there is a need for particular attention to vulnerable stakeholders, especially at the local level,** i.e. home workers, migrant workers, all discriminated groups, women, and those who do not have the same access to education, such as indigenous groups. Very often, these individuals are not represented by trade unions, as they work in informal sectors based on subcontracting, which dilutes the responsibility of the companies. Against this background, **transatlantic cooperation should be enhanced to align standards on investigations and evidence thresholds, in particular on what constitutes ‘substantiated concern’, in order to ensure the exchange of information** between the US CBP and the EU enforcement authority **during investigations.** This would guarantee a level playing field for everyone, and would ease the work of companies with just one standard to comply with, and of all other stakeholders, including civil society organisations.

Finally, climate change is a cross-cutting issue that affects human rights and other aspects in many ways. **CO2 and other emissions are therefore considered one of the most important issues to be tackled.** Nevertheless, there are concerns about the reliability of the data submitted by the suppliers, as well as the equivalence of the data provided by suppliers across companies. It has been suggested that guidelines and rules should be developed that would apply globally across supply chains to ensure the reliability of data (beyond average data) submitted by suppliers. In other words, in addition to the price of a product, a CO2 footprint that everybody measures in the same way is needed.



IV – SESSION 2: CASE STUDIES – SHARING BEST PRACTICES AND LESSONS LEARNED FROM THE IMPLEMENTATION OF DUE DILIGENCE APPROACHES, INCLUDING THROUGH COLLABORATIVE MULTISTAKEHOLDER INITIATIVES

The second session of the roundtable discussed **three case study presentations in the sectors of garments and textiles, critical minerals and cocoa**, with the objective of sharing best practices and lessons learned from the implementation of due diligence approaches, including collaborative multistakeholder initiatives. The panel was composed of signatories, members and representatives of the Dindigul Agreement to End Gender-Based Violence and Harassment, the European Partnership for Responsible Minerals (EPRM) and the International Cocoa Initiative (ICI). Due diligence should indeed be framed within a broader ecosystem approach that encompasses accompanying regulatory and multistakeholder efforts.

In the **garment and textile sector**, the **Dindigul Agreement** is a multistakeholder enforceable brand agreement (EBA) in the Tamil Nadu region, which is an important garment production site in India. The agreement has been signed by multiple stakeholders, including a local union, a supplier, and diverse fashion brand buyers, as well as US and Asian regional allies. It commits suppliers and brands to prevent, monitor and remediate gender-based violence and harassment at covered factories. While it is a private agreement, the Dindigul Agreement is founded on traditional due diligence frameworks in relying on national and international labour standards and best practices, including ILO standards, OECD guidelines, the national law of India and best practices from unions. It is legally enforceable through arbitration, and governed by a multistakeholder Oversight Committee that includes an independent grievance mechanism for noncompliance.

The Dindigul Agreement has successfully changed labour conditions where due diligence and other efforts led solely by brand buyers and suppliers fell short. It has built trust, delivered decent work in very difficult places, prevented rights violations, jointly solved problems and provided meaningful remediation. Two key factors of its success relate to the involvement and meaningful engagement of trade unions, worker rights organisations and workers, as well as the handling of problems at the local level based on the action of multiple stakeholders.

The Dindigul Agreement's strengthened supply chain accountability has been recognised by the US government, following the rapid lifting of a Section 307 ban on imports from the region. Against this background, the Dindigul Agreement shows that enforceable supply chain agreements that include unions work. They can mitigate the risk of companies facing import bans and forced labour prohibition because they meaningfully prevent forced labour and advance freedom of association. The Dindigul Agreement could serve as a model for future EBAs in other regions and sectors. Such agreements should, however, work in concert with the action of the state, notably regarding labour inspection systems.

In the **critical mineral sector**, the **EPRM** was founded in 2016 as an accompanying measure to the EU Responsible Minerals Regulation. It aims to be a global initiative, inviting greater coherence and certainty in the diverse current and future minerals due diligence legal frameworks. The overarching goal of the EPRM, inspired by the relevant OECD due diligence guidance, is to create better social and economic conditions for artisanal and small-scale mining (ASM) and local mining communities by increasing the number of ASM mines with responsible



mining practices in conflict-affected and high-risk areas (CAHRAs), contributing to a reduction in conflict and risk. Its membership is diverse and encompasses government and observers, including international organisations, companies (mainly in the tech sector) and civil society organisations.

The EPRM strives for better representation along the supply chain by including non-tech companies and more governments, including producer-country governments. Its core ambitions and activities relate to the whole critical mineral supply chain: supporting ASM to produce more responsibly and be better equipped to manage access to local and international formal markets (80% of ASM is in the informal market), based on EPRM-funded projects in CAHRAs; supporting companies to improve their due diligence practices to source 3TG (tin, tantalum, tungsten and gold) responsibly; and supporting the linkage between production and sourcing in connecting actors along the supply chain through projects, members meetings, events and other activities to create mutual understanding and demonstrate opportunities for responsible sourcing from ASM.

