



Subject: Complementary action needed to address unfair purchasing practices and achieve goals of the upcoming Sustainable Corporate Governance directive.

Brussels, 15 July 2021

Dear Commissioners Reynders and Breton,

We – a group of human rights, labour rights and development organizations – welcome the European Commission’s commitment to ensure that the economic recovery will be fairer and more sustainable as we come out of this unprecedented health crisis. In this letter, we wish to highlight the need to ensure responsible purchasing practices by businesses to ensure decent work conditions for workers in producing countries and a sustainable post-crisis economic recovery.

The COVID-19 crisis has evidenced the volatility and vulnerability of global supply chains. It has demonstrated how companies currently externalise risks and costs towards weaker supply chain partners. These business models and purchasing practices then, in turn, cause or contribute to adverse human rights impacts on workers, smallholders, communities and the environment, both in the EU and in third countries.

We welcome the upcoming Sustainable Corporate Governance (SCG) initiative, in particular the pillar focusing upon a corporate duty for human rights and environmental due diligence. However, for the corporate duty to respect human rights and the environment to work effectively in globalized supply chains, it must address the issue of unfair purchasing practices. In addition, complementary measures on purchasing practices should be taken to guarantee the effectiveness of the SCG initiative.

Extensive research by the International Labour Organisation has demonstrated the power imbalances and the effect of lead firms’ purchasing decisions. The ILO’s research evidenced that lead firms’ current processes to place and pay for orders constrain other supply chain partners’ ability to respect labour rights and to minimise the environmental impacts of their activity.¹ The power imbalance also results in weaker supply chain partners being afraid to

¹ ILO, 2017, "Purchasing practices and working conditions in global value chains: Global Survey results". Available at: http://ilo.org/travail/info/fs/WCMS_556336/lang--en/index.htm

challenge these customers, even in the case of illegal actions (such as breaches of contract) for fear of jeopardising their relationship with their customers and future business.²

The ILO study demonstrates how unfair purchasing practices cuts across several sectors but concludes that these power imbalances and resulting purchasing practices are particularly problematic in the garment sector. Studies by Human Rights Watch and the Center for Global Workers Rights have further evidenced how unfair purchasing practices are a problem in this sector.³

Indeed, unfair purchasing practices by (e)retailers and brands severely inhibit the ability of their suppliers to respect and fulfil the rights of their workers, communities, and the environment. When lead companies fail to honour commitments made at an earlier stage in the purchasing process or practice abusive purchasing practices such as the very late confirmation of final order numbers, this can directly result in workers being forced to work overtime, sometimes in unsafe conditions. Last-minute urgent orders (or changes to orders) also often lead suppliers to subcontract⁴ to unidentified/unauthorised suppliers where working conditions might be even more appalling. Unfair purchasing practices are therefore linked to a host of risks and impacts ranging from low wages and unsafe working environments to modern slavery and gender-based violence.

Given the endemic scale of this problem and the size of the garment sector, the consequences are immense. It is estimated that up to 60-75 million people worldwide are employed in the sector. Further, being the second clothing market in the world, the European apparel import market was valued at €177.3 billion in 2019.

These practices also undermine other efforts of (sometimes the same) brands and retailers to improve labour rights within their value chain as part of responsible business conduct. It is therefore no surprise that the OECD Due Diligence Guidance on the Garment & Footwear sector highlights the necessity for businesses to evaluate and amend purchasing practices to align with the expectations on responsible business conduct. Indeed, sustainable purchasing practices are essential to finance increasing expectations in terms of compliance for addressing human and environmental impacts.

The European Commission already has extensive experience in seeking to address unfair trading practices, both in food and non-food value chains, through a green paper on unfair trading practices.⁵ Subsequently, in 2019, the EU took legislative action, but limited this to the food and agricultural sector.⁶ Similar, if not worse, price pressures remain in other sectors

² See for example “Farce majeure: How global apparel brands are using the COVID-19 pandemic to stiff suppliers and abandon workers”. Available at:

https://www.ecchr.eu/fileadmin/ECCHR_PP_FARCE_MAJEURE.pdf

³ Human Rights Watch, “Paying for a Bus Ticket and Expecting to Fly: How Apparel Brand Purchasing Practices Drive Labor Abuses,” April 2019. Available at: <https://www.hrw.org/report/2019/04/23/paying-bus-ticket-and-expecting-fly/how-apparel-brand-purchasing-practices-drive>; Center for Global Workers Rights, “Abandoned? The Impact of Covid-19 on Workers and Businesses at the Bottom of Global Garment Supply Chains,” March 2020. Available at: <https://www.workersrights.org/wp-content/uploads/2020/03/Abandoned-Penn-State-WRC-Report-March-27-2020.pdf>

⁴ Know the Chain, 2021, “Apparel and footwear benchmark”. Available at: <https://knowthechain.org/wp-content/uploads/2021-KTC-AF-Benchmark-Report.pdf>

⁵ European Commission, 2013, “Green Paper on Unfair Trading Practices in the Business-to-Business Food and Non-Food Supply Chain in Europe.” Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52013DC0037&locale=en>

⁶ Directive (EU) 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food value chain on 17 April 2019

where there are significant and largely unchecked power asymmetries between buyers and suppliers.

Addressing unfair purchasing practices in all sectors through the HREDD process would substantially improve the ability of both buyers and suppliers to fulfil the expected outcomes under the SCG initiative. We therefore believe it is crucial to include purchasing practices in this initiative.

Indeed, the European Parliament legislative own initiative report on Corporate due Diligence and Corporate Accountability rightfully included purchasing practices as part of the due diligence process by suggesting that, “Undertakings shall ensure that their purchase policies do not cause or contribute to potential or actual adverse impacts on human rights, the environment or good governance” (Art 4.8). We support this approach and call on the European Commission to require companies to specifically address purchasing practices at all steps of the HREDD process, and for those purchasing practices to be explicitly considered within the reporting obligations. This will lead to tangible positive impact for rightsholders in companies’ supply chains.

Moreover, it is important to introduce guidance on what “harmful purchasing practices” are, in the SCG legislation itself. A more detailed description should also be included in a future delegated act. A good start for identifying “harmful purchasing practices” is contained in the Directive 2019/633 on Unfair Trading Practices in the Agri-food supply chain.

Additionally, to complement the policy goals of Sustainable Corporate Governance initiative, the Commission should initiate sectoral parallel policy process to address unfair purchasing practices in specific sectors and couple it with a fit-for-purpose enforcement mechanism. In the case of garment and textiles sector, this could take place within the framework of the EU Strategy for Sustainable Textiles.

We would welcome discussing more detailed proposals with you and your offices to ensure that this long-lasting and well-known problem is addressed.

Yours truly,

Anti-Slavery International
Business and Human Rights Resource Center
Clean Clothes Campaign
European Coalition for Corporate Justice
Fair Trade Advocacy Office
Fashion Revolution
Human Rights Watch
IndustriALL Europe
Traidcraft Exchange