



*WORKING DOCUMENT<sup>1</sup>*

## ***Child labour and Corporate Social Responsibility***

### ***What should the European Union do?***

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<sup>1</sup> You are welcome to comment on this working Paper until 2nd June 2008 after which it will be finalised.

## **I. Executive summary and recommendations in short**

The EU Member States like other states have 'the duty to protect against human rights abuses by third parties, including business'.<sup>2</sup> The European Union has an important role in realising this duty of its Member States. This is certainly the case where this duty links up with trade, investments and the obligations of the corporate sector, an area in which the Member States have given important powers to the European Commission and the European Council. Regarding children's rights this position has been reflected by the European Commission in its Communication 'A special place for Children in EU External Action'<sup>3</sup>. It states: '*EU trade policy is formulated recognising fully the need to ensure that it is consistent with the protection and promotion of children's rights.*' What we are exploring in this Working Document is how to ensure this consistency and make it most effective in terms of protecting children's rights.

The 218 million children suffering from child labour worldwide, of which the products are also consumed in Europe, are a dramatic illustration of the mismatch between the rights of the economically powerful and the rights of the child. Where regulations in other fields abound, including those regulating the rights of companies, children seem to be left to fend for themselves in the national international marketplace. That is absolutely unacceptable.

The recommendations to implement a 'child labour free trade policy' presented in this paper reflect to a considerable extent the already existing consensus of the European Parliament for stronger policies and certain forms of regulation. Apart from going deeper into some of these proposed policies, also a number of related less discussed proposals for policies will be taken up. These proposed policies and regulations can of course be broadened to the other three fundamental labour rights. Responsible corporate conduct should not limit itself to eradicating child labour only, but child labour should certainly be high on the agendas, requiring an adequate and urgent response of both the corporate sector as of governments.

The campaign 'Stop Child Labour – School is the best place to work' proposes the following recommendations:

### **1. *Make a child labour impact assessment of trade and investment relations***

A child labour impact assessment of trade and investment relations would help the EU to specify and implement its anti-child labour policies in terms of e.g. informing consumers, providing (or withdrawing) subsidies, development programming, political dialogue, fair public procurement and reporting. More specifically it is recommended to publish an EU World Report on fundamental labour rights every year, including one on child labour every four years. In addition it is recommended to publish a list of products produced by children that are imported by EU-based companies.

### **2. *Systematically include the child labour issue in your political, human rights and economic dialogues and negotiations with third countries and international agencies***

<sup>2</sup> See: <http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative>

<sup>3</sup> See: [http://ec.europa.eu/development/policies/9interventionareas/humandev/humandevchildren\\_en.cfm](http://ec.europa.eu/development/policies/9interventionareas/humandev/humandevchildren_en.cfm)

The European Union rightly emphasises consistency of all its actions with the protection and promotion of human, including children's rights. Therefore EU officials should systematically raise the issue of child labour in all relevant political and economic meetings at various levels. It should, where relevant, also come up with proposals for action (see below).

3. ***Include plans to monitor and remediate child labour in EU agreements with countries where this practice is widespread. This should have a specific focus on the supply-chain of EU-based companies***

Existing agreements with e.g. the ACP countries and the countries with a Partnership and Co-operation Agreement with the EU, already mention the mutual commitment or even co-operation to combat child labour. Linked to these agreement there should be a time-bound programme to eradicate child labour in the supply-chain of EU-based companies. Such programmes should also be set up with other countries where many EU-based companies are active in child labour prone sectors.

4. ***Make it mandatory for companies to report on child labour, also in their supply chain and thus provide consumers the 'right to know' how a product is made, e.g. by child labour***

Mandatory reporting and the right to know are crucial prerequisites for the consumer to play her/his role in combating child labour. Although child rights should principally not be a consumers' choice, consumers can be important drivers for change. Therefore any EU human rights based labelling programme should also be based on both ILO child labour Conventions.

5. ***Declare a time-bound transition phase to move from reporting on child labour to mandatory implementation of a no-child labour policy***

Asking companies to report on child labour and labour rights is not compatible with immediate sanctions when violations of these rights are reported. Therefore the EU should take the lead in establishing a transition period of a few years demanding from companies to phase out child labour in the supply chain, after which sanctions will be imposed in case of non-compliance.

6. ***Create appropriate legal safeguards to prosecute EU based companies who violate (child) labour rights***

This recommendation has been reiterated in several forms by various resolutions of the European Parliament. It can best be summarized by a recommendation in a recent report by Mrs. Roberta Angellili supported by a large majority in the European Parliament: *'Points to the fact that products being sold in the EU may be produced by child labour; calls on the Commission to implement a mechanism by which victims of child labour can seek redress against European companies in the national courts of the Member States.'*

The European Commission ought to respond swiftly with a proposal to make this long-standing demand of the Parliament a reality.

7. ***Make sure that any support given by the European Commission and its Member States to companies (trade missions, subsidies, export credit guarantees, studies etc.) is combined with the obligation that no child labour is used in the company or the supply chain***

Companies receiving subsidies or credits, participating in trade missions or are otherwise supported by the government, should provide evidence that they are

do not make use of child labour in their supply chain. In order to give companies some time to properly address child labour (and other labour rights) in their supply chain (see also recommendation 5) they should in the coming years be given the option to develop and implement a public time-bound plan removing children from work and getting them into school, whilst the results should be reported publicly.

**8. *Withdraw the Generalised System of Preferences (GSP) status from countries not implementing their ILO commitments on child labour***

The EU should more actively use the human rights and good governance provisions under both the GSP and GSP+. In the case of Uzbekistan, where large scale forced child labour occurs by the Uzbek Government, the EU should immediately revoke its GSP status, until the ILO child labour conventions are implemented by the Uzbek government.

The EU should also strengthen the GSP+ arrangement for countries with a relatively better human rights and governance record, which is too 'liberally' interpreted at the moment. It should adopt a stricter assessment of the implementation of the ILO child labour Conventions. Preferably the EU should consider combining the granting of concessions under the GSP+ arrangement with a time-bound action plan to eradicate child labour. This could also be linked to an agreement as proposed in recommendation 3 to work on the eradication of child labour in the supply chain of EU-based companies.