Among these EPRM funded projects, CAPAZ I and II have demonstrated a successful multistakeholder approach to improving responsible mining practices in the gold supply chain, by developing the [CRAFT \(Code of Risk-mitigation for ASM engaging in Formal Trade\)](#) market entry standard. CRAFT is an open-source standard for ASM actors to demonstrate that the gold they sell has been extracted according to OECD due diligence guidance. It also sets a way forward for the continuous improvement of risk management practices within the sector. The CRAFT approach seeks to incentivise better environmental and social practice, and to support economic development in ASM communities by enabling their access to OECD-conformant supply chains. The code is trusted by industry, as they see it as a means to engage with ASM, and is used by companies to help them on their responsible sourcing journeys. Once a responsible gold supply chain was established, the second phase of the project aimed to achieve a wider impact. These projects have successfully incentivised the formalisation, legalisation and empowerment of ASM miners and their local mining communities, and should be extended to further regions.

In the **cocoa sector**, forced and child labour are the two most salient human rights risks. Different multistakeholder projects of **the ICI, the Rainforest Alliance and other partners** have been successful in preventing and addressing these issues in the cocoa industry. Based on follow-up visits undertaken in 2021 to cocoa-growing households in Côte d'Ivoire and Ghana, the ICI has managed to reduce child labour by 34% among children identified in labour through two systems, Human Rights Due Diligence and the Child Labour Monitoring and Remediation System, both of which are concrete applications of due diligence. In particular, measures implemented by government and industry that have effectively prevented and addressed child labour comprise school enrolment, bridging classes, birth certificates and cash transfers. The ICI, together with its members and partners, is also developing and testing new approaches to prevent, identify and respond to forced labour risks. These include risk assessment and data collection tools, awareness raising and training material, and templates for cooperative policies on forced labour, in addition to work on grievance mechanisms, contract facilitation and mediation.

The Rainforest Alliance, together with the ICI and other partners, has successfully implemented projects with 40 communities in Ghana to help address forced and child labour in cocoa production and gold mining, based on a multifaceted approach.



First, training and capacity building have contributed to organising dialogue at the district level between companies, governments and communities, in order for companies to communicate and clarify their commitments on forced and child labour, and for communities to voice their concerns, expectations and needs. This dialogue has been very helpful and will continue, underlining that: (a) commitments on forced and child labour made by companies and governments are crucial steppingstones towards driving action on the ground; and (b) capacity building of the most vulnerable stakeholders is key for them to engage directly with the stakeholders holding the most bargaining power, and to participate in the discussions that concern them.

Second, the development of a gender-sensitive human rights due diligence toolkit, containing easy-to-use instructions and templates, has helped cooperatives set up their own due diligence management systems to address the risks.

A third project has contributed to building the economic capacity of farmers and miners as a primary and essential condition for decent work.



RECOMMENDATIONS BY STAKEHOLDERS

General:

- Building on what exists as the fastest route to strengthened due diligence practices.
- Involving workers and their representatives in all work related to strengthening due diligence. Respecting and promoting the right of association and collective bargaining.
- Distributing the burden of responsibility among stakeholders.

Key role of international cooperation:

- Strengthening international cooperation with strategic partners, including like-minded and high-risk countries, as well as with international organisations such as UN agencies, the ILO and the OECD, with the objective of exploring opportunities to align responsible business conduct policies with a global agenda on due diligence.

Due diligence legislation:

- Adopting mandatory, horizontal, well-built and enforceable legislation on due diligence, as opposed to taking a voluntary and unilateral approach, to achieve the most ambitious denominator.
- Promoting harmonisation and coherence between emerging due diligence legislation and existing due diligence legislation, as well as international alignment of standards.
- Aligning standards on investigations and evidence thresholds, in particular on what constitutes ‘substantiated concern’, in order to ensure exchanges of information during investigations on forced labour between the US CBP and the EU enforcement authority, and a level playing field for everyone.
- Including living income and responsible purchasing practices in the material scope of due diligence legislation.

Accompanying support measures:

- Framing due diligence in a broader ecosystem approach.
- Providing sufficient funding for accompanying measures.
- Developing accompanying support measures, in particular guidelines and external action, to support due diligence legislation.
- Developing multistakeholder public-private partnerships as components of the ‘smart mix’ of measures on due diligence.
- Reinforcing the mapping, traceability and transparency of value chains, in particular trading data, to prevent forced labour.
- Developing guidelines and rules that are applicable globally across supply chains to ensure the reliability of data on CO₂ and other emissions (measured in the same way) submitted by suppliers.
- Translating guidelines into case studies to make due diligence more operational.
- Creating a list of relevant multistakeholder collaborations that are essential to address the root causes of risks throughout supply chains, and for any systemic change to happen.
- Including access to finance that can be granted to producing countries that participate in such multistakeholder programmes.
- Expanding and learning from enforceable supply chain agreements that have trade unions built in at the local, regional, national and international levels.



- In multistakeholder projects, supporting the connection between all actors along the supply chain to create mutual understanding, and to demonstrate opportunities for responsible business conduct.
- Supporting the establishment of fully functioning grievance mechanisms and of regular dialogue with stakeholders, in particular local organisations and trade unions, to avoid situations resulting in forced labour.
- Finding ways to engage the unengaged, the most vulnerable actors in the supply chain. Drawing particular attention to vulnerable stakeholders, in particular at the local level, to prevent forced labour.



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This report has been prepared by Dr Malorie Schaus, coordinator of WG10 of the TTD, assisted by Ms Jane Arroyo and Ms Panka Rekasy, TTD.

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