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50 Billion Euros: Europe's Child Labour Footprint in 2019

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Dr. Derrill D. Watson II conceptualised the economic underpinnings of the study. Drs. Claire Bright and Irene Pietropaoli discussed pertinent legislative precedents and forthcoming due diligence legislation. Justine Vinet investigated the manner in which child labour is currently treated in EU trade instruments. Eliana Gonzalez Torres collated the data in order to estimate the imports produced with child labour, and created an [application visualising those findings](#). Dr. Chris N. Bayer designed and executed the study. The result reflects our combined expertise. Any errors remain our responsibility, and the views expressed do not necessarily reflect those of The Greens/EFA Group.

## Executive Summary

Total importation of goods from non-EU countries into the EU (EU28) reached €2.057 trillion in 2019.<sup>1</sup>

### Child labour footprint

| Findings  | Definition  |
|---|---|
| Of the €2.057 trillion importation total, an estimated <b>€50.08 billion</b> constituted the importation of products that were made with child labour. In other words, the EU's footprint concerning child labour imports was 2.433% – or 1/41 of all EU imports – in 2019 (see our <a href="#">application further detailing these findings</a> ). | <i>Child labour</i> is work below the minimum age, notably codified in ILO Convention 138. As explained by USDOL (2020a), the term <i>child labour</i> includes the <i>worst forms of child labour</i> as per ILO Convention 182, but excludes <i>light work</i> performed by children who are above the minimum age and who are not exposed to the <i>worst forms of child labour</i> (see section A. <i>Definitions</i> for more detail). |

### Forced/indentured child labour footprint – a subset of the child labour footprint

| Findings   | Definition   |
|--|--|
| Of the €2.057 trillion importation total, an estimated <b>€38.55 billion</b> was the value of imports by the EU that were produced with forced or indentured child labour in 2019 (see our <a href="#">application further detailing these findings</a> ). | <i>Forced/indentured child labour</i> is a type of <i>child labour</i> , and a type of the <i>worst forms of child labour</i> . As explained by USDOL (2020a), “Children <i>older</i> than the minimum age for work are in forced child labor if work is involuntary and they are under the menace of penalty. For children <i>younger</i> than the minimum age, voluntariness need not be established because children cannot legally consent to work” (see section A. <i>Definitions</i> for more detail). |

**Figure 1: % of Goods Entering the EU (Economic Value)**



<sup>1</sup> Based on EU Comext data (European Commission, 2021a), code: EU28\_EXTRA - Extra-EU28 (= 'WORLD' - 'EU28\_INTRA')

### **The economic case against child labour**

From the perspective of child labour reduction, a free-market economy is a two-edged sword. On the one hand, vibrant trade has the power to lift entire societies out of poverty. Economic openness “has helped integrate many developing countries into the world economy, lifting hundreds of millions of people out of poverty and decreasing inequalities between countries” (European Commission, 2021e). The macro context is also reflected at the household level: caregiver income is the largest explanatory factor for the phenomenon of child labour. On the other hand, a laissez-faire approach to child labour can actually produce a vicious cycle: the supply of child labour expands the overall labour supply, holding down adult wages, which in turn would prevent certain low-income households from withdrawing their children from labour, and in doing so perpetuate inter-generational poverty. Once the exporting country has reached a certain level of development, enabling bilateral trade terms acting on the exporting country may actually liberate a trade partner from a bad equilibrium, where child labour competes with adult labour to keep wages low. Two further economic reasons speaking *for* intervention: (1) hazardous child labour can produce morbidity and mortality outcomes that counteract short-term economic gains, and (2) child labour results in less human capital formation over time, as school absenteeism leads to forgone economic returns to education.

Importing countries also have a self-serving interest in the abolishment of child labour, as goods made with child labour abroad may undercut the price of goods offered by domestic competitors. This “unfair advantage,” associated with job losses in importing countries, undermines the goal of equitable trade.

The good news is that with overall growing global prosperity and increasing attention over the past decades, the international community now has a realistic chance of abolishing child labour, despite of the inevitable setback due to COVID-19. Given globalised markets, the rules of trade play a key role in shaping the outcomes of children’s well-being, including child labour.

### **EU practice**

The EU’s common commercial policy does not effectively leverage its purchasing power to nudge exporting countries into making significant gains on their reduction of child labour. While the EU’s approach to resolving issues in its trade agreements has evolved from a soft approach based on dialogue (e.g. EU-Korea FTA in 2010) to a stronger approach that includes a rebalancing mechanism (EU-UK Trade and Cooperation Agreement (TCA) of 2020), European expectations for labour rights performance is even more lax in FTAs than its Generalised System of Preferences (GSPs). On account of their lacking an effective enforcement mechanism and binding dispute settlement procedures, Trade and Sustainable Development (TSD) chapters in FTAs have not been able to encourage trade partners to meet their commitments under ILO convention ratifications, or prevent them from causing market distortions through social dumping.

While the EU has global human rights sanctions regime (as per Council Regulation EU 2020/1998 and Council Decision CFSP 2020/1999), which allows it to freeze assets and issue travel bans of designated individuals and entities, the EU does not currently have the powers to stop the importation of tainted goods at its borders on the basis of their having been produced with forced child labour.

## U.S. practice

Unlike the EU, the U.S. has robust and enforceable labour rights provisions in its Free Trade Agreements (FTAs). Furthermore, by presiding over the option of import bans as well as the exclusion of goods from federal procurement, the U.S. has hard-line measures at its disposal that allows it – based on child-labour-premised conditions – to intervene in the market. The underlying legislation providing these powers are the following.

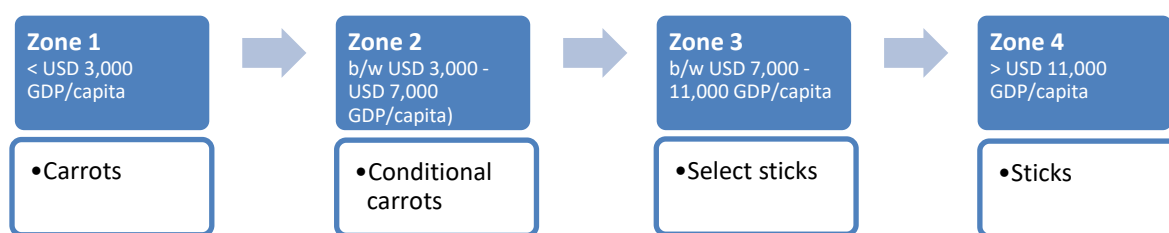
**Table 1:** Notable U.S. Legislation and Instruments

| Scope                             | Legislation  | Instrument   | Execution entity   |
|-----------------------------------|--|--|--|
| Child labour                      | <i>Trafficking Victims Protection Reauthorization Act (TVPRA) of 2005</i>  | Publication of: “ <i>List of Goods Produced by Child Labor or Forced Labor</i> ”   | U.S. Department of Labor (USDOL)’s Bureau of International Labor Affairs (ILAB) publishes list   |
| Forced or indentured child labour | <i>U.S. Tariff Act of 1930, amended by the U.S Trade Facilitation and Trade Enforcement Act of 2015, impacting Title 19 (Customs Duties) CFR Section 12.42</i> | Importation bans (exclusion and/or seizure), possible criminal investigation   | U.S. Department of Homeland Security (DHS): U.S. Customs and Border Protection (CBP) issues Withhold Release Orders (WRO) and publishes findings |
|                                   | <i>U.S. Executive Order 13126 of 1999</i>  | Publication of: “ <i>List of Products Produced by Forced or Indentured Child Labor,</i> ” goods excluded from federal procurement, consequences for violations | USDOL’s ILAB maintains list of products and pursues remedy   |

## EU policy options

### UNGPs Pillar I – Measures to Enhance the State’s Duty to Protect

How can the EU, leveraging its sizable aggregate purchasing power, effectively reduce child labour globally? As unconditional trade bans and sanctions would likely lower child welfare and increase child labour, *ceteris paribus*, this study proposes a 4-zones approach to trade partner engagement on the issue, depending, largely on their degree of socio-economic development (as proxied through GDP/capita). This reform would ensure that the EU would not reverse the development – and thus the related reduction of child labour gains – of the EU’s trade partners (in line with the ‘first, do no harm’ rule), but effectively nudge trade partners towards the effective reduction of child labour, however mindful of market access co-dependency.



More specifically, this four-zone system of incentives and disincentives would pursue a policy of *progressive conditionality* vis-à-vis child labour.

**Table 2:** Four-zone System of Incentives and Disincentives

|               | <i>carrots</i>  |                              |   | <i>sticks</i>                       |  |                              |                                 |
|---------------|---|------------------------------|---|-------------------------------------|--|------------------------------|---------------------------------|
|               | <i>aid<br/>(empirically<br/>proven<br/>interventions)</i> | <i>aid<br/>(conditional)</i> | <i>conditional<br/>market access,<br/>preferences</i> | <i>surgical<br/>import<br/>bans</i> | <i>public<br/>procurement<br/>measures</i> | <i>creation<br/>of lists</i> | <i>rebalancing<br/>measures</i> |
| <b>Zone 1</b> | X   | X                            |   |                                     |  | X                            |                                 |
| <b>Zone 2</b> | X   | X                            | X   |                                     |  | X                            |                                 |
| <b>Zone 3</b> |   | X                            | X   |                                     | X  | X                            |                                 |
| <b>Zone 4</b> |   |                              |   | X                                   | X  | X                            | X                               |

**A. Aid (empirically proven interventions):** European aid programmes such as the Neighbourhood, Development and International Cooperation Instrument (NDICI) may step up interventions with demonstrated success in reducing child labour, such as the provision of school meals, conditional cash transfers, and reducing the cost of education for impoverished families.

**B. Aid (conditional):** Aid may be provided, however, premised on performance tied to educational outcomes (e.g. of primary, secondary school enrolment) and/or monitoring outcomes (e.g. the identification of child labour in high-risk sectors through child labour monitoring systems and the establishment of child protection systems) and/or economic outcomes (e.g. payment of living income/wages, price stabilisation, farm gate prices, etc.). Also Aid for Trade (AfT) may be leveraged to this end.

**C. Conditional market access and trade preferences:** A licensing model (a form of a non-tariff trade barrier), instituted through bilateral agreements or MOUs with countries exporting commodities suffering from a high degree of child labour would serve to improve partner-country standards of governance and law enforcement. Furthermore, TSD chapters should include time-bound roadmaps and targets, with preferential trade conditions premised, in turn, on trade partner performance.

D. Surgical import bans: The U.S. has the powers of blocking, on the basis of reasonable suspicion, specific shipments containing products made with forced labour or forced child labour. Yet, it does not have to come to a ban if importers then offer proof that their products were not produced with labour prohibited under U.S. law. The provision thus shifts the burden of proof on the importer to demonstrate its products to not produced with child labour. Forced labour – including forced child labour – is prohibited according to ILO Convention 182. All the world’s eligible countries – 187 out of 187 – have now ratified ILO Convention 182. If the EU acquired similar powers – as a matter of last resort – it could act systematically, surgically, and decisively on the practice of forced child labour, with a particular emphasis on its worst forms. However, in light of the possible collateral damage caused, it should apply these potential powers only in Zone 4 countries.

E. Public procurement measures: Under U.S. Executive Order 13126 of 1999, goods may be excluded from federal procurement, and consequences assessed for violations. Also the public sector in Europe could lead by example. Conversely, punitive measures may be complemented with public procurement policy of *buying by example*. Such a policy would entail government buyers meeting minimum criteria for legality and social and environmental standards.

F. Creation of lists: The U.S. Department of Labor establishes and regularly updates a *List of Goods* produced by child labour or forced labour and their source countries (under the 2005 TVPRA regulation), as well as a *List of Products* and their source countries produced by forced or indentured child labour and their source countries (under Executive Order 13126). A surgical (black)listing approach targeting products, countries, individuals and/or companies is advised also for the EU, that would serve as a monitoring tool, inform public procurement, as well as send “signals” to the market.

G. Rebalancing measures: As the EU-UK’s TCA features a “rebalancing measure” that offers a clear mechanism for a trade partner to seek and – if need be, unilaterally – obtain redress for a position of “unfair disadvantage.” In order to be in a position of credibly challenging a trade partner on child labour outcomes, the EU should insert conditionality in re-negotiated and future trade deals, which in turn could trigger “rebalancing measures.”

### UNGPs Pillar II – Measures to Enhance the Corporate Responsibility to Respect

#### **mHRDD**

Four measures concerning mandatory human rights due diligence (mHRDD) are advanced in this study. Needed in impeding EU legislation are the following six provisions:

- A. An overarching human rights due diligence framework, accompanied by specific guidance, performance standards and key performance indicators for certain industries with widespread child labour in supply chains;
- B. Due diligence obligations to reach entire value chains;
- C. Responsible purchasing practices on the part of companies;
- D. Meaningful stakeholder consultation throughout the due diligence process;
- E. Dissuasive sanctions and strong enforcement mechanisms;
- F. Coordination through the Chief Trade Enforcement Officer (CTEO).



## IPAs

Lastly, we recommend that Investment Protection Agreements (IPAs) protecting private sector Foreign Direct Investment (FDI) be reformed such that investments into sectors steeped with child labour would only be protected if certain conditions were upheld, notably the payment of living income/wages and the eradication of the Worst Forms of Child Labour.

## WTO

Based on a legal analysis of the provisions of the General Agreement on Tariffs and Trade (GATT), the EU has two legal theories premised on Article XX(a) “public morals” and Article XX(b) “health protection,” with which it would have the best chances of securing enforcement in its bilateral trade agreements, as well as justifying surgical import bans.

If these suggested reforms were implemented, the EU would be in a position to properly leverage its purchasing power in order to advance the cause of children worldwide and show resolve vis-à-vis the issue of child labour. This study provides an empirical and child-centric blueprint for the EU to do its part.

After all, Article 3.5 of *THE TREATY ON EUROPEAN UNION* reads:

“ *In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.*

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## Acronyms

|        |  |
|--------|--|
| AAT    | Advanced-Afghan Trade  |
| AFET   | Committee on Foreign Affairs                                     |
| AfT    | Aid for Trade  |
| BAFA   | Federal Office for Economic Affairs and Export Control (Germany) |
| BoP    | Balance of Payments  |
| CACL   | Campaign Against Child Labour                                    |
| CBP    | Customs and Border Protection (U.S.)                             |
| CETA   | EU-Canada Free Trade Agreement                                   |
| CFR    | Federal Acquisition Regulations System (U.S.)                    |
| CIR    | Common Implementing Regulation                                   |
| CLMRS  | Child Labour Monitoring and Remediation System                   |
| CLMS   | Child Labour Monitoring System                                   |
| CLP    | Child Labour Platform (ILO)                                      |
| CO2    | Carbon dioxide   |
| COVID- | Coronavirus Disease 2019   |
| CRC    | UN Convention of the Rights of the Child                         |
| CRS    | Congressional Research Service                                   |
| CSR    | Corporate Social Responsibility                                  |
| CTEO   | Chief Trade Enforcement Officer                                  |
| DAG    | Domestic Advisory Group  |
| DCFTA  | Comprehensive and Free Trade Areas                               |
| DCI    | Development Cooperation Instrument                               |
| DCLDDA | Dutch Child Labour Due Diligence Act                             |
| DEVE   | Committee on Development (European Parliament)                   |
| DHS    | U.S. Department of Homeland Security                             |
| DOL    | U.S. Department of Labor   |
| DOS    | U.S. Department of State   |
| DRC    | Democratic Republic of the Congo                                 |
| EBA    | Everything But Arms  |
| EDF    | European Development Fund  |
| EDH    | Enterprises pour les Droits de l'Homme                           |
| EEAS   | European External Action Service                                 |
| EESC   | European Economic and Social Committee                           |
| EFA    | European Free Alliance   |
| EFSD+  | European Fund for Sustainable Development Plus                   |
| EIDHR  | European Instrument for Democracy and Human Rights               |
| ELM    | External Lending Mandate   |
| ENI    | European Neighbourhood Instrument                                |
| EO     | Executive Order  |
| EPA    | Economic Partnership Agreement                                   |
| EU     | European Union   |
| EUR    | Euro   |

|       |  |
|-------|--|
| EVFTA | European Union–Vietnam Free Trade Agreement                                  |
| FDI   | Foreign Direct Investment  |
| FLEGT | Forest Law Enforcement, Governance and Trade                                 |
| FDVL  | French Duty of Vigilance Law   |
| FPF   | Field Production Facility  |
| FTA   | Free Trade Agreements  |
| FY    | Fiscal Year  |
| GATT  | General Agreement on Tariffs and Trade                                       |
| GCLMS | Ghana Child Labor Monitoring System  |
| GDP   | Gross Domestic Product   |
| GFEA  | Guarantee Fund for External Action   |
| GNI   | Gross National Income  |
| GNP   | Gross National Product   |
| GSP   | Generalised System of Preferences  |
| HRDD  | Human Rights Due Diligence   |
| HSI   | Homeland Security Investigations   |
| ICE   | Immigration and Customs Enforcement (U.S.)                                   |
| ICT   | Information and Communication Technology                                     |
| IISD  | International Institute for Sustainable Development                          |
| ILAB  | Bureau of International Labor Affairs (USDOL)                                |
| ILO   | International Labour Organization  |
| IMF   | International Monetary Fund  |
| INP   | Indigenous Natural Product   |
| INTA  | Committee on International Trade (European Parliament)                       |
| IOE   | International Organisation of Employers                                      |
| IOM   | International Organization for Migration                                     |
| IPA   | Investment Protection Agreements   |
| IPEC  | International Programme on the Elimination of Child Labour                   |
| IPEC+ | International Programme on the Elimination of Child Labour and Forced Labour |
| JEFTA | Japan-EU Free Trade Agreement  |
| LFS   | National Labour Force Surveys  |
| LSMS  | Living Standards Measurement Study   |
| MBM   | Market Basket Measure  |
| MCC   | Millennium Challenge Corporation   |
| MEP   | Member of the European Parliament  |
| MFF   | Multiannual Financial Framework  |
| MFN   | Most Favoured Nation   |
| mHRDD | mandatory Human Rights Due Diligence   |
| MICS  | Multiple Indicator Cluster Survey  |
| MOU   | Memorandum of Understanding  |
| NDICI | Neighbourhood, Development and International Cooperation Instrument          |
| NORC  | National Opinion Research Center (University of Chicago)                     |
| OCFT  | Office of Child Labor, Forced Labor, and Human Trafficking                   |
| ODA   | Official Development Assistance  |

|        |  |
|--------|--|
| OECD   | Organisation for Economic Co-operation and Development           |
| OEM    | Original Equipment Manufacturer                                  |
| OFAC   | Office of Foreign Assets Control (U.S.)                          |
| OHCHR  | Office of the High Commissioner for Human Rights                 |
| OHS    | Occupational Health and Safety                                   |
| OIRER  | Office of International Relations and Economic Research          |
| OPHI   | Oxford Poverty and Human Development Initiative                  |
| OTLA   | Office of Trade and Labor Affairs (U.S.)                         |
| PI     | Partnership Instrument   |
| PPP    | Purchasing Power Parity  |
| RBC    | Responsible Business Conduct                                     |
| RICO   | Racketeering Influenced Corrupt Organizations                    |
| SC/ST  | Scheduled Caste and Scheduled Tribes                             |
| SDG    | Sustainable Development Goals                                    |
| SIMPOC | Statistical Information and Monitoring Programme on Child Labour |
| TCA    | Trade and Cooperation Agreement (EU-UK)                          |
| TDA    | Trade and Development Act (U.S.)                                 |
| TFTEA  | Trade Facilitation and Trade Enforcement Act (U.S.)              |
| TIP    | Trafficking In Persons   |
| TSD    | Trade and Sustainable Development                                |
| TULRAA | Trade Union and Labor Relations Adjustment Act (South Korea)     |
| TVPA   | Trafficking Victims Protection Act (U.S.)                        |
| TVPRA  | Trafficking Victims Protection Reauthorization Act (U.S.)        |
| UK     | United Kingdom   |
| UN     | United Nations   |
| UNCTAD | United Nations Conference on Trade and Development               |
| UNDP   | United Nations Development Programme                             |
| UNESCO | United Nations Educational, Scientific and Cultural Organization |
| UNGA   | United Nations General Assembly                                  |
| UNGPs  | United Nations Guiding Principles                                |
| UNICEF | United Nations Children's Fund                                   |
| U.S.   | United States  |
| USD    | U.S. Dollar  |
| USDOL  | U.S. Department of Labor   |
| USMCA  | U.S.-Mexico-Canada Agreement                                     |
| USMCC  | U.S. Millennium Challenge Corporation                            |
| USTR   | United States Trade Representative                               |
| VCLT   | Vienna Convention on the Law of Treaties                         |
| VPA    | Voluntary Partnership Agreements                                 |
| WFCL   | Worst Forms of Child Labour                                      |
| WRO    | Withhold Release Order   |
| WSR    | Worker-driven Social Responsibility                              |
| WTO    | World Trade Organization   |



## Foreword by Saskia Bricmont

50 billion Euros. This is what I call the “European child labour footprint”. In 2019, we imported goods tainted with child labour to fulfil our needs as consumers for an amount representing close to 100 Euros per European. Yet, the 50 billion figure does not capture the full extent of the child labour phenomenon since most children (about 80%) work on family-based farms producing goods that do not enter global supply chains.

When taking office, President of the European Commission, Ursula von der Leyen made the strong pledge of “zero tolerance towards child labour”. Two years have passed, and to be honest, we have not witnessed any meaningful steps to make this commitment concrete. We are now in 2021, the UN Year for the Elimination of Child Labour, which unfortunately coincides with a reversal of the global downward trend in child labour. Years of progress will be wiped out by the pandemic that will increase millions of working children due to school closures, job losses and deepening poverty.

This scourge is usually viewed through the lens of development and cooperation policy. Here, it is worth noting that the commitment taken by the EU and its Members States to devote 0.7% of their GNP in official development assistance has not been honoured: the EU27 collective effort peaked at 0.49% of EU Gross National Income (GNI) in 2016 before sliding to 0.41% in 2019. Only three Member States met their ODA commitments: Luxembourg, Sweden, Denmark.

In front of the Members of the European Parliament, Commission Executive Vice-President Valdis Dombrovskis, then candidate for the trade portfolio affirmed that “in today’s world, trade is about much more than just trade. European trade policy must do more to help us meet the great challenges of our time.” And as rightly stated by the [European Commission](#), “the EU as a main global trade partner has a crucial role to play towards the elimination of child labour in global supply chains.”

Taking these assertions at face value, I commissioned this study to follow up on President von der Leyen in view of coming forward with proposals putting the EU at the forefront when it comes to the achievement of SDG 8.7 on the eradication of child labour, forced labour and modern slavery by 2025 and in the context of this UN Year.

It is worth noting that against the backdrop of the UN Year, the EU is about to strike deals with two countries flagged among the main countries featuring child labour: China (EUR 37 billion) and Brazil (EUR 908 million). It would be a missed opportunity and a moral failure not to tackle child labour in these contexts.

This study demonstrates that a mere prohibition of the entry into the EU market of goods produced with child labour may lead to a counterintuitive outcome: an outright prohibition would push children further away in informal and dangerous activities in countries where enforcement activity is defaulting and where there are no worthy alternatives such as education and basic social protection.

Internationalisation can lead to a lowering of child labour participation firstly by increasing incomes. Therefore, increasing tariffs as a sanction of badly behaving countries may even aggravate the problem while they are intended to deter countries from using child labour.

The study also shows the importance of decent working conditions for women to avoid that children are put to work. A 10% increase of their wages can lead to a 10% decrease of the need to send girls to factories, mines or fields. The textile, leather and footwear but also the agriculture sectors, where they comprise a major portion of the workforce, are a case in point.

Therefore, it would make sense to enlarge the range of conventions referred to in TSD chapters of our FTA's (Free Trade Agreements) or in the GSP Regulation (that already covers the Convention n°182 on Worst Forms of Child Labour) to Conventions n°138 on the minimum age for employment, n°189 on domestic workers, n°156 on workers with family responsibilities, n°190 on violence and harassment. The EU could help trade partners and countries in implementing these instruments properly and foster capacity building, including when it comes to collecting data to monitor progress. Drawing the lessons of the report of the panel of experts that settled the dispute on social rights between the EU and South Korea and drawing on the approach adopted in the political cooperation agreement with Vietnam, it is important that trade agreements and the likes contain a roadmap with milestones and concrete and verifiable objectives to come to terms with child labour.

If the COVID-19 pandemic has disruptive consequences, climate change could also exacerbate child labour. The expected increasing number of natural disasters like floods or droughts as well as severe and extreme heat events will cause even more temporary or chronic emergency conditions, jeopardising family incomes and imperilling school infrastructure.

The study opens different avenues to feed future legislative initiatives. Autonomous EU measures could be designed along the lines of the U.S. Tariff Act of 1930, amended by the U.S Trade Facilitation and Trade Enforcement Act of 2015. Up to 15% of children at work are estimated to be active in global value chains. This is an issue that should be properly addressed in the forthcoming due diligence legislation.

A surgical blacklisting approach targeting individuals and companies could be grounded on the new EU Global Human Rights Sanctions Regime adopted in December 2020.

The EU is putting in place a robust framework for its climate and digital revolution. Yet, for this to happen, the EU needs to secure its supply of raw materials, for which we are highly dependent on the rest of the World. The EU identifies 30 raw materials as strategic, but 7 of them are indicated as child labour-tainted in the U.S. *List of Goods Produced by Child Labor or Forced Labor* (Cobalt, Coking Coal, Fluorspar, Natural Rubber, Tantalum, Tungsten, and Natural Graphite). The recent [EU action plan for critical raw materials](#) evokes that "high supply concentration in countries with low standards of governance not only poses a security of supply risk, but may also exacerbate environmental and social problems, such as child labour." Therefore, to be coherent, it is also urgent that our trade relations with countries richly endowed with such resources duly tackle this risk, for instance by designing provisions in agreements in liaison with the ILO and local civil society organisations.

Objective 8.7 could be pursued through a plurilateral, innovative and trade-based initiative backed by the EU and the members of the U.S.-Mexico-Canada Agreement (USMCA) in the first place, since they represent about 45% of all import of goods and services and host many multinational decision centres topping global value chains. The next stage could be to gather the support of like-minded countries like Australia and New Zealand and possibly Japan and South Korea. These four countries are close to the Eastern and South-Eastern Asian region where child labour is the most prominent and members of the recent Regional Comprehensive Economic Partnership, along with problematic countries.

Technology transfer fostering mechanisation in some sectors could decrease the demand for child labour in some countries. This is where investment agreements come in that promote such FDI. I note also that the authors “recommend lifting protection for Foreign Direct Investment (FDI) into sectors steeped with child labour through the reform of Investment Protection Agreements (IPAs).”

I am very grateful to the dream team of *Development International e.V.*, their network of committed researchers for this landmark study, and for their inclusive work that benefitted from comments of leading experts from the ILO, UNICEF and NGOs.

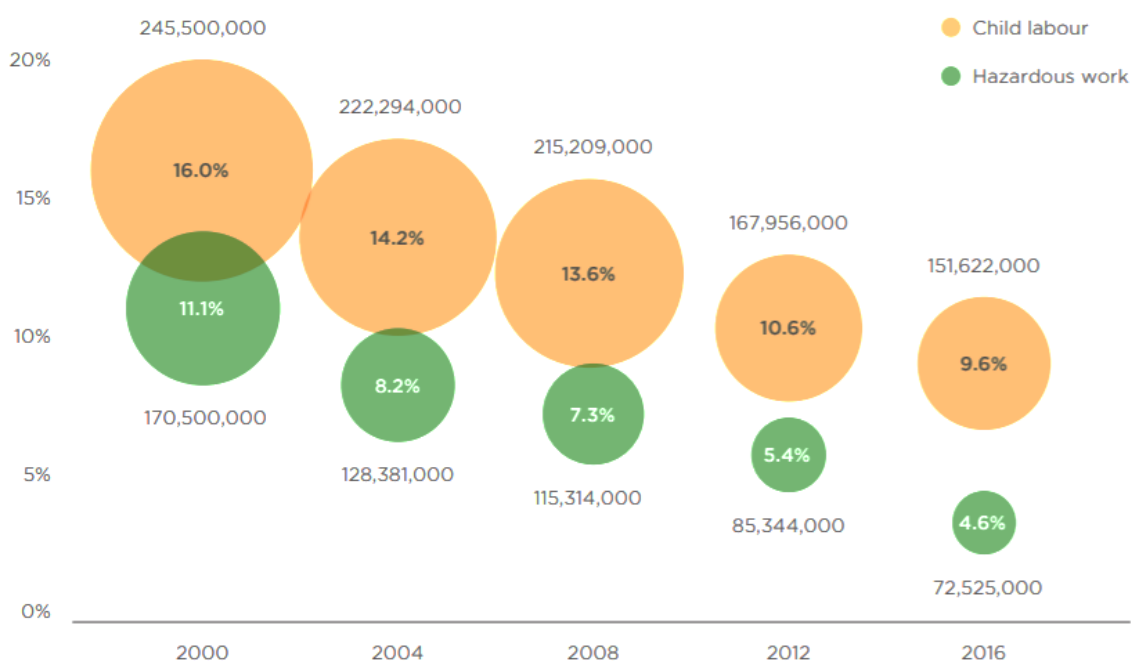
I sincerely hope that this very valuable report and the recommendations will contribute to making Europe the first “fair and ethical trade” continent.

A handwritten signature in black ink, consisting of a stylized, cursive letter 'S' followed by a horizontal line.

## I. Introduction

The good news is that the estimated prevalence of child labour dropped by almost 40% to the begin of the new millennium. Between 2000 and 2016, according to the International Labour Organization (International Labour Office, 2017a) estimates, the world witnessed a net reduction of 94 million children exposed to child labour, from an estimated 246 million to 152 million children.

**Figure 2:** Children's Involvement in Child Labour and Hazardous Work, Percentage and Absolute Number of Children, 5-17 Age Range, 2000-2016



*Note:* Bubbles are proportionate to the absolute number of children in child labour and hazardous work.

*Source:* Global estimates of child labour: Results and trends, 2012-2016, (International Labour Office, 2017a), [URL](#)

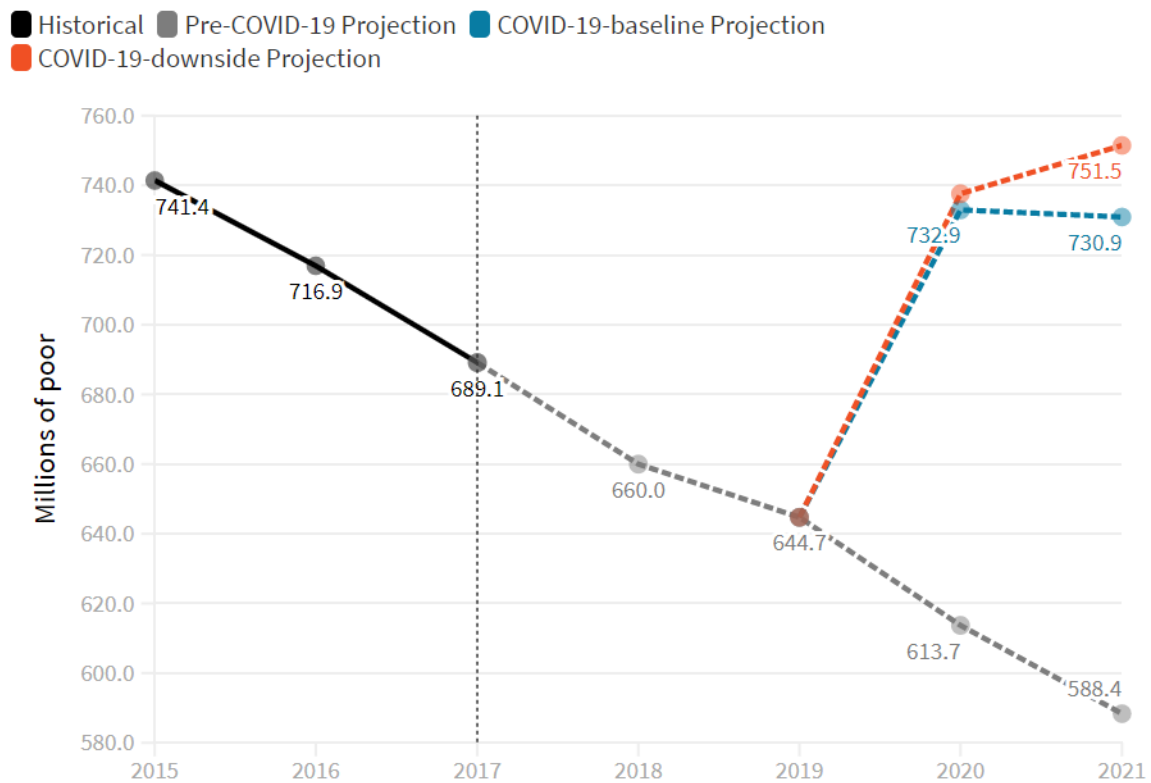
The bad news is that the trend of decreasing child labour will, however, likely be reversed due to global economic contraction precipitated by the COVID-19 pandemic. One study performed in Tamil Nadu exemplifies how the financial strains created by COVID-19 are driving children to work: released by the Campaign Against Child Labour (CACL), a survey conducted in 24 districts by child rights specialists R. Vidyasagar and K. Shyamalanachiar, shows that the number of children in vulnerable communities (such as SC/ST) increased from 231 to 650 compared to pre-COVID-19 levels ("Child Labour on the Rise," 2021).