**9. *Create a 'child labour free' public procurement policy, also in companies' supply chain***

Sustainable or fair public procurement should include social criteria. A fairly recent EU directive provides the basis for such a policy. They are however only slowly being introduced in the Member States because of legal ambiguity and practical and possibly political obstacles and hesitations. The EU should therefore play an active role in encouraging and supporting EU Member States to implement social criteria. The promised guidebook on social criteria for public authorities on how to integrate social criteria into public procurement should therefore be finalized very soon.

**10. *Make sure that the work of organisations that report on and/or campaign against (child) labour violations are not treated as non-tariff trades barriers, that EU grants to NGOs or unions are not labelled as such and make a clear statement to that effect***

Efforts, e.g. recently by India, to define campaigning on child labour or other labour rights as non-tariff trade barriers should be strongly resisted. An important implication of such a definition could be the withdrawal or withholding of subsidies to NGOs working on (child) labour rights. This should be countered by a strong public statement from the EU that campaigning on labour rights can never constitute a non-tariff trade barrier.

**11. *The EU should contribute to make the OECD Guidelines for Multinational Enterprises more effective in order to tackle (child)labour rights violations***

The EU should – both at the systemic and implementation level - contribute to strengthening the OECD Guidelines for Multinational Enterprises. It should urge the OECD and its Member States to broaden the scope of the OECD Guidelines

for Multinational Enterprises from investment to trade relations between companies, as well as strengthen its monitoring, complaint and sanctioning mechanism. In addition, the implementation of the present Guidelines ought to be improved. This should include: joint promotional and training programmes, support to less well-resourced NCPs in new EU Member States, establishing a focal point for exchanges between civil society and the National Contact Points (NCPs) in the European countries. More resources for proper investigation of cases are needed too, as well as clear time frames for the commencement or completion of cases. Further, the European Commission and the EU Member States should also contribute to the harmonising NCP procedures.

## II. Introduction

Children's rights are human rights. Children have the right to be free from child labour and have the right to education. But rights also imply that others have duties. While states have the primary responsibility to respect, protect and fulfil these human rights, it is increasingly recognised that companies have the responsibility to respect the human rights that are enshrined in international treaties and conventions. This was recently reinforced by UN Special Representative on business and human rights John Ruggie in his report to the Human Rights Council.<sup>4</sup>

Before discussing the actions the European Union could take in adopting and implementing policies and regulations with regard to the role of companies in combating child labour, we first shortly draw the attention to a newly published practical guide on what companies *themselves* can do. We also give the reasons *why* companies should take action against child labour.

The EU Member States have 'the duty to protect against human rights abuses by third parties, including business'.<sup>5</sup> The European Union has an important role in realizing this duty of its members. This is certainly the case where this duty links up with trade, investments and the obligations of the corporate sector, an area in which the Member States have given important powers to the European Commission and the European Council. Regarding children's rights this position is e.g. reflected by the European Commission in its Communication 'A special place for Children in EU External Action'<sup>6</sup> where it says: 'EU trade policy is formulated recognising fully the need to ensure that it is consistent with the protection and promotion of children's rights.' How to ensure this consistency and make it most effective in terms of protecting children's rights is what we are exploring in this working document.

## VI. **III.** Action Plan for Companies to Combat Child Labour<sup>7</sup>

The 'Out of Work and Into School - Action Plan for Companies to Combat Child Labour' is developed by the campaign 'Stop Child Labour – School is the best place to work'<sup>8</sup> to specify in 18 concrete steps what companies can do to fulfil the responsibility to combat child labour. This Action Plan was finalised after receiving

<sup>4</sup> See: <http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative>

<sup>5</sup> Idem 2

<sup>6</sup> See: [http://ec.europa.eu/development/policies/9interventionareas/humandev/humandevchildren\\_en.cfm](http://ec.europa.eu/development/policies/9interventionareas/humandev/humandevchildren_en.cfm)

<sup>7</sup> This section of the report has been adapted from 'Out of Work Into School - Action Plan for Companies to Combat Child Labour'

<sup>8</sup> See website: [www.stopchildlabour.eu](http://www.stopchildlabour.eu)

valuable input from a range of people worldwide, including employers, unions, NGOs and people working for international organisations such as the ILO.

The campaign 'Stop Child Labour – School is the best place to work' has also more broadly build on the varied experience of companies, trade unions, non-governmental organisations (NGOs), multi-stakeholder initiatives, governments and international organisations.

Besides being based on this wide variety of contributions, the added value of the Action Plan consists of a *combination* of:

- a focus on *all forms of child labour* that come under the two ILO child labour conventions 138 and 182 (instead of primarily the worst forms of child labour) and its link with the right to education, as the basis for corporate policies on child labour;
- a focus on *engagement* of companies in the supply chain aimed at systematic planned elimination of child labour, instead of immediately withdrawing orders from suppliers in case of child labour found;
- explicitly combating child labour within the broader goal of realising labour rights and recent experiences gained in the field of corporate responsibility and accountability;
- a focus on *engagement with other stakeholders* such as unions, NGOs, governments, multi-stakeholder initiatives etc.

The Action plan is primarily written for companies as well as multi-stakeholder initiatives that are working or intend to work on the elimination of child labour. However, we think is also useful for governments to (re)consider their policies and regulations, for NGOs to guide their action and engagement regarding company or sector-related activities and for international organisations to further specify their policies on the subject of child labour. In that spirit we hope it also informs the policy recommendations in this paper.

#### **IV. Why should companies and the EU act against child labour?<sup>9</sup>**

The Universal Declaration of Human Rights<sup>10</sup> states that '*every organ of society*' should contribute to ensuring that human rights are observed and implemented. This of course includes the business community. The Convention on the Rights of the Child (CRC)<sup>11</sup>, which has been ratified by almost all states worldwide, obliges states to 'recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development'.<sup>12</sup> Member States to the CRC have committed themselves to incorporating this obligation in their national legislation. In order to be consistent they are also obliged to ensure that companies under their jurisdiction comply with international agreements outside their home markets.

