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Addressing unfair trading practices in global textile supply chains

A UTP directive can complement the CSDDD

I. Introduction

The textile and garment industry is a major source of employment, offering employment to millions of people, both within the EU and beyond. However, the industry is equally notorious for its pervasive human rights and labour rights violations. Workers in this industry often face poor working conditions, including excessive working hours, low wages, union busting and unsafe environments. According to the International Labour Organization (ILO), millions of garment workers endure excessive working hours, often exceeding 60 hours per week, without adequate rest or compensation.¹ Wages in the textile sector are frequently below the living wage threshold, leaving workers unable to meet their basic needs.² A study by the Fair Wear Foundation highlights that gender-based violence and harassment are rampant in garment factories, with many women reporting instances of verbal, physical, and sexual abuse by supervisors and male colleagues.³

The industry is one of the largest polluters globally, contributing to water pollution, greenhouse gas emissions, and the depletion of natural resources. For example, the extensive use of toxic chemicals in textile production contaminates water supplies, posing severe health risks to local populations and workers.

One of the key factors driving these negative impacts are the excessive unequal power relations between buying companies (or lead firms) and their suppliers. From a position of strength, buying companies wield excessive power over their suppliers in contractual negotiations, dictating terms and conditions to their advantage. These include the time frames within which suppliers should deliver products, the price brands pay for these finished products and other purchasing terms. Worse, even when buyers do not honour the contracts which are already in their favour, suppliers are unlikely to challenge and enforce these in civil court due to the same power asymmetry and a climate of fear. The result is **unfair trading practices** which deviate from good commercial conduct, which are contrary to good faith and fair dealing and often unilaterally imposed by one trading

¹ ILO Better Work (2011) Better Work Discussion Paper Series: No. 2. Excessive Overtime, Workers and Productivity: Evidence and Implications for Better Work. Available at: <https://betterwork.org/wp-content/uploads/Discussion-Paper-Series-No-2-Excessive-Overtime-Workers-and-Productivity-Evidence-and-Implications-for-Better-Work.pdf>

² ActionAid (2023) Stitched Under Strain. Available at: <https://actionaid.org.au/resources/new-report-stitched-under-strain/>; CNV Internationaal (2023) Making the case for higher wages in the Cambodian garment sector. Available at: https://www.cnvinternationaal.nl/_Resources/Persistent/6/8/8/4/68845ceff8d7e76c2db893d55067f94a3ff2dd68/CNVI-0394%20Living%20wages%20in%20the%20Cambodian%20textile%20sector%202023%20final.pdf; ECCHR (2023) No Contracts, no Rights: How the Fashion Industry Avoids Paying Minimum Wages in Pakistan. Available at: <https://www.ecchr.eu/en/publication/keine-vertraege-keine-rechte-wie-die-modeindustrie-ihre-arbeiterinnen-um-mindestloehne-betruegt/>; Clean Clothes Campaign (2024), Bangladesh Minimum Wage: Available at: <https://cleanclothes.org/campaigns/bmwc>

³ Fair Wear Foundation (2018) Violence and Harassment against Woman and Men in the Garment Sector. Available at: <https://api.fairwear.org/wp-content/uploads/2018/03/FWF-ILO-submission-final.pdf>

partner on another.⁴

Driven by buying companies' search for lower and more flexible terms of production, producers are in turn forced to cut corners when it comes to labour rights and climate and environmental standards. While not exclusive to the garment sector, the ILO estimated that these power asymmetries are particularly intense in the garment sector.⁵ The COVID-19 crisis highlighted and amplified painfully the effects of these skewed power structures and buyer-driven supply chains. For example, fashion brands have activated broad hardship or force majeure clauses in their supplier contracts to cancel or suspend orders worth millions of euros and to dishonour their contractual obligations.⁶ Other reports indicated extended payment terms up to 180 days after shipment. This resulted in no income for factory workers with disastrous effects on their human rights, especially in countries that do not provide a strong social security net for their citizens.

This paper aims to provide an overview on **how banning Unfair Trading Practices in the textile and garment sector can provide a crucial complement to the objectives and the success of the Corporate Sustainable Due Diligence (CSDD)**. Indeed, especially in sectors characterised by such intense power imbalances, due diligence risks in fact to become an additional "cost of compliance" upon weaker parties, thus further exacerbating the problem rather than addressing it. To counterbalance the uneven power relationships that often exist between buying companies and suppliers in the garment sector, an additional instrument is needed which can be modelled from the 2019 UTP Directive in the agricultural and food supply chain.

II. The Corporate Due Diligence Directive and the UTP Directive compared

In May 2024, the European Council agreed to the final text of a directive on Corporate Sustainability Due Diligence,⁷ to ensure that companies operating on the internal market

⁴ Green Paper on Unfair Trading Practices in the Business-To-Business Food and Non-Food Supply Chain in Europe (2013)

⁵ See for a cross sectoral study ILO (2017) Purchasing practices and working conditions in global supply chains: Global Survey results. Available at: https://www.ilo.org/travail/info/fs/WCMS_556336/lang-en/index.htm; See also Human Rights Watch (2019) "Paying for a Bus Ticket and Expecting to Fly" How Apparel Brand Purchasing Practices Drive Labor Abuses. Available at: <https://www.hrw.org/report/2019/04/23/paying-bus-ticket-and-expecting-fly/how-apparel-brand-purchasing-practices-drive> for a study in the garment sector.

⁶ Vogt J., Saage-Maaß M., Vanpeperstraete B. and Hensler B. (2020) 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

⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0071>

“contribute to sustainable development”. The Directive lays out obligations for companies regarding actual and potential human rights and negative environmental impacts. The Directive covers companies their own operations, the operations of their subsidiaries, and a part of their value chain. The instrument provides for supervision by competent authorities and civil liability for victims of such abuses.

Limitations to the personal scope: how to address the majority of the sector

The proposal currently applies to large companies placing products on the EU market, namely EU companies and parent companies with over 1000 employees and a worldwide turnover higher than 450 million euros, or non-EU companies and parent companies with equivalent turnover in the EU. However, most textile and garment companies are SMEs (99.8% of EU textile companies according to EURATEX)⁸, thereby falling outside the scope of the Directive. Unlike highly concentrated sectors such as agri-food, energy, extractives or IT, where a handful of companies control the whole industry, the garment industry is more fragmented – although its degree of concentration has not been well-documented.

According to Katalyst Initiative⁹, the largest garment brands which fall under the scope of the CSDD Directive do not dominate the industry. In fact, they estimate that the top 150 US and EU brands represent 30-40% of supply chain labour market share. While putting forward a precise estimation is not yet possible with available data, **there is substantial doubt that the CSDDD scope will be sufficient to benefit the majority of garment workers and achieve sector-wide improvements to their working conditions and labour rights**. Indeed, while the CSDDD mandates companies in scope to address impacts in their supply chain, a significant part of garment production for the European market will not be covered.

The UTP directive in the agri-food sector covers the buying practices of businesses that purchase agri-food products if at least one of the parties is based in the EU. This can include retailers, brands, processors, and even public bodies like local and national government departments.

The UTP Directive uses a “step approach” to protect weaker suppliers against UTPs engaged in by an economically stronger buyer. It creates six size categories by annual turnover¹⁰, thereby using turnover as a proxy to reflect the unequal power relationship between suppliers and buyers, rather than a minimum threshold for application. **A similar approach would also be relevant for the textile and garment sector**, covering a significantly broader part of the supply chain workers producing for the European market, possibly addressing the gap by CSDDD.

⁸ https://euratex.eu/wp-content/uploads/EURATEX_FactsKey_Figures_2022rev-1.pdf

⁹ Katalyst Initiative, Sizing Up the Garment Industry - Working Paper 1. Available at: <https://katalystinitiative.org/working-paper-1/> and Katalyst Initiative, Garment Industry Structure - Working Paper 2. Available at: <https://katalystinitiative.org/working-paper-2/>

¹⁰ Zero to €2m; €2m to €10m; €10m to €50m; €50m to €150m; €150m to €350m; €350m and above

Limitation to the intervention logic: how to achieve the desired behaviour of brands

The Due Diligence Directive explicitly covers purchasing practices as part of ways to address potential or actual impact. However, it addresses unfair purchasing practices only indirectly and, in a process-oriented fashion. For a company under scope to amend its purchasing practices, the company need to have identified a specific human rights or environmental impact, it being sufficiently significant and evaluates itself as jointly causing the impact, and that an amendment of the purchasing practices is the appropriate route to address this.

This risks diluting the responsibility of buyers, who may have individually not identified and made a similar assessment on the impacts, their relationship to these impacts, the appropriate measures to be taken and, if this is an amendment to their purchasing practices, which parameter (price, lead time, confirmation of orders, technical specificities, payment schedule, ...) to amend and to which standard. In return, it leaves significant discretion to the companies if, and to what extent, they are amending their purchasing practices. Additionally, the material scope of the Directive covers a select number of human rights violations such as low wages or freedom association, leaving impacts such as gender-based violence out of scope.

Finally, the Due Diligence Directive relies heavily on seeking contractual assurances, contract cascading and monitoring. This coupled with the requirement to disengage from business partners in a risky situation where it is not possible to prevent or mitigate harm, risks adding pressure on these suppliers for HREDD compliance, without adequate and proportionate support (including financial). For example, in assessing the implementation of its due diligence framework in the mining sector, the OECD found that there is a tendency for companies to pass on the costs of Human Rights Due Diligence implementation up the supply chain without addressing the impact of their own practices. The Directive does foresee, as previously mentioned, the adaptation of the business model and purchasing practices as an appropriate measure, and the provision of support to SME business partners. However, it remains to be seen to what extent this effectively mitigates this risk.

The UTP Directive for Agri-food¹¹ tackles unfair trading practices from a different angle, by forbidding a selected number of practices and restricting some others.¹² Article 3 of the Directive gives a list of which unfair trading practices should at least be banned or restricted. Ten practices are banned outright, whatever the circumstances.¹³ Six further practices are banned unless they are previously agreed to in clear and unambiguous terms in a supply agreement.¹⁴ The limitation to the contracting freedom of the bigger player thus results in freedom of contract of the smaller supply chain partner.

Even though producers are often confronted with prices below production costs which are imposed on them by powerful businesses¹⁵, the directive did not include purchasing below production costs as an unfair trading practice. It was however included during transposition in Italy and in Spain¹⁶.

Limitation to the enforcement: how to overcome the fear of retaliation by manufacturers

Furthermore, although the CSDD Directive foresees in enforcement by supervisory authorities and civil liability, with only the administrative enforcement being an avenue for business partners to raise non-compliance with the due diligence obligation. However, the trigger of such administrative oversight or liability would be a specific human rights or environmental impact or risk, which thus likely excludes their usage from the perspective of a manufacturer within the supply chain.

Providing sufficient economic space in the buyer-supplier relationship is crucial for the

¹¹ Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain

¹² See for more detail: FTAO et al. (2019) The Unfair Trading Practices Directive: a transposition and implementation guide. Available at: <https://fairtrade-advocacy.org/wp-content/uploads/2019/07/The-Unfair-Trading-Practices-Directive.pdf>

¹³ These include:

1. Late payments: paying later than 30 days for perishable products
2. Late payments: paying later than 60 days for other agri-food products
3. Cancelling of orders at short notice (less than 30 days)
4. Making unilateral changes to a supply agreement
5. Requiring payments from the supplier that are not related to the product
6. Requiring the supplier to pay for the deterioration or loss of a product once it has passed into the buyer's ownership
7. Refusing to provide a written supply agreement if requested
8. Acquiring, using or disclosing the supplier's trade secrets
9. Carrying out (or threatening) commercial retaliation when a supplier exercises their rights under this Directive
10. Requiring a supplier to pay for the cost of customer complaints

¹⁴ These include:

1. Return of unsold products.
2. Payment of the supplier for stocking, display and listing.
3. Payment of the supplier for promotion.
4. Payment of the supplier for marketing.
5. Payment of the supplier for advertising.
6. Payment of the supplier for staff of the buyer, fitting out premises.

¹⁵ NEEDS TO BE REFERENCE OF TRANSPOSITION

¹⁶ FTAO (2022) Guiding steps towards living income in the supply chain. Available at: https://fairtrade-advocacy.org/wp-content/uploads/2022/08/220802_GIZ_BRO_Government_A4q_ENG.pdf page 48

suppliers' own business model and its ability to respect human rights and the environment, otherwise, the CSDD Directive risks stimulating to give with one hand while taking with the other. Thus, other measures to guarantee good business conduct such as balanced contracts, fair prices, correct payment terms and no unilaterally enforced discounts seem warranted.

The UTP Directive requires each member state to set up an enforcement body which will ensure compliance with the law. This can either be an entirely new body or a pre-existing entity such as a competition authority or a national regulator. Suppliers, producer organisations and non-profit organisations with legitimate interest in representing affected suppliers have the right to complain to the relevant enforcement authority specifically to the enforcement authority. Furthermore, non-profit organisations with legitimate interest in representing affected suppliers can also introduce a complaint to the enforcement authority.

III. Conclusion

These two pieces of legislation -- the UTP Directive and the proposed CSDDD -- work in different ways and address different needs. The UTP Directive offers clear and uniform rules and boundaries on business conduct intending to protect the weaker business partner. On the other hand, looking at a company's own purchasing practices as part of an obligation under the CSDD Directive and providing support is process-oriented, context-specific and potentially leaves considerable discretion to the powerful supply chain partner. There is namely the risk that buyers will only focus on the impact, and in certain several business partners might even come up with very different approaches to attack the human rights impacts. This might still leave the supplier in a difficult economic situation which can stimulate the supplier to obfuscate or displace the human rights impacts.

There is therefore a need for legislation banning UTPs in addition to the inclusion of buying companies' purchasing practices in the due diligence process under the CSDD Directive. The two types of legislation are complementary and UTP legislation will support the objectives of the CSDD Directive. The agri-food UTP Directive provides clarity for the agri-food sector and straightforwardly bans certain unfair trading practices in that specific sector. There is a clear need to expand such an approach to other sectors with strong power asymmetries such as already noted by the Commission in garment and textiles. The upcoming evaluation of the agri-food UTP Directive may thus be a good opportunity to expand the scope of this instrument. There may however be other trading practices, even in the same sector, that are leading to adverse human rights impacts in a given supply chain but are not covered by the current directive, such as prices below the costs of production.

Annex

Comparison UTP Directive and CSDD Directive

Characteristics	UTP Directive for agri-food	The proposed CSDD Directive
Scope (company size)	All companies active in the agri-food sector	Covers companies above a certain threshold in terms of employees and turnover
Value Chain Coverage	Only direct contractual relations	Direct and indirect contractual relations, but considering the “involvement” of the company
Intervention logic relative to purchasing practices	Defines a minimum of 10 unfair trading practices, which are outlawed. 6 further practices are further are only allowed by mutual consent.	Does not address unfair trading practices, except when they are identified as causing or contributing to a human rights or environmental impact. However, includes a general duty to assess human rights impacts in the supply chain and take appropriate measures to address impacts. The Parliament negotiating mandate foresees explicitly the adaptation of business models and purchasing practices.
Preventative v reactive approach	Targets UTPs already happened or taking place. Enforcement may lead to prevention.	Process-based mechanisms including prevention, mitigation, and remediation.
Possibility to raise UTPs to	Yes, complaints can be lodged to the responsible national authority (may	Indirectly,

government supervisor	also open investigations without an official complaint) by supplier/producer organisations or NGOs (not individuals).	Complaints can be lodged to: - to responsible national authority (may also open investigations without an official complaint) - by supplier/producer organisations or NGOs. - if the UTP means a breach of the HREDD duty
Enforcement	<p>After UTP occurred</p> <p>A responsible national authority has powers to carry out unannounced on-site inspections and find an infringement of UTP.</p>	<p>Both, before and after harm occurs. National Supervisory Authority has powers of investigation and upon finding a human rights due diligence failure, can order cessation of infringements and abstention from repetition which can be followed by pecuniary sanctions (based on a company's turnover) and interim measures to avoid the risk of severe and irreparable harm.</p> <p>Civil liability when companies' failure to comply with the obligation to conduct due diligence led to harm. (Not for suppliers)</p>
Remedies	Competent authorities can end the practice, issue fines or other penalties and mediate to settle cases between buyers and suppliers.	<p>Competent authorities can issue fines and request specific actions from companies</p> <p>Civil proceedings can provide remedies to victims of human rights abuses</p>