Indeed, an additional 86 million children are estimated to have fallen into poverty in 2020 as their parents lost their source of income, forcing the children to interrupt their education and some to work (United Nations Children's Fund [UNICEF], 2020). According to World Bank reporting, the number of people living in extreme poverty (living on less than \$1.9 per day) was steadily decreasing, but jumped by 119 million in 2020 (see Figure 3). From the



baseline of 2019, “the estimated COVID-19-induced poor is set to rise to between 143 and 163 million” (World Bank Blogs, 2021) in 2021.

**Figure 3: Nowcast of Extreme Poverty, 2015-2021**



Source: Updated estimates of the impact of COVID-19 on global poverty, (World Bank Blogs, 2021), [URL](#)

In a bid to step up efforts that reduce forced labour and child labour, the year 2021 has been declared by the UN General Assembly as the *Year for the Elimination of Child Labour*. The underlying unanimous United Nations General Assembly (UNGA) resolution called on member states to “take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms” (United Nations [UN], 2015a, p. 20).

As for the EU, the President of the European Commission, Ursula von der Leyen (2019), has stated that EU trade policy should have ‘zero-tolerance’ for child labour. Prior to that pronouncement, the Council Conclusions on Child Labour (Foreign Affairs Council, 2016) had noted that the *worst forms of child labour* should have been eliminated by 2016 according to the *Roadmap* (The Hague Global Child Labour Conference, 2010) adopted in The Hague in 2010 and reaffirmed in the *Brasília Declaration on Child Labour* (III Global Conference on Child Labour, 2013) adopted in 2013. Furthermore, the Council had encouraged “the High Representative and the Commission to explore how the EU can step up its contribution to the realisation of SDG target 8.7 which calls for measures to [...] secure the prohibition and elimination of the worst forms of child labour and by 2025 end child labour in all its forms”

(Foreign Affairs Council, 2016, p. 4).<sup>2</sup> Lastly, the Council encouraged “the Commission, in line with its ‘Trade for All: Towards a more responsible trade and investment policy’ strategy, to continue exploring ways to use more effectively the trade instruments of the European Union, including the Generalised Scheme of Preferences and Free Trade Agreements to combat child labour” (Foreign Affairs Council, 2016, p. 4).

The *European Parliament resolution of 7 October 2020 on the implementation of the common commercial policy* also treated the issue of child labour, notably in sections 54 and 55. Section 54 “calls on the Commission to monitor the progress made with respect to the implementation of [...] ILO conventions, and to set up without delay the interparliamentary committee as agreed under the EVFTA, paying special attention to the prohibition of child labour” (European Parliament, 2020b). Further, Section 55 “Recalls the need for an effective action plan to implement the goal of zero tolerance of child labour in FTAs, by building a strong partnership with NGOs and national authorities in order to develop strong social and economic alternatives for families and workers, in coherence with actions taken under the EU development policy.” Section 63 goes on to discuss the newly created role of the Chief Trade Enforcement Officer (CTEO), chiefly “to monitor and improve compliance with the EU’s trade agreements.” The section furthermore:

*notes that rules under EU trade agreements should be properly enforced in order to ensure their effectiveness and address market distortions; underlines the need for this newly created post to focus on implementation and enforcement of our trade agreements, as well as on breaches of market access and trade and sustainable development commitments; is of the opinion that the CTEO should not only monitor and enforce environmental and labour protection obligations under the EU trade agreements with third countries, but also focus on implementation of all chapters of trade agreements in order to guarantee that these are used to their full potential* (European Parliament, 2020b).

The extent to which child labour may simply be “eliminated” is, however, a matter of contention. For one, an act of survival ought not be stigmatised. Two, target-setting should be underpinned by a meaningful capacitation of beneficiaries. Stating that they could “no longer continue blindly with the well-intended but unrealistic goal of eliminating child labour by 2025” (“Open Letter: Change Course,” 2021) a group of 101 academics recently called for the issue to be viewed rather through the lens of the UN Convention of the Rights of the Child (CRC). The authors further cautioned that “eliminating child labour as a resolution without addressing fundamental structural problems of poverty and inequality will not be successful,” and that only removing children “from work is no help if this drives them deeper into the famine and broken lives that the work was undertaken to mitigate” (“Open Letter: Change Course”, 2021). Instead of a blanket prohibition of child work, the aim, instead, should be to reduce truly harmful types of work, while, however, protecting the utility of “beneficial work.” In response, the ILO highlights the fact that non-hazardous child labour is also harmful; the empirical evidence showing that the practice is harmful to children’s education and future prospects (B. Smith, personal communication, May 20,

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<sup>2</sup> Indicator 8.7.1 of the UN Sustainable Development Goals is the “Proportion of children engaged in economic activity (%) – Annual.”

2021). Furthermore, the ILO notes that the CRC and ILO Conventions on child labour are in no way at odds with each other (ibid).

To further compel exporting countries to root out the practice of child labour, one hard-line option at the disposal of importing countries involves the imposition of trade conditionality to the point of sanctions. For example, since the removal of the consumptive demand exemption in 2016, the U.S. is banning goods from entering the country that are believed to be produced with forced labour, including forced or indentured child labour. What began as isolated sanctions against Xinjiang textile makers in August of 2020 (U.S. Department of the Treasury, 2020) became a blanket ban on all Xinjiang cotton in January of 2021 – impacting 87% of China’s cotton crop and, consequently, one-fifth of the world’s supply (Dou et al., 2021). Also the U.K. Government (2021) has taken measures to halting the importation of goods that are linked to modern-day slavery in China.

Concerted supply chain action also at the individual corporate level – in the case of severe human rights impacts – is e.g. also advised in the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals* (OECD, 2016). Adopted in 2011, the OECD Guidance features a due diligence framework for minerals production and trade, and Annex II provides for companies to cease business relationships where their supply chains are linked, *inter alia*, to the Worst Forms of Child Labour (WFCL).

## II. Research Objectives

**Overarching objective:** This study seeks to provide evidence-based policy options that may enhance the EU’s position to reduce child labour through its demand in traded goods, given that current trade policy does not apply its own leverage on the issue to its full potential. The EU’s leverage on the issue will be enhanced by introducing additional conditionality, accountability, and corporate liability into future legislation, including bilateral trade agreements and mandatory due diligence provisions. What are the relevant instruments at the disposal of policymakers, as revealed by precedents? What toolkits would need to be created? Scientific evidence and arguments will be furnished, resulting in an empirical basis for such policy options. From the position of child wellbeing, maximally beneficial outcomes will be proposed, mindful of externalities.

**Overarching framework:** Pillar I and Pillar II of the United Nations (UN, 2011) Guiding Principles on Business and Human Rights (UNGPs) serve as the overarching framework of this study. Unanimously endorsed by the United Nations Human Rights Council in 2011, the UNGPs put forward 31 principles how nation-states and businesses should uphold human rights, organised according to three pillars (see Table 3).

**Table 3:** Pillars of United Nations Guiding Principles

| <i>pillar</i> | <i>actor</i>                  | <i>Duty</i>   |
|---------------|-------------------------------|---|
| <i>I</i>      | <i>State</i>                  | protect human rights  |
| <i>II</i>     | <i>Private sector</i>         | respect human rights  |
| <i>III</i>    | <i>State + private sector</i> | provide access to remedy for victims of business-related abuses |

**Study scope:** Another way to describe the scope of this study is its application of 3 lenses:

--> EU-based legislative initiatives (ex novo or pipeline)

--> Application of the UNGPs as they apply to states, markets and victims

--> Products associated with child labour imported into the EU

In applying these three lenses, we must, however, add the caveat that the study will not cover the full gamut of dimensions.

With the first and second pillar of the UNGPs serving as this study's overarching framework, the proposed legislative interventions advanced in this study align with the two pillars as follows:

Pillar 1 – Protect: bilateral trade policy, multilateral engagement

Pillar 2 – Respect: mandatory due diligence legislation

To strengthen existing EU legislation vis-à-vis the UN Guiding Principles, and, in particular, to leverage the market (e.g. trade block purchasing power, trade policy) toward that end, the study will specifically focus on (1) bi-lateral trade agreements, (2) mandatory corporate due diligence, and (3) investment codices.

Upon covering the research objectives ([Chapter II](#)) and research methods ([Chapter III](#)), this report delves into the problem statement ([Chapter IV](#)), which notably covers sectors and geographies where child labour is present, estimates the share of goods imported to the EU made with child labour, as well as investigates the drivers of child labour and relevant interventions through the eyes of scholarly works. Thereafter, the study investigates measures related to the first UNGPs Pillar – i.e. the state's duty to protect – and specifically how the EU and U.S. treat the issue of child labour in trade policy and instruments, including the use of sanctions targeting relevant corporate entities or goods to be imported ([Chapter V](#)). Under the rubric of the second UNGPs pillar – i.e. the corporate responsibility to respect – the study assesses, in particular, existing and forthcoming supply chain due diligence legislation ([Chapter VI](#)). [Chapter VII](#) ties our research findings to policy options, [Chapter VIII](#) considers the interactions of the recommended reforms, and [Chapter IX](#) treats relevant WTO provisions and potential approaches.



### III. Methodology

The methodology pursued to carry out this study involved the following:

1. *Literature review*: This study drew on primary and secondary literature. The information obtained was triangulated between sources.
2. *Quantitative research*: We consulted primary data provided by reputable sources in order to estimate the value of goods entering the EU produced with child labour (see section [1. Methodology applied](#) for more details).
3. *Qualitative research*: We conducted qualitative research methods to analyse data sources and produce empirical findings.
4. *Peer review*: the study was also peer-reviewed by notable experts in their respective field of expertise.

### IV. Problem Statement

#### A. Definitions

Considering the rightsholder point-of-view, it is imperative to distinguish between child labour and the Worst Forms of Child Labour (WFCL), the latter however being a subset of the former.

**Child Labour**: According to the [International Labour Organization \(ILO\) Convention on the Minimum Age \(No. 138\) of 1973](#), child labour is any employment or work below the age of **15** years of age (paragraph 3, Article 2). However, on the grounds of a country's particular economic development, poverty or lack of educational resources, the minimum age for employment work may be lowered to **14** years (paragraph 4, Article 2).

ILO (1973) Convention 138 also establishes 18 as the minimum age for hazardous work: "The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than **18** years" (paragraph 1, Article 3).

Yet, an optional "flexibility clause" was built into ILO Convention 138, of which countries may avail themselves, pertaining only to hazardous work only. Employment or work above the age of **16** years, however, does *not* qualify as child labour "on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity" (paragraph 3, Article 3).

**Permissible light work**: Under the age of 15 / 14, according to ILO (1973) C138, "*light work*" is permitted for persons **13** to **15** years of age, which entails economic activity "(a) not likely

to be harmful to their health or development; and (b) not such as to prejudice their attendance at school” (paragraph 1, Article 7). However, if the minimum age is set at 14, light work may be permitted at the age of **12**.

**Worst Forms of Child Labour (WFCL):** According to the [ILO Convention on the Worst Forms of Child Labour \(No. 182\) of 1999](#), the Worst Forms of Child Labour (WFCL) is work carried out by persons below the age of 18 years that could likely harm the “health, safety or morals of children.” Four types of WFCL are specifically called out in the convention: hazardous work, slavery-like practices, use of children for commercial sexual exploitation, or in illicit activities (Article 3).

**Forced Labour:** [ILO Convention on Forced Labor \(No. 29\) of 1930](#) prohibits all forms of forced or compulsory labour, which is defined as “all work or service which is exacted from any person under the menace of any penalty and for which the person has not offered himself voluntarily” (paragraph 1, Article 2).

**Forced Child Labour:** Under ILO (1999) C182, “forced child labor” is a type of the “worst form of child labour.” Article 3a specifies that WFCL includes “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict.”

Referencing the ILO’s Revised Draft Guidelines (International Labour Office, 2018) concerning the measurement of forced labour, USDOL defines forced child labour as follows.

*Children older than the minimum age for work are in forced child labor if work is involuntary and they are under the menace of penalty. For children younger than the minimum age, voluntariness does not need to be established because children cannot legally consent to work. Forced child labor also includes work performed with or for the child’s parents for a third party under the threat or menace of any penalty directly applied to the child or parents. All children who are made to work as a result of parental forced labor are engaged in forced child labor (U.S. Department of Labor, 2020a, p. 57).*

## **B. Child labour lists**

### 1. USDOL’s “List of Goods Produced by Child Labor or Forced Labor”

USDOL’s Bureau of International Labor Affairs (ILAB) “maintains a list of goods and their source countries which it has reason to believe are produced by child labor or forced labor in violation of international standards, as required under the Trafficking Victims Protection Reauthorization Act (TVPPRA) of 2005 and subsequent reauthorizations” (U.S. Department of Labor, n.d.-a). As of September 2020, the biennial *List of Goods* comprised 144 goods

produced with child labour in 74 countries.<sup>3</sup> Open-access resources include [the full report on the list of goods](#) (U.S. Department of Labor, 2020a) and an [interactive database](#) (U.S. Department of Labor, n.d.-a) disaggregating data per country and per good.

With respect to the context of this *List of Goods*, [ILO \(1973\) Convention 138](#) serves as the leading international standard in which each ratifying country – 173 to date (ILO, n.d.-c) – undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons” (ILO, 1973). The terms and age limits of each age group are defined in section A. *Definitions* above.

## 2. USDOL’s “List of Products Produced by Forced or Indentured Child Labor”

Pursuant to Executive Order 13126, ILAB also compiles the *List of Products* and their source countries which it has “a reasonable basis to believe” they are “produced by forced or indentured child labor” (U.S. Department of Labor, n.d.-c).

As of March 2019, the *List of Products* comprised 34 products from 25 countries. Available resources include an [interactive database](#) per country and product. This list is then used to ensure “that U.S. federal agencies do not procure goods made by forced or indentured child labor” (U.S. Department of Labor, n.d.-c).

The broader context of this *List of Products* is the following:

1. With [ILO Convention 182](#) – 187 ratifications to date (ILO, n.d.-c) – ratifiers “shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency” (ILO, 1999). The very definition of the term *Worst Forms of Child Labour*, as per Article 3 of the convention, includes in first place “(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour (...).”
2. With [ILO Convention 29](#) – 179 ratifications to date (ILO, n.d.-c) – ratifiers undertake to “suppress the use of forced or compulsory labour in all its forms within the shortest possible period” (ILO, 1930). The term *forced or compulsory labour* is defined as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”
3. With [ILO Convention 105](#) – 176 ratifications to date (ILO, n.d.-c) – ratifiers undertake to “suppress and not to make use of any form of forced or compulsory labour” (ILO,

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<sup>3</sup> The European Commission (2020d) prepared a list of critical raw material (CRM). In its last 2020 revision, the EU list contains 30 materials which 7 of them were flagged by USDOL as produced with child labour: Cobalt, Coking Coal, Fluorspar, Natural Rubber, Tantalum, Tungsten, and Natural Graphite (as part of “Stones” exported in certain countries flagged by USDOL).

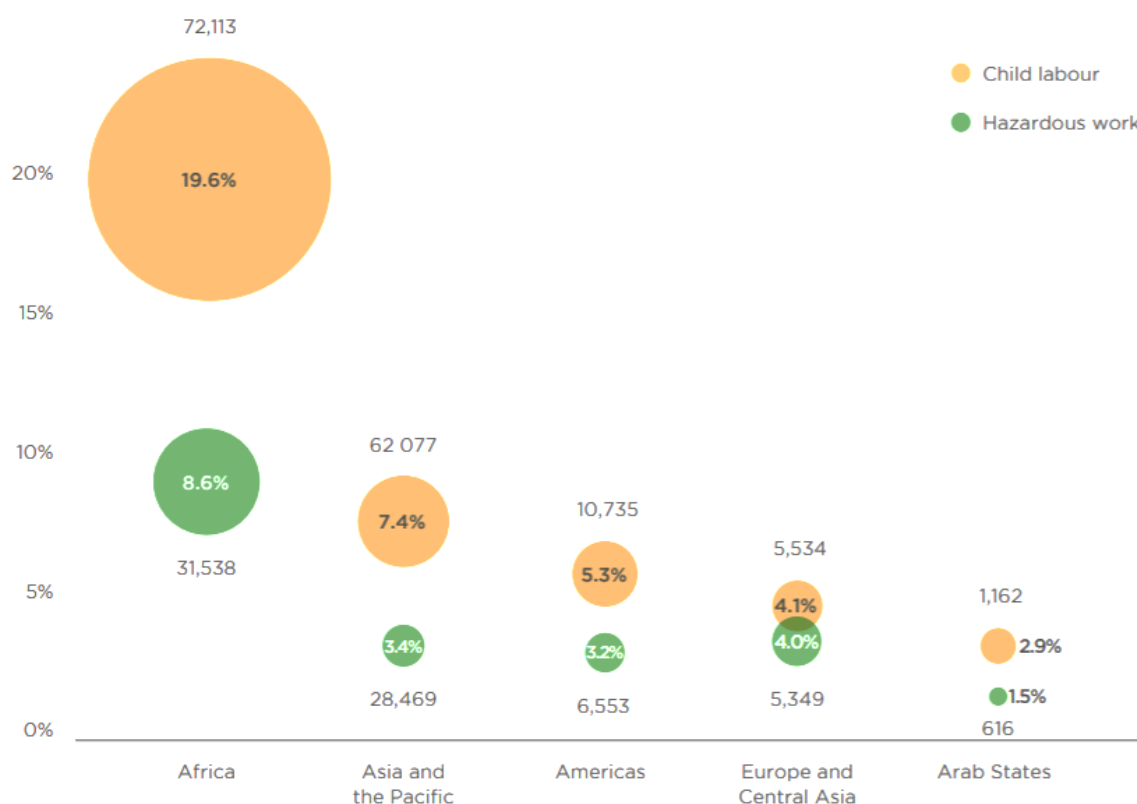
1957), including “(b) as a method of mobilising and using labour for purposes of economic development.”

### C. Sectors and geographies with child labour practices

In terms of economic domains, 70.9% of child labourers globally were engaged in agricultural work (108 million). The remaining child labourers worked in services (17.2%), and the others in some form of industry (11.9%) (International Labour Office, 2017a).

In terms of regional differences, the African continent is home to the highest number of child labourers, as well as the highest number of children performing hazardous work (see Figure 4). While Asia and the Pacific trail in second place, in absolute terms they do not have far fewer child labourers than Africa.

**Figure 4:** Child Labour and Hazardous Work by Region, Percentage and Absolute Number (in Thousands) of Children, 5-17 Age Range, 2016



Note: Bubble size is proportionate to absolute number of children in child labour and hazardous work in each region.

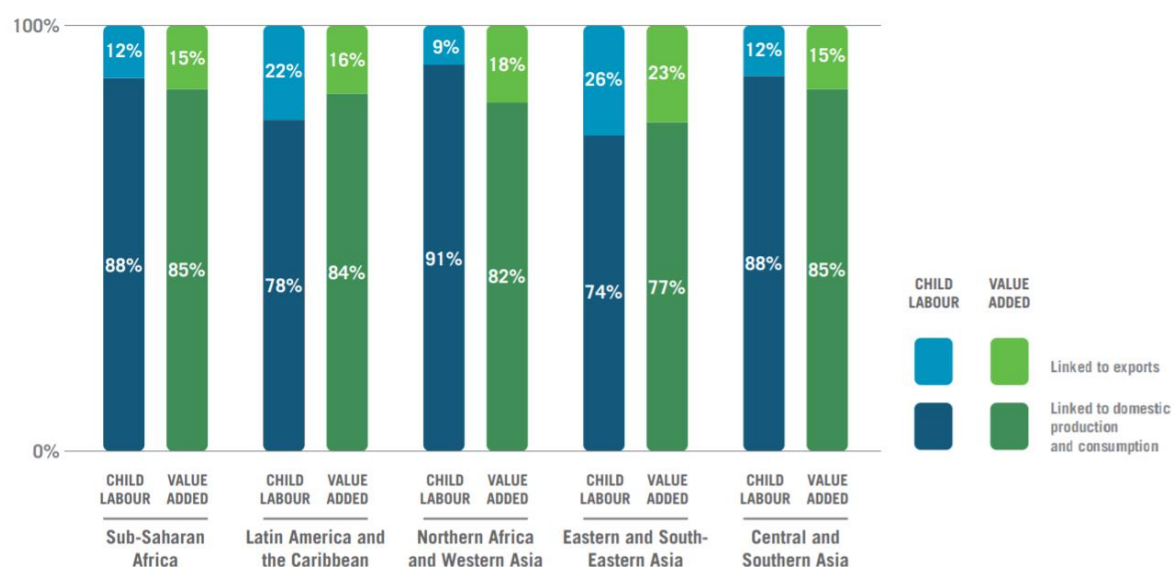
Source: *Global estimates of child labour: Results and trends, 2012-2016*, (International Labour Office, 2017a), [URL](#)

Agriculture and industry are domains that have supply chains also reaching the EU: IPEC+ estimated that between 5-15% of child labourers are estimated to be working in global supply chains (ILO, 2017).

A study by Alsamawi et al. (2019) estimates the “extent to which child labour within a region is estimated to contribute to exports” (p. 19). Applying the symmetric input-output table method, the *added value* of products made with child labour destined for export is derived through information including “compensation of employees, gross operating surplus, and other taxes on production” (Alsamawi et al., 2019, p. 4).

Considerably more child labour occurs in production linked to domestic production and consumption than production linked to exports, as Figure 5 depicts. This is particularly the case in “regions where children in child labour are mainly involved in family-based subsistence agriculture” (ILO et al., 2019, p. 8). Furthermore, the “added value” of child labour in products destined for export varies from 12% in Sub-Saharan Africa and Central and Southern Asia to 26% in Eastern and South Eastern Asia.

**Figure 5:** Estimated of Child Labour and Value Added for Exported Goods and Services and Domestic Demand by Region (2015)



Source: *Measuring child labour, forced labour and human trafficking in global supply chains*, (Alsamawi et al., 2019), [URL](#)

Drilling down further, particular industries of global supply chains are particularly exposed to child labour, as uncovered in a recent report by the ILO, IOM, OECD, and UNICEF, under the aegis of Alliance 8.7 (ILO et al., 2019). Depicted in Table 4, for each of the above featured regions, are the five exporting industries most at risk of having child labour present in their exported products. The column “By DIRECT contributions” counts only direct contributions in the final stage of production and the column “By INDIRECT contributions” counts only indirect contributions from upstream inputs of the supply chain. The table illustrates that child labour is a scourge that is found across regions and sectors, also where the practice is less well documented.

**Table 4:** Top Five Exporting Industries with Risk of Child Labour in their Supply Chains, Direct and Indirect Contributions, by Region (2015)

| <i>Region</i>                    | <i>By DIRECT contributions</i>   | <i>By INDIRECT contributions</i>   |
|----------------------------------|--|--|
| Sub-Saharan Africa               | Agriculture<br>Wholesale and retail<br>Transport and storage<br>Textiles and apparel<br>Food products          | Food Products<br>Mining, non-energy<br>Basic metals<br>Transport and storage<br>Wholesale and retail             |
| Eastern and South-Eastern Asia   | Agriculture<br>Textiles and apparel<br>Wholesale and retail<br>Mining, energy<br>Transport and storage         | Food and products<br>Textiles and apparel<br>Wood<br>Mining, energy<br>ICT and electronics                       |
| Central & Southern Asia          | Textiles and apparel<br>Agriculture<br>Wholesale and retail<br>Transport and storage<br>Food products          | Textile and apparel<br>Food products<br>Wholesale and retail<br>Transport and storage<br>Other business services |
| Northern Africa and Western Asia | Agriculture<br>Wholesale and retail<br>Transport and storage<br>Mining, energy<br>Accommodation and food       | Food products<br>Mining, energy<br>Textiles and apparel<br>Wholesale and retail<br>Agriculture                   |
| Latin America and the Caribbean  | Agriculture<br>Wholesale and retail<br>Accommodation and food<br>Transport and storage<br>Textiles and apparel | Food and products<br>Motor vehicles<br>Chemicals<br>Basic metals<br>Textiles and apparel                         |

Source: *Ending child labour, forced labour and human trafficking in global supply chains*, (ILO et al., 2019), [URL](#)

## *D. Share of child labour exposure in products imported to the EU*

### 1. Methodology applied

The question arises: What is the "Child labour footprint" of EU trade flows, the major sectors concerned (e.g., cocoa, textile, mining, etc.), and the countries of origin? In the absence of a child labour "added value" measure for each product imported into Europe, it must be derived. For the purposes of estimating the volumes of child labour-tainted goods exported to the EU, we applied the following methodology:

1. For child labour, we consulted the products listed in the USDOL *List of Goods Produced by Child Labor or Forced Labor*<sup>4</sup> (U.S. Department of Labor, 2020a), and for forced/indentured child labour we consulted USDOL's *"List of*

<sup>4</sup> USDOL List is updated biannually. Its latest publication was in 2020, which is used to apply the methodology as it covers year 2019.

*Products Produced by Forced or Indentured Child Labor*” (U.S. Department of Labor, n.d.-c).

2. We matched the EU import trade data<sup>5</sup> per listed commodity and exporting country for 2019 using Eurostat Comext (European Commission, 2021a).
3. We multiplied the trade data by the % of child labour value-added for exported goods and services, by region – as per Alsamawi et al. (2019).
4. We aggregated the commodity-specific results.

The methodology we applied to match the commodities listed by USDOL with the codes of products (as per Comext) was as follows:

1. We swept all codes potentially related to the commodity (by name, including technical or scientific name).
2. We opted for the parent category (two digits codes in Comext) whenever a commodity was well represented according to the USDOL term. In exceptional cases, lower hierarchy codes (four, six, eight digits codes) were used in combination with higher ones (two digits codes). E.g., for Copper, Zinc, and Tin, higher categories involving “articles made of” were considered, but also the minerals’ ore (lower). In addition, the following was taken into account while applying this step:
  - a. We considered generic parent codes when USDOL-flagged products were generic as well.<sup>6</sup>
  - b. We considered the commodity’s next step of value addition where such scope was implied in the USDOL terminology, to assess whether child labour may be involved or whether the commodity remains the principal component of the category. However, codes representing products that required a sophisticated industrial process or high-skilled labour were excluded (as we assumed more supply chain oversight). This did not apply when the USDOL flagged product indicated otherwise.<sup>7</sup>

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<sup>5</sup> Importation into 28 EU member countries, including the UK, which, in 2019, was still part of the European Union.

<sup>6</sup> E.g. for Meat, the matching code selected was “02- Meat and edible meat offal”, as there were no further specifications of the type of meat (bovine, fish, pig, etc.).

<sup>7</sup> E.g. USDOL flagged “Leather” for Bangladesh, Pakistan and Viet Nam, “Leather Goods” for México, and “Leather Goods/Accessories” for India. For the first commodity, the selected matching code was “Raw hides and skins (other than furskins) and leather,” further processed products would involve clothing, accessories, bags, etc. However, we considered that more sophisticated skills are needed, so no additional codes were added. But, for Mexico and India, leather goods further processed were specifically flagged so, the selected matching code was “Articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silkworm gut).”



- c. We performed a duplicate control per country to make sure that there was no duplication of codes.<sup>8</sup>
  - d. Any other consideration or exception was marked and added as a footnote in Table 5.
3. We opted for the next lower hierarchy category (four, six, eight digit codes) if there were no matches in step 2. Also, the following method was applied:
- a. We searched for codes that contain only the selected category.
  - b. In the event we did not obtain a clear 1=1 match, we proceeded to analyse the codes containing the flagged commodity and up to one non-flagged commodity (Table 5, step 2 exception <sup>efhi</sup> shows commodities where also two non-flagged commodities were included). There, the working assumption was that similar production behaviour regarding child labour would be present.
  - c. We considered the commodity in the successive step of value addition (if applicable as per the USDOL designation) to analyse if child labour could be involved or whether the commodity remains the principal component of the category. However, codes representing products that required a sophisticated industrial process or high-skilled labour were excluded (as we assumed more supply chain oversight).
  - d. Any other consideration or exception was marked and added as a footnote in Table 5.

**Table 5:** Product-level Methodology and Exceptions

| <i>Methodology step applied</i> | <i>Selection of parent category (two-digit codes)</i>                                      | <i>Selection of next lower hierarchy category (four, six, eight digit codes)</i> | <i>Exceptions</i>                            |
|---------------------------------|--|--|--|
| <b>Step 2</b>                   | Meat; Cereal Grains; Cocoa; Tobacco; Pyrotechnics; Rubber; Leather; Leather Goods; Timber; | -  | Textiles; Copper*; Zinc*; Tin*; Electronics* |

<sup>8</sup> To ensure zero double counting, further controls were performed on the final list of codes. First, a control in Excel prevented “Country-Commodity Code” duplication. Second, to each code we assigned a level of hierarchy (1, 2, 3, 4), which allowed us to identify the next immediate previous hierarchy code, and with an excel formula we searched in the final list for the combination “Country – Previous Immediate Hierarchy Commodity Code.” Third, a similar step was applied for levels 3 and 4, to identify if in the final list there was a higher category for level 1 and 2. Forth, any duplicate found was excluded, and in the case of higher and lower categories, we opted to exclude the lower ones. Fifth, five commodities with multiple codes that had no flags for duplicates were further investigated to prove that it was indeed correct that there were not any flags. Application example: for code “country-07108070” (level 4) in the second step we looked for a match with a code level 3 “country-071080.” In the third step, we searched for a match with level 2 “country-0710” and level 1 “country-07.”

|                   |  |  |  |
|-------------------|--|--|--|
|                   | Cotton; Carpets;<br>Garments; Footwear;<br>Ceramics; Glass;<br>Furniture   |  |  |
| <b>Step 3</b>     | -  | Alcoholic Beverages; Baked Goods; Bamboo; Bananas;<br>Beans; Beef; Blueberries; Bovines; Brazil<br>Nuts/Chestnuts; Broccoli; Cabbages; Carrots; Cashews;<br>Cattle; Charcoal; Chile Peppers; Citrus Fruits; Cloves;<br>Coal; Cobalt ore; Coca; Coconuts; Coffee; Corn;<br>Cottonseed; Cucumbers; Cumin; Diamonds; Dried Fish;<br>Eggplants; Embellished Textiles; Fashion Accessories;<br>Fireworks; Fish; Flowers; Fluorspar; Footwear (sandals);<br>Fruits (Pome and Stone); Garlic; Gems; Goats; Gold;<br>Granite; Grapes; Gravel (crushed stones); Gypsum;<br>Hazelnuts; Hogs; Incense (agarbatti); Lettuce; Lobsters;<br>Locks; Manioc; Matches; Melons; Nile Perch (fish); Oil<br>(palm); Olives; Onions; Peanuts; Pepper; Peppers;<br>Pineapples; Poppies; Potatoes; Poultry; Pulses; Rice;<br>Salt; Sand; Sesame; Sheep; Shellfish; Shrimp; Silk Fabric;<br>Silver; Sisal; Soap; Soccer Balls; Stones; Limestone;<br>Pumice; Strawberries; Sugar Beets; Sugarcane; Sweet<br>Potatoes; Tantalum ore; Tea; Tin ore; Tomatoes;<br>Tungsten ore; Vanilla; Yerba Mate | Beans (soy) <sup>a</sup> ;<br>Bidis <sup>b</sup> (hand-<br>rolled <sup>c</sup><br>cigarettes);<br>Bricks <sup>c</sup> ;<br>Thread/Yarn <sup>d</sup> ;<br>Sapphires <sup>e</sup> ;<br>Rubies <sup>f</sup> ;<br>Toys <sup>g</sup> ;<br>Surgical<br>Instruments <sup>h</sup> ;<br>Emeralds <sup>i</sup> |
| <b>No matches</b> | Beans (green beans, yellow beans); Brassware; Bricks (clay); Furniture (steel); Glass Bangles;<br>Granite (crushed); Jade; Khat/Miraa (stimulant plant); Pornography; Tanzanite; Teak; Trona |  |  |

**Notes:**

\* Codes where lower hierarchy codes were used in combination with higher ones, however controlling for double counting.