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<sup>9</sup> This section of the report is adapted from the 'Action Plan for Companies to Combat Child Labour'

<sup>10</sup> See: <http://un.org/Overview.rights.html>

<sup>11</sup> See: <http://ohchr.org/english/law/pdf/crc.pdf>

<sup>12</sup> See Article 32.1 Convention on the Rights of the Child: <http://www.unhcr.ch/html/menu3/b/k2crc.htm>

Also the Organisation for Economic Co-operation and Development (OECD) Guidelines for multinational enterprises<sup>13</sup> stipulates that enterprises should 'contribute to the effective abolition of child labour' (see for more information under point 9). Furthermore, the United Nations' *Global Compact* consists of a number of principles that businesses should adhere to – including principle 5: taking effective action to end child labour.<sup>14</sup>

The two 'Conventions' on child labour of the International Labour Organisation (ILO), ratified by more than three-quarters of its 181 Member States, are the most explicit international agreements in specifying what combating child labour means in practice. These are the Minimum Age Convention (No.138)<sup>15</sup> and the Convention on the Worst Forms of Child Labour (No. 182)<sup>16</sup>. These Conventions have been jointly drafted in the ILO by national governments, employers' associations and trade unions. Thus, the business community is politically and morally obliged to implement them. The Minimum Age Convention specifies that work is banned for children under the age of 15 (developing countries may opt for 14 years of age). Fifteen years is not a maximum; several countries including Brazil have adopted 16 as minimum age for employment. Light work is allowed for 12- and 13-year-olds in most developing countries, provided that it does not interfere with their schooling. Both Conventions include a ban on hazardous work for children under the age of 18. The Worst Forms of Child Labour Convention also prohibits 'working' as a child soldier, as a drugs trafficker and children working in pornography and prostitution, and other forms of forced labour.

Having described why companies should act against child labour, it is also clear from the above that states have the primary responsibility to respect, protect and fulfil human rights, including the right not to be a victim of child labour. The above mentioned Conventions On the Minimum Age for Employment (C138) and the Worst Forms of Child Labour (C182) have been ratified by 150 and 165 countries respectively, including almost all EU Member States.

In June 1998 by the ILO Declaration on Fundamental Rights at Work was adopted, which incorporates 'the effective abolition of child labour' and in which it was declared *'that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in Accordance with the Constitution [of the ILO], the principles concerning the fundamental rights which are the subject of those Convention..'*<sup>17</sup>

While not fully congruent with ILO Convention 138, which sets a minimum age for employment at 15, the universally-supported Millennium Development Goals (MDGs) 2 and 3 on education are aimed at a 'full course of primary education' (usually four to six years). Companies can be expected to contribute to the realisation of the MDGs and schooling up to at least 15 years of age by eradicating child labour and assisting in getting children to school.

<sup>13</sup> See: <http://www.oecd.org/dataoecd/56/36/1922428.pdf>

<sup>14</sup> See Global Compact: <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle5.html>

<sup>15</sup> See ILO website: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C138>

<sup>16</sup> See: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C182>

<sup>17</sup> See: [http://www.ilo.org/dyn/declaris/declarationweb.aboutdeclarationhome?var\\_language=EN](http://www.ilo.org/dyn/declaris/declarationweb.aboutdeclarationhome?var_language=EN)

## V. The role of the European Union

In various policy statements the European Union has made it clear that it not only expects EU-based companies to implement these norms in EU Member States - where they are part of more elaborate labour rights legislation - but also in countries outside the EU. The Guidelines of the OECD for Multinational and Other Enterprises are an example of that expectation. In the EC's Communication on CSR to the European Council and the European Parliament and the European Economic and Social Committee<sup>18</sup>, the Commission says that it aims *'to pursue the promotion of core labour standards [including the elimination of child labour] in bilateral agreements'* and *'The Commission is also committed to using trade incentives as a means of encouraging respect for the main human/labour rights..'*

The promotion of fundamental labour standards and the effective use of trade-related incentives to further their implementation is one area in which the European Union should consider stronger and more effective policies and implementation measures. We will discuss some of them below.

Part and parcel of such policies ought to be more direct regulatory policies and measures to oblige companies ensuring that labour rights - including a no-child-labour policy - are implemented, including in the supply chain. It is much debated to what an extent such recommended behaviour by EU-based companies in non-EU countries should be voluntary or mandatory. This is especially important when companies operate in countries whose legislation is not in conformance with the fundamental labour rights, or if such legislation has not been effectively implemented. Thus far the approach of the European Commission and also the EU Member States is *in principle* that efforts of European companies to combat child labour in non-EU countries should be voluntary and should not be mandatory under EU or national EU Member States legislation. However a number of 'incentive-based' public policies have been developed in the realm of CSR that have a bearing on combating child labour outside the EU, which can be called 'soft forms of regulation'. The fair procurement policy made possible by the EU - and now slowly being implemented by some Member States - is a case in point. Trade incentives against child labour, like provided via the GSP+ (see point 8), is another form of soft regulation

There is a growing public voice for certain forms of regulation of EU-based companies operating in non-EU countries. This voice is both coming from the public, non-governmental organizations (including trade unions) as well as from an increasing number of companies looking for a level playing field worldwide. The focus of such potential legislation is serious human rights violations, including the fundamental labour rights, and environmental crimes abroad.

The European Parliament has played an active looking role in the debate on the desired role of the European Union regulating certain aspect of the behaviour of companies worldwide. This is exemplified by e.g. the European Parliament's resolution on the 'Exploitation and child labour in developing countries' (July 2005) by rapporteur Manolis Mavrommatis and the *'Report on corporate social responsibility: a new partnership'* (December 2006) - further referred to as 'the CSR report' - by rapporteur Richard Howitt.

The 'Mavrommatis report' is groundbreaking because it contains clear ideas on the role of the European Commission and Member States regarding public policies and

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<sup>18</sup> See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0136:FIN:EN:PDF>

regulation in the field of child labour and corporate behaviour. Its recommendations 46 to 60 cover, amongst others, the following issues:

- *investigation and identification of companies* that persistently violate the core labour conventions, including the use of child labour in any part of the production chain (see recommendation 1 below);
- *co-operation of governments* in developing countries with international organisations to monitor industry and agriculture to prevent child labour in combination with full-time education and other supporting measures for children; (see recommendation 2);
- *reporting by the Commission and national governments* on the contribution of enterprises to the effective abolition of child labour plus the creation of consumer awareness on child labour free products (see recommendation 3);
- *legal safeguards and mechanisms* to identify and prosecute EU-based importers which import products made by child labour, including in the supply chain (see recommendation 5);
- *the purchasing and contracting policy* should be in compliance with the core labour standards, including child labour (see recommendation 6).

These and related issues will be elaborated on below in the form of a set of recommendations. They reflect to a large extent the already existing consensus of the European Parliament for stronger policies and certain forms of regulation. Apart from going deeper into some of these proposed policies, also a number of related less discussed proposals for policies will be taken up in the form of recommendations.

## **VI. Recommendations to the European Union in full**

### **1. Make a (child) labour impact assessment of trade and investment relations.**

In its resolution 'Exploitation and child labour in developing countries' (2005) the European Parliament recommends the Commission to *'investigate and identify companies which continuously and persistently use child labour in any part of the production chain and calls for such a list to be made available to EU importers'*.

This recommendation implies that the EU and its Member States should, as part of a coherent human rights and child rights policy, play an active role in fighting child labour in trade and investment. The starting point should be a thorough 'child labour impact assessment' by the EU, focusing on economic sectors with a high 'child labour risk'. It would help the EU and its Member States to formulate and implement policies e.g. in the field of informing consumers, focussed subsidies to anti-child labour initiatives, withdrawal of subsidies to companies violating child rights, fair public procurement, human rights dialogues, (mandatory) reporting and the public's 'right to know' on companies' child labour impact (see further). In addition the European Commission could focus on companies in specific sectors that are 'child labour prone' and make a publicly available list of those companies.

The Labor Department of the US government, Bureau of International Labor Affairs<sup>19</sup>, already compiles such a list of products made by forced and child labour already.<sup>20</sup> The aim of this list is among others: a) monitor the use in violation of international standards, b) develop and make available to the public a list of goods from countries that are most likely produced by forced labor or child labour, c) work to create a standard set of practices that will reduce the likelihood of child labour producing such goods using the labour described and d) consult with US Governments departments and agencies to reduce forced and child labour internationally and ensure that products made by forced labour and child labour in violation of international standards are not imported into the United States. The list will be published in spring 2008. There are indications that these activities, already before being definite, have already e.g. contributed to the Indian government decision to audit export sectors on child labour.

If the European Union would initiate a similar research this would be tremendously beneficial to set establish norms and practices to ensure that serious efforts are undertaken to produce child labour free products. We envisage two complementary ways to approach this:

- an *EU World Report on Fundamental Labour Rights* published every year on one of these rights. This would mean a report on child labour every four years, complementary to the annual Global Report published by the ILO. The differences would be that the EU focuses on its own relations with third countries in terms of fundamental labour rights. Such a report should provide facts and figures, make analyses of countries, assess the impact of present economic relations of the EU with third countries, assess the impact of interventions and suggest new strategies in the fields of development co-operation, political and human rights dialogues and economic and trade related measures. An analysis of problematic (economic sectors) regarding the violation of children's rights (and other fundamental labour rights in the respective annual reports) should also be part of such a report.
- a regularly updated *list of products and services* (also) produced by children that are imported in the EU or produced and marketed in third countries by EU-based companies. Such a list, together with the EU World report, should be used to further shape and implement policies such as the ones recommended below.

## **2. Systematically include the child labour issue in your political, human rights and economic dialogues and negotiations with third countries and international agencies.**

The European Union rightly emphasises consistently of all its actions with the protection and promotion of human, including children's rights. Therefore EU officials should systematically raise the issue of child labour in all relevant political and economic meetings at various levels. It should, where relevant, also come up with proposals for action (see also recommendation below). It is very important that child labour is not only raised in the political dialogues with third countries but also when trade agreements are being negotiated, at EU-sponsored fairs, when trade missions visit third countries, when projects and programmes - including economic ones - are being financed etc. This 'child

<sup>19</sup> Website Department of Labour US government: <http://www.dol.gov/ILAB/programs/ocft/tvpra.htm>

<sup>20</sup> See: <http://www.setonresourcecenter.com/register/2007/Dec/27/73374A.pdf>

labour diplomacy' should also extend to international agencies. It is e.g. very important to systematically put child labour on the agenda of international agricultural agencies (such as FAO, IFAD, CHIAR, IFAP) and urge them to initiate programmes on the issue, as 70% of all child labour is in agriculture.

**3. Include plans to monitor and remediate child labour in EU agreements with countries where this practice is widespread. This should have a specific focus on the supply-chain of EU-based companies.**

In its agreements with developing and 'transition countries', whether they are economic, developmental or have a wider scope, the EU should include a plan to combat child labour and support programmes to get children to school. This would be consistent with and could build upon a number of existing agreements between the EU and third countries. For example in the so-called Cotonou Agreement between the EU and 79 Asian, Pacific, Caribbean (ACP) countries<sup>21</sup> signed in 2000, it is said that co-operation on core labour standards will be enhanced by 'strengthening of existing legislation' and 'enforcement of adherence to national legislation..' There are also Partnership and Co-operation Agreements (PCA) between the EU and ten Eastern European and Central Asian countries in which the respect for human rights are 'essential elements' of the Agreements.

In this context the following recommendations of the European Parliament (Howitt, 2006)<sup>22</sup> are relevant: '*.. calls on the Commission to include in future cooperation agreements with developing countries chapters on research, monitoring and help to remediate social, human and environmental problems in operations and supply-chain of EU-based companies in third countries*'. Another recommendation in the same report broadens the scope from EU-based companies to support for implementing international conventions: '*believes that EU assistance to governments of third countries in implementing social and environmental regulation consistent with international conventions, together with effective inspection regimes, are a necessary complement to advancing the CSR of European business worldwide*'.

Child Labour, in combination with the other three fundamental labour rights, would be a key issue to start related auditing and remediation programmes. An interesting example in this regard is the fact that the Indian government, ostensibly triggered by some 'child labour scandals' in certain export sectors, wants independent agencies to undertake child labour audits of five sectors: apparel, handicrafts, carpets, sports goods and gems & jewellery. The entire chain of suppliers has to conform to child labour laws as well. The National Commission for Protection of Child Rights is involved in the effort.<sup>23</sup>

While India could undoubtedly, when political will exists, set up a transparent credible audit itself, other countries might need support to set up a good system with independent monitoring and verification. Just eradicating child labour from the work force or supply chain is not effective and sustainable solution. Companies who have benefited from child labour have a moral obligation to support children leaving work to get a decent education.

<sup>21</sup> See: <http://www.acpsec.org/en/conventions/cotonou/accord1.htm>

<sup>22</sup> See for report and comments: <http://www.corporatejustice.org/spip.php?article80&lang=en>

<sup>23</sup> See 'Child labour audit mooted': <http://www.financialexpress.com/news/Child-labour-audit-mooted/246517/>

The 'Action Plan for Companies to Combat Child Labour' published by the campaign 'Stop Child Labour – school is the best place to work' states:

*'Ensure that children hitherto employed at the company's own plants, plantations or service operations, and/or in outsourced or sub-contracted operations across the entire supply chain, are transferred to free, full-time regular education. Experience shows that companies with a no-child-labour policy frequently limit their involvement to merely seeing to it that the children concerned are removed instead of facilitating their transition to formal day-time schooling. There have been several highly visible examples of companies keen to rid themselves of the children who worked for them in order to boost their public image.'*

It is the political obligation of the EU to make sure that this is happening and backed up with appropriate comprehensive remediation programmes. Any agreement between the European Union and a third country on combating child labour should therefore include a plan for remediation of the children found in the workplace of the EU-based company or their supply chain.

In prioritising countries with which 'child labour company-related auditing and remediation agreement' is sought, the following criteria could be used:

- countries with which a new cooperation treaty (trade, development or more comprehensive) is being negotiated; these include the ten PCA countries with which the ten-year agreement is running out in 2009 and the countries benefiting from the GSP and GSP+ whose regulation both run out by the end of 2008 (see also recommendation 8);
- Countries benefiting from the Generalised System of Preferences (GSP) and especially the GSP+ (see also recommendation 9);
- countries where any agreement with the EU could be linked to and strengthened by other EU or EU-member state funded programmes, especially in the field of education, poverty alleviation and decent work.
- countries with both a high prevalence of child labour and a large presence of EU-based companies;
- countries that approach the EU with the political will and plans to work on this issue;
- countries where a sectoral or regional approach, instead of 'only' a EU-based companies approach, can be undertaken. Such a sectoral approach is more effective as all or most companies in the sector, or a whole region, could be included in the effort.

#### **4. Make it mandatory for companies to report on child labour, also in their supply chain and give the 'right to know' to consumers to be informed how a product is made, including if made by child labour.**

At various occasions the European Parliament has voiced its support for mandatory social and environmental reporting by (large) companies. In the earlier mentioned report on CSR the European Parliament asks the European Commission to put forward a proposal to include social and environmental reporting alongside financial reporting by amending the Fourth Company Law Directive.<sup>24</sup>

Hence, it has been agreed by the European Parliament that certain types of companies – generally the bigger ones - should report about their impact on

<sup>24</sup> See resolution: [http://www.corporatejustice.org/IMG/pdf/CSR\\_resolution.pdf](http://www.corporatejustice.org/IMG/pdf/CSR_resolution.pdf)

society, including on child labour and labour rights. Reporting should focus at least on 'big issues' like child labour and fundamental labour rights. It is recognized in the European's Parliament's CSR report ' that only a minority of the companies who report voluntarily use internationally accepted standards, covers the company's full supply chain or involve independent monitoring and verification.

Another approach to being transparent, is the 'right to know' of citizens and consumers about company practices and products and their impact on (child) labour, also in its supply-chain. This also allows consumers to make a choice for (products of) companies that make real efforts to eradicate child labour. However, this is only an intermediate step in the direction that all products are produced child labour free, as (child) rights should not be at the mercy of an individual consumer.

At the same time one has to recognize that reporting and labelling products as child labour free (or larger social and/or environmental claims) and the demand of critical consumer's for these products, are among the important driver's of CSR. Therefore the European Parliament's in its resolution on CSR has called on the European Commission 'to adopt a European standard for product labelling where observance of human rights and fundamental workers' rights are part of the labelling scheme'. Such a standard, if developed, should of course also be based on the two ILO Conventions related to child labour.

**5. Declare a time-bound transition phase to move from reporting on child labour to mandatory implementation of a no-child labour policy.**

Requesting companies to report on child labour and labour conditions in international supply-chains will only be realistic if there are no immediate sanctions. It can however be demanded, also by regulation, that companies take credible steps to tackle (child) labour issues in a phased manner, including in their supply chain. If companies do not report (and evidence of violations is available) and/or make insufficient progress in combating child labour, then legal action in its home country against such a company ought to be taken. The European Union should take the lead in establishing such a transition period of two to three years. It should formulate what it demands from EU-based companies operating outside the European Union in terms of combating child labour, and what the sanctions are if these demands would not be met.

**6. Create appropriate legal safeguards to enable prosecution of EU based companies who violate (child) labour rights.**

The issue of legal options to prosecute EU based companies violating (child) labour rights in non-EU countries has often been hotly debated. But this form of 'direct foreign liability' is not new when it comes to other actions of companies and individuals. Extraterritorial jurisdiction regarding criminal legal liability is known for companies who bribe officials in other countries and also individuals that sexually abuse children. Already in 1999, the governments, employers' and workers' organizations in the ILO recommended in ILO Recommendation 190 to ILO Convention 182:

*' providing for the prosecution in their own country of the Member's nationals who commit offences under its national provisions for the prohibition and immediate elimination of the worst forms of child labour even when these offences are committed in another country'.*

The 'Mavrommatis report' in its recommendation 47 combines incentives with sanctions. It states: *'Recommends that the Commission investigate the creation of appropriate EU-level legal safeguards and mechanisms which identify and prosecute EU-based importers who import products which allow the violation of the core ILO conventions, including the use of child labour, in any part of the supply chain.'*

In its report on CSR the European Parliament *'calls on the Commission to implement a mechanism by which victims, including third-country nationals, can seek redress against European companies in the national courts of Member States'*. In the same resolution the European Parliament *'encourages the Commission to develop, in particular, mechanisms that ensure that communities affected by European companies are entitled to a fair and accessible justice process'*.

In a recent (December 2007) report by Mrs. Roberta Angellili a large majority of Parliament clearly expressed that possibilities for legal redress for victims of child labour are needed: *'Points to the fact that products being sold in the EU may be produced by child labour; calls on the Commission to implement a mechanism by which victims of child labour can seek redress against European companies in the national courts of the Member States; calls on the Commission to enforce supply-chain compliance and especially to come forward with mechanisms that make the main contractor liable in Europe in cases of violation of UN conventions on child labour in the supply chain'*.

It is clear that a legal tool is needed to prosecute those companies who violate human rights, including the rights of children.

**7. Combine any support given by the European Commission and its Member States to companies (trade missions, subsidies, export credit guarantees, studies etc.) with the obligation that no child labour is used in the company or the supply chain.**

The CSR report of the European Parliament recommends *'for the Commission, the European Investment Bank and the European Bank of Reconstruction and Development to apply strict social and economic criteria to all grants and loans allocated to private sector companies, backed by clear complaints mechanisms'*. This includes the ILO fundamental labour rights. For the EU to establish a coherent anti-child labour policy in all its instruments and mechanisms by which it supports the corporate sector, it is needed to make an overview of the different ways in which the Commission supports enterprises and their organizations. These instruments and mechanisms would include but are not limited to trade missions and other trade support measures, subsidies, export credit guarantees, feasibility studies etc. The Commission should ask all companies that are supported by the EU in any way, to declare that they are not using child labour, including in their supply chain, or show a public plan of action that they are working on a child-labour free supply-chain in a time bound matter. Such a plan of action should include measures to guide and

support the children found, into full-education or transitory education leading to joining full-time education (see also the Action Plan for Companies to Combat Child Labour).

On the 22<sup>nd</sup> of April 2008 the Dutch Parliament has unanimously agreed on a motion along these lines saying that companies who receive subsidies or credits, participate in trade missions or are otherwise supported by the government, should provide evidence that they are not making use of child labour in their supply chain. However in order to avoid being excluded from government support the other option is that companies provide a 'public time-bound plan to remove children from work and get them into school'.

**8. Withdraw the Generalised System of Preferences (GSP and GSP+) status from countries that are non-compliant regarding their ILO commitments on child labour or agree on a time-bound action plan to eliminate child labour.**

The Generalised System of Preferences of the EU gives tariff preferences to developing countries. Products exported by them to the EU are either duty-free or benefit from a tariff-reduction. They provide an incentive to traders on the EU side to import products from developing countries, and help the latter to compete on international markets. The GSP regulation states that this should 'be consistent with and consolidate the eradication of poverty and the promotion of sustainable development and good governance'. GSP tariff reductions can be temporarily withdrawn in case of 'serious and systematic violations of principles laid down in the conventions listed in Part A of Annex III, on the basis of the conclusion of the relevant monitoring bodies'. These Conventions include the two ILO child labour conventions.

In addition there is a 'Special incentive arrangement for sustainable development and good governance' called the GSP+. This arrangement is open for a specific group of 'vulnerable developing countries that have implemented sustainable development and good governance policies'. It started on 1 July 2005 and will end on 31 December 2008. Countries have to specifically apply for GSP+. They are not only expected to ratify a range of treaties and Conventions, including on child labour, but also to 'effectively implement' them and '*provide comprehensive information in writing and to fully comply with the monitoring and review mechanisms envisaged in the relevant conventions*'. The Commission will assess and verify the information and decide whether a GSP+ status is warranted. In 2005 15 countries have been granted this GSP+ status.<sup>25</sup> A possible new phase of GSP+ will start in 2009. Assessments whether countries qualify for GSP+ will take place at the end of 2008.

*The case of Uzbekistan*

Uzbekistan benefits from the general GSP arrangement. It annually exports for almost €200 million cotton to Europe. There is ample evidence that children are forced by the government to participate in the annual cotton harvest under generally very bad working conditions. It is estimated that hundreds of

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<sup>25</sup> These are: Bolivia, Columbia, Ecuador, Peru, Venezuela, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Moldova, Georgia, Mongolia and Sri Lanka.

thousands of children<sup>26</sup> below 14 are involved in cotton production. Although Uzbekistan has recently adopted ILO Conventions 138 and 182, it remains to be seen how these Conventions will be implemented and enforced. Clear EU action can spur the Uzbek government to swiftly work towards effective implementation and stop its forced employment of children. To that effect the EU should start a case to immediately revoke the GSP status which Uzbekistan enjoys, until such time that it effectively implements its ILO commitments.

There are precedents for the EU to use its leverage in this way. In December 2006 the EU warned that it would have to withdraw Belarus' trade preferences under the GSP if Belarus did not comply with its ILO obligations relating to freedom of association for workers. In June 2007, the ILO adopted its assessment that Belarus had failed to ensure the protection of certain key labour rights and Belarus' GSP trade preferences were withdrawn for a six-month period in order to leverage change. Consideration should be given to applying similar measure against Uzbekistan, and other countries that fail to effectively implement their ILO commitments.

#### *Strengthen the GSP+ arrangement*

Looking at the countries that are at present benefiting from the GSP+ arrangement one can hardly escape the impression that the EU has not been very strict in its assessment. For example Bolivia is known for its large number of children working in mining (120.000 is one estimate) plus roughly 600.000 in other occupations. Colombia has a large child labour population with e.g. 25% of its rural children not going to school at all. The EU should adopt a stricter assessment of the implementation of the ILO child labour Conventions. Alternatively, and to be preferred, the EU should consider to combine the granting of concessions under the GSP+ arrangement with a time-bound action plan to eradicate child labour. This could also be linked to an agreement as proposed in recommendation 2 to work on the eradication of child labour in the supply chain of EU-based companies.

### **9. Create a fair 'child labour free' public procurement policy.**

The European Parliament in its CSR report points to the 'Public Procurement Directives adopted in 2004 *'to support CSR by applying social and environmental clauses to their [public procurement] contracts.'*

The European Commission as such as well as various EU Member States, at different governmental and semi-governmental levels, procures a large number of products and services. In several countries a move is discernable towards 'fair public procurement', including 'child labour free products'. However 'green public procurement' has advanced much more than 'social public procurement'. Because of the ambiguity of the EU directive regarding social criteria, there is still a lot of uncertainty among national governments if and how to apply social criteria in public procurement. This is even more when it comes to the supply chain of companies providing goods to state agencies. Thus far mainly municipalities have applied such criteria, e.g. the city of Munich who does not want to procure products made by the worst forms of child labour. Several other German states and municipalities have started to apply child labour criteria or other core fundamental labour rights in public procurement as well, albeit in different forms.

<sup>26</sup> See: <http://www.ejfoundation.org/pdf/The%20Children%20behind%20Our%20Cotton%20FINAL.pdf>

At the political level the Dutch parliament and government have set a target for themselves that their € 40 billion annual procurement bill should be 100% sustainable in 2010, including social criteria, which also implies without child labour. Dutch municipalities have a 75% target of the same kind in 2010. However, regarding the application of social criteria there are still hesitations on its legal but also practical feasibility, especially in the supply chain. In a letter by EU Commissioner's Spidla and Verheugen to the European Coalition for Corporate Justice (ECCJ) (from September 2007) the Commission says it *'is now considering the production of a guidebook for public authorities on how to integrate social criteria into public procurement.'* Such a guidebook is urgently needed to speed up the implementation of social criteria, including regarding a no-child-labour policy, in public procurement.

An issue that merits attention in the context of fair public procurement is the fact that the state is not only a 'big market player' but also has a more general responsibility, e.g. as a regulator, which should devise policies and regulation of the basis of ratified international treaties and conventions. Governments should therefore not simply push the responsibility for fair public procurement to the market sector by demanding 'certificates'. They should create a clear standard and actively support companies to enable them to eliminate child labour in the supply-chain. Leaving implementation to individual companies or purchasing agencies would be a waste of time as every agency or municipality would invent its own 'fair wheel', thus creating enormous confusion and bureaucracy. Simply asking for certificates could also lead to a lot of 'false claims' or would lead to only dismissing children from work without supporting and guiding them to appropriate education.

It is therefore important to ensure that governments create, preferably at the European level, a framework which actively supports companies to move towards 'child labour free products' in often complex supply-chains in a phased manner. The EU could set an example herself regarding the products and services it procures herself. This should be complemented by sectoral 'child labour impact assessments' (see above) but also by the already mentioned agreements with other countries, at the national or EU level, creating an enabling and supporting environment for individual corporate action. The EU and its Member States should also require that companies in certain child labour prone sectors will become an active member of credible labour rights related multi-stakeholder initiatives as a pre-condition to be allowed to deliver 'child labour free products' to the government. The Action Plan for Companies to Combat Child Labour' can be a guideline for this.

**10. Make sure that the work of organisations that report on and/or campaign against (child) labour violations are not treated as non-tariff trades barriers, that EU grants to NGOs or unions are not labelled as such and make a clear statement to that effect.**

In the World Trade Organization and bilateral trade relations a permanent discussion is going on about trade barriers and how to deal with them. An important new development has recently occurred in that respect. The influential trade Minister Kamal Nath recently labelled the campaign of the Clean Clothes Campaign and India Committee of the Netherlands (ICN) a 'non-

tariff trade barrier'.<sup>27</sup> He also referred to reports and campaigns on child labour in cotton and garment production as raising such barriers. Kamal Nath filed a formal complaint with the European Commissioner Peter Mandelson on this, also in view of grants of the EU for such organizations. This move could be the beginning of an effort by India and other countries to define 'non-tariff trade barriers' much more broadly (and dangerously) than is the case at present. If accepted it would mean that the freedom of speech and publication, as well as international co-operation to combat child labour and improve labour standards, will be seriously hampered. The European Union should make clear in its international negotiations on trade, including the present negotiated Free Trade Agreement between the EU and India, that the publication of reports on (child) labour violations and campaigning on the basis of these publications can *never* be construed to form a non-tariff trade barrier.

**11. The EU should contribute to make the OECD Guidelines for companies more effective in order to tackle child labour and other labour rights violations.**

In the OECD (Organisation for Economic Co-operation and Development) Guidelines for multinational enterprises<sup>28</sup> it is spelled out what the OECD Member States expect from their national business sector, including outside their home markets and throughout their supply chains. This includes 'contributing to the effective abolition of child labour'. In the Guidelines it is specified that businesses should *encourage* their suppliers and subcontractors to comply with them as well. Although voluntary, the Guidelines request the OECD Member States to deal with complaints about violations of the Guidelines (called 'specific instances') by making use of their National Contact Points (NCPs) as a mediation mechanism. Most developing countries are not a member of the OECD, which is primarily an organization of rich(er) countries. Businesses are however *encouraged* to apply the OECD Guidelines in non-member countries as well.

The 40 mostly western member countries see the OECD Guidelines as the main instrument for CSR while operating abroad. However criticism has been levelled at the OECD Guidelines by NGOs and unions as being 'too weak'.<sup>29</sup> At the systemic level the criticism of the OECD Guidelines is that they are mainly limited to investment and investment-related transactions and lack an effective complaint and sanctioning mechanism. Also within the constraints of the present Guidelines many improvements could be made, especially regarding the functioning of the National Contact Points (NCPs). NCPs have also been requested several times to deal with cases regarding child labour in the supply chain (including on Bayer and adidas). According to the recently published report for the Human Rights Council by Prof. John Ruggie, the Special representative of the UN for 'human rights and business'<sup>30</sup> *the NCPs are potentially an important vehicle for providing remedy. However, with a few exceptions, experience suggests that in practice they have too often failed to meet this potential*'.

<sup>27</sup> See e.g. <http://in.rediff.com/money/2008/feb/08exp.htm>

<sup>28</sup> See website OECD: <http://www.oecd.org/dataoecd/56/36/1922428.pdf>

<sup>29</sup> A main player in this respect is a coalition of NGOs called OECD Watch. Website <http://www.oecdwatch.org/>

<sup>30</sup> See report + related material: <http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative>

The EU should contribute to strengthening the OECD Guidelines for Multinational Companies. It should urge the OECD and its Member States to broaden the scope of the OECD Guidelines for Companies from investment to trade relations between companies, as well as strengthen its monitoring, complaint and sanctioning mechanism.

OECD Watch has presented a so-called 'Model National Contact Point'<sup>31</sup> which (also) describes the functioning of the NCPs in the EU and gives specific recommendations to the EU as well: joint promotional efforts and training programmes, provide support to less well-resourced NCPs in newer EU states, establishing a focal point for exchanges between civil society and the NCPs in the European countries (especially where several EU-based companies in different countries are involved in the same case ). The Commission and the Member States should also work to harmonise the NCP procedures. At least they should try to help remedy the specific problems that Prof. Ruggie raises in his report: conflict of interests if NCPs are located in government departments that primarily promote business; no resources for proper investigation of cases; no time frames for the commencement or completion of a cases and no public reporting.

More specifically on child labour we could add that NCPs, in dealing with child labour cases, should not only look if children are removed from the workplace but also if an alternative, at least including education for the child, is provided.

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<sup>31</sup> See: [http://www.oecdwatch.org/docs/OECD\\_Watch\\_Model\\_NCP\\_final.pdf](http://www.oecdwatch.org/docs/OECD_Watch_Model_NCP_final.pdf)

## **VII. Campaign 'Stop Child Labour – School is the best place to work'**

The 'Stop Child Labour – School is the best place to work' campaign is based on the conviction that the Millennium Development Goals can only be achieved if all forms of child labour are eradicated and all children up to the age of 15 are given the opportunity of full-time education. The campaign aims to convince policy makers that they should close the gap between Millennium Goal 2 – i.e., that all children receive an undefined 'full course of primary education' - usually 4 to 6 years - and ILO Convention 138, which states that children should only be allowed to work from the age of 15. The campaign aim, therefore, is to achieve that, by 2015 every child receives formal, day-time, regular and uninterrupted education till the age of at least 15 years.

The campaign is being carried out by the Alliance2015 network of European development organisations: Cesvi (Italy), Concern (Ireland), Deutsche Welthunger Hilfe (Germany), IBIS (Denmark), Hivos (the Netherlands) and People in Need (Czech Republic) in co-operation with three other Dutch organisations: the General Education Union (Algemene Onderwijsbond), FNV and the India Committee of the Netherlands (ICN).

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## VIII. Guiding Principles

### **Campaign 'Stop Child labour – School is the best place to work'**

**Definition of Child Labour:** Child Labour is work performed by a child that is likely to interfere with his or her education, or to be harmful to their health or physical, mental, spiritual, moral or social development. (*Convention on the Rights of the Child, Article 32.1*)

#### **Principle 1: Child labour is the denial of a child's right to education**

The elimination of child labour and the provision of full-time formal education are inextricably linked. The focus of attention must be to actively integrate and retain all 'out of school' children into formal education systems. Children have the right to education at least until the age they are allowed to work which is 15 (while developing countries can choose 14). In addition efforts must be made to remove all barriers to local schools as well as ensuring the necessary financial and infrastructural support for the provision of quality education.

#### **Principle 2: All child labour is unacceptable**

The Convention on the Rights of the Child (quoted above) along with a host of other international agreements unequivocally affirm the right of all children to live in freedom from exploitation. Approaches to the issue have tended to prioritize and segregate solutions to different types of child labour depending on certain categories. These range from children working in hazardous industries, children doing so-called non-hazardous work - including domestic work - but missing out on school. The SCL campaign believes that such distinctions, while helping to cast a spotlight on the worst abuses, tend to be too narrow in their focus and offer only partial solutions. Efforts to eliminate child labour should focus on all its forms, preferably aiming at all children in a certain community.

#### **Principle 3: It is the duty of all Governments, International Organisations and Corporate Bodies to ensure that they do not perpetuate child labour**

All governments have a duty to ensure that they do not permit, or allow child labour to exist within their state. Furthermore they have a duty to ensure that state agencies, corporate bodies as well as their suppliers and trading partners worldwide, are fully compliant with the CRC and other international agreements protecting the rights of the child. As part of their corporate social responsibility, all transnational and other business enterprises using child labour should create and implement a plan to remove children from their workforce, including their supply chain, and enrol them in full-time education.

#### **Principle 4: Core Labour standards must be respected and enforced to effectively eliminate child labour**

The eradication of child labour is closely linked to the promotion of other labour standards in the workplace: the right to organise and collective bargaining, freedom from forced labour, child labour and discrimination. A living wage, health and safety at work, the absence of forced excessive overtime are also crucial. Child labour undermines the opportunities for adult employment and decent wages. Experience has shown that child labour is highly unlikely to exist when a free trade union is present and where core labour standards are respected.