<sup>a</sup> USDOL Flagged Beans (green, soy, yellow), as there were no matches for green or yellow beans, only soy was considered.

<sup>b</sup> For Bidis, matching selected commodity was “Cigars, Cheroots and Cigarettes of tobacco [..]” as we assume bidis are included and the country mainly exports that type of cigarettes.

<sup>c d g</sup> These commodities are manufactured goods (they are the result of industrial processes), we excluded some codes that contained the commodity as we considered highly unlikely a child being involved in the production e.g. refractory bricks.

<sup>e f h i</sup> Exceptional cases where up to two non-flagged commodities were included (due to Comext coding).

## 2. Example child labour commodities

In order to illustrate this method, we highlight five products amongst those listed in the USDOL 2020 *List of Goods*,<sup>9</sup> namely Cocoa, Cotton, Sugarcane, Rice and Tobacco. The value in euros of importations of commodities to the EU was obtained by the EU database Comext (European Commission, 2021a) for the year 2019 and matched with the data contained in the 2020 USDOL *List of Goods*. Data for the third step were drawn from Alsamawi et al. (2019), and countries were matched to the regional data using the UN Standard country or area codes for statistical use (M49) (United Nations, 2020). The discussion below summarises the findings of five example commodities, further enumerated for each identified country in Annex I.

**Cocoa:** Cocoa has been identified as being produced by child labour in seven (7) countries partners of the EU, i.e. Brazil, Cameroon, Ghana, Guinea, Côte d’Ivoire, Nigeria and Sierra

<sup>9</sup> USDOL’s 2020 list was applied as it represents a biennial list. There was no list published in 2019.

Leone. Ghana and the Ivory Coast were the largest EU cocoa trade partners in 2019 (amounting to over EUR 1 billion and EUR 3 billion, respectively) and Brazil was the smallest. Since Alsamawi et al. (2019) estimate that in Sub-Saharan Africa, 12% of exported goods and services are produced with child labour, and 22% in Latin America, the total value of cocoa flowing into the EU in 2019, produced with child labour, was worth approximately **EUR 648 million**. More than half of that value – an estimated EUR 373 million – was produced with child labour in Côte d'Ivoire alone.<sup>10</sup>

**Cotton:** According to the 2020 USDOL List, 15 countries produce cotton with child labour, with Turkey, China and India being identified by the Comext database as the largest exporters in 2019 (amounting to over EUR 751 million, EUR 416 million and EUR 415 million, respectively). Turkey, China and India had child labour value added of 9%, 26% and 12%, respectively. Accordingly, Turkey's share of cotton produced with child labour and imported to the EU in 2019 was estimated to be EUR 67,641,399, that of China EUR 108,301,926, whilst that of India estimated to be EUR 49,860,002. In total, the value added from child labour for all 15 cotton-producing countries came to **EUR 247 million** in 2019.

**Rice:** In 2019, 5 countries grew rice with child labour according to USDOL: Brazil, Myanmar (Burma), India, Philippines and Viet Nam. Among them, India and Myanmar were the largest exports of rice to the EU, with exports worth EUR 223,058,929 and EUR 160,995,597, respectively. Given the degree of child labour in each country, the rice value added by child labour in Myanmar was EUR 41,858,855, and EUR 26,767,929 in India. Among the 5 identified countries, the total child labour value added for rice was an estimated **EUR 76,164,154** in 2019.

**Sugarcane:** Nineteen (18) countries are identified by the 2020 USDOL List as producing sugarcane with child labour, 17 of which exported to the EU in 2019. The Comext database, which provides data on imports of cane sugar, identifies Belize and Brazil as the largest 2019 exporters of these products to Europe (with exports amounting to over 54 million and 76 million euros, respectively). Belize and Brazil produced an estimated EUR 12,011,958 and EUR 16,771,052, respectively, each with child labour value added of 22%. In total, the

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<sup>10</sup> In 2019, Côte d'Ivoire exported 1,343,072,400 kg of cocoa to the EU, a value of EUR 3,110,025,709. This value is, in our methodology, multiplied by 12% in order to obtain the child labour value added. Yet in order to double-check whether the 12% child labour value added estimate by Alsamawi et al. (2019) lines up with a specific commodity sourced from Sub-saharan Africa, we draw on figures available from the cocoa sector of Côte d'Ivoire. According to 2018/19 survey data reported by the child labour prevalence figures in the report "*NORC Final Report: Assessing Progress in Reducing Child Labor in Cocoa Production in Cocoa Growing Areas of Côte d'Ivoire and Ghana*" (Sadhu et al., 2020), data from agricultural households (with at least one child in the 5-17 age group) in the cocoa growing areas of Côte d'Ivoire indicate that an estimated 790,647 children were engaged in child labour in cocoa production in Côte d'Ivoire. This works out to 38% of Ivorian children working as child labourers in cocoa growing areas. Incidentally, almost all of these children – 770,000 or 37% – were also exposed to at least one component of hazardous child labour in cocoa production. With an estimated 800,000 smallholder farmers (GIZ, 2021) in the country – between 700,000 and 1,000,000 cocoa producers in 2010 according to Ben Houassa (2011) – that works out to one child worker per smallholder (the average of 1 child labourer and 2.8 adults per cocoa-growing household is further corroborated by de Buhr et al. 2018, p. 20). The total output of a given farm X would be multiplied by 0.26316 in order to obtain an individual worker's output. One must, however, also take into account that adult workers are 2 to 3 times more efficient than child workers. Thus, those 790,647 child labourers are responsible for 33%-50% of the workload. In sum, a 12% child labour value added of total cocoa output certainly passes the plausibility test ( $0.26316 \times 50\% = 0.13158$ , or  $0.26316 \times 33\% = 0.8772$ ).

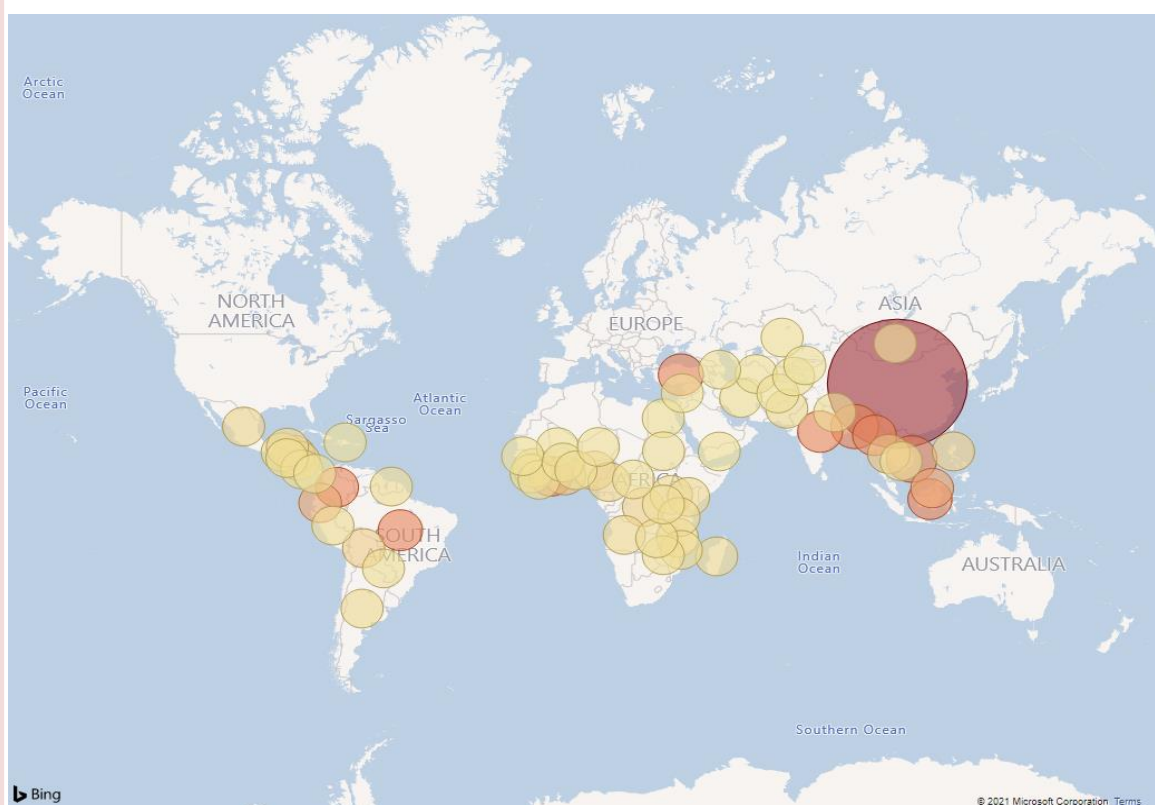
sugarcane value added from child labour exported by 17 countries came to almost EUR 44 million (**EUR 45,656,251**) in 2019.

**Tobacco:** According to USDOL's 2020 List, 17 countries produce tobacco with child labour. Malawi and Brazil are identified by the Comext database as the largest 2019 exporters to the EU (amounting to EUR 234 million and EUR 543 million, respectively). Child labour value added to exports from Malawi was 12%, and in Brazil 22%. Accordingly, Malawi's share of tobacco produced by child labour and exported to the EU was estimated to be EUR 28,097,531, and that of Brazil estimated to be EUR 119,525,577. Altogether, the value of tobacco produced with child labour and exported to the EU was worth an estimated **EUR 264,401,759** in 2019.

### 3. Child labour footprint findings

The USDOL *List of Goods* flagged 74 countries, 145 commodities, and a total of 395 combinations (*country-commodity*) produced with child labour in its last publication covering for years 2019-2020. Out of those, the results of 102 commodities from 66 countries are displayed in Figure 6 (280 combinations). The omitted products and countries are due to excluded commodities, whether because there was no importation of the flagged commodity to the EU from the selected country, or they could not be matched with a Comext category.<sup>11</sup> As the study is focused on importation flows outside of geographical Europe, Ukraine was not considered (as the only in-scope country as per the USDOL *List of Goods*).

**Figure 6:** Child Labour Bubble Map



An estimated €50.08 billion was the value of imports by the EU produced with child labour in 2019. Figure 6 depicts the value of in-scope goods exported to the EU produced with child labour, where the bubbles' size and colour vary according to the estimated amount of child labour. The most prominent in-scope exporters to the EU (see Table 6) are China (EUR 143bn), Bangladesh (EUR 18.4bn), Turkey (EUR 13.4bn), Viet Nam (EUR 12.3bn), and India (EUR 9.3bn). These countries are also the ones that contributed the most to the child labour value estimated in EUR. In first place is China, with 74% (EUR 37.2bn) of the value

<sup>11</sup> The countries, for which the value of imports of the in-scope product/s was null, are: Mauritania, Ethiopia, Lesotho, Eswatini, Chad, and South Sudan.

### Child Labour Footprint Findings

mentioned above. In second place is Viet Nam 6% (EUR 3.2bn), in third Bangladesh 4% (EUR 2.2bn), followed by Turkey and India 2% each, in fourth (EUR 1.2bn) and fifth (EUR 1.1bn) place, respectively. Table 6 presents the top 20 in absolute terms. For the full list, see our [application visualising those findings](#).

**Table 6:** Top 20 In-Scope Countries Exporting to the EU with Child Labour (Ordered by the Contribution to the Estimated EUR Value of Child Labour)

|     | Country                          | In-scope importations (EUR) | Estimated value of child labour (EUR) |
|-----|----------------------------------|-----------------------------|---------------------------------------|
| 1.  | China                            | 143,172,279,621             | 37,224,792,701.46                     |
| 2.  | Vietnam                          | 12,323,108,894              | 3,204,008,312.44                      |
| 3.  | Bangladesh                       | 18,391,656,557              | 2,206,998,786.84                      |
| 4.  | Turkey                           | 13,373,033,536              | 1,203,573,018.24                      |
| 5.  | India                            | 9,304,000,608               | 1,116,480,072.96                      |
| 6.  | Brazil                           | 4,128,323,323               | 908,231,131.06                        |
| 7.  | Indonesia                        | 3,114,678,094               | 809,816,304.44                        |
| 8.  | Burma                            | 2,646,794,974               | 688,166,693.24                        |
| 9.  | Colombia                         | 1,908,292,867               | 419,824,430.74                        |
| 10. | Côte d'Ivoire                    | 3,147,419,697               | 377,690,363.64                        |
| 11. | Malaysia                         | 1,080,557,144               | 280,944,857.44                        |
| 12. | Ecuador                          | 1,145,583,785               | 252,028,432.70                        |
| 13. | Ghana                            | 1,200,922,370               | 144,110,684.40                        |
| 14. | Thailand                         | 509,234,377                 | 132,400,938.02                        |
| 15. | Honduras                         | 597,939,665                 | 131,546,726.30                        |
| 16. | Bolivia                          | 426,093,855                 | 93,740,648.10                         |
| 17. | Philippines                      | 322,087,243                 | 83,742,683.18                         |
| 18. | Democratic Republic of the Congo | 638,691,318                 | 76,642,958.16                         |
| 19. | Nigeria                          | 517,172,701                 | 62,060,724.12                         |
| 20. | Cameroon                         | 506,894,944                 | 60,827,393.28                         |

The principal in-scope products imported with child labour (see Table 7) were Electronics (EUR 35bn), Garments (EUR 5.4bn), Footwear (EUR 1.5bn), Coffee (EUR 1.1bn), and Toys (EUR 1.1bn).

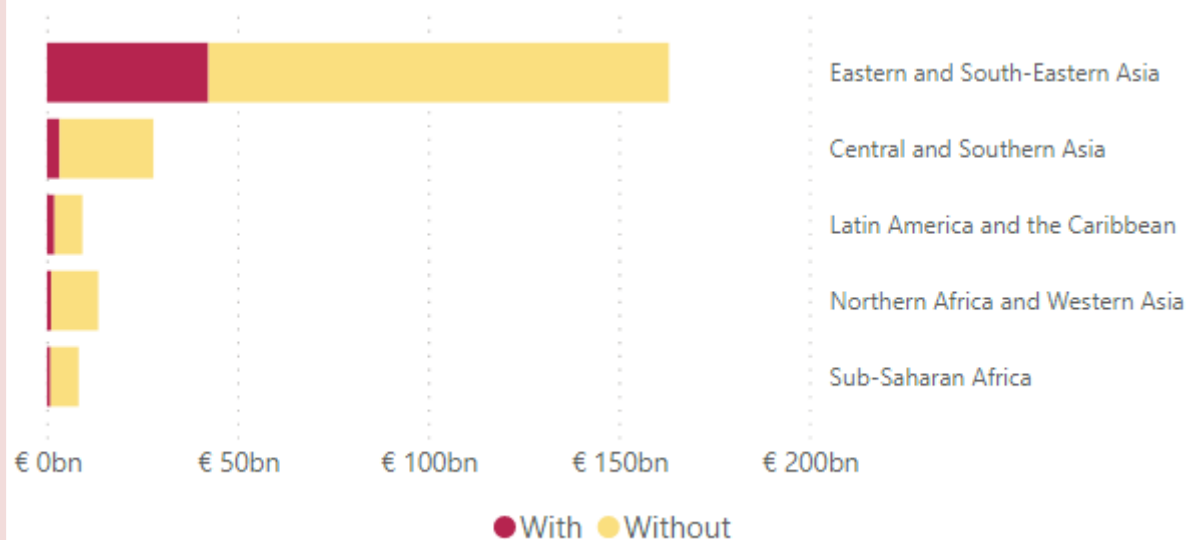
### Child Labour Footprint Findings

**Table 7:** Top 10 In-scope Commodities Exported to the EU with Child Labour (Ordered by the Contribution to the Estimated EUR Value of Child Labour)

|     | Goods       | In-scope importations (EUR) | Estimated value of child labour (EUR) |
|-----|-------------|-----------------------------|---------------------------------------|
| 1.  | Electronics | 134,891,109,865             | 35,071,688,564.90                     |
| 2.  | Garments    | 39,535,377,933              | 5,368,812,578.53                      |
| 3.  | Footwear    | 6,780,229,648               | 1,452,434,066.40                      |
| 4.  | Coffee      | 4,990,472,465               | 1,098,477,466.50                      |
| 5.  | Toys        | 4,088,001,417               | 1,062,880,368.42                      |
| 6.  | Textiles    | 3,515,747,483               | 912,806,637.48                        |
| 7.  | Oil (palm)  | 2,903,245,530               | 754,675,825.34                        |
| 8.  | Cocoa       | 5,391,985,710               | 648,809,380.10                        |
| 9.  | Furniture   | 2,531,227,884               | 440,527,130.02                        |
| 10. | Rubber      | 1,359,889,915               | 349,489,532.58                        |

Applying the country categories as per the UN Methodology M49 Standard (United Nations, 2020), in-scoped countries can be grouped into five regions. The following figure shows the value in Euros of the flagged commodities imported to the EU with and without child labour.

**Figure 7:** Value of In-scope Goods Imported by the EU With/Without Child Labour by Region



We observe that Eastern and South-Eastern Asia is the region which exports the most in-scope goods to the EU with and without child labour. The region also represents almost 85% of the calculated value of child labour. Central and Southern Asia contributes to that total with 6.71%, Latin America and Caribbean with 4.12%, Northern Africa and Western Asia 2.43%, and last, Sub-Saharan Africa with 2.01%.



### Child Labour Footprint Findings

#### 3.1 Eastern and South-Eastern Asia

Breaking down the analysis per region, Eastern and South-Eastern Asia exported to the EU 163.2 bn EUR of in-scope products. The principal commodities contributing to Child Labour, as per Table 8, were Electronics, Garments, Footwear, Toys, and Textiles.

**Table 8:** Top 5 In-scope Countries and Goods Contributing to Child Labour in Eastern and South-Eastern Asia

| Country   | Estimated value of child labour (EUR) | % contribution |
|-----------|---------------------------------------|----------------|
| China     | 37,224,792,701.46                     | 87.74%         |
| Vietnam   | 3,204,008,312.44                      | 7.55%          |
| Indonesia | 809,816,304.44                        | 1.91%          |
| Burma     | 688,166,693.24                        | 1.62%          |
| Malaysia  | 280,944,857.44                        | 0.66%          |

| Goods       | Estimated value of child labour (EUR) | % contribution |
|-------------|---------------------------------------|----------------|
| Electronics | 35,071,688,564.90                     | 82.66%         |
| Garments    | 1,711,214,199.24                      | 4.03%          |
| Footwear    | 1,160,695,568.76                      | 2.74%          |
| Toys        | 1,062,880,368.42                      | 2.51%          |
| Textiles    | 911,702,887.68                        | 2.15%          |

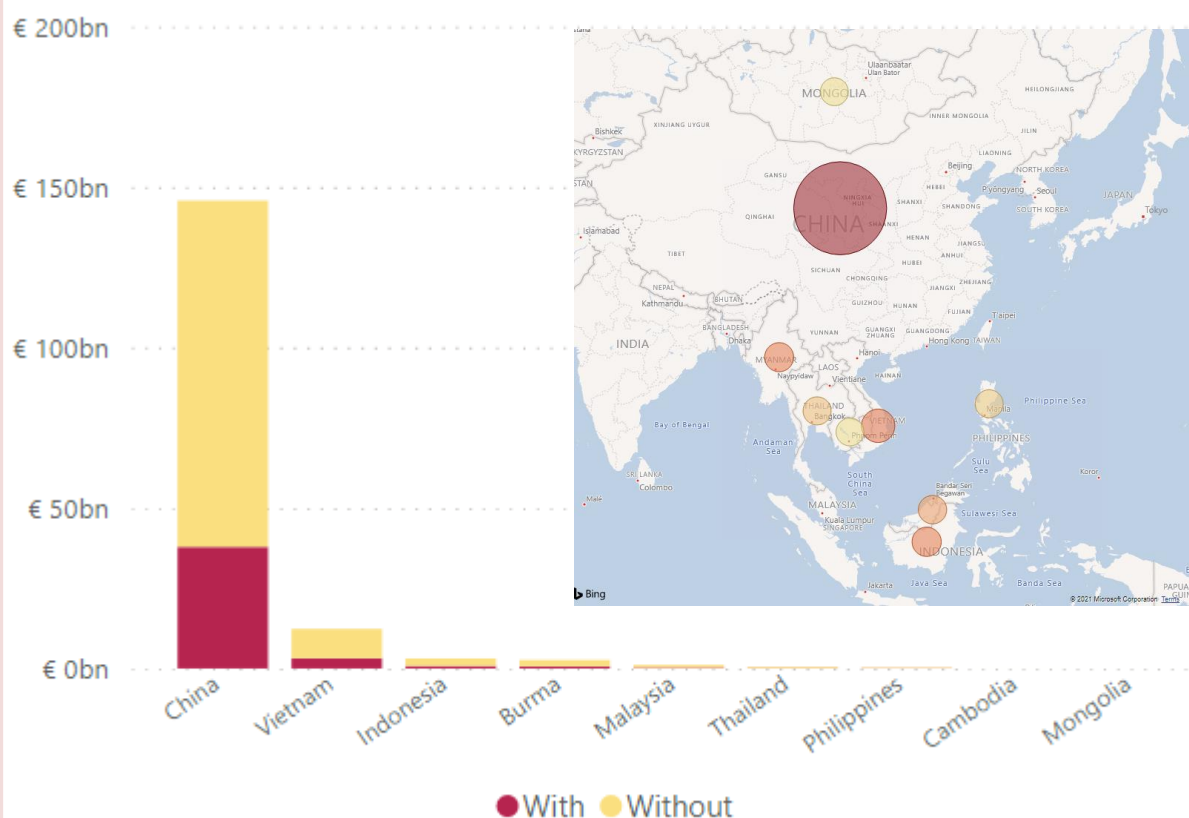
USDOL justifies the inclusion of Electronics from China in its *List of Goods* on the following grounds:

*There are reports that children ages 13-15 are forced to produce electronics in China. Based on the most recently available data from media sources, government raids, and NGOs, hundreds of cases of forced child labor have been reported in factories in Guangdong province, but the children are often from Henan, Shanxi, or Sichuan provinces. In some cases, children are forced to work in electronics factories through arrangements between the factories and the schools that the children attend in order to cover alleged tuition debts. The forced labor programs are described as student apprenticeships; however, the children report that they were forced to remain on the job and not allowed to return home. Half of the students' wages are sent directly to the schools, and the children receive little compensation after deductions are made for food and accommodations. In other cases, children are abducted or deceived by recruiters, sent to Guangdong, and sold to employers. Some children are held captive, forced to work long hours for little pay (U.S. Department of Labor, n.d.-b).*

Figure 8 graphically represents where child labour is concentrated: China (87.74%), for the most part, and then Viet Nam (7.55%), Indonesia (1.91%) and Burma (1.62%). The contribution of the rest of the in-scoped countries is minimal (less than 1% each).

### Child Labour Footprint Findings

**Figure 8:** Value of In-scope Goods Imported by the EU With/Without Child Labour from Countries in Eastern and South-Eastern Asia Region



### 3.2 Central and Southern Asia

Central and Southern Asia region exported into the EU around EUR 28bn. Top five products imported contributing to child Labour are Garments (81.01%), Footwear (6.42%), Leather Goods/Accessories (4.85%), Carpets (1.75%), and Cotton (1.58%).

**Table 9:** Top 5 In-scope Countries and Goods Contributing to Child Labour in Central and Southern Asia

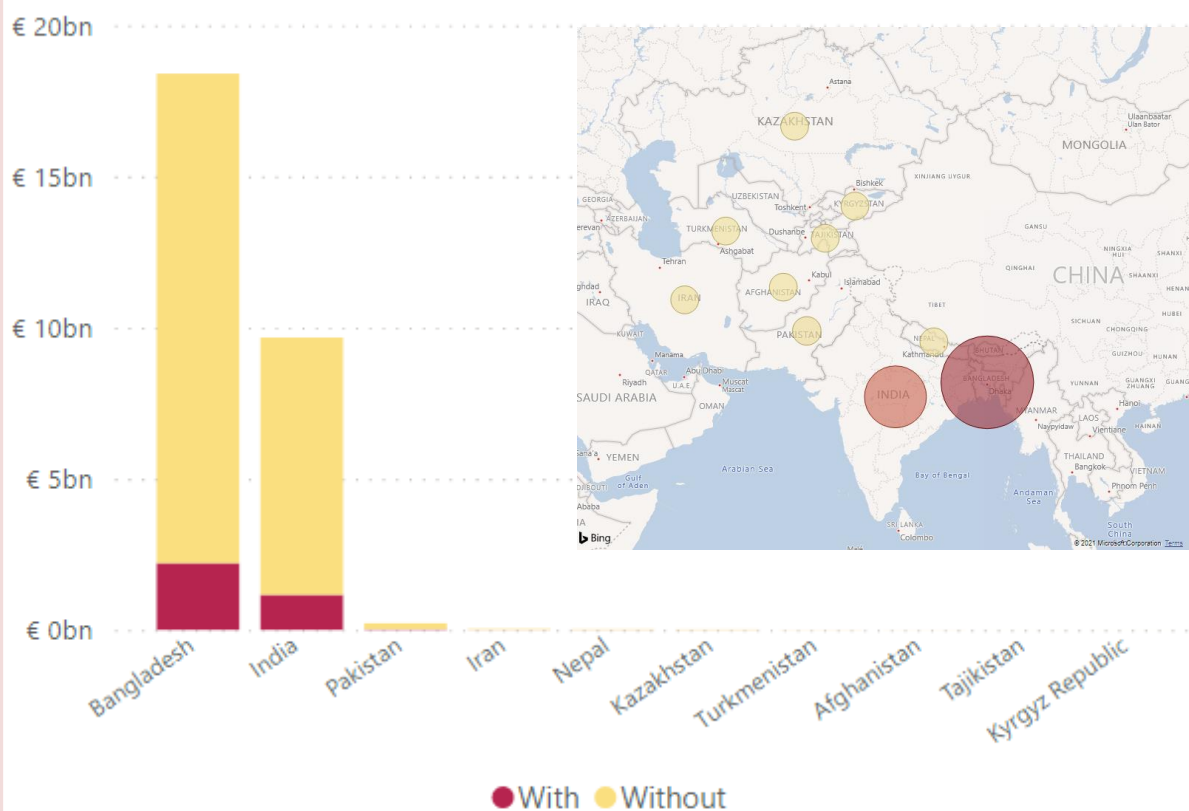
| Country    | Estimated value of child labour (EUR) | % contribution |
|------------|---------------------------------------|----------------|
| Bangladesh | 2,206,998,786.84                      | 65.69%         |
| India      | 1,116,480,072.96                      | 33.23%         |
| Pakistan   | 26,340,959.40                         | 0.78%          |
| Iran       | 3,788,356.68                          | 0.11%          |
| Nepal      | 2,558,448.00                          | 0.08%          |

| Goods                      | Estimated value of child labour (EUR) | % contribution |
|----------------------------|---------------------------------------|----------------|
| Garments                   | 2,721,661,680.84                      | 81.01%         |
| Footwear                   | 215,778,491.88                        | 6.42%          |
| Leather Goods/ Accessories | 162,865,584.12                        | 4.85%          |
| Carpets                    | 58,638,574.92                         | 1.75%          |
| Cotton                     | 52,923,511.08                         | 1.58%          |

### Child Labour Footprint Findings

Regarding countries, Figure 9 shows the amount of exports to the EU and the degree to which each country contributes to the child labour total estimated in the region. Bangladesh represents 64.77% (EUR 2.20bn) of the estimates, and India 34.16% (EUR 1.16bn).

**Figure 9:** Value of In-scope Goods Imported by the EU With/Without Child Labour from Countries in Central and Southern Asia Region



### 3.3 Latin America and the Caribbean

For Latin America and the Caribbean, Figure 10 shows that in comparison to the previous regions, a higher number of countries were flagged as producing with child labour. Nevertheless, it remains third with respect to the regional contribution to the estimated value of child labour. Another finding of note is that most of the commodities flagged by USDOL correspond with raw goods, the top 5 contributing to child labour are Coffee, Bananas, Corn, Coal and Gold.

Concerning the five principal country positions, Brazil exported a total of EUR 4.12bn, Colombia EUR 1.9bn, Ecuador EUR 1.14bn, Honduras EUR 597M and Bolivia EUR 426M of in-scope goods. A hotspot for child labour, as per Figure 10, is Brazil, with almost half (44%) of the child labour estimated in the region. In second and third place are Colombia 20.34% and Ecuador 12.21%.

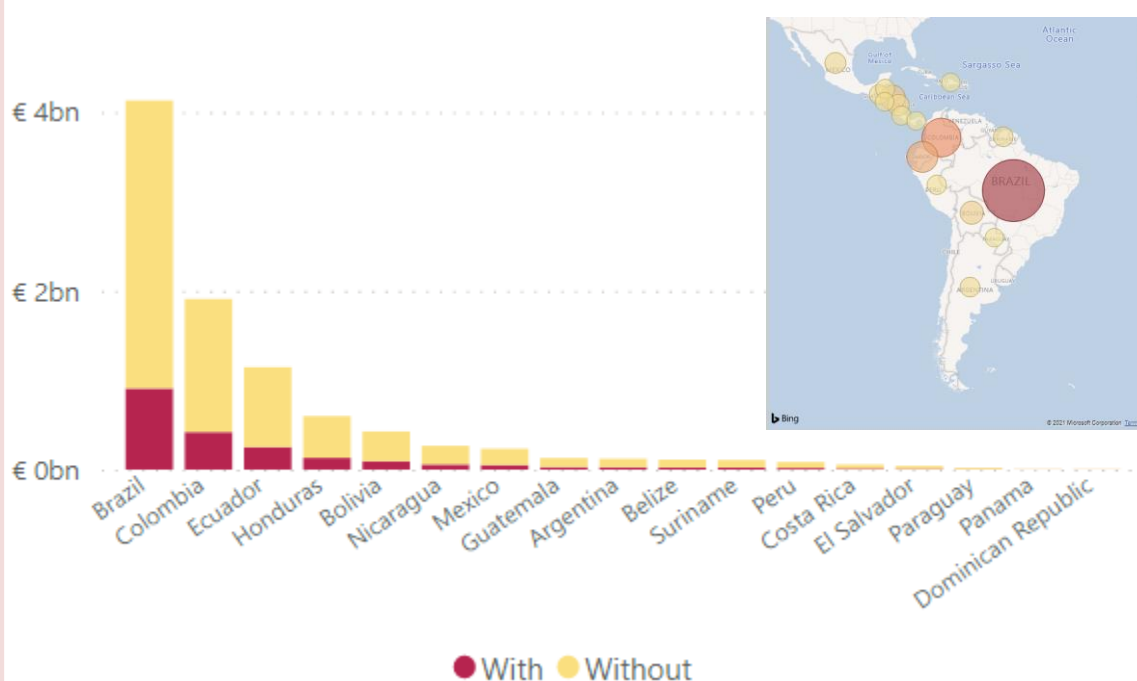
### Child Labour Footprint Findings

**Table 10:** Top 5 In-scope Countries and Goods Contributing to Child Labour in Latin America and the Caribbean

| Country  | Estimated value of child labour (EUR) | % contribution |
|----------|---------------------------------------|----------------|
| Brazil   | 908,231,131.06                        | 44.00%         |
| Colombia | 419,824,430.74                        | 20.34%         |
| Ecuador  | 252,028,432.70                        | 12.21%         |
| Honduras | 131,546,726.30                        | 6.37%          |
| Bolivia  | 93,740,648.10                         | 4.54%          |

| Goods   | Estimated value of child labour (EUR) | % contribution |
|---------|---------------------------------------|----------------|
| Coffee  | 755,411,409.28                        | 36.60%         |
| Bananas | 225,628,184.10                        | 10.93%         |
| Corn    | 183,322,434.90                        | 8.88%          |
| Coal    | 175,952,219.74                        | 8.53%          |
| Gold    | 142,206,213.16                        | 6.89%          |

**Figure 10:** Value of In-scope Goods Imported by the EU With/Without Child Labour from Countries in Latin America and Caribbean



### 3.4 Northern Africa and Western Asia

The Northern Africa and Western Asia region follows fourth in terms of their regional position, with only 5 countries considered for the study. The principal in-scope commodities exported to the EU with child labour were Garments, Furniture, Cotton, Hazelnuts and Footwear.

### Child Labour Footprint Findings

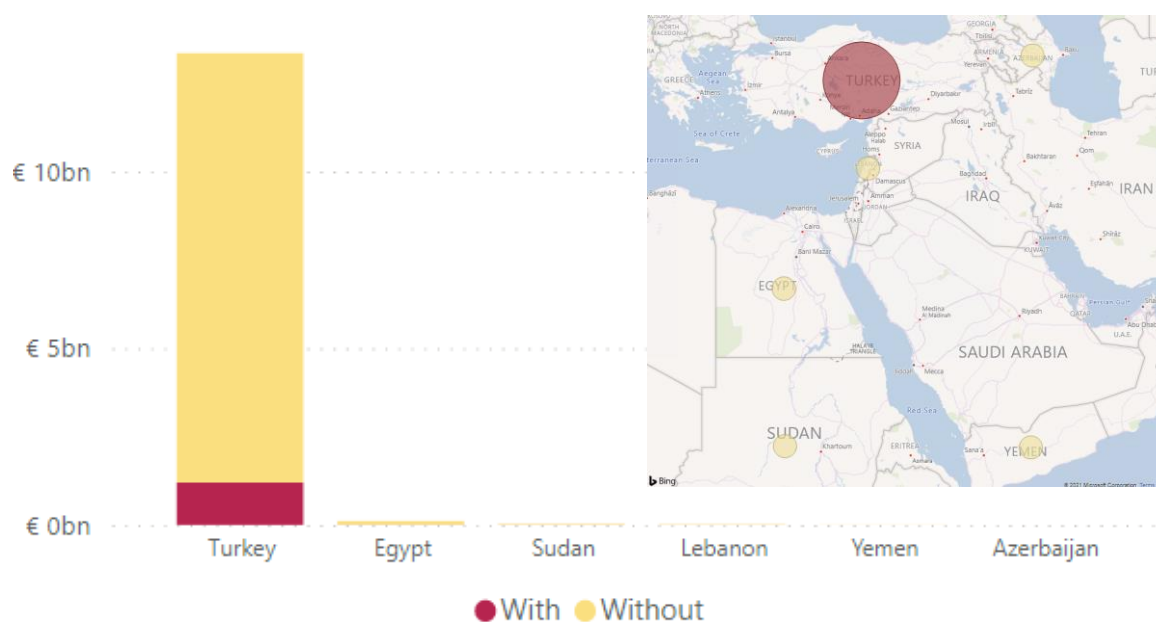
**Table 11:** Top 5 In-scope Countries and Goods Contributing to Child Labour in Northern Africa and Western Asia

| Country | Estimated value of child labour (EUR) | % contribution |
|---------|---------------------------------------|----------------|
| Turkey  | 1,203,573,018.24                      | 98.79%         |
| Egypt   | 9,975,919.41                          | 0.82%          |
| Sudan   | 2,633,356.80                          | 0.22%          |
| Lebanon | 1,585,251.99                          | 0.13%          |
| Yemen   | 486,440.55                            | 0.04%          |

| Goods     | Estimated value of child labour (EUR) | % contribution |
|-----------|---------------------------------------|----------------|
| Garments  | 916,742,000.07                        | 75.25%         |
| Furniture | 115,195,828.14                        | 9.46%          |
| Cotton    | 77,623,393.68                         | 6.37%          |
| Hazelnuts | 60,406,675.11                         | 4.96%          |
| Footwear  | 26,286,642.90                         | 2.16%          |

Figure 11 shows that Turkey makes up for almost all exports with child labour, as in-scope exports for the region was EUR 13.53bn, and for Turkey they were EUR 13.37bn.

**Figure 11:** Value of In-scope Goods Imported by the EU With/Without Child Labour from Countries in Northern Africa and Western Asia



### 3.5 Sub-Saharan Africa

Sub-Saharan Africa is the region with most countries flagged as producing with child labour. However, similar observations as in the Latin America region can be made: the main commodities are raw goods without much further added value. The top five products are Cocoa, Tobacco, Copper, Coffee and Diamonds.

### Child Labour Footprint Findings

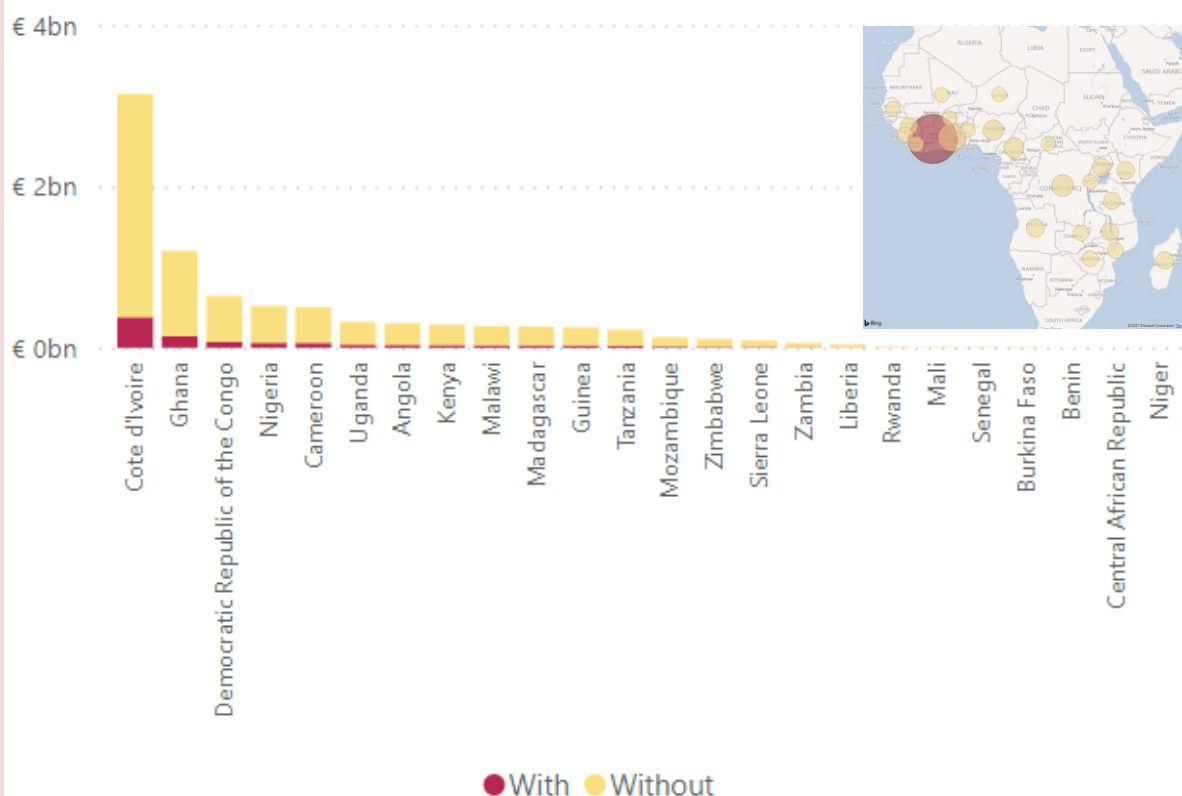
**Table 12:** Top 5 In-scope Countries and Goods Contributing to Child Labour in Sub-Saharan Africa

| Country          | Estimated value of child labour (EUR) | % contribution |
|------------------|---------------------------------------|----------------|
| Côte d'Ivoire    | 377,690,363.64                        | 37.54%         |
| Ghana            | 144,110,684.40                        | 14.32%         |
| Congo, Dem. Rep. | 76,642,958.16                         | 7.62%          |
| Nigeria          | 62,060,724.12                         | 6.17%          |
| Cameroon         | 60,827,393.28                         | 6.05%          |

| Goods    | Estimated value of child labour (EUR) | % contribution |
|----------|---------------------------------------|----------------|
| Cocoa    | 644,912,971.32                        | 64.10%         |
| Tobacco  | 76,256,525.88                         | 7.58%          |
| Copper   | 71,828,178.00                         | 7.14%          |
| Coffee   | 52,883,867.52                         | 5.26%          |
| Diamonds | 49,759,733.40                         | 4.95%          |

The hotspot for child labour is in Côte d'Ivoire (EUR 377.7M), where 98.81% of the estimated value of child labour for the country is due to Cocoa production also ranked first in the top 5 commodities in the region.

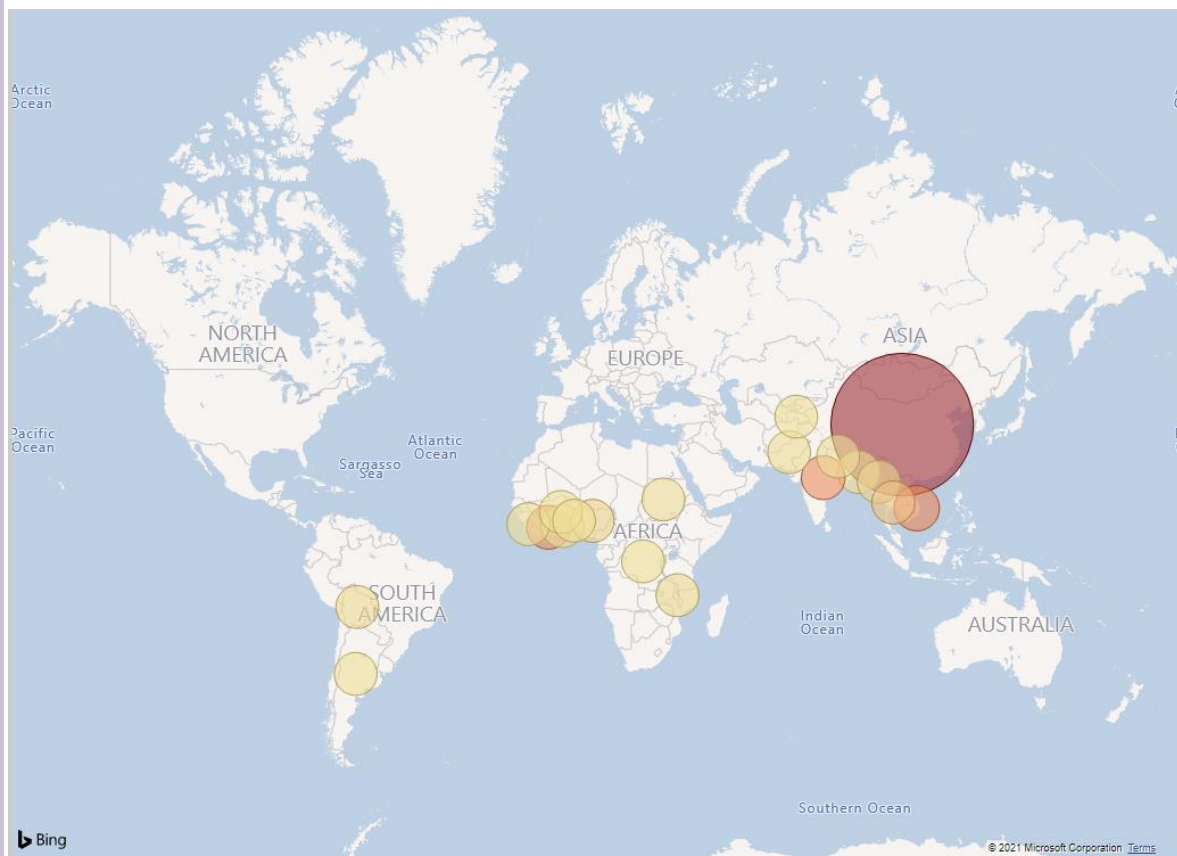
**Figure 12:** Value of In-scope Goods Imported by the EU With/Without Child Labour from Countries in Sub-Saharan Africa



#### 4. Forced/indentured child labour findings

USDOL's *List of Products Produced by Forced or Indentured Child Labour* flagged 25 countries and 34 commodities in 2019. Out of those, 25 commodities originating from 19 countries are shown in Figure 13 (42 combinations). As previously mentioned, the omitted products and countries are due to the fact that the flagged commodities were either not traded with the EU, or that they could not be matched with an appropriate Comext category.

**Figure 13:** Forced or Indentured Child Labour Bubble Map



An estimated €38.55 billion was the value of imports by the EU produced with forced or indentured child labour in 2019. Figure 13 presents the data of the value of in-scope exported goods to the EU with forced or indentured child labour, where the bubbles' size and colour vary according to the estimated amount of forced or indentured child labour. The five most prominent exporters of the in-scope goods to the EU are China (EUR 139.5bn), India (EUR 5.5bn); Viet Nam (EUR 3.7bn), Côte d'Ivoire (EUR 3.1bn), and Nigeria (EUR 517.1M). Four of the beforementioned countries also comprised the top 5 contributors to the forced or indentured child labour value. China accounts for 94.05% of the EUR 38.55bn estimation, Viet Nam 2.48%, India 1.71%, Côte d'Ivoire 0.98%, and Thailand 0.34%. The principal in-scope products imported with forced or indentured child labour were Electronics (EUR 35.1bn), Garments (EUR 1.7bn), Toys (EUR 1.1bn) Cocoa (EUR 435M), and Cotton (EUR 109M), as is depicted in Table 14.



*Forced / Indentured Child Labour Footprint Findings*

**Table 13:** Top 10 In-Scope Countries Exporting to the EU with Forced/Indentured Child Labour (Ordered by the Contribution to the Estimated EUR Value of Forced/Indentured Child Labour)

|     | <i>Country</i> | <i>In-scope importations<br/>(EUR)</i> | <i>Estimated value of<br/>forced/indentured child labour<br/>(EUR)</i> |
|-----|----------------|--|--|
| 1.  | China          | 139,452,666,511                        | 36,257,693,292.86  |
| 2.  | Vietnam        | 3,674,196,997                          | 955,291,219.22   |
| 3.  | India          | 5,503,535,602                          | 660,424,272.24   |
| 4.  | Côte d'Ivoire  | 3,147,419,697                          | 377,690,363.64   |
| 5.  | Thailand       | 508,937,034                            | 132,323,628.84   |
| 6.  | Nigeria        | 517,098,775                            | 62,051,853.00  |
| 7.  | Burma          | 164,853,748                            | 42,861,974.48  |
| 8.  | Malawi         | 234,146,098                            | 28,097,531.76  |
| 9.  | Bolivia        | 99,446,711                             | 21,878,276.42  |
| 10. | Sierra Leone   | 54,283,473                             | 6,514,016.76   |

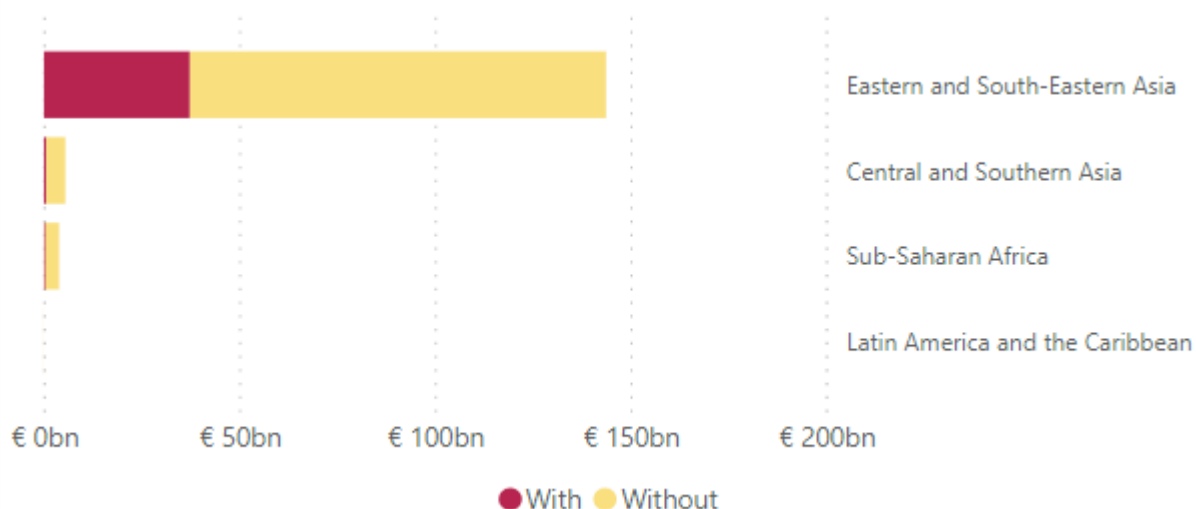
**Table 14:** Top 10 In-scope Commodities Exported to the EU with Forced/Indentured Child Labour (Ordered by the Contribution to the Estimated EUR Value of Forced/Indentured Child Labour)

|     | <i>Goods</i>           | <i>In-scope importations<br/>(EUR)</i> | <i>Estimated value of<br/>forced/indentured child labour<br/>(EUR)</i> |
|-----|------------------------|--|--|
| 1.  | Electronics            | 134,891,109,865                        | 35,071,688,564.90  |
| 2.  | Garments               | 9,162,148,008                          | 1,680,416,459.80   |
| 3.  | Toys                   | 4,088,001,417                          | 1,062,880,368.42   |
| 4.  | Cocoa                  | 3,627,123,298                          | 435,254,795.76   |
| 5.  | Cotton                 | 422,303,997                            | 108,992,901.86   |
| 6.  | Rice                   | 384,054,526                            | 68,625,926.70  |
| 7.  | Tobacco                | 234,146,098                            | 28,097,531.76  |
| 8.  | Stones                 | 189,072,186                            | 22,688,662.32  |
| 9.  | Brazil Nuts/ Chestnuts | 99,439,184                             | 21,876,620.48  |
| 10. | Bricks                 | 71,102,951                             | 16,514,019.14  |

Grouping the countries according to the regions indicated by the UN (2020) Methodology M49, Figure 14 shows the value in Euros of the flagged country-commodity pairs imported to the EU with and without forced or indentured child labour. The figure notes that most of the importation flow comes from the Eastern and South-Eastern Asia (EUR 143.8bn), followed by Central and Southern Asia (EUR 5.6bn), Sub-Saharan Africa (EUR 4bn) and last, Latin America and the Caribbean (EUR 100M). There were no products flagged for the Northern Africa and Western Asia region.

### Forced / Indentured Child Labour Footprint Findings

**Figure 14:** Value of In-scope Goods Imported by the EU With/Without Forced or Indentured Child Labour



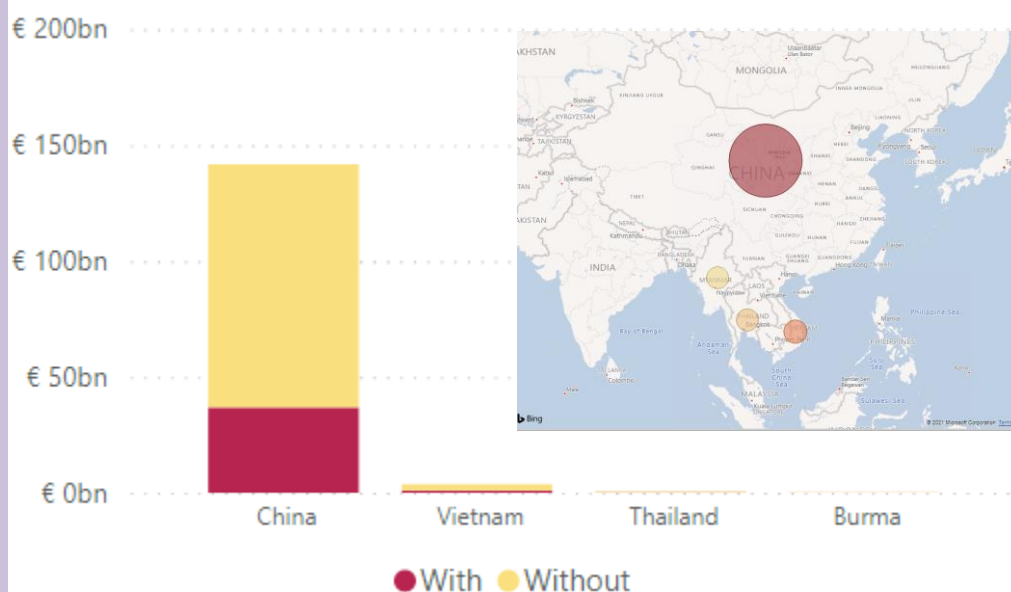
Concerning the analysis of each region, similar conclusions can be drawn as for the Child Labour dimension. One notable change was that Sub-Saharan Africa went from last position in the Child Labour dimension to third in the current analysed dimension.

#### 4.1 Eastern and South-Eastern Asia Region

Eastern and South-Eastern Asia Region contributes to the aforementioned value with 37.4bn (96.98%). The countries considered were China, Viet Nam, Thailand, and Burma. The hotspot of forced or indentured child labour is concentrated in China, as per Figure 15, contributing with EUR 36.3bn to the total estimation, after which comes Viet Nam with 955.3M, and last the other two countries Thailand 132.3M, and Burma 42.9M. The main in-scope commodities are Electronics, Garments, Toys and Cotton.

### Forced / Indentured Child Labour Footprint Findings

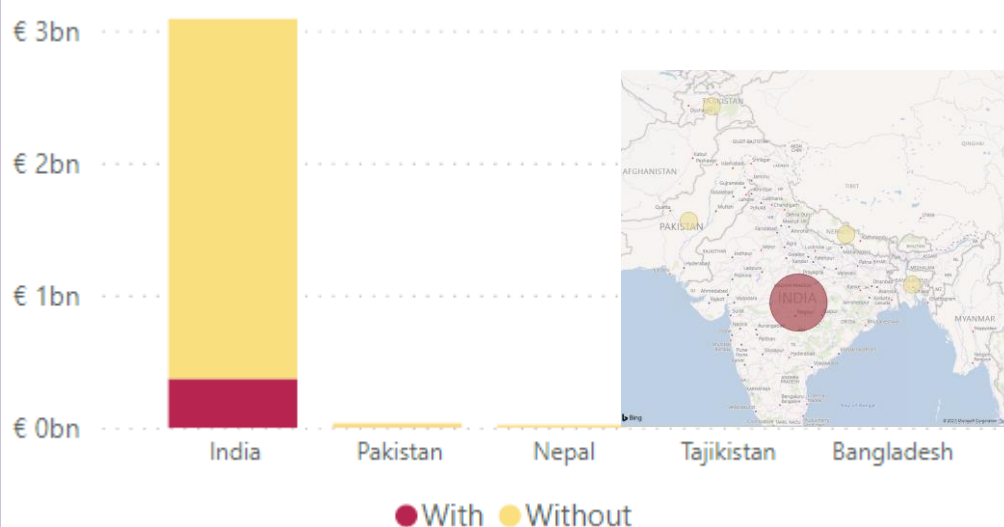
**Figure 15:** Value of In-scope Goods Imported by the EU With/Without Forced or Indentured Child Labour from Countries in Eastern and South-Eastern Asia Region



#### 4.2 Central and Southern Asia

In this dimension, the Central and Southern Asia region encompasses five countries, detailed in Figure 16. Nearly 99% of the in-scope importation flow comes from India with EUR 5.5bn, which is also where forced or indentured child labour is most concentrated.

**Figure 16:** Value of In-scope Goods Imported by the EU With/Without Forced or Indentured Child Labour from Countries in Central and Southern Asia



With EUR 660.4M, India alone contributes the most to the estimated EUR value of forced or indentured child labour in the region (a total of EUR 667.2M). The top 5 commodities for the

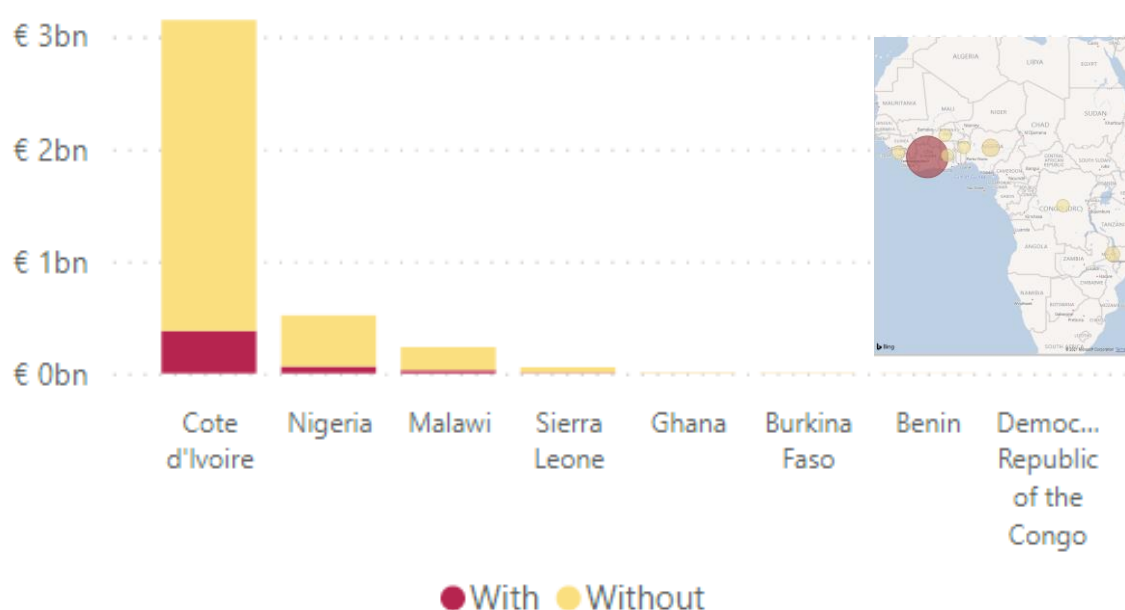
### Forced / Indentured Child Labour Footprint Findings

region are: Garments, Rice, Stones, Embellished Textiles, and Carpets. Next in the country ranking comes Pakistan with 4M, and third Nepal 2.5M.

#### 4.2 Sub-Saharan Africa region

For the Sub-Saharan Africa region, Figure 17 shows that the hotspot for forced or indentured child labour is in Côte d'Ivoire, contributing with 377M. Second comes Nigeria 62M, third Malawi 28M and forth Sierra Leone 6.5M. Ghana, Burkina Faso, Benin and the DRC did not reach 1% of the total estimated for the region. Regarding commodities, the top five are Cocoa, Tobacco, Diamonds, Coffee and Fish.

**Figure 17:** Value of In-scope Goods Imported by the EU With/Without Forced or Indentured Child Labour from Countries in Sub-Saharan Africa

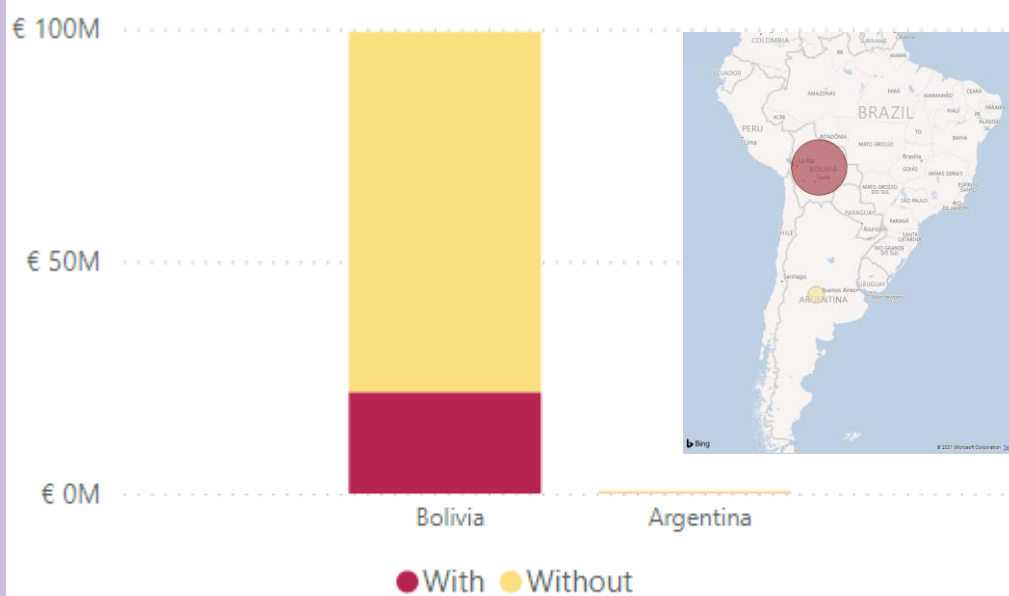


#### 4.2 Latin America and the Caribbean

Last, as can be seen in Figure 18, the Latin America and the Caribbean region features two countries for this dimension: Bolivia and Argentina. Bolivia is the largest exporter, and also the hotspot for forced or indentured child labour, accounting for 99.43% of the estimated value calculated for the region (EUR 22M). There are only 3 commodities contributing to this estimate: Brazil Nuts/Chestnuts (21M), Garments (124K) and Sugarcane (1K).

### Forced / Indentured Child Labour Footprint Findings

**Figure 18:** Value of In-scope Goods Imported by the EU With/Without Forced or Indentured Child Labour from Countries in Latin America and Caribbean



### *E. Factors of child labour*

The phenomenon of child labour is inextricably linked to economic conditions at the household and national level.

Indeed, the centrality of economic factors driving child labour is unmistakable: “Variation in GDP per capita explains 73 percent of the variation in the economic activity rates of children” (Edmonds & Pavcnik, 2005, p. 210).

Since children, as dependents, usually do not take life decisions autonomously, the family unit of analysis is foundational.<sup>12</sup> In economic terms, a family is considered as continuously seeking to optimise its welfare (i.e. solving for the welfare optimisation problem), and at the very least, ensuring its survival. Vulnerable families continuously weigh factors such as the relative economic return of schooling and a child’s more immediate wages (Schultz, 1960). There is further the issue that households may choose to send some children to work in order to afford the schooling fees for their siblings. This “sibling complementarity” has tended to favour sending older, female children to work so that younger, male siblings can go to school (Basu & Tzannatos, 2003).

In general, as incomes improve, the family chooses to have their children work less. This idea is central in Basu and Van’s (1998) seminal paper, where children only work when the family cannot meet its subsistence needs. This “luxury axiom” Basu and Van (1998) define as “a family will send the children to the labor market only if the family’s income from non-child-labor sources drops very low” (p. 416). Indeed, a number of studies that have tracked families over time almost universally found declines in child labour associated with significant increases in family incomes: Edmonds (2001) found that for households at the poverty line, increased income can explain 94% of the decline in child labour for households. Conversely, as households resort to all available means to make ends meet, a rise of poverty is a predictor for child labour (ILO & UNICEF, 2020). In a cross-sectional, multi-country study, Edmonds (2010) found that a 1 percentage point rise in poverty leads to an estimated 0.72 percentage point increase in child labour. With a mother’s improved income, also the girl child obtains better educational outcomes: studies by Levy (1985) and Rosenzweig (1980) found that a 10 percent increase in women’s wage rates would decrease the girl child’s labor force participation by as much as 10 percent. Though underexplored in the literature, women’s socioeconomic position and bargaining power in governments, and presumably in the household,<sup>13</sup> have significant impacts on child labour rates (Güvercin, 2020). Both access to remittance income as well as the opportunity to emigrate to earn greater income, reduce

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<sup>12</sup> Yet there are exceptions to this parameter. The majority of children live with at least one parent (whether maternal or paternal). Yet in 2015, there were almost 140 million children (under 18 years of age) who had lost one or both parents to any cause of death (UNICEF, n.d.). Children who live in households whose mother is not biologically theirs – either due to divorce or new marriages or death – leave on their own accord to survive or earn income. Furthermore, some minors (children) also engage in migrant work, and trafficked children commonly leave without parental permission.

<sup>13</sup> Intra-household bargaining models are a mainstay in development economics and have not been sufficiently used in studying child labour. Generally, studies find that when women produce or control a greater share of household income/wealth, more of that income is spent on child inputs *beneficial to the child(ren)*. One hypothesis in need of further investigation is that, holding income levels constant, the more control women have over income, the less children would work.

child labour supply (Dimova et al., 2015). Sakellariou and Lall (1998), as well as Cartwright (1998), reach similar conclusions. Together, these studies highlight the key role that income plays with regard to the level of child labour. Ahmed (1999) summed it up as follows: “There is by now a virtually unanimous view that poverty is the main, although not the only cause, of child labor” (p. 1815).

Edmonds and Pavcnik (2005) explain how rising incomes may decrease child labour: with “diminishing marginal utility of income, the value of the marginal contribution of the child’s income decreases” (p. 209) as adult incomes rise. In addition, “higher family incomes may facilitate the purchase of substitutes for child labor that may potentially lower the return to child labor within the household. For example, a washboard, fertilizer spreader or a combine harvester may replace child labor within the home” (Edmonds & Pavcnik, 2005, p. 209).

The explanatory power of parental caregiver income for child labour thus has implications for minimum wage policy. Relevant here, for example, is a farm owner’s attainment of a so-called “living income” or, the ability e.g. of a seasonal/day labourer to earn a “living wage.” The latter is defined as: “Remuneration received for a standard work week by a worker in a particular time and place sufficient to afford a decent standard of living include food, water, housing, education, healthcare, transportation, clothing, and other essential needs including provision for unexpected events” (Global Living Wage Coalition, n.d.). The leading methodology to measure living wages was developed by Richard Anker and Martha Anker (2017), which benchmarks living wage levels in a multitude of sectors and geographies. The payment of living wages may also benefit the employer and an entire economy, as is modelled in wage efficiency theory and wage-led growth [see “shirking model” (Shapiro & Stiglitz, 1984), “Gift Exchange” (Akerlof, 1982), “supervision model” (Rebitzer, 1995), and wage-led growth (Lavoie & Stockhammer, 2013, pp. 29–34)]. Conversely, the practice of the piece-rate pay system may place downward pressures on income if it is not designed to reward workers “according to the difficulty and quality of their work, ensuring that motivated workers can earn substantially more than the minimum wage” (Borino, 2018, p. 3).

While in some cases children work because their families are impoverished and depend on the child’s income, and in other cases they work because the net benefits of attending school are low relative to the rewards from work. Looking at the interplay of demand and supply child labour determinants, Kis-Katos and Schulze (2006) query a data set of all Indonesian villages and urban neighbourhoods, and find that child labour is:

*significantly associated with poverty, natural and epidemic disasters, and with unemployment. It is negatively associated with credit and school availability, only if we correct for the existence of small industries in that village. Our results thus confirm the importance of school availability and credit provision as policy instruments to reduce child labor* (p. 1).

Researchers have further identified household debt (Grootaert & Kanbur, 1995) and credit constraints (Edmonds, 2006; Fatima, 2017; Guarcello et al., 2010; Nepal & Nepal, 2012) as leading to higher child labour rates, underscoring the importance of social protection measures (Güvercin, 2020). Because of these factors, child labour will also be more



prevalent in rural areas than urban because of lower incomes, fewer opportunities for educational attainment, less access to credit and social protection, and fewer opportunities for jobs that require even secondary education (Neumayer & De Soysa, 2005).

The relationship between increased income and decreasing child labour is, however, not completely linear, and in some cases the practice proves to be “sticky.” Consider that at the turn of the millennium, most economically active children – 94% – were found in low-income countries (IPEC, 2002). Four percent of children were working in transition economies,<sup>14</sup> and two percent work in “developed” economies (IPEC, 2002). Yet in the ILO’s 2016 global estimates (ILO, 2017a), that picture had shifted: the majority of child labour was found in middle income countries (the sum of lower-middle-income countries being 38.4%, and of upper-middle-income countries being 17.3%).

Even at the same income level, intervening factors can lead to variation in the degree of child labour between countries or even between households. The more prevalent child labour is and the longer it has been practised, the greater the communal or social norm that children are expected to work, as seen even in EU history (Basu & Tzannatos, 2003). Some regard child labour as a type of workforce training not available in schools (Zamfir, 2019b). Higher parental income is no guarantee for no child labour: a higher-earning head of household may not share income with other members of the family, such that children may also be prone to enter the labour market. In communities where children are valued for their income support to their parents and grandparents, if the perceived value of education is low and mortality rates are high, there will be a higher chance that children will be sent to work so the family can appropriate income today rather than wait for an uncertain future. An increase in child labour is also observed on larger farms that require more labour but which do not have the ability to mechanise. The wages earned, in fact, is not irrelevant: daily wage earned through child labour has a significant positive impact on the hours of work for children (Bhalotra & Heady, 2003). Another source of child labour is due to deliberate government-mandated work or apprenticeship/internship programmes, e.g. as is the case of Kazakhstani cotton (Human Rights Watch, 2017a) or Chinese electronics (Chamberlain, 2019), where school children are required to perform non- or under-compensated work. Conversely, government enforcement of labour laws, often premised upon the ratification of ILO conventions has an impact on child labour prevalence (see section *E. Multilateral support to nation-states*).

Apart from identifying poverty as a strong determinant of child labour, Rahman and Khanam (2012, p. 20) find that “parents’ education, credit market constraints, schooling performance, child’s nutrition and health status, family size and birth order, higher schooling costs, lack of quality education, employer’s attitude, inappropriate government policy play major roles. It is also evident that child labour negatively affects child’s physical and mental health, educational outcomes, adult employment, adult earnings and bargaining power of adult workers.”

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<sup>14</sup> There are altogether 17 economies in transition: 5 countries in South-Eastern Europe (Albania, Bosnia and Herzegovina, Montenegro, Serbia, The former Yugoslav Republic of Macedonia), 11 countries within the Commonwealth of Independent States (Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Republic of Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine, Uzbekistan), as well as Georgia (UN, 2014).

Domestic government policies and capacity are essential factors as well, such as the degree of law enforcement, and the lack thereof. A higher risk of child labour is commonly accompanied by the government's "lack of capacity to carry out labour inspections, poor sector coverage and resourcing of anti-child labour programmes, as well as inadequate penalties that do little to deter violations. In addition to this, widespread corruption in government and law enforcement is seen as a severe issue aggravating the problem of child labour" (Verisk Maplecroft, 2019, p. 8). A common denominator in countries where child labour is prevalent, is that their governments rarely have the capacity and resources to effectively enforce regulations on child employment (Edmonds & Shrestha, 2012).

Among the multiple factors associated with child labour is also national stability, i.e. the presence of conflict or outright war. According to ILO, the "incidence of child labour in countries affected by armed conflict is 77 per cent higher than the global average, while the incidence of hazardous work is 50 per cent higher in countries affected by armed conflict than in the world as a whole" (International Labour Office, 2017a, p. 12). But man-made causes are not the only factors of displacement and livelihood disruption.

Apart from outright conflict, natural disasters can result in child labour by destroying school infrastructure or by causing temporary or chronic emergency conditions within the family. Indeed, a UNICEF (2015) publication observes that children "become more susceptible to child labour following floods, droughts, severe weather and extreme heat events" (Myers & Theytaz-Bergman, 2017, p. 8). Furthermore, the Terre des Hommes report documents how climate change, e.g. in Burkina Faso – a Sahel region – "leads to unpredictable weather patterns and soil depletion, which forces families to seek alternative sources of income" (Myers & Theytaz-Bergman, 2017, p. 14). Similarly, in India, climate change has produced intermittent crop failure, a decrease in grazing land, and consequently a decline in income and employment, escalation of food prices, hunger and malnutrition (Patel, 2016). Believing the need for child labour to be short-term, families may send their children to work to support the family during the emergency, only to discover that conditions remain poor longer than anticipated, that injuries or new trials, growing student disinterest in school combine to make the absence from schooling permanent (Neumayer & De Soysa, 2005).

## *F. Child labour vs. trade*

### **1. Does trade itself lower the phenomenon of child labour?**

There are arguments that trade may either raise or lower child labour (Edmonds, 2005). The standard textbook model of trade between higher- and lower-income countries is the Heckscher-Ohlin model with the associated Stolper-Samuelson theorem. To be brief, the Heckscher-Ohlin model assumes that countries differ because of their factor endowments. Lower-income countries have abundant unskilled labour, including child labour. Higher-income countries have more physical capital and skilled labour. Therefore, lower-income countries will tend to export goods that intensively use unskilled labour while higher-income countries rely more on physical or human capital in their production.

The Stolper-Samuelson theorem expands on this model to uncover the impacts of trade on inequality. To the extent trade increases demand for goods made with unskilled labour, it

will increase demand for unskilled labour and therefore the wages of the poor. This will tend to decrease inequality in lower-income countries.

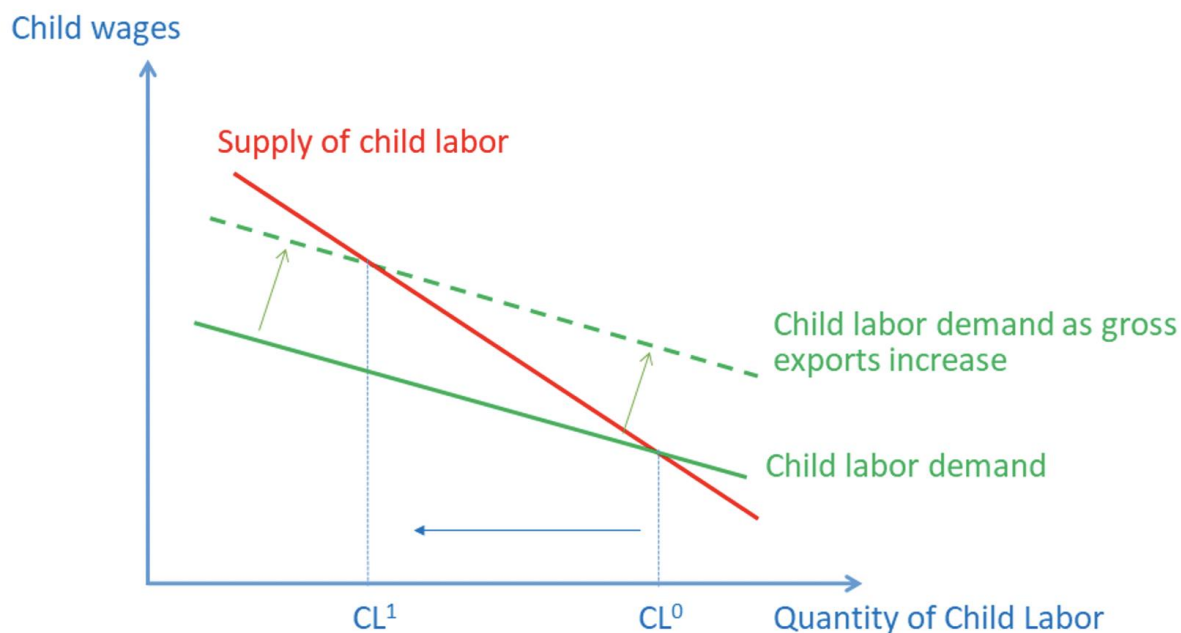
From there, however, less is certain. Foreign demand for exported goods in this model will increase demand for child labour. Whether that results in an increase or decrease in child labour depends on the slope of the child labour supply curve. What is certain either way, however, is that trade ought to raise wages for adults and children, improving family welfare unambiguously. The exact effect on the amount of child labour is less certain. If, as Basu (1999), Basu and Van (1998) and Basu and Zarghamee (2009) contend, child labour supply curves are downward sloping<sup>15</sup> (see Figure 19), an increase in demand could actually decrease the incidence of child labour.

Another chain of thought underscores that firms will tend to choose to produce in countries with lower costs, holding all else constant. If they can obtain products of comparable quality while utilising cheap child labour, then the opportunity to export their goods from countries that allow child labour could result in a “race to the bottom.” In more extreme versions of the argument, firms not only seek out countries with lower standards, but countries that are more open to trade would lower their child labour standards in order to attract more firms or to compensate domestic firms when trade brings increased foreign competition (Martinez-Zarzoso & Kruse, 2019). Whether this has happened in practice is, as above, an empirical question. Basu (1999) points out that, to the extent one is worried about a race to the bottom, international action serves a coordinating function that improves outcomes for children in each country. Though it may be in each country’s private interest to allow child labour as that would attract more firms, all are better off economically if none do. In such a case, EU-imposed child labour standards through trade could be very useful in the fight against child labour.

Olarreaga, Saiovici, and Ugarte’s (2020) study of 26 low- and middle-income countries demonstrates that industries with greater foreign trade participation tend to have lower child labour participation. This is more particularly the case in industries that supply inputs to foreign firms (forward linkages). Ul-Haq, Khanum, and Cheema (2020) show that lowering tariffs in Pakistan decreased the incidence of child labour as well. This has been supported in previous literature by Edmonds and Pavcnik (2004b, 2004a, 2005), Neumayer and Soysa (2005), Davies and Voy (2009), and Bharadwaj, Lakdawala, and Li (2016). Importantly, while Edmonds and Pavcnik (2005) find that trade lowers child labour primarily or exclusively by increasing incomes, Olarreaga, Saiovici, and Ugarte (2020) show that as countries with child labour increase their exports, child labour in those countries decreases even after controlling for incomes. They speculate that this could be caused by firms in developed countries having higher standards regarding child labour that they require of their developing country suppliers.

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<sup>15</sup> A worker whose wage increases typically faces two effects: the income effect and the substitution effect. The income effect tells them that they are richer and can afford more leisure time, so they should work less. The substitution effect tells them that they can buy better stuff, so they should work more. Identifying when and where one effect dominates the other has kept labour economists’ families fed and clothed for decades. It is widely held that in developing countries, households’ primary goal is to achieve subsistence, such that the income effect clearly dominates. Alternatively, only the poorest families send their children to work, creating this downward-sloping portion of the labour supply curve even if it is upward-sloping at higher wages. Either way, a child who gets paid more would then have to work less.

**Figure 19:** Impact of Export Growth on Child Labour

Source: “Child Labour and Global Value Chains”, (Olarreaga et al., 2020), [URL](#)

Conversely, Zhao, Wang, and Zhao (2016) find non-linear responses in China upon their accession to the World Trade Organization in 2001. In the short run, child labour incidence in China increased, particularly for “girls, older children, rural children, and children with less-educated parents” (Zhao et al., 2016, p. 1). In the longer run, however, greater trade openness allowed exporters to adopt labour-saving technology, reducing their demand for child labour to its original level.

In conclusion, Edmonds and Pavcnik (2005) sum up the empirical landscape on trade vis-a-vis child labour as follows: “it is not inevitable that a growth in trade and employment opportunities will increase child labor [across the board], nor is it inevitable that such growth will decrease child labor either. The data, however, are clear on one point: significant increases in family income are ceteris paribus strongly associated with reductions in child labor” (p. 213).

Among the factors that will matter in determining the extent to which future trade agreements lead to lower child labour rates is the inclusion and content of specific labour provisions. Martinez-Zarzoso and Kruse (2019) examine a panel of 96 countries from 1995-2008 to demonstrate that the inclusion of labour provisions significantly increases the rate at which increased trade can lead to improved labour outcomes, though they did not examine child labour specifically. Among the problems of answering this question rigorously is endogeneity: lower-income countries already making progress on reducing child labour are likely to be more open to free trade agreements that include such provisions. The literature on labour standards provision has thus far demonstrated that “sanctions are not only trade-harming but also too indirect to effectively target labour standards” (Martinez-Zarzoso & Kruse, 2019, p. 977; Martin & Maskus, 2001; Maskus, 1997; Srinivasan, 1998).

## 2. How could unconditional trade bans and sanctions lower child welfare?

The above section has demonstrated that the impact of trade on child labour is multi-faceted and may be positive or negative depending on the rules of trade, the time frame considered, the industry, the wealth of the country, and other factors. Many activists, however, implicitly assume that trade with countries, industries, or more certainly firms that use child labour must increase demand for, and therefore use of, child labour. The obvious assumption is that by refusing to purchase the products made with child labour, the use of child labour will also decrease.

There are several problems with this line of thought. The weaker argument is the problem of fungibility. Most individual buyers and even most countries are too small to have a noticeable impact on global demand. Someone else will buy these goods, goes the argument, and therefore the sanctioned party is made worse off for no material gain. In the context of the European Union, however, it is much more likely that trade bans and sanctions *will*, in fact, have a noticeable effect on demand for these goods. Lower demand for these goods will likely lower global prices and profits for those who use child labour, ultimately decreasing demand for child labour.

This is where a second, stronger argument comes into play. Consider again the above Figure 19 depicting the downward sloping child labour supply curve. If trade sanctions successfully decrease demand for child labour, this will tend to lower the wages of child workers, increasing the quantity supplied. This perverse effect lowers child welfare, first by making those children who are already working worse off as their families have lower incomes to purchase necessities, and second by inducing more children to spend additional time in labour rather than education.

A third concern is that even if bans are successful in reducing child labour, that does not immediately imply that these children are then better off. Because of the indigent circumstances of the families sending children to work, the loss of the child's income likely means employment in a different, worse job rather than increased opportunities for education and success in life. A fourth concern worth brief mention is that most developing countries are suspicious of bans based on child labour, suspecting that they actually constitute protectionism disguised as charity, making them less likely to cooperate.

Moving from the theoretical to the empirical, in 1992 Senator Harkin of the United States proposed the *Child Labor Deterrence Act* (aka Harkin Bill), "with the laudable aim of prohibiting the import of products made by children under 15" (UNICEF, 1997, p. 23). This legislative initiative came on the heels of a 1991 ILO prognosis that "half of the 50,000 children working as bonded labor in Pakistan's carpet-weaving industry would never reach the age of twelve – victims of disease and malnutrition" (Kelleher, 1994, p. 161).

With the prospect of a bill, needless to say, Senator Harkin had the attention of the Bangladesh export garment industry, "and whose products – some \$900 million in value – were exported to the US in 1994" (UNICEF, 1997, p. 23). A Memorandum of Understanding was signed in 1995 wherein the garment industry agreed to phase out all child labourers

and their families would be given a stipend to help prevent the necessity of their returning to work. Rahman et al. (1999) report that before the introduction of the bill, most of the jobs done by the children were light but monotonous, and the working conditions left much to be desired in terms of sanitation and excessively long hours. More than half reported that they could not attend school because of their poverty. Yet after the bill's introduction multiple studies (see: Powell, 2014; UNICEF, 1997) reported that most children who were summarily dismissed from the garment industry did not return to school, but:

*found alternative, less secure, and less lucrative employment in the informal sector [including in prostitution]. ... [The threat of the Harkin Bill] brought untold misery. ... [It] viewed one particular right in isolation from all the others. By limiting its vision to the right to education, it threatened to violate the children's fundamental right to survival, leaving them in a more vulnerable position than before. (Rahman et al., 1999, pp. 995–997)*

Thereafter the ILO and UNICEF were asked to step in to assist. An agreement with the employers' association was established to determine the number of working children under the age of 14; to implement a monitoring system aimed to remove them from work (the original Child Labour Monitoring System (CLMS); to set up education programmes; and to provide partial compensation for loss of income to children formerly in child labour and to their families. As a result, more than 8,000 children were withdrawn from 800 garment factories and enrolled in special education programmes.

In conclusion, Rahman et al. (1999) recommend instead compensating families to encourage their children to go to school, such as the successful conditional cash transfers in Brazil and Mexico, and reducing the cost of education for poor families to eliminate child labour.

### *G. Laissez-faire vs. intervention*

Proponents of a laissez-faire approach to child labour regard it as a brute necessity for survival along the arch a country's development, pointing to its widespread practice in times of the industrial revolution and agricultural contexts in the U.K. and U.S. The practice is painted as a multidimensional problem and a stark "reality" in which there is no viable alternative where the caretaker's poverty is profound – e.g. due to endemic unemployment or menial wages earned, or e.g. in the event of a caretaker's death. This view is for example represented by Thomas DeGregori (2002):

*It is clear that technological and economic change are vital ingredients in getting children out of the workplace and into schools. Then they can grow to become productive adults and live longer, healthier lives. However, in poor countries like Bangladesh, working children are essential for survival in many families, as they were in our own heritage until the late 19th century.*

This view thus treats child labour tantamount to a "necessary evil" – a stepping stone on a country's developmental path. A case against intervention is further argued by Edmonds and Pavcnik (2005, pp. 217–218):

*Might trade-related pressure help to reduce child labor? The U.S. government has repeatedly considered restricting trade or trade preferences for countries where child labor is endemic [...]. At the international level, some advocate for the World Trade Organization or the International Labor [sic] Organization to oversee harmonized child labor standards, with violators to be punished via trade sanction [...]. At the consumer level, boycotts of products produced by child labor and more generally antisweatshop activism have become popular. Such campaigns seek to pressure multinational producers of high-profile brand name products to improve their labor practices. Although these trade policies have highlighted the issue of child labor on the political agenda, there are several problems in using them in practice. First, if these policies lead to trade sanctions that reduce average family income, they could potentially increase the incidence of child labor. On the other hand, if the sanctions are only implemented very rarely, then they will not be a credible threat. Second, the recent history of trade sanctions aimed to promote broader political change does not suggest much optimism about their efficacy (Elliott & Freeman, 2003). Third, it's not clear what specific action the trade pressures should be seeking to create. For example, preventing children from working in one high-profile job may do nothing more than force children to change employers—perhaps for the worse. Attempts to require either bans on child labor or compulsory school attendance are subject to the problems above. Fourth, it is difficult to distinguish whether these measures reflect genuine interest in the well-being of children in poor countries or whether they are just a palatable excuse for protectionism. Overall, it is difficult to make a strong case for trade policy or consumer boycotts as an effective tool to combat child labor. Consumer activism has brought the problem of child labor into the spotlight, but we are not aware of any systematic empirical evidence of the effectiveness of consumer activism in reducing child labor. It seems a blunt tool that is unlikely to reach the typical child laborer who helps parents on the family farm and in domestic chores.*

Yet the fundamental question arises whether a do-no-harm approach must translate into a laissez-faire approach, or whether a smart mix of interventions can effectively curtail its manifestation. Three economic effects of child labour, as a matter of fact, speak for intervention: (1) direct bodily harm to the child, (2) negative economic consequences for the child, and (3) the macro argument against child labour.

### **1. Morbidity and mortality of hazardous labour**

Children working in hazardous conditions risk physical and psychological injury, as well as death. Apart from the tragic human loss, such events are a great setback for a family's welfare optimisation. If significant child morbidity and mortality occurs, this would also impact a country's macroeconomic prospects at the aggregate level.

The case where health consequences bar child labourers from pursuing their education was again illustrated in the recent NORC study on child labour in the cocoa sectors of Ghana and Côte d'Ivoire: 12% of Ivorian children working in agriculture stated that they "could not go to school" due to an injury sustained through farming (Sadhu et al., 2020).

Given the most drastic welfare losses occur where children are exposed to hazardous work, some scholars argue that it should be a priority to withdraw children from WFCL. Mansoor

(2004) for example argues that: “As a matter of priority, less developed countries should prohibit child labour in hazardous and unsafe activities, protect children from exploitative bonded labour, and prohibit the employment of those who have not completed primary education or are below the age of twelve.”

## **2. Foregone economic returns of education**

Also non-hazardous child labour is economically harmful (International Labour Office, 2017a). Edmonds and Pavcnik (2005) observed that “Reported school attendance rates [...] drop below 50 percent on average for children working more than 40 hours per week” (p. 205). In general, children “who attend school spend less time working than children who do not attend school” (p. 205). A lack of education limits work options as adults, and at the macro level also inhibits the effective formation of human capital. This, in turn, serves to perpetuate the cycle of poverty, also over generations (United Nations Development [UNDP] & Oxford Poverty and Human Development Initiative [OPHI], 2020). Given that poverty and child labour are inextricably linked, a continuation of child labour to cure the “disease” of poverty results in both poverty and child labour. Conducting a study on the impact of schooling in Indonesia, Esther Duflo (2001) found that the economic returns to education ranged from 6.8 to 10.6 percent. Worldwide, 36 million children ages 5–14 in child labour – 32 percent of all children in that age range – were out of school, completely deprived of education as per the latest estimates (International Labour Office, 2017a). If assisting children exposed to non-WFCL child labour is not considered important, the vicious cycle of poverty and child labour will never end.

## **3. Labour substitutability, multiple equilibria**

Earlier it was shown the important conclusions that can be reached if the labour supply curve is downward sloping. Basu and Van (1998) add an innovation to that model that presents the possibility of multiple equilibria. One equilibrium includes children's work competing for wages with adults (“substitution axiom”), while another equilibrium excludes working children, resulting in higher adult wages. In the following discussion, it will be seen that there is a critical income threshold – determined in part by credit and school availability, law enforcement, cultural norms, and conflict as discussed above – below which punitive measures designed to prevent child labour may harm the welfare of the very children in need of help. Above that threshold, there will be multiple equilibria, and trade sanctions or other measures may be useful in nudging an economy out of the equilibrium that includes child labour to an equilibrium with less or none.

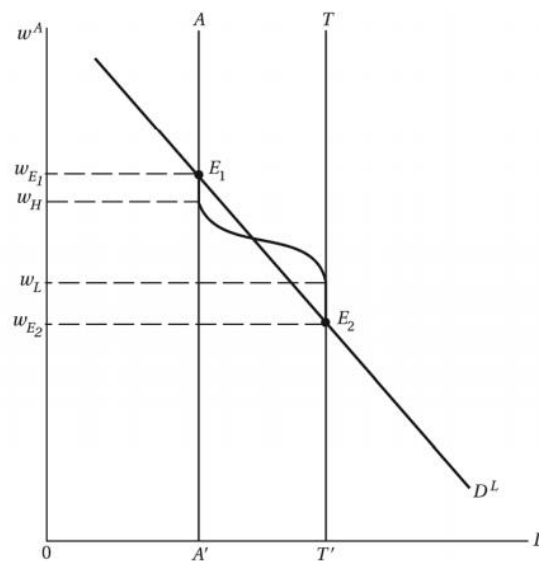
To see this, consider the following graph from Basu (1999). The demand for labour ( $D^L$ ) is a normal, downward-sloping demand curve. That is, as workers become more expensive, firms want to hire less labour. At the low levels of income prevalent in many developing countries, however, the supply curve comes in three segments:

- if the wage is high enough (above  $w_H$  in the graph) then adult wages alone are sufficient to ensure family survival, resulting in the eradication of child labour;
- if the wage is low enough (below  $w_L$  in the graph) then many families are forced to send their children to work in order to survive;
- and in between those extremes (the curved segment) more and more families send their children to work for longer and longer hours as wages decrease.



If it happens to be the case that demand for labour is high enough, then the only equilibrium is one where only adults work and child labour is non-existent. This is the situation in most developed countries. If labour demand is low enough, the only equilibrium includes child labour. However, there is a special range in the middle, where labour demand intersects the supply curve at three different points:  $E_1$  where there is only adult labour,  $E_2$  where there is a large amount of child labour; and an unlabelled point in the middle where there is some child labour. In this intermediate range, because multiple equilibria are present, it may be possible for outside influence to help jostle an economy loose from a bad equilibrium ( $E_2$ ) to a good one ( $E_1$ ) with significantly less child labour. If labour demand - and therefore incomes - are low enough, however, outside influence to reduce child labour may make the situation worse. This is the fundamental argument that will be used in this paper to support *progressive conditionality*, focusing policy efforts where they are most likely to do the most good.

**Figure 20: Demand for Labour**



Source: "Child Labor: Cause, Consequence and Cure, with Remarks on International Labor Standards," (Basu, 1999)

Some authors have proposed that these multiple equilibria may also interact with other conditions in the country. Tanaka (2003) considers the interaction between income inequality, income taxes, and child labour. Income taxes are used to pay for better schooling, so the higher the tax rate is, the better schooling quality is, and therefore the fewer children will be engaged in the labour force (both because the opportunity cost of working is higher as school quality increases and because the payoff from child labour is lower as taxes are higher). He argues, based on the median voter theorem, that if income inequality is high that taxes will be low, school quality be low, and child labour will be high. Doepke and Zilibotti (2005) similarly demonstrate that impoverished families with many children will value child labour highly and therefore oppose efforts to reduce child labour, while smaller households in less unequal societies will tend to favour policies that reduce child labour.

## *H. Implications of child labour models*

Based on the foregoing discussion, this paper advances a trade regime to reduce child labour and WFCL, where, depending on a country's level of income, a progressive system of carrots and sticks is applied:

1. in lower middle-income countries and below (Zone 1), carrots (incentives) are relied on exclusively;
2. in upper middle-income countries (Zones 2-3), sticks (e.g. sanctions and bans) are progressively phased in with the phasing out of carrots;
3. in high-income countries (Zone 4), sticks are used exclusively.

This section introduces some of the possibilities that will be developed further in the policy section (VII. Policy Options), as well as some of the criteria that could be used to determine which particular country or trading partner belongs in which zone.

From earlier sections, the cases for Zone 1 and Zone 4 should be fairly clear. Zone 4 countries have sufficiently high wages that the vast majority of families should not have an economic necessity for sending their children to school, the government possess the capacity to ensure universal education through at least 14 years, and the legal system is capable of enforcing child labour regulations uniformly across industries and geographic areas. In such an economy, there are very few valid excuses for child labour to exist in any harmful or meaningful way. Zone 1 countries, by contrast, are characterised by large swaths of the population suffering from want and deprivation, lack adequate school facilities, and the government is incapable of universally enforcing child labour regulations. In these cases, trading bans, sanctions, or other economic punishments would be more likely to make the problem of child labour worse, as in the case of the threatened U.S. Harkin Bill targeting Bangladesh during the 1990s, when it had an inflation-and-PPP-adjusted GDP/capita of \$1,400.

Identifying where Zones 2 and 3 begin and end will require multiple judgement calls, that in some cases may appear subjective. Basu and other authors have refrained from writing clear structural equations that would enable policy makers to identify at what specific family income  $E_2$  and  $E_1$  occur. Basu and Tzannatos (2003) do suggest in a footnote that China and India (around 11% of children in the workforce) are unlikely to have a multiple equilibrium situation, while Ethiopia and Nepal (41-85%) are much more likely. The characteristics of countries in Zone 1 and Zone 4 described in the preceding paragraph, however, suggest some vital dimensions that would likely play a role in such equations.

### **Dimension 1: Income and Basic Needs**

There are several ways to measure or think about the level of income necessary for families to survive without relying on child labour. At its quickest and most widely available, GDP per capita adjusted for purchasing power parity can be used. GDP/capita will be highly correlated not only with family incomes but with educational attainment and opportunity, the value and returns to education, government capacity, and other variables of interest. This is not a causal statement. Because of these correlations, GDP/capita can be reasonably used as one measure.

It would be unwise to rely solely on GDP/capita for a number of reasons, the most prominent of which for our purposes is that it fails to capture inequality or the size of the informal economy where many children will find employment. Ideally, one would like measures based on the extent to which households are able to meet their basic needs (Watson, 2014). Many of these are still in the early development stages and are not widely available for many countries – let alone communities – or across multiple years (e.g. Canada’s MBM in: Dufour et al., 2021; Ram, 1982).

The Alkire and Foster (2011) method used by the Oxford Poverty and Human Development Initiative (UNDP & OPHI, 2020) is perhaps the closest measure available for a large number of countries (growing from 80-107 in the last decade, broken down to 625 subnational areas in 2020). It aggregates ten measures of three dimensions of poverty: 1) health, based on nutrition and child mortality; 2) education, based on school attendance and number of years of schooling; and 3) standard of living, including cooking fuel, sanitation, drinking water, electricity, housing, and assets. As can be seen in Figure 21, there is a strong correlation between multidimensional poverty and child labour (with a coefficient of .86).

**Figure 21:** Child Labour Prevalency vs. Multidimensional Poverty



Note: N=65,  $\text{corr} = .86 (p < 0.001)$ . The size of each bubble reflects the size of the population

Source: Global Multidimensional Poverty index 2020 – Charting Pathways out of Multidimensional Poverty: Achieving the SDGs, (UNDP & OPHI, 2020), [URL](#)

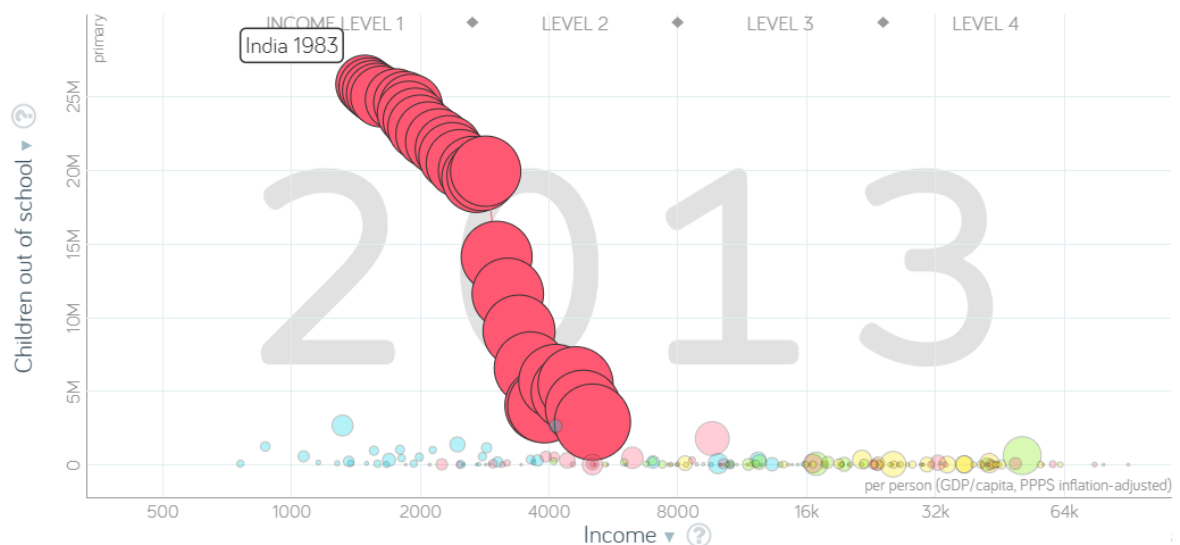
## Dimension 2: Quality of the education system

The better the quality of the education system, the more likely it is that parents will choose to send their children to school rather than work. If the schooling system where a particular family lives is non-existent or poor, then it matters very little what alternative policy is

chosen: their child will not be going to school. It makes very little sense then to use penalties in places where the school system is very poor. Put another way, for EU trade policy to have the greatest potential for improving child welfare standards, more energy should be placed on those countries that have better school systems already in place or to improving the education systems in areas with high amounts of child labour. Basu (1999) has also pointed out that a law making education compulsory through the age of 14 is much easier to measure (and therefore enforce) than a law banning child labour.

A number of countries achieved a remarkable increase in school attendance – and some in a very short timeframe. India case in point: While between the years of 1983-2002, the number of Indian children not in school decreased from 25 to 20 million, in just six years from 2002-2008, the number of children not in school dropped from 20 to 4 million (see Figure 22).

**Figure 22:** India, Children Out of School vs. Income (GDP/capita, PPP, \$ Inflation Adjusted)



Source: Gapminder.org; CC-BY

A remarkable decrease in school absenteeism was also witnessed in Indonesia and Ethiopia, whereas Bangladesh made steady progress over a longer stretch of time. As Table 15 also highlights, all of these cases were associated with sustained, multi-year economic growth.

Measuring the quality of education systems, however, is not a simple proposition. A seminal paper by Harvey and Green (1993) points out that educational systems have multiple purposes – such as preparing people for the workforce, spreading and defending cultural norms and values, preparing children for adulthood, and teaching people how to learn throughout their lives – and multiple ways of identifying a “quality” system, be that value for money efficiency, accurate sorting of students, high average scores on a standardised test, or personal transformation. Spaul and Taylor (2012) point out that most measures have either focused on access (enrollment) or on quality (some combination of inputs and outputs), but exceptionally few consider both.

**Table 15:** Decrease in School Absenteeism, Country Examples

| <i>Country</i>    | <i>Decrease in school absenteeism</i> | <i>GDP per capita, PPP, inflation adjusted</i> | <i>Timeframe</i> |
|-------------------|---------------------------------------|--|------------------|
| <b>India</b>      | 20 to 4 million<br>(-16 million)      | 37% growth<br>(\$2850-\$3910)                  | 2002-2008        |
| <b>Indonesia</b>  | 5.4 to 0.6 million<br>(-4.8 million)  | 27% growth<br>(\$2690-\$3420)                  | 1975-1983        |
| <b>Bangladesh</b> | 5 to 0.4 million<br>(-4.6 million)    | 56% growth<br>(\$1270-\$1990)                  | 1987-2006        |
| <b>Ethiopia</b>   | 6 to 3 million<br>(-3 million)        | 37% growth<br>(\$677-\$928)                    | 2004-2008        |

*Source: Gapminder.org, CC-BY*

To be brief, families need physical access to schools, including both geographic distance and cost dimensions. Instruction needs to be in a language the child understands and there needs to be sufficient supplies and inputs, including teachers who are trained both in subject matter and in pedagogy. Quality educational systems will produce learners capable of performing certain skills, particularly basic literacy and numeracy. Quality systems will be more valued by parents that already have higher rates of education themselves, so quality education systems may take generations to develop. They will also be more valued if there are higher-paying jobs that specifically demand the skills being taught in schools and families feel there is a chance their children could have access to these types of jobs. System administrators will also need to consider that the needs of students may differ by gender, minority status, income, and disability.

Getting measures on all these dimensions, or even some, is remarkably difficult. UNESCO's September 2020 data update contains a large Excel file that lists the years that different measures of educational quality are available by country (UNESCO Institute for Statistics [UIS], n.d.). In Kenya, for example, over half of the 561 proposed measures for Sustainable Development Goal 4 have never been measured and some, like the percent of students who finished particular milestones, have not been measured in the last ten years. In Mexico – a country with six times the GDP/capita of Kenya – over 100 indicators have never been measured, many have only been measured once, and the vast majority have not been updated since 2018. Even that is doing much better than the United States, UK, France, or Germany which can boast over 340 missing indicators each and statistics that have not been updated since 2015. In fact, the average indicator of educational quality has 124 missing observations out of 229 countries. 188 countries have never measured what percent of the population has a minimum level of literacy.

These difficulties suggest a few points. First, most governments simply are not collecting data on educational quality consistently. To the extent the EU can encourage governments, including member governments, to collect and report data on educational quality, it will be easier to identify where the gaps are to improve child welfare and reduce child labour. Second, it will be difficult to craft trade conditionalities based on improved educational outcomes (as a sign of reduced child labour) if those outcomes are not being measured. Third, this highlights why GDP/capita is one of the first measures to be used, because other measures simply are not widely available or updated in a timely fashion.

To the extent it can be identified that one country has a better educational system than another, there can be greater confidence that children released from child labour will enter the schooling system. That will encourage more use of bans than would be suggested from income data alone. Countries that have worse educational systems, and especially those where access is less widely available, should have conditionalities that focus more on improving the education system than on child labour directly to ensure that there is a viable option in place for families to choose.

### **Dimension 3: Government capacity**

Government capacity will be an essential element in reducing the incidence of child labour. Previous research on child labour has identified that partial enforcement may well be worse than no enforcement.

Consider the following thought experiment from Basu and Van (1998). Suppose that a government can enforce a child labour ban on one group of firms but not on another group, which Basu calls red and green firms for purposes of generality. That might be a stand-in for exporting firms vs. internal firms, formal vs. informal, urban vs. rural, firms in a particular sector but not in others. The good news is that child labour will stop in the red firms, raising adult wages in those sectors. If there are relatively few red firms, all the child labourers can be absorbed by the green firms, and there is no change in adult or child wages. If green firms are less safe or desirable in some way, this will actually make children worse off. This exactly describes what happened in the 1990s, when the proposed U.S. Harkin Bill prompted the Bangladeshi garment industry to ban child labour, and most of the children ended up in worse working conditions than before. If there are many red firms such that the green sector cannot absorb all the child labourers, however, there are more interesting and complicated dynamics. Adult wages will tend to rise as child wages fall, which may make families better off and reduce child labour (if adult wages rose enough to not need the child work and child wages fell enough that schooling became more attractive) or may create more complex trade-offs, with some families better off, other families worse off, and no reduction in child labour. Basu and Van (1998) also mention that if the red firms are exporters only, as would be the case with sanctions or a ban imposed from outside, it is also possible that the higher costs this imposes on red firms could kill the exporting industry itself if it runs on thin margins. That would make thousands of families lose their jobs and tend to depress wages for both adults and children, making all families unambiguously worse off.

This thought experiment highlights at least two facets of governance well worth considering. Can the developing country government enforce child labour laws universally? To what extent might corruption or a lack of the rule of law prevent such enforcement?

Of the various measures of corruption, the Corruption Perception Index by Transparency International (2020) and the World Bank's Control of Corruption measure by Kaufmann and Kraay (2019) are perhaps the best known. Measures of state capacity have not been as developed or widely accepted because of differing definitions in the political science literature. Hanson and Sigman (2020) have attempted to combine the various measures and identify what they share in common through latent variable analysis. Their new measure is

most highly correlated with the World Bank's (2020) measure of Statistical Capacity, the Political Risk Service's (2018) measure of Bureaucracy Quality, and v-Dem's measure of Rigorous and Impartial Public Administration (Coppedge et al., 2021).

More can be expected of governments that have higher administrative amplitude. They will have greater enforcement capacity for any conditionality, and holding all else constant, ought to maintain lower levels of child labour. That does not necessarily change whether incentives or deterrents are a better strategy, but that does change the rigour with which conditionalities may be enforced. A more capable low-income country might be engaged with stronger conditionalities earlier than other countries at similar levels of income.

Corruption is less clear cut. More corrupt regimes will both be less likely to uphold the conditions to which they agree and less able to enforce those they attempt to follow (Pinstrup-Andersen et al., 2011). They are also more likely to allow the worst forms of child labour that should be most vigorously fought. The correlation between more corruption and lower income also makes it more likely there will be more child labour. Holding GDP constant, there should be less reliance on conditionalities (because they will be ineffective) where there is more corruption.

The World Economic Forum's (2020) Global Competitiveness Report attempts to measure government and social capacity to adapt to changes and challenges. Among their 11 measures of global competitiveness, it would appear that 1) "Ensuring public institutions embed strong governance principles", 4) "Updating education curricula and expanding investment in skills", and 5) "Rethinking labour laws and social protection" are the most relevant to this discussion. There are several problems. Their measures of public institutions include judicial independence, but not the effectiveness or impartiality of law enforcement; "business leaders' perception of the strength of auditing and accounting standards" and corruption perceptions, but nothing that addresses bureaucratic capacity or whether the national government can enforce child labour laws. Their measures of upgraded education are about providing digital skills rather than literacy, and "business views on employees' skills" rather than accessibility for a wide range of the population. Finally, they are looking for integrated health, education, and labour laws as complements of social support policies, which goes well beyond the question of if social protection policies exist. On the positive side, however, these measures are highly relevant, including social protection coverage, guaranteed minimum income benefits, inequality-adjusted access to education, and enforcement of minimum wage. While the Global Competitiveness Report is available for only 37 countries, these measures provide good suggestions for more inclusive economic measures that may be available for a wider range of countries, and the report's emphasis on inclusiveness and care for the poorest and most marginalised suggest a number of ways forward in the countries for which such data can be obtained.

## V. UNGPs Pillar I – Measures to Enhance the State’s Duty to Protect

The very first charge for the State, under the United Nations Guiding Principles (UNGPs), is the charge to protect its citizens *inter alia* through policy, legislation and regulation. Point 1. under “A. Foundational principles” reads that “States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (UN, 2011, p. 3).

This section therefore investigates to what extent EU and U.S. trade-related legislation features and enforces measures to uphold human rights – and in particular the issue of child labour.

### *A. EU trade policy enforcement vis-à-vis child labour*

#### **1. Trade and Sustainable Development Chapters**

##### References to labour rights in TSD Chapters

Since its 2010 FTA with South Korea, the EU has included Trade and Sustainable Development (TSD) chapters in its trade agreements, committing signatory parties to uphold the economic, environmental and social pillars that comprise sustainable development (European Commission, 2020c). By using the incentive of market access to motivate trade partners to implement international labour and environmental standards, these chapters seek to “maximize the leverage of increased trade and investment on issues like decent work, environmental protection or the fight against climate change to achieve effective and sustainable policy change” (European Commission Services, 2018, p. 1). Figure 23 visualises with which country the EU has concluded bilateral trade agreements (TSD chapters are contained in Free Trade Agreements).

In contrast to the United States, which attaches more importance to national governance and refers to a broader set of issues such as minimum wages, hours of work and occupational safety and health,<sup>16</sup> the EU has chosen to place an emphasis on ILO principles and associated standards. This reference in EU trade agreements to multilateral standards has evolved over the years to encompass as much the ILO conventions as other instruments, such as the Agenda 21 on Environment and Development on Sustainable Development of

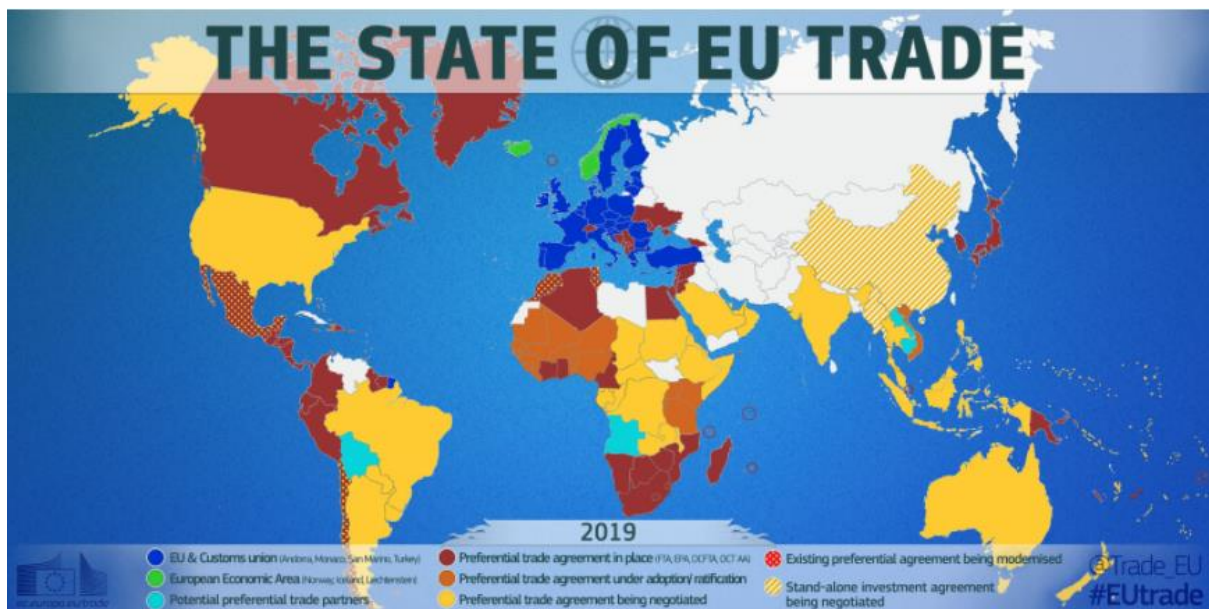
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<sup>16</sup> These standards are encompassed by the “internationally recognized workers rights” protected under the US Code (19 UCS § 2497 (4)), and the worst forms of child labour, protected under Sec. 2497 (6). They have consistently been implemented in U.S. agreements; as an example, see Article 19.3 (2) of the Trans-Pacific Partnership Agreement (TPP) concluded by the United States with eleven other countries in 2016. The agreement specifies that “for greater certainty, this obligation relates to the establishment by a Party in its statutes, regulations and practices thereunder, of acceptable conditions of work as determined by that Party.”



1992;<sup>17</sup> the Johannesburg Plan of Implementation of the World Summit on Sustainable Development of 2002;<sup>18</sup> the Ministerial Declaration of the UN the Outcome Document of the Economic and Social Council on Generating Full and Productive Employment and Decent Work for All of 2006;<sup>19</sup> the ILO Declaration on Social Justice for a Fair Globalization of 2008;<sup>20</sup> the United Nations Conference on Sustainable Development of 2012<sup>21</sup> or The Outcome Document of the United Nations Summit on Sustainable Development of 2015.<sup>22</sup> Although these conventions are general instruments, it is worth noting that the EU Association Agreement with Central America also specifically mentions ILO Convention 182.<sup>23</sup>

**Figure 23:** EU Trade Agreements With Third Countries, 2019



Source: EU trade map: The state of EU trade, (European Union, 2019), [URL](#)

In addition to referencing the above cited instruments, TSD chapters also refer specifically to fundamental human rights that the parties commit themselves to respect, promote and realise. The effective abolition of child labour is consistently included amongst them (see *Annex III – Examples of TSD Chapters*). However, this commitment remains limited, as there are no provisions in the EU TSD chapters that would deter trading partners from not respecting these principles.

<sup>17</sup> See notably the EU-Korea FTA (2010), art. 13.1(1); EU-Ukraine Association Agreement (2014) article 289(1); EU-Vietnam FTA (2019), art. 13.1 (2); EU-Singapore FTA (2018), art. 12.1 (1).

<sup>18</sup> See notably the EU-Korea FTA (2010), art. 13.1(1); EU-Ukraine Association Agreement (2014) article 289(1); EU-Vietnam FTA (2019), art. 13.1 (2); EU-Singapore FTA (2018), art. 12.1 (1).

<sup>19</sup> See notably the EU-Korea FTA (2010), art. 13.1(1); EU-Ukraine Association Agreement (2014) article 289(1); EU-Vietnam FTA (2019), art. 13.1 (2); EU-Singapore FTA (2018), art. 12.1 (1).

<sup>20</sup> See EU-Singapore FTA (2018), art. 12.1 (1).

<sup>21</sup> See EU-Vietnam FTA, art. 13.1 (2).

<sup>22</sup> See EU-Vietnam FTA, art. 13.1 (2).

<sup>23</sup> See EU-Central America Association agreement (2012), art. 286.2 (b).

### Non-enforceability of TSD Chapters

On account of their lacking binding dispute settlement procedures, TSD chapters are not enforceable. Moreover, TSD chapters are systematically *excluded* from the binding bilateral dispute settlement mechanism anchored within the agreements. While TSD chapters provide for consultations, exchange of information and cooperation, they are not subject to a dispute settlement mechanism as are other matters in the agreement. This is for example the case of the EU-Singapore FTA, already in force, the EU-Canada FTA (CETA), which is being provisionally applied, and the EU-Mercosur agreement reached on June 28th, 2021. In sum, TSD chapters lack “sticks” ensuring that the trading partner remains proactive in improving human and labour rights.

The provisions for consultations are designed such that the parties establish a Panel of Experts when no mutually satisfactory resolution is reached. This panel, composed of independent trade, labour and environmental experts, prepares a public report with recommendations, however it does not have the power to impose sanctions or fines in case of non-compliance. After the Panel report is issued, it is up to the parties to discuss appropriate measures to be implemented. In addition, a sub-committee created by the TSD chapter is responsible for monitoring the implementation of the chapter, as well as the Panel’s reports and recommendations. The right hand column in *Annex III – Examples of TSD Chapters* notably references provisions of the TSD chapters in keeping with panels of experts.

The mechanisms for ensuring follow-up to their reports are also deemed insufficient. On the basis of the European Commission’s proposals to develop individual strategies for each partnership (European Commission Services, 2017, p. 6), some authors thus highlight that it would be necessary for the EU to “focus on the key concerns identified in each trade partnership” (Barbu et al., 2017, p. 4).

The “enforcement” and monitoring of TSD chapters thus solely rely on soft mechanisms enshrined in provisions which “do not link compliance to economic consequences but provide a framework for dialogue, cooperation, and/or monitoring” (Ebert, 2013, p. 1). The activation of these mechanisms notably hinges on civil society (which includes trade union actors), so as to engage the dialogue on human rights issues. However, the role of civil society participation remains limited on account of functional shortcomings, such as resourcing constraints or difficulties of representation amongst trading partners. Some academics therefore advocate to ascribe a more meaningful role as well as procedural rights to civil society alongside trader partners and states (Barbu et al., 2017, p. 4; Harrison et al., 2017, pp. 29–30).

Given these limitations, one debate currently waged concerns the question whether the EU’s existing TSD model featuring dialogue and consultation effectively improves conditions in partner countries. On the one hand, it is argued that the treat of levying sanctions for EU

partners in EU TSD chapters may act as a deterrence.<sup>24</sup> One argument is that the threat of sanctions motivates greater compliance with human rights standards, including child labour. Evidence supporting this view is that upon threatening the revocation of their EU GSP+ status, El Salvador reportedly made demonstrated progress (European Trade Union Confederation [ETUC], 2017). Also, the U.S. threatening to revoke Georgia's GSP status prompted a change to their labour code (ETUC, 2017). Once implemented, actual sanctions can furthermore prompt the desired action, as in the case of U.S. removal of GSP for Bangladesh, which "lead to changes in the law to allow freedom of association in the garment sector" (ETUC, 2017). Yet the implementation of sanctions may not always lead to the desired outcomes, as was the case in some U.S. agreements (Raess, 2018, p. 13).

Although several complaints have been filed, sanctions have hitherto not been applied in cases involving non-compliance with labour and environment chapters. In the only labour-related case subject to a WTO dispute settlement, the United States was not able to prevail due an almost impossibly high standard of proof, i.e. that Guatemala's violation of its labour commitments had resulted in a substantial impact on trade flows<sup>25</sup> (Barbu et al., 2017, p. 5; International Labour Office, 2016, pp. 45–47; Lowe, 2019, pp. 2–3).

Some observers have cautioned against the introduction of sanctions in TSD chapters on account of the harm they may cause to developing countries. As Moore and Scherrer (2017, p. 14) posit, economic sanctions are more likely to harm citizens through job losses than governments that have failed to meet their commitments. This is especially true of countries with low GDP/capita, where sticks are not recommended and for which incentives ("carrots") are considered more suitable to encourage trade partners to abide by their commitments under the agreements. Eventually, sanctions may have an adverse impact on trade relations (European Commission Services, 2017, p. 9).

Therefore, the European Commission recommended in 2018 to improve the existing cooperative mechanisms implemented in EU agreements rather than introducing sanctions (European Commission Services, 2018). In its 2020 report on the implementation of EU Trade Arguments in 2019, the Commission further reaffirmed the importance of cooperation in the following terms:

*Complying with trade and sustainable development commitments often involves tackling long-standing and deeply rooted domestic issues and different policy priorities. This calls for a long-term perspective on implementation, supported by enforcement and the active involvement of civil society and business. Therefore, the implementation work focuses also on building platforms for cooperation and joint initiatives on issues ranging*

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<sup>24</sup> A 2019 publication by the Center for a New American Security concluded that the consensus in academic literature is that conventional trade sanctions result in some meaningful behavioural change in the targeted country in about 40% of cases, but narrower bans on the sale of luxury goods and sectoral sanctions have an even lower success rate at about 20% (Peksen, 2019).

<sup>25</sup> The bar was set extremely high in the Central America-United States Free Trade Agreement (CAFTA-DR), ETUC (2017) explained, as the main condition for a complaining party to impose sanctions was "that the violation occurred 'in a manner affecting trade,' which has never previously been interpreted by a trade panel. The panel, in an effort to understand why this language, rather than the more usual 'trade-related,' was used, decided that the use of 'in a manner affecting trade' was intended to set a higher bar. In other words, this language was interpreted as a limitation to enforcement."

*from fair remuneration, working in a safe and healthy environment to promoting climate-friendly technologies* (European Commission, 2020b, p. 28).

However, in response to ongoing criticisms of the lack of enforceability of TSD chapters, the European Commission announced in 2021 that it would consider implementing sanctions for non-compliance with TSD chapters (European Commission, 2021c, p. 16). These changes are being considered as part of the Commission's review of the 2018 15-point TSD Action Plan, which aimed to encourage stronger enforcement of EU trade agreements and identify a “set of targeted actions according to the specific priorities identified for each trading partner” (European Commission, 2020b, p. 28). As explained by the EU Commission,

*the review will cover all relevant aspects of TSD implementation and enforcement, including the scope of commitments, monitoring mechanisms, the possibility of sanctions for non-compliance, the essential elements clause as well as the institutional set-up and resources required* (European Commission, 2021c, p. 16).

In line with one of the 15 action points to facilitate “the monitoring role of civil society,” the EU Commission also announced it would launch a new complaints system for reporting market access barriers, open to all EU-based stakeholders – ranging from Member States to individual companies, business/trade associations, civil society organisations and EU citizens (European Commission, 2021c). The objective of this so-called “Single Entry Point” is to “streamline internal processes to tackle market access issues and non-compliance with TSD/GSP commitments and to be able to better prioritise enforcement action” (European Commission, 2021b, p. 1). Stakeholders would therefore be able to play a direct role in the implementation of TSD chapters.

#### Disputes involving child labour

No dispute settlement procedure has been activated concerning TSD chapters so far, insofar as they strictly have relied on cooperative mechanisms.

However, it may be noted that some issues have been raised regarding labour rights, even though they do not tackle child labour specifically. In January 2019, government consultations were held under the TSD Chapter of the EU-South Korea trade agreements at the request of the European Commission, due to South Korea's non-implementation of the agreement's labour provisions since the entry into force in 2012. This claim represented the first European initiative concerning the formal dispute settlement procedure. In July of the same year, the EU requested the establishment of a panel of experts, on account of the lack of efforts toward ratifying four ILO conventions (1930; 1948; 1949; 1957), i.e. Forced Labour Convention, 1930 (No. 29); Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and Abolition of Forced Labour Convention, 1957 (No. 105). The EU also claimed that the provisions of the South Korean Trade Union and Labour Relations Adjustment Act 1997 (Government of Korea, 1997) were not consistent with the principles concerning freedom of association implemented in Article 13.4.3 of the trade agreement. On 25 January 2021, the panel confirmed that South Korea had failed to make continued and sustained efforts towards ratification of the above cited four ILO Conventions, and recommended that South Korea bring TULRAA into conformity with the principles concerning freedom of

association (Jill Murray et al., 2021, p. 79). The panel notably pointed out that the provisions on ratification of the ILO core conventions lacked a specific target date or particular milestone and merely referred to the obligation to make “continued and sustained efforts towards ratification” (Jill Murray et al., 2021, p. 74, §276). Accordingly, both parties had under the agreement an “*on-going obligation*” to ratify the conventions, “affording leeway for the Parties to select specific ways to make continued and sustained efforts” (Jill Murray et al., 2021, p. 74, §278). Owing to this leeway, the panel therefore concluded that South Korea had only violated its obligations under the agreement because it had not acted on this on-going obligation to strive to ratify the four ILO conventions. However, the decision of the panel emphasised the importance for the European Union to include provisions with time-bound roadmaps accompanied with targets within future trade agreements. Such provisions would indeed impose a strong obligation on the parties to ratify the instruments, in contrast to the mere reference of “continued and sustained efforts towards ratification.”

While other issues have also been raised, they involved matters other than labour rights. For example, the European Commission requested consultations with Ukraine on the country’s export restrictions in January 2019, under the EU-Ukraine Association Agreement (European Commission, 2020b, pp. 47–48).

## 2. Stringency of child labour provisions

### Comparison between FTA and GSP provisions

The lack of enforceability of TSD chapters calls for a comparison with other similar trade instruments, so as to draw good practice from these instruments in the event that they would be more stringent than TSD chapters. In this respect, as GSP programmes allow for a unilateral approach, they provide an alternative to trade agreements with TSD chapters in the European Union.

The aim of GSP provisions is to remove or decrease import duties from products produced by countries considered as being “vulnerable” (Regulation (EU) No 978/2012, Preamble, para. 9-11, art. 9). By contrast to TSD chapters, which apply uniformly for both parties of the agreement, GSP apply unilaterally.

Created following UNCTAD recommendations in 1971, the EU GSP reduces tariffs for developing countries so as to generate an additional export revenue and thus create jobs respecting internationally agreed standards. In the words of Borchert et al. (2020, p. 12), the EU GSP is enshrined in the WTO system, whose Enabling Clause of 1979 legalises a positive, pro-development form of trade discrimination. Indeed, it enables developed countries to propose to developing countries more attractive tariffs than those of the most favoured nation (MFN). As laid down in Article 4(1) of the Regulation, developing countries are deemed as vulnerable as long as they are classified as having an income level below the “upper middle income” by the World Bank, and are not already granted preferential treatment under another agreement, such as FTAs (Regulation (EU) No 978/2012).

The EU GSP has evolved through several reforms in 1995, 2006 and 2014 (Council Regulation (EC) No 3281/94, No 980/2005, No 978/2012), with the latter providing for the

current GSP regulation for ten years. As laid down in Article 1(2) of the Regulation, preferential access to the EU market is made possible through three different programmes, i.e. the standard GSP programme, the GSP+ programme and the Everything But Arms (EBA) programme (Regulation (EU) No 978/2012).

Whilst the standard programme applies to countries with low- or lower-middle income, and only enables them to get a reduction in duties below the MFN tariff treatment on about 66% of EU tariff lines, the second programme, introduced in 2006, provides for duty-free tariffs on all products covered by the standard GSP. Both programmes had their scope cut down, such that the standard GSP programme currently counts 15 countries, whereas the GSP+ programme comprises 8 countries (Damen & Igler, 2020, pp. 2–3). The EBA programme, introduced in 2001, eventually allows for duty-free and quota-free access to the EU, with the exception of trade of arms and ammunition (Damen & Igler, 2020, p. 3). This arrangement is only available for the least-developed countries. Comparing the standard GSP, GSP+ or the EBA initiative, two observations can be made, which suggest that the provisions of the GSP are more stringent than those of the TSD chapters.

First, GSP provisions are endowed with a strong pre-ratification mechanism. All GSP programmes require the respect of fifteen core conventions on human rights and labour rights, as laid down in 19(1)(a) of the Regulation (EU) No 978/2012. These conventions comprise, *inter alia*: the Convention on the Rights of the Child of 1989 (United Nations General Assembly, 1989); the Convention concerning Forced or Compulsory Labour of 1930, no 29 (ILO, 1930); the Convention concerning the Abolition of Forced Labour of 1957, no 105 (ILO, 1957); the Convention concerning Minimum Age for Admission to Employment of 1973, no 138 (ILO, 1973); the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour of 1999, no 182 (ILO, 1999).

In addition, countries eligible for the GSP+ are required to comply with an additional number of international conventions protecting human rights, the environment and good governance. As provided in Article 9 of the Regulation (EU) No 978/2012, beneficiary countries must indeed ensure the effective ratification and implementation of a set of 27 international conventions, and accept the reporting requirements under the Conventions as well as monitoring and review of their implementation.

The requirements to ratify these conventions are thus much more specific than in TSD chapters, which usually merely engage countries to respect fundamental labour and human rights and strive to ratify ILO Conventions. Indeed, the language used in TSD chapters is mostly non-binding (the parties aim to “promote”, “reaffirm their determination”, “make efforts”, “undertake to cooperate”). It should also be noted that in contrast to TSD chapters, which place parties on an equal footing, GSP programmes are specifically tailored for providing market access to more vulnerable trade partners. GSP programmes thus provide stronger ‘carrots’ than TSD chapters, as their ILO convention ratification is required: this prerequisite, on the part of the EU trade partner, conditions the countries’ preferential access to the EU market, which thus embodies a genuine incentive for ratification.

Second, as opposed to TSD chapters, which lack enforcement mechanisms, GSP’s preferential arrangements may be withdrawn temporarily in cases of non-compliance. Article 19 of the EU regulation thus provides that all preferential arrangements may be

withdrawn in cases of serious and systematic violation of these instruments (Regulation (EU) No 978/2012). Paragraph 24 of the Preamble also states that:

*The reasons for temporary withdrawal of the arrangements under the scheme should include serious and systematic violations of the principles laid down in certain international conventions concerning core human rights and labour rights, so as to promote the objectives of those conventions. Tariff preferences under the special incentive arrangement for sustainable development and good governance should be temporarily withdrawn if the beneficiary country does not respect its binding undertaking to maintain the ratification and effective implementation of those conventions or to comply with the reporting requirements imposed by the respective conventions, or if the beneficiary country does not cooperate with the Union's monitoring procedures as set out in this Regulation. (Regulation (EU) No 978/2012)*

The threat of this withdrawal can be considered as a “stick,” which forces the trade partners to comply with their commitments.

Accordingly, GSP provisions are designed to be more stringent than TSD chapters, for their stick-carrot system is stronger: trade partners are encouraged to respect or improve respect for human rights by the threat of withdrawal from the arrangements on the one hand (the “stick”) and by the incentive of ratifying and respecting ILO conventions (the “carrot”) on the other.

### **3. Local impact dimension of TSD chapters**

The effects of TSD chapters are considered difficult to assess, on account of the promotional nature of their provisions (ILO & International Institute for Labour Studies [IILS], 2013, p. 21). This may explain why no consensus has been reached so far on their role in improving labour and human rights protection.

In response to the Non-paper of the European Commission Services (2017), which sought feedback on its approach to TSD chapters, some scholars underlined that a number of studies on this question “failed to find positive impacts of labour provisions for the situation of workers in the EU or its trade partners. In two studies it was found that governments had actually sought to weaken labour standards protection (Peru successfully and South Korea unsuccessfully) since the trade agreements with the EU came into force” (Barbu et al., 2017, p. 2).

They ascribe this lack of effectiveness to the shortcomings of TSD chapters, amongst which the limited role of the EU actors involved in the implementation of the chapters; a lack of systematic implementation of cooperative activities; the limited participation of civil society and insufficient follow-up procedures and dispute resolution process. According to them, academic studies concluding that FTAs have positive effects on workers’ rights tend to be based on Brussels-based interviews and fail to identify TSD shortcomings.

This view is partly shared by Damian Raess (2018, pp. 9–10), who investigated the degree of labour-related implementation after the signing of an FTA (ex-post effects). Unlike Postnikov

and Bastiaens (2014), whose study concluded that the EU's trading partners generally accorded better protection to labour rights after signing the FTA, Raess's study does not offer a conclusion on labour-related FTA effectiveness. Raess explains the difference between the studies by the fact that Postnikov and Bastiaens' study covers the period 1980-2010, whereas his own study focuses on agreements made since the EU-Korea FTA in 2010, from which the agreements' soft approach based on dialogue has shifted to a stronger approach based on cooperation mechanisms. Raess, however, does suggest that there may be evidence that trade agreements have an *ex ante* influence, i.e. before their ratification.

An ILO study (International Labour Office, 2016, pp. 72–104) led over the period 1991-2014 yielded similarly mixed results, and concluded that FTAs did not have any effects on working conditions, although they improved labour force participation rates and reduced the gender gap.

The European Commission's own analysis of TSD chapters is insufficiently comprehensive to determine whether TSD chapters have an impact on labour and rights protection (European Commission, 2020b, pp. 28–30). In its report of 2020 on the implementation of EU Trade Arguments in 2019, the Commission merely mentions Viet Nam as an example of progress on trade and labour commitments, in particular with regard to the abolition of child labour (which reduced more than 40% since 2012).

However, a positive impact of TSD chapters in EU trade agreements may be more apparent in years to come," as a review of the 15-point action plan has been scheduled for 2021 (European Commission, 2021c, p. 16).

#### **4. EU-UK Free Trade Agreement**

The EU-UK Trade and Cooperation Agreement (TCA) of 2020 established a tariff- and quota-free trade relationship between the EU and the UK, provisionally entered into force on the 1<sup>st</sup> of January, 2021 (TCA, 2020).

The TCA (2020) specifically treats child labour in *Article 8.3 on "Multilateral labour standards and agreements."* In particular, "each Party commits to respecting, promoting and effectively implementing the internationally recognised core labour standards, as defined in the fundamental ILO Conventions," including "(b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour."

Yet as, comparatively speaking, it is predominantly developing countries that struggle to uphold these labour standards, the TCA also included a supply chain dimension. In *Article 8.10* (TCA, 2020) on "*Trade and responsible supply chain management*," the "Parties recognise the importance of responsible management of supply chains through responsible business conduct and corporate social responsibility practices and the role of trade in pursuing this objective." The EU and the UK are to encourage responsible business conduct by "providing supportive policy frameworks that encourage the uptake of relevant practices by businesses" (TCA, 2020). Further, the parties are to "support the adherence, implementation, follow-up and dissemination of relevant international instruments, such as the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of



Principles concerning Multinational Enterprises and Social Policy, the UN Global Compact, and the UN Guiding Principles on Business and Human Rights” (TCA, 2020).

Where significant divergences arise regarding the parties’ policies and priorities with respect to labour, social, or environmental protection, and such differences cause material impacts on trade and investment *Article 9.4 in Title XI: Level Playing field for open and fair competition and sustainable development* of the TCA (2020) provides the option for one party to impose on the other so-called “rebalancing measures,” i.e. a sanction (e.g., tariffs) which are “designed to compensate one side for an unfair disadvantage” (Luyten, 2021).

Luyten (2021) explains the process:

*In such a scenario, the party who intends to impose rebalancing measures must notify the other party and consultations will take place to find a solution. If no agreement is reached, after five days from the conclusion of the consultations, the party can adopt necessary and proportionate rebalancing measures to remedy the situation, providing that the other party has not requested the establishment of an arbitration tribunal. If an arbitration tribunal is established, but does not deliver its final ruling after 30 days, the party is allowed to adopt rebalancing measures. In return, the other party can also take proportionate counter-measures until the tribunal delivers its ruling. In enacting measures, the aim is to craft something so that disruption to the trading relationship is minimized.*

As this “rebalancing measure” in the TCA offers a clear mechanism to challenge a trade partner on sustainability outcomes, it represents an improvement over existing TSD chapters which do “not include the possibility to impose rebalancing measures against non-compliant third countries” (Luyten, 2021).

## **5. EU “essential elements” human rights clause**

Apart from its TSD chapters, the EU has another “mechanism for incorporating human rights into the EU's bilateral agreements” (Zamfir, 2019, p. 1). The “essential elements” human rights clause “enables one party to take appropriate measures in case of serious breaches by the other party.” By opening up “the path to dialogue and cooperation on human rights issues,” the clause is reportedly “more than just a legal mechanism enabling the unilateral suspension of trade commitments.” Given its existence as a measure of last resort, this guillotine option has not been deployed:

*So far, the EU has clearly preferred a constructive engagement to more restrictive measures, and has not activated the clause to suspend trade preferences under any of its trade agreements. Civil society and the European Parliament have, on the other hand, encouraged the European Commission to use the clause in a more robust way in order to respond to serious breaches of human rights and democratic principles (Zamfir, 2019a, p. 1).*

## 6. EU trade sanction instruments

In 2020, “the EU Council adopted a framework consisting of a decision (Council Decision CFSP 2020/1999) and a regulation (Council Regulation EU 2020/1998), which establish a global human rights sanctions regime” (“EU Targets Individuals,” 2020). Together, the Council Decision and Regulation establish the first global and comprehensive human rights sanctions regime to be enacted by the EU. Mirroring the U.S. Magnitsky Act, the new sanctions regime provides the EU with a legal framework to target natural and legal persons, entities and bodies – including state and non-state actors – responsible for, involved in or associated with serious human rights violations and abuses worldwide, regardless of where these might have occurred.<sup>26</sup> The sanction regime applies to acts such as genocide, crimes against humanity and other serious human rights violations, such as torture, slavery, extrajudicial killings, arbitrary arrests or detentions. While child labour is not specifically listed, other human rights violations can fall under the scope of the sanction regime where those violations or abuses are widespread, systematic or are otherwise of serious concern.<sup>27</sup> In March, this new framework was, for example, used to target Chinese officials in relation with Xinjiang (Council of the European Union, 2021).

The sanction regime allows EU member states to impose on designated individuals and entities travel bans (applying to individuals) and asset freezes (applying to both individuals and entities). The EU Council, acting upon a proposal from a member state or from the High Representative of the EU for Foreign Affairs and Security Policy, is mandated to establish, review and amend the list of those individuals and entities that are subject to the sanction regime. Note that designating an individual or an entity will require a significant degree of consensus, as the Council of the EU can only proceed with designations on the basis of unanimity among all member states. Enforcing the sanction regime, including determining the applicable penalties for the infringement of the restrictive measures, falls within the competency of member states.

The EU traditionally imposed sanctions against third countries for human rights violations on the basis of a sanctions framework linked to specific countries, conflicts or crises. Prior to the adoption of the new framework, outside of this country-based regime, the EU had no specific mechanism to impose sanctions on individuals or entities accused of human rights abuses. Linking the possibility of sanctioning human rights violations to specific countries or conflicts limited the EU’s ability to respond swiftly whenever a new crisis emerged. The new regime may confer more flexibility and speediness to the EU’s response to significant human rights violations. In addition, since the new regime put the emphasis on the individual responsibility of designated persons and entities (rather than on their nationality), it may reduce geopolitical tension compared to the country-based sanctioning and resulting political, economic and strategic conflicts with third countries (Gibson Dunn, 2020).

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<sup>26</sup> Note that Canada and the UK, among other countries, also have in place Magnitsky-like sanctions regimes. In July 2020, the UK introduced into law the *Global Human Rights Sanctions Regulations 2020*, and designated the first individuals under the Regulations in connection with their involvement in gross human rights violations. The Regulations are made under powers in the *Sanctions and Anti-Money Laundering Act 2018*, which was enacted in order to empower the UK government to introduce the UK’s own sanctions post-Brexit. The list of financial sanctions targets in the UK includes forced labour allegations against seven entities (Office of Financial Sanctions Implementation HM Treasury, 2021).

<sup>27</sup> As regards the objectives of the common foreign and security policy set out in Title V Article 21 of the Treaty on European Union.

Certain members of the European Parliament have called for a new EU instrument that would allow for import bans on products related to severe human rights violations such as forced labour or child labour (Vanpeperstraete, 2021). This tool could be a complementary measure to the EU legislation on corporate human rights and environmental due diligence along supply chains which is currently being developed.

A discussion paper released by the Greens/European Free Alliance (EFA) Group in the European Parliament in March 2021 examines options for an EU mechanism on forced labour and modern slavery. The paper analyses four options for introducing an import ban via: EU foreign policy, such as the new EU Human Rights Sanctions mechanism; amending EU Free Trade Agreements and other trade mechanisms; a new internal market mechanism; or a new instrument with a legal trade basis (IISD, 2021). Such a mechanism would allow the EU to immediately stop goods at the EU border when there is reasonable suspicion the goods have been produced with forced labour. Although the EU is developing a proposal for a law on corporate human rights and environmental due diligence, this law will not allow for restrictions or bans on products linked to forced labour. The paper aims to examine opportunities to complement the upcoming EU due diligence law with an import ban instrument that would allow the EU an additional tool to ensure that no products sold in the EU are linked to forced labour. While the EU's Common Foreign and Security Policy includes restrictive measurements like sanctions, the paper concludes it is not the best option because of the "cumbersome and complex decision-making procedure driven by the European Council" (Vanpeperstraete, 2021, p. 6), which would restrict specific sanctions to a limited number of high-profile cases, provide limited recourse for individual complaints, and be subjected to broader foreign policy objectives. The paper identifies a number of challenges in relation to both the option of amending existing trade mechanisms – including challenges with enforcement and variations in trade relations across the EU – and the option of introducing a new internal market mechanism – similar to procedures against illegal, unreported and unregulated fishing. The paper concludes that the preferred option is a new EU instrument with a trade legal basis that establishes a mandate to withhold the release of goods suspected to be made by or transported by forced labour. The paper suggests such an instrument could draw from previous instruments such as the Regulation banning instruments for torture for the substantive part and the Regulation protecting intellectual property rights for the procedural aspect. To minimise adverse impacts for workers and communities, the paper recommends targeting bans against individual companies or specific products where there has been proven abuse rather than against entire countries or sectors (Vanpeperstraete, 2021).

### *B. U.S. trade policy enforcement vis-à-vis child labour*

The United States keeps hard-line policy options on the table, which the government uses to threaten and actually impose sanctions or other actions on the grounds of child labour and other labour rights violations. These tools include the blocking of goods entering the country, the sanctioning and other actions against producers using child labour in their operations and supply chains, the listing of goods produced by forced and child labour, and monitoring trade policy for changes in child and forced labour prevalence.

**Table 16:** U.S. Policy to Impose Sanctions or Other Actions on the Grounds of Child Labour and Other Labour Rights Violations

| Legislation  | Purpose   | Execution entity   |
|--|---|--|
| Instruments that initiate child-labour-premised trade action:  |   |  |
| <i>U.S. Tariff Act of 1930, amended by the U.S Trade Facilitation and Trade Enforcement Act of 2015, impacting Title 19 (Customs Duties) CFR Section 12.42</i> | Provides for importation bans (exclusion and/or seizure), possible criminal investigation   | U.S. Secretary of the Treasury to promulgate necessary regulations; U.S. Customs and Border Protection (CBP) of the U.S. Department of Homeland Security (DHS) issues Withhold Release Orders (WRO) and findings |
| <i>U.S. Executive Order 13126 of 1999</i>  | Creation of <i>List of Products</i> , products are excluded from federal procurement, consequences for violations   | The Bureau of International Labor Affairs (ILAB) of the U.S. Department of Labor maintains <i>List of Products</i> and pursues remedy  |
| <i>U.S. Global Magnitsky Human Rights Accountability Act (2016) and U.S. Executive Order 13818 of 2017</i>   | Sanction of individuals and entities  | U.S. Department of the Treasury: freezes U.S. assets and bans physical entry into the United States  |
| Instruments that provide policy and information through which trade instruments are enforced:  |   |  |
| <i>U.S. Trafficking Victims Protection Act ("TVPA") 2000, and successive reauthorisation acts (TVPRA) of 2003, 2005, 2008, 2013, 2017</i>                      | Creation of <i>List of Goods</i> , coordination and enforcement   | U.S. Department of State, U.S. Department of Labor   |
| <i>U.S. Trade Act of 2002</i>  | Trade policy which informs the United States' policy objectives   | U.S. Congress, President of the United States  |
| <i>U.S. Trade Promotion Authority Act of 2015</i>  | Accords labour issues the same dispute settlement mechanisms and penalties for labour violations as for other FTA chapters, prohibits "the diminution of labor standards to attract trade and investment" | U.S. Congress, President of the United States  |

## 1. DHS mechanism

### U.S. Tariff Act of 1930, amended by U.S. Trade Facilitation and Trade Enforcement Act of 2015

U.S. customs law has prohibited importing goods produced by certain categories of labour since the end of the nineteenth century. Beginning in 1890, the United States prohibited imports of goods manufactured with convict labour. In 1930, Congress expanded this prohibition in Section 307 of the *Tariff Act (1930)* to include any (not just manufactured) products of forced labour. Section 307 of the *Tariff Act* of 1930 prohibits the importation of merchandise mined, produced or manufactured, wholly or in part, in any foreign country by forced labour, including prison labour. Forced labour is defined in Section 307 as: "All work or service which is exacted from any person under the menace of any penalty for its non-performance and for which the worker does not offer himself voluntarily" with language modelled on the ILO (1930) Forced Labor Convention.

Then, in 2000, Section 307 was amended by the U.S. Trade and Development Act (TDA) of 2000 to expand its scope, explicitly including forced or indentured child labour: “For purposes of this section, the term ‘forced labor or/and indentured labor’ includes forced or indentured child labor” (19 U.S.C. § 1307). The TDA furthermore authorised and directed the U.S. Treasury Secretary to prescribe regulations necessary for the enforcement of the provision to deny entry of all “goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions” (ibid).

Although a few Members of Congress brought up humanitarian concerns during debate of the *Tariff Act* of 1930, the central legislative concern was with protecting domestic producers from competing with products made with forced labour. As such, Section 307 allowed the importation of certain forced labour-produced goods if the goods were not produced “in such quantities in the United States as to meet the consumptive demands of the United States” (*Tariff Act*, 1930, §1307). Under the original law, if goods could not be sufficiently made available through domestic means, they could also *not* become a target of sanction. In 2016, 86 years after its signing into law, this “consumptive demand” provision of the 1930 *Tariff Act* was struck. The bi-partisan *Trade Facilitation and Trade Enforcement Act of 2015* amended the *Tariff Act* by eliminating the “consumptive demand” exemption clause (19 U.S.C. § 1307).<sup>28</sup>

### **Enforcement**

Under Section 307 of the *Tariff Act*, merchandise mined, produced or manufactured, wholly or in part, in any foreign country by forced/indentured child labour is subject to exclusion and/or seizure, and may lead to criminal investigation of the importer (U.S. Customs and Border Protection [CBP], 2021). Enforcement of the *Tariff Act* is operationalised in Title 19 (Customs Duties) CFR Section 12.42. U.S. Customs and Border Protection (CBP) enforces the prohibition (CBP, 2021).

CBP may initiate investigations into forced labour violations involving specific manufacturers/exporters and specific merchandise based on internal allegations (through information provided in a CBP Form 28 Request for Information, or by port directors) or on allegations from an outside source (such as a third-party) (19 C.F.R. § 12.42 (a)-(d)). CBP “encourages anyone with reason to believe that merchandise produced by forced labor is being, or is likely to be imported into the United States, to communicate his or her belief to any U.S. port director or the commissioner of CBP” (CBP, 2016a, 2021; 19 C.F.R. § 12.42). This may be accomplished by submitting a detailed formal petition to CBP.<sup>29</sup> Anyone – a business, an agency, even a non-citizen – may submit to U.S. Customs (under the Department of Homeland Security) a petition showing “reasonably but not conclusively” that imports were made at least in part with forced labour (Bayer, 2016; CBP, 2021).

<sup>28</sup> One entire sentence was struck: “The provisions of this section relating to goods, wares, articles, and merchandise mined, produced, or manufactured by forced labor or/and indentured labor, shall take effect on January 1, 1932; but in no case shall such provisions be applicable to goods, wares, articles, or merchandise so mined, produced, or manufactured which are not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States” (19 U.S.C. § 1307).

<sup>29</sup> Any such petition must completely satisfy the requirements of 19 C.F.R. § 12.42(b).

As required by 19 C.F.R. §12.42, port directors and other principal customs officers must report such instances to the CBP Commissioner. Upon receipt of such a report, the Commissioner of CBP is required to initiate an investigation “as appears warranted” by the amount and reliability of the submitted information. If the Commissioner of CBP finds the information “reasonably but not conclusively indicates” that imports may be the product of forced labour, then the Commissioner is to issue a Withhold Release Order (WRO) of such goods pending further instructions (CBP, 2021; 19 C.F.R. § 12.42 (e)-(g).). If the Commissioner is provided with information sufficient to make a determination that the goods in question are subject to the provisions of 19 U.S.C. § 1307, the Commissioner will publish a formal finding to that effect in the Customs Bulletin and in the Federal Register (CBP, 2021; 19 C.F.R. § 12.42 (f).). Immigration and Customs Enforcement can pursue criminal investigations of Section 307 violations.

Furthermore, the Act charges the Commissioner to submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report on compliance with section 307 of the *Tariff Act* of 1930 that includes:

1. the number of instances in which merchandise was denied entry pursuant to that section during the 1-year period preceding the submission of the report,
2. a description of the merchandise denied entry pursuant to that section, and
3. other information as the Commissioner considers appropriate with respect to monitoring and enforcing compliance with that section (Congressional Research Service [CRS], 2021b).

In February 2019, and in response to recommendations from outside stakeholders, CBP published a forced labour process, consisting of the following nine steps (CBP, 2019a):

1. *Receipt of Allegation or Self-Initiation: The provisions of 19 C.F.R § 12.42 detail who may submit information;*
2. *CBP Evaluation: CBP must determine or establish reasonable suspicion to issue a Withhold Release Order (WRO) or conclusively demonstrate that merchandise is prohibited to publish a finding;*
3. *Commissioner Review of WRO Issuance: If Commissioner approves a WRO, CBP detains subject merchandise;*
4. *Issuance of WRO: Port directors instructed to withhold release of subject merchandise;*
5. *Detention of Merchandise: CBP begins to detain all shipments within WRO parameters;*
6. *Export, Contest, or Protest: Importer may export, contest, or protest; CBP may release or exclude;*
7. *Finding/ Customs Bulletin and Federal Register: If a finding is published, subject merchandise that has not been released from CBP custody shall be treated as an importation prohibited by 19 U.S.C. § 1307;*
8. *Seizure – Subsequent FPF Process: CBP will seize merchandise. Violator may petition for the release of merchandise; and*
9. *Judicial Forfeiture: CBP will commence summary forfeiture proceedings.*

An importer has three months to contest a WRO and must demonstrate that it has made “every reasonable effort” to determine both the source of and the type of labour used to

produce the merchandise and its components. If the importer does not successfully contest the WRO and does not remove the merchandise at issue from the United States, CBP is to seize and destroy it.

The forced labour import prohibition applies to all importers of goods to the United States. According to published guidance, importers have a general obligation to exercise “reasonable care” and to take all necessary and appropriate steps to ensure that goods imported to the United States comply with all laws and regulations, including the Tariff Act (CBP, 2017, para. 14).

While CBP generally does not target entire product lines or industries, CBP (and ICE) do consider information that companies make available during their efforts to address forced labour risks in their supply chains, as well as external reports (CBP, 2021; 19 C.F.R. § 12.42(e)). Following detention, CBP must determine whether to formally exclude the merchandise, or deem it admissible and release it for importation into the United States. An importer may submit information demonstrating that the detained subject merchandise does not violate the *Tariff Act*. CBP may revoke a WRO if evidence shows that the subject goods were not made with forced labour, are no longer being produced with forced labour, or if the goods are no longer being, or likely to be, imported into the United States (CBP 2016b).

In addition to CBP’s civil enforcement actions, ICE’s Homeland Security Investigations (HSI) may institute criminal investigations against individuals or companies for involvement in the importation of prohibited goods. Since 2017, ICE has initiated 54 international cases on forced labour, prompted 66 related international arrests, and seized 4,397 related goods domestically and internationally (U.S. Immigration and Customs Enforcement [ICE], 2018).

#### ***Withhold Release Orders***

Until 2016, Section 307 was rarely used to block imports. Between 2000 and 2016, CBP did not issue any WROs. Observers generally linked the difficulties in enforcing Section 307 to the “consumptive demand” clause. As more goods were manufactured exclusively abroad, it became easier for importers to make use of the exception. CBP also attributed difficulties to limited resources and a lack of sufficient evidence, caused in part by the infeasibility of spot inspections that would provide evidence of forced labour (CRS, 2021a).

Repeal of the consumptive demand exception enhanced CBP’s ability to prevent products made with forced labour from being imported into the United States. As of January 2021, it has issued seven active findings and 47 WROs (CBP, 2021). While from 2000 to 2015 the CBP had not issued any WRO, since 2016 it has issued 13 WROs. All WROs are publicly available and listed by country on the CBP’s Forced Labor Withhold Release Orders and Findings page (CBP, n.d.).

Although CBP does not generally publicise specific detentions, re-exportations, exclusions, or seizures of merchandise that may have resulted from WROs, following the passage of the TFTEA, CBP published six WROs that it issued targeting the imports of various goods, the majority of which were from China, specifically: soda ash, calcium chloride and caustic soda; potassium, potassium hydroxide and potassium nitrate; stevia and its derivatives; peeled garlic; toys; and cotton from and products produced with Turkmenistan cotton (CBP, n.d.).

On November 1, 2019, the CBP issued a WRO against tobacco from Malawi. As the agency explained: “CBP issued the WRO based on information collected by the agency that reasonably indicates the tobacco from Malawi is produced using forced labor and forced child labor” (CBP, 2019b). Since the announcement, the WROs are partially applied (“active”), i.e. two companies (Alliance One International and Limbe Leaf Tobacco Company Limited) have since been “removed” from the order and may continue to import tobacco (CBP, n.d.).

In 2018, toys from one manufacturer in China and all cotton produced in Turkmenistan were stopped at the U.S. border through U.S. CBP WROs. The banning of “all Turkmenistan cotton or products produced in whole or in part with Turkmenistan cotton” (CBP, n.d.) is significant as it is the first time that the U.S. government has banned all forms of a particular commodity from an entire country, as opposed to banning products from specific manufacturers.

The majority of WROs have been against China: Of the 61 issued since 1990, 43 (70%) were against Chinese goods. Many orders were issued between 1991 and 1993, declining after the U.S. and China negotiated agreements relating to goods made with prison labour, notably a 1992 Memorandum of Understanding (MOU) and 1994 Statement of Cooperation. These agreements provided for the exchange of information and requests for inspections. However, China’s compliance has been inconsistent, and U.S. concerns over prison and forced labour broadly, remain. Since 2016, China has again become a focus of Section 307 actions. Several WROs centre on concerns over systemic forced labour of ethnic Uyghurs and other Turkic Muslims in Xinjiang. CBP has issued 16 WROs and one Finding against goods from China since 2016, with the most recent WRO of January 2021, requiring the detention of all cotton and tomato products originating from Xinjiang as well as any goods that use cotton or tomato products from Xinjiang as an input (CBP, n.d.).

To date, CBP has predominantly issued WROs that target specific goods from specific producers, and the agency has not generally targeted entire product lines or industries in problematic countries or regions (CBP, 2021). As such, the WRO against goods from Xinjiang is an exception.

In February 2021, the U.S. House of Representatives reintroduced the *Uyghur Forced Labor Prevention Act (2020)*, a bipartisan bill which passed in the House in 2020 that would ban imports from China’s Xinjiang region unless it is certified they are not produced with forced labour. The bill would also require financial disclosures by listed U.S. companies about engagement with Chinese firms and entities engaged in abuses. At the heart of the bill is a “rebuttable presumption” that assumes goods from Xinjiang are made with forced labour and banned from the United States unless there is “clear and convincing” evidence to the contrary (CRS, 2021a). While the legislation has had strong bipartisan support, congressional aides say it has been the target of lobbying by firms with supply-chain links to Xinjiang. For example, Apple, Coca-Cola and Nike were among companies lobbying the U.S. Congress to alter the legislation arguing that it would disrupt supply chains and that investigating forced labour ties in the region is difficult, given the opacity of Chinese supply chains and the limited access of auditors to a region where the Chinese government restricts people’s movements (Swanson, 2020).



Also, in February 2021, the United States offered qualified support for a new Australian bill to ban imports from the Xinjiang region (Hurst, 2021a; U.S. Department of State, 2021). The bill would prohibit the importation into Australia of goods from Xinjiang province “as well as goods from other parts of China that are produced by using forced labour” (Hurst, 2021b). Commentators expect the bill to pass given the Senate’s current composition (Maberry & Torrico, 2021).

### *Effects of DHS mechanism*

In 2020, the CBP increased its use of Section 307 and issued 12 WROs, and in the previous twelve months, the CBP had issued only one WRO (CBP, n.d.).

UK online fashion company Boohoo is currently facing the possibility of a United States import ban because of widespread allegations over the use of forced labour. Repercussions of a 2020 exposé of Boohoo’s gross breach of Covid-19 regulations, exploitation of factory workers and furlough fraud in garment factories in Leicester. The CBP “has seen enough evidence to launch an investigation after petitions from a campaigning British lawyer” (Brunt, 2021).

An emblematic WRO under the Tariff Act is the one for rubber gloves produced by two subsidiaries of Top Glove in Malaysia, the world’s largest rubber glove company, issued in July 2020 (Lee, 2020a). CBP issued the WRO based on reasonable belief that two of Top Glove’s subsidiaries, *Top Glove Sdn Bhd* and *TG Medical Sdn Bhd* were using forced labour, in this case debt bondage, to produce rubber gloves. In issuing this WRO, the CBP blocked all imports of these rubber gloves into the United States, closing the companies’ access to the American market. The import ban remained active even as the COVID-19 pandemic significantly increased demand for rubber gloves (Vanpeperstraete, 2021).

The speed with which Top Glove and its subsidiaries attempted to remediate the harm the workers suffered was surprising. In early August 2020, just two weeks after the WRO had been issued, Top Glove agreed to refund foreign workers who had paid recruitment fees to agents – as much as \$34 million to be paid to 10,000 workers – and to improve workers’ accommodations (Choy, 2020; Lee, 2020b). It is possible that the quick action was related to the large number of sales Top Glove was going to lose – shipments from the two subsidiaries constituted 12.5% of the group sales and half of its sales to the United States (Brudney, 2020; Lee, 2020a).

In any case, the extent and speed of Top Glove’s response to the WRO demonstrates how Section 307 “can be leveraged to protect workers, as a rights-promoting tool” – even if the law was designed to protect American businesses, not workers abroad (Brudney, 2020). By blocking access to the U.S. market, Section 307 can put pressure on companies to undertake human rights due diligence across their value chains. Greater supply chain due diligence and accountability by companies may be an important positive consequence of Section 307. It may also have a preventive effect as other companies may take steps before a similar WRO is issued against them. The remediation that CBP required from Top Glove may signal other companies – especially other companies in the region – to change their practices in relation to recruitment fees (ibid). For targeted companies, regaining access to the lucrative U.S. market provides a significant incentive to remedy the situation on the ground. The action of the CBP has been effective because the *Tariff Act* allows them to impose real and

substantial costs on abusive companies. These financial losses stimulate rapid company remedy. In addition, “each impounding of goods also has a major benign multiplier effect: business competitors fear similar action and act rapidly to remedy their own abuse” (Bloomer, 2020).

There is no clear evidence, however, about the lasting consequences of these measures. In March 2021, U.S. customs found forced labour practices in one of Top Glove’s subsidiaries and directed its port to seize goods from the manufacturer (Reuters, 2021).

Companies importing goods to the United States should consider the risk of forced labour in their supply chains, in particular companies involved in high-risk industries and/or countries. Development and implementation of due diligence policies and procedures is essential for ensuring supply-chain integrity and mitigating enforcement risk (Connellan et al., 2019).

#### *Weaknesses of DHS mechanism*

While congressional action to close the Section 307 consumptive demand provision should be welcomed, there are a number of weaknesses and possible unintended consequences in the use of this mechanism.

First, the WRO was originally developed as a protectionist tool meant to protect American companies, not workers (Brudney, 2020). As such, it is a mechanism that simply stops the goods at the border may not have real effects on addressing forced labour. Initially, the mechanism was developed to protect American companies against unfair trade practices by competing foreign companies. Once a WRO is issued, authorities mandate no further import from entities involved in forced labour practices. For the most part, there are no requirements to remediate forced labour abuses and improve working conditions. If issued without accompanying remedial requirements, a WRO could even have adverse consequences for workers. For example, “instead of dealing with the underlying forced labour issues, companies may shut down and lay off their workers” (Brudney, 2020). This is even more problematic in the case of child labour.

Second, the Tariff Act and recent WROs “are sometimes seen as an extension of other (foreign) policy objectives” (Vanpeperstraete, 2021). For example, the majority of recent WROs have been against Chinese companies: of the 13 WROs issued in 2020, nine were against Chinese companies, all of them in Xinjiang linked to rights violations against the Uyghur minority (Vanpeperstraete, 2021). The WRO, linked to state sponsored prison labour in Xingjian Uyghur Autonomous Region, had initially targeted five economic entities, but then was later expanded to the entire region for specific products, i.e. tomato and cotton (CBP, n.d.).

Third, and related to the previous point, the scope of WRO may have negative consequences for local economies, further exacerbating situations of poverty and resulting in an increased risk of forced labour for local workers. A WRO’s scope may cover entire countries, not just single companies – which can lead to adverse economic consequences for local communities.

Fourth, the CBP enjoys wide discretionary powers in enforcement of the Act. In the words of Luciano Racco: “CBP is acting as the investigator, judge and jury in these matters” (Shenoy,

2021). Whether to issue a WRO and its scope remains solely at the discretion of the CBP. The CBP also decides when to require companies to remediate working conditions, and what efforts constitute adequate remediation in order to lift a WRO. Also, there is a lack of clear evidentiary standards required in petitions and transparency by CBP on explanations of enforcement actions. The issuance of WROs might not be sufficiently evidence-based, consistent and independent (Vanpeperstraete, 2021). The definition of sufficient remedial steps remains discretionary, with limited space for input from rights holders or civil society. The investigation remains largely non-public (Bell, 2016; Kuplewatzky, 2016). The initiative of the U.S. Congress for an annual report by the Commissioner of the CBP is a critical first step toward greater transparency and accountability (GoodWeave, 2017).

Fifth, there are still a relatively small number of actions. Although the CBP has increased its enforcement actions, only twelve WROs have been issued in 2020. In order to make a real impact on corporate behaviour, a higher and more regular number of WROs would need to be issued (Vanpeperstraete, 2021). One of the reasons for the small number of actions may be the customary practice of targeting individual producers and the difficulty of tracing products back to the factory or farm using forced labour, given complex global supply chains. Enhancing Section 307 enforcement would likely hinge on greater resources. CBP has cited staff shortages as causing the agency to drop investigations and limiting its ability to monitor existing cases (CRS, 2021a).

Finally, there may be unintended consequences for business. Industry groups caution that broader WROs may disrupt supply chains, deter legitimate business with other suppliers, and worsen the economic security of vulnerable workers. There may also be financial repercussions. In March 2021, it was reported that Nike and H&M are facing backlash in China over Xinjiang statements condemning forced labour – with Chinese social media criticising the statements by the companies and Chinese celebrities cancelling contracts with them (Standaert, 2021).

## 2. EO mechanisms

### U.S. Executive Order 13126 of 1999

Executive Order (EO) 13126 of 1999 *Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor* seeks to ensure that U.S. federal agencies do not procure goods made by forced or indentured child labour notably through the following means:

1. Policy (Section 1). Executive agencies “take appropriate actions to enforce the laws prohibiting the manufacture or importation of goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part by forced or indentured child labor” (Executive Order No. 13126, 1999).
2. Publication of List (Section 2). The Department of Labor (DOL) publishes a list called “Prohibition of Acquisition of Products Produced by Forced or Indentured Labor” – a list of products, identified by their country of origin, that has “a reasonable basis to believe might have been mined, produced, or manufactured by forced or indentured child labor” (Executive Order No. 13126, 1999).

3. Procurement (Section 3). Each solicitation of offers for a contract for the procurement of a product included on the list published by the DOL should include i) a provision that requires the contractor to certify that it “has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under the contract and that, on the basis of those efforts, the contractor is unaware of any such use of child labor” and (2) a provision that obligates the contractor to cooperate fully in providing reasonable access to its records, documents, persons, or premises for the purpose of determining whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under the contract” (Executive Order No. 13126, 1999).

Termination of the contract, suspension of the contractor; or debarment of the contractor for a period not to exceed three years are the remedies available for violations (48 CFR §22.1504(b)). Since the EO’s issuing, USDOL accepts for review allegations of forced child labour in the production of goods. The minimum standard of evidence involves recent, credible, and appropriately corroborated information (Bayer, 2016).

#### U.S. Global Magnitsky Human Rights Accountability Act and U.S. Executive Order 13818 of 2017

In 2012, the United States adopted the *Magnitsky Act* which provided for governmental sanctions on foreign individuals associated with human rights violations and corruption (Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act, 2012). Intended to punish Russian officials responsible for the death of Russian tax lawyer Sergei Magnitsky in a Moscow prison in 2009, the Act froze any U.S. assets they held and banned them from entering the United States.

Building on the original Russia-focused Magnitsky law, in 2016 U.S. Congress enacted the *Global Magnitsky Human Rights Accountability Act* – abbreviated *GloMag* – which allows the executive branch to impose visa bans and targeted sanctions on individuals anywhere in the world responsible for committing human rights violations or acts of significant corruption. GloMag authorises the president to block or revoke the visas of certain “foreign persons” (both individuals and entities) or to impose property sanctions on them. People can be sanctioned (a) if they are responsible for or acted as an agent for someone responsible for “extrajudicial killings, torture, or other gross violations of internationally recognized human rights,” or (b) if they are government officials or senior associates of government officials complicit in “acts of significant corruption” (Global Magnitsky Human Rights Accountability Act, 2016). Sanctions deny individuals entry into the U.S., allow the seizure of any of their property held in the country, and effectively prevent them from entering into transactions with large numbers of banks and companies. Both American companies and multinational companies with American subsidiaries run the risk of violating U.S. sanctions if they do business with sanctioned people (Human Rights Watch, 2017b).

Building upon GloMag, Executive Order (EO) No. 13818 (2017) “Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption” was signed in 2017, finding

that the “prevalence of human rights abuse and corruption that have their source, in whole or in substantial part, outside the United States, had reached such scope and gravity that it threatens the stability of international political and economic systems.”

Actions pursuant EO 13818 can target “persons” – both individuals and entities. For example, in July 2020, the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) sanctioned one Chinese government entity and two current or former government officials in connection with rights abuses against ethnic minorities in Xinjiang (U.S. Department of the Treasury, 2020). As a result of such action, all property and interests in property of those officials and entities that are in the United States or in the possession or control of U.S. persons are blocked and must be reported to OFAC.

### **3. List of Goods, coordination of enforcement**

#### U.S. Trafficking Victims Protection Act of 2000 and successive reauthorisation acts

During the process of developing the Palermo Protocol, and ultimately to provide for both implementation of the Protocol and to fill gaps in U.S. law, Congress passed the bipartisan *Trafficking Victims Protection Act* (TVPA) in 2000. The TVPA (2000) was created to “ensure just and effective punishment of traffickers, and to protect their victims.” In particular, there were three main components of the TVPA, commonly called the three P’s: Protection, Prosecution, and Prevention.

In response to the growing human trafficking problem, the United States promulgated a comprehensive domestic law to combat trafficking in persons. President Clinton signed the TVPA into law on October 28, 2000. Both the *Trafficking Victims Protection Reauthorization Act* of 2003, and the *Trafficking Victims Protection Reauthorization Act* of 2005 supplemented the TVPA. The *Trafficking Victims Protection Act* of 2008 (TVPA, 2008) amended the TVPA. The TVPA’s purpose is “to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominately women and children, to ensure just and effective punishment of traffickers, and to protect their victims” (TVPA § 102, 114 Stat. 1464 at 1466). Using the “three P’s” structure of protection of trafficking victims, prosecution of those persons trafficking in human beings, and prevention of human trafficking, the TVPA provides innovative measures for eliminating human trafficking (Hendrix, 2010). It sets “minimum standards for the elimination of trafficking” applicable to governments of countries that are places of “origin, transit, or destination for a significant number of victims of severe trafficking” (TVPA § 108(a), 114 Stat. 1464 at 1480).

The TVPA of 2000 established methods of prosecuting traffickers, preventing human trafficking, and protecting victims and survivors of trafficking. The Act further establishes human trafficking and related offenses as federal crimes. It established the Office to Monitor and Combat Trafficking in Persons, which is required to publish a Trafficking in Persons (TIP) report each year. The TIP report describes and ranks the efforts of countries to combat human trafficking. The act also established the Interagency Task Force to Monitor and Combat Trafficking, which assists in the implementation of the TVPA.

The TVPA of 2000 *inter alia* required the U.S. Secretary of State to submit to Congress a report on the status of human trafficking worldwide, including the United States. A notable feature of the Trafficking in Persons (TIP) reports is that they, pursuant to TVPA, classify countries according to three tiers, associating the third tier with countries that do not fully comply with the law's minimum standards and which are not making significant efforts to bring themselves into compliance. Countries on Tier 3 may be subject to certain sanctions, whereby the U.S. government may withhold or withdraw non-humanitarian, non-trade-related foreign assistance, even assistance channelled through the International Monetary Fund (IMF) and the World Bank. Since 2000, the U.S. Department of State (DOS) has published 15 TIP reports.

The *Trafficking Victims Protection Reauthorization Act* of 2003 (TVPRA, 2003) established human trafficking as a chargeable crime under the Racketeering Influenced Corrupt Organizations (RICO) statute. The *Trafficking Victims Protection Reauthorization Act* of 2005 (TVPRA, 2005) established a pilot programme for sheltering human trafficking victims who are minors and provided grants to assist state and local law enforcement in combating trafficking. The TVPRA of 2005 charged the U.S. Department of Labor (DOL) with issuing a list of products that DOL believes are being made or harvested by child or forced labour (see USDOL *List of Goods Produced by Child Labor or Forced Labor*). The law furthermore charges the agency of working with producers of the goods on the list to set standards to eliminate such practices, and to work with other U.S. government agencies to "ensure that products made by forced labor and child labor in violation of international standards are not imported into the United States" (TVPRA § 105(b), p. 119 Stat. 3567).

The *William Wilberforce Trafficking Victims Protection Reauthorization Act* of 2008 (TVPRA, 2008) expanded anti-trafficking prevention strategies and expanded protections available with the T Visa. The TVPRA of 2008 built on the previous trafficking acts, notably including a provision that establishes a two-year time limit for countries on *Tier 2 special watch list* before they are re-classified (TVPRA, 2008). It also regulated that all unaccompanied alien children be screened as potential victims of human trafficking. This bipartisan reauthorisation extended and modified certain programmes that form the core of the Department of Justice's efforts to prevent and prosecute human trafficking and protect the victims of trafficking, forced labour, and modern slavery, as well as the Department of Labor's efforts to better document and deter the trafficking problem.

The *Trafficking Victims Protection Reauthorization Act* of 2013 (TVPRA, 2013) establishes and strengthens programmes to ensure that U.S. citizens do not purchase products made by victims of human trafficking, and to prevent child marriage. The reauthorisation also strengthened the collaboration with state and local law enforcement to ease charging and prosecuting traffickers.

The TVPA continues to impose reporting mandates on U.S. federal agencies, such as the U.S. Department of State's Trafficking in Persons Report, and USDOL's *List of Goods Produced by Child Labor or Forced Labor*. The TVPA requires the U.S. government to establish partnerships with community organisations, universities, enterprises, and others to ensure that "US citizens do not purchase products made by victims of human trafficking." The findings and conclusions of these reports are often considered by the government in making economic and trade policy decisions.

The TVPA list's findings may lead to the blocking of imports from countries that do not play by the rules. This model could be transposed to the EU and serve as an inspiration for the new legislative proposals, for example around forced labour import bans and corporate human rights due diligence, amendments of existing legislation, and for the newly appointed Chief Trade Enforcement Officer, who, among other things, is mandated to ensuring that countries the EU has trade agreements with meet the commitments they make under them on workers' rights (European Commission, 2020e).

#### ILAB's lists of goods and reports

A number of government-issued lists and reports on forced labour measures are used to inform and enforce forced labour measures in the United States. These lists and reports contain country profiles and lists of goods suspected to have been produced by child or forced labour. The outputs are published by the Bureau of International Labor Affairs (ILAB), a department within USDOL, and notably include:

- USDOL's *List of Goods*, required by the TVPRA of 2005 (Pub. L. 109-164), which charged the DOL to work with producers of the goods on the list to set standards to eliminate such practices, and to work with other U.S. government agencies to "ensure that products made by forced labor and child labor in violation of international standards are not imported into the United States." This is a biannual report that flags goods that agencies charged with enforcement duties should pay attention to when enforcing federal law. For example, in 2021, this list identified five goods produced by forced labour in Xinjiang, including textiles, thread/yarn, and tomato products. As such, DOL issued a business advisory to caution businesses about the risks of supply chain links to entities that engage in human rights abuses, including forced labour, in Xinjiang and elsewhere in China (Hurst, 2021a; U.S. Department of State, 2021). According to ILAB, it "maintains the List primarily to raise public awareness about forced labor and child labor around the world and to promote efforts to combat them; it is not intended to be punitive, but rather to serve as a catalyst for more strategic and focused coordination and collaboration among those working to address these problems. Publication of the List has resulted in new opportunities for ILAB to engage with foreign governments to combat forced labor and child labor" (U.S. Department of Labor, n.d.-a).
- USDOL's *List of Products*, mandated by EO 13126 of 1999, features products that have been mined, produced, or manufactured by forced or indentured child labour. The list "Prohibition of Acquisition of Products Produced by Forced or Indentured Labor" (U.S. Department of Labor, n.d.-c) published annually by ILAB is intended to ensure that U.S. federal agencies do not procure goods made by forced or indentured child labour. The Department of Labor, in consultation with the departments of State and Homeland Security, publishes and maintains the List. ILAB released its first list in 2001.
- USDOL's *Findings on the Worst Forms of Child Labor* is prepared in accordance with the Trade and Development Act of 2000.

### ILAB administration

Established in 1913, ILAB comprises five offices, three of which are technically specialised:

- Office of Child Labor, Forced Labor, and Human Trafficking (OCFT);
- Office of Trade and Labor Affairs (OTLA);
- Office of International Relations and Economic Research (OIRER).

ILAB promotes a strong U.S. trade policy by negotiating robust labour provisions in new trade and investment agreements, and enforcing the eligibility criteria of trade preference programmes, enforcing labour provisions of U.S. free trade agreements and trade preference programs to ensure that no country gains an unfair advantage, and building the capacity of other countries to enforce and improve labour protections (Bureau of International Labor Affairs, n.d.-b).

ILAB's research output includes annual reports on child labour and forced labour, which also provide "recommendations to combat child labor in over 130 trade beneficiary countries" (US Department of Labor, 2018, p. 2). ILAB's two mobile applications, Sweat & Toil and Comply Chain, allow stakeholders to "identify child and forced labor, and provide compliance assistance in rooting out these labor abuses in global supply chains" (US Department of Labor, 2018, p. 2).

ILAB further fosters U.S. trade interests through an approach that "combines monitoring and engagement with targeted technical assistance to strengthen the rule of law in countries that have the political will but lack the resources to comply" (US Department of Labor, 2018, p. 2). This multifaceted approach has reportedly improved labour law enforcement in trade partners including Honduras, Colombia, Guatemala, Viet Nam, and Bangladesh ILAB's output is the building of capacity (ibid). Taken together, ILAB has trained over 50,000 labour inspectors and law enforcement officials (ibid). Figure 24 shows the organisational chart of ILAB.

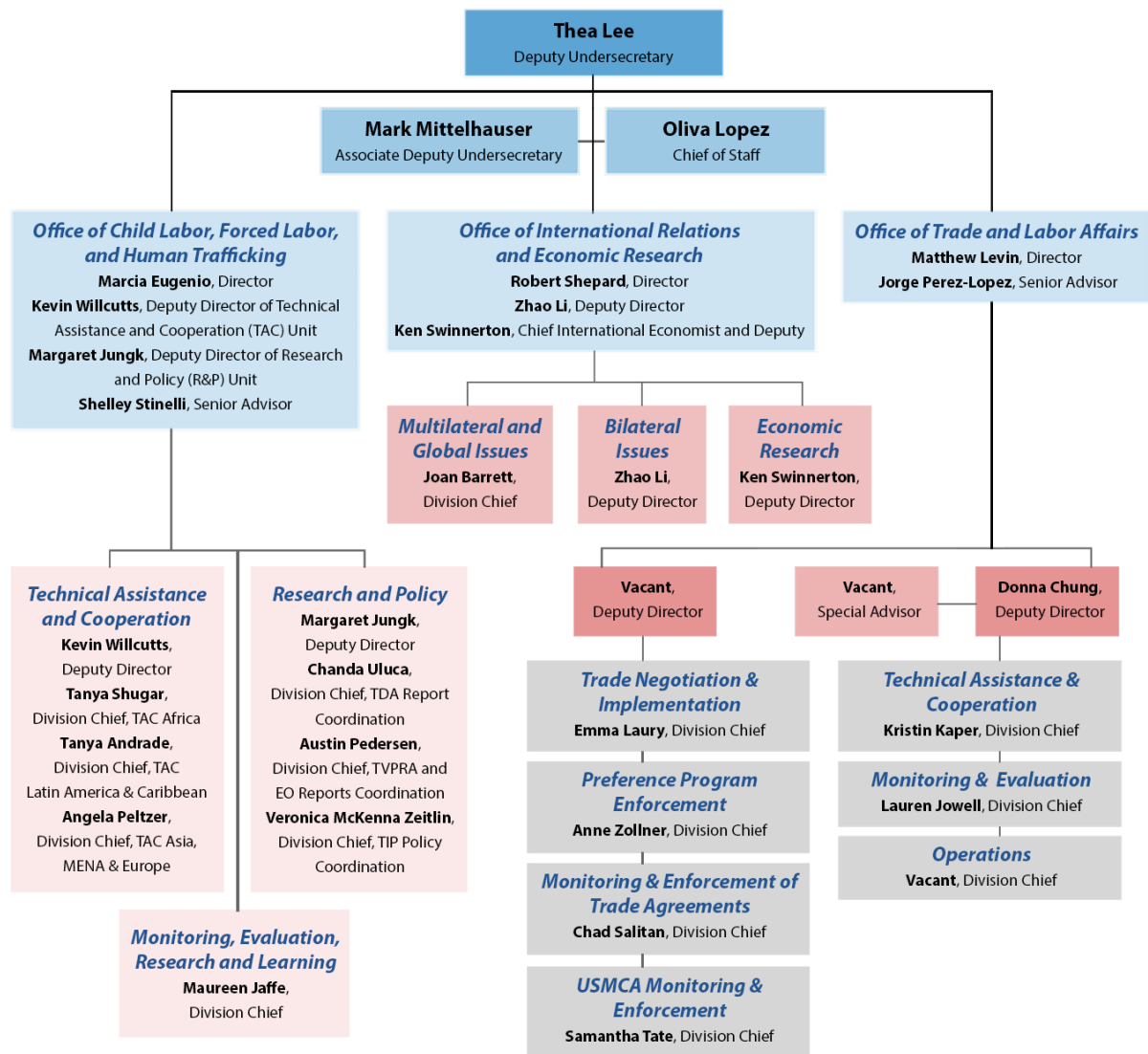
ILAB's budget has decreased significantly since 2019, when it had \$86,125 million with which to work. Prior to 2019, ILAB had a similarly high budget (U.S. Department of Labor, 2020b).<sup>30</sup> But in 2020, ILAB's budget dropped to \$18,500 million, and in FY 2021, ILAB's budget request was \$18,660 million. Currently, the branch has 94 Full Time Equivalent employees (U.S. Department of Labor, 2021). Staff was reduced reflecting the workload decrease associated with the elimination of new grants as well as a reduction in other ILAB work activities (U.S. Department of Labor, 2020b). ILAB now focuses available resources on efforts to make U.S. trade agreements fair for U.S. workers by monitoring and enforcing the labour provisions of free trade agreements and trade preference programmes to ensure a fair global playing field for U.S. workers and businesses (U.S. Department of Labor, 2020b).

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<sup>30</sup> ILAB's budget was \$91,125 million in 2015, and \$86,125 million in 2016, 2017, 2018 and 2019.



Figure 24: ILAB's Organisational Chart



Source: Organization Chart, (Bureau of International Labor Affairs, n.d.-a), [URL](#)

#### 4. U.S. Trade Policy

##### U.S. FTAs

The limitations of EU FTAs described – notably relating to the mere existence of flexible mechanisms, the other to their activation – call for a comparison with the U.S. FTAs, whose approach to compliance with human rights standards is substantially different. Most of the U.S. agreements have indeed required the compliance with the internationally recognised worker rights (Ebert, 2013, p. 31). By contrast to EU agreements, their enforcement relies on dispute settlement procedures such as formal consultations or the establishment of panels endowed with the ability to impose sanctions when the treaty requirements are not met (Lowe, 2019, p. 2). These sanctions function as “sticks” for partner countries, as the threat of their enforcement encourages these countries to respect their commitments under the trade agreements.

Furthermore, the U.S. system also allows the aggrieved party to withdraw its trade concessions if it demonstrates that the other party's non-compliance with its commitments has had a substantial impact on trade flows. Both are made effective by the importance attached to complaint mechanisms, which ensure substantial third-party participation and give the U.S. Department of Labor the role of reviewing submissions (Barbu et al., 2017, p. 5; European Commission Services, 2017, p. 7; Lowe, 2019, p. 2).

Recent U.S. FTAs commit countries to maintain laws on core ILO labour standards (ILO, 2009). For example, in its 2000 free trade agreement with Jordan, the trade partners agreed to protect core ILO workers' rights. Disputes over labour standards, e.g. if one country weakened its labour laws or failed to bring its laws or enforcement into compliance with the ILO core standards, could end with the other party unilaterally withdrawing trade benefits.

For the first time in a U.S. FTA, the United States-Mexico-Canada Agreement (USMCA) also commits the parties to prohibit imports produced by forced labour and to cooperate in identifying such goods. USMCA-implementing legislation created a Forced Labor Enforcement Task Force, chaired by the Secretary of Homeland Security, to monitor and report on broader enforcement of Section 307 (USMCA Implementation Act, 2020). Incidentally, the Canadian system allows for the imposition of fines proportionate to the adverse impacts on trade.

In addition, eligibility criteria for U.S. trade preference programs includes taking steps to maintain internationally recognised worker rights. Some eligibility reviews and revocation of developing country benefits by the U.S. Trade Representative have involved concerns over labour practices. Trade agreements have expanded coverage of trade and labour issues in part because the World Trade Organization (WTO) does not cover such rules (though it provides exceptions to a country's obligations for measures related to imports of products of prison labour) (CRS, 2021a).

The aegis of monitoring and enforcing foreign government compliance with trade agreements is principally held by the United States Trade Representative (USTR), which "pursues enforcement using bilateral engagement, dispute settlement procedures, and the full range of U.S. trade laws when appropriate." USTR is supported by "relevant agencies, including the U.S. Departments of Agriculture, Commerce, Justice, Labor, and State," which "help ensure that these agreements yield the maximum benefits by ensuring negotiated market access, promoting adherence to international commitments, and advancing a free, fair, and market-oriented trading environment" (USTR, n.d.-a).

#### Relevant legislation

The U.S. Trade Act of 1974 notably defines "internationally recognized worker rights" as constituting "acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health" (Trade Act, 1974). The law furthermore provides instruments to protect U.S. traders and workers against unfair trade practices. "Section 201 provides for safeguard actions in order to facilitate positive adjustment of U.S. domestic industry to import competition. Section 301 may be used to enforce U.S. rights under

bilateral and multilateral trade agreements, and to respond to unreasonable, unjustifiable, or discriminatory foreign government practices that burden or restrict U.S. commerce” (USTR, n.d.).

The U.S. Trade Act of 2002 (H.R.3009) directs U.S. trade negotiators to:

- “promote respect for worker rights and the rights of children consistent with core labor standards of the ILO”;
- “seek provisions in trade agreements under which parties to those agreements strive to ensure that they do not weaken or reduce the protections afforded in domestic environmental and labor laws as an encouragement for trade”;
- “promote universal ratification and full compliance with ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Labor.”

The U.S. Bipartisan Trade Promotion Authority Act of 2002 (Pub. Law 107-210) provides, *inter alia*, for the President to “submit several reports to Congress related to any free trade agreements entered into under the act,” including a report entitled “Laws Governing Exploitative Child Labor” (USTR, n.d.-b). Eleven such reports have been published.

The U.S. Trade Promotion Authority Act of 2015, in effect through July 1, 2021, notably included “the same dispute settlement mechanisms and penalties for labor as for other FTA chapters;” required “the maintenance in laws and practice of principles stated in the ILO Declaration;” prohibited “the diminution of labor standards to attract trade and investment;” and limited “prosecutorial and enforcement discretion, as grounds for defending a failure to enforce labor laws” (CRS, 2020). In section (10) *LABOR AND THE ENVIRONMENT*, the Act affirms that the “principal negotiating objectives of the United States with respect to labor and the environment are,” *inter alia*, “(C) to strengthen the capacity of United States trading partners to promote respect for core labor standards (as defined in section 111(7)). These core labour standards also concern “(C) the elimination of all forms of forced or compulsory labor; (D) the effective abolition of child labor and a prohibition on the worst forms of child labor” (Defending Public Safety Employees Act, 2015).

As presented in a Congressional Research Service (CRS) publication, the treatment of labour rights in U.S. trade policy and FTAs has been of long-standing congressional interest, and has become stricter in recent years (see Figure 25).

**Figure 25:** Evolution of U.S. Labour Commitments

Source: *Worker Rights Provisions in Free Trade Agreements (FTAs)*, (CRS, 2020), [URL](#)

### *C. EU support for trade partners*

#### **1. Support through Aid for Trade**

Launched at the Hong Kong Ministerial Conference in December 2005, the WTO established a Task Force in 2006 with the aim of operationalising Aid for Trade (World Trade Organization [WTO], n.d.-b). A decade later, the initiative was recognised “for supporting developing country Members to build supply-side capacity and trade-related infrastructure” (WTO, 2015).

Trade partners may be supported through aid programmes to either meet the human rights standards required to benefit from trade agreements and schemes such as GSP programmes and FTAs, or to enforce these standards and improve the country's human rights policies. Although these programmes are generally stand-alone, there may be value in associating them with trade agreements so that trading partners can be better supported, both at the agreement negotiation stage and afterwards.

Several comments to this effect were made in relation to the EU Aid for Trade (AfT) programme, on the occasion of its 2019 periodic review. The EU AfT Strategy was adopted in October 2007 in response to the WTO-led AfT Initiative, which “encourages developing country governments and donors to recognise the role that trade can play in development. In particular, the initiative seeks to mobilise resources to address the trade-related constraints identified by developing and least-developed countries” (WTO, n.d.-b).

In the words of the European Commission, the EU AfT strategy similarly aims at helping “developing countries better integrate into the international trading system and take greater advantage of the poverty-reducing benefits of economic openness and enhanced trade efficiency” (European Commission, 2019, p. 5). The Strategy takes into account the 2030 Agenda and the EU trade and development policies to promote economic growth along social and environmental objectives. In accordance with the WTO task force recommendation on Aid for Trade of 2006, projects and programmes fall under the AfT Strategy only if they are considered as trade-related development priorities for the beneficiary country's national development strategies, i.e. trade policy and regulations, trade-related infrastructure, productive capacity building, trade-related adjustment, or other trade-related needs (European Commission, 2019, p. 5).

Albeit not tied to EU trade agreements and schemes, the EU AfT may help developing countries to benefit from them and may also provide additional support. Some AfT programmes have already shown some results in this regard. Whilst the EBA programme, which benefitted to Afghanistan and enabled the country to be endowed with unilateral trade preferences, proved insufficient to raise the effectiveness of its export sectors, the Advanced-Afghan Trade (AAT) project enabled to support the improvement of the business and investment related environment to boost competitiveness, and support regional transit/connectivity (European Commission, 2019, p. 18). EU trade-related projects in Nepal have also been instrumental in helping the country to better promote its exports, even though Nepal already benefited from an EBA programme and had 90% of its exports entering the EU market on preferential terms (European Commission, 2019, p. 20).

Such results may nonetheless be tempered by criticisms on EU AfT spending, which is deemed to be too decentralised and fragmented. In its 2019 report, the EU Commission indeed stressed the importance of better combining bilateral, regional and thematic tools with aid modalities, both at EU and Member State level. In particular, the European Commission proposed the following recommendations to help partner countries make the most of the EU's trade agreements and schemes:

- *Use the institutional monitoring mechanisms established by EU free trade agreements, including EPAs, as an additional means to identify relevant aid for trade activities;*
- *Include in EU free trade agreement implementation plans, including for EPAs, targeted measures to help developing partner countries make better use of the opportunities offered by EU trade agreements;*
- *Regularly assess the rate of preferences utilisation by partners of trade agreements and beneficiary countries of the Generalised Scheme of Preferences; and analyse the limiting factors, from both domestic supply-side and EU trade regime perspectives. Direct EU Aid for Trade towards better addressing such constraints and, where relevant, assess the need to take them into account in the evolution of trade measures (European Commission, 2019, p. 20).*

## 2. Support through dialogue and cooperation platforms

The role of dialogue and cooperation platforms pertaining to trade and sustainable development has been growing over the past ten years, both in and out of the framework of trade agreements and schemes. In the context of trade agreements, most dialogue and cooperation platforms are established as civil society mechanisms, implemented in the trade and sustainability chapters and also, in the case of some association agreements, for the whole agreement (see in this regard the 2016 EU-Ukraine Association Agreement, Article 470). It should be noted that this extension of the scope of civil society stakeholder advice is likely to be generalised in future agreements, as the European Commission has recognised the need for stakeholders to propose their recommendations on the sustainability implications of other parts of agreements apart from TSD chapters (European Commission Services, 2018, p. 6).

Although civil society mechanisms appear to be based on the same model in the TSD chapters, they remain tailored to their trade agreements and therefore vary greatly from one agreement to another, both in terms of their provisions and their implementation. In the words of Orbie, Martens and Van Den Putte (2016, pp. 14–15), whose study well explained these variations, civil society mechanisms can be broken down into at least five categories (see Figure 26):

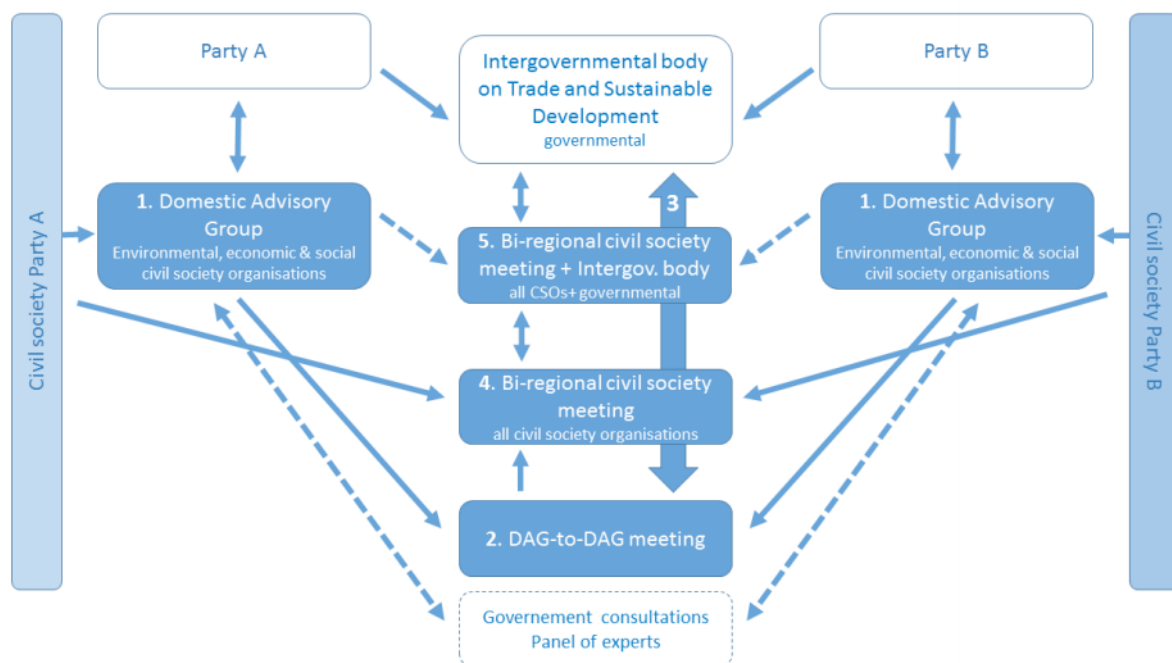
1. *A Domestic Advisory Group (DAG) in which civil society organisations of one [trade] Party meet;*
2. *A joint meeting of the domestic advisory groups (DAG-to-DAG meeting) of the Parties;*
3. *In this constellation, the DAG-to-DAG meeting comes together with the intergovernmental body;*
4. *An open civil society meeting where civil society organisations of the Parties meet without the presence of the intergovernmental body;*
5. *Civil society from different countries meets with the intergovernmental body.*

As domestic mechanisms, DAGs ideally comprise labour, environmental and business representative organisations for each party (the EU and its trading partner(s)) and ensure a balanced representation of economic, social and environmental stakeholders, including employers and workers organisations, business groups and environmental organisations. As transnational mechanisms, joint meetings of DAGs tend to meet once a year to discuss the implementation of the TSD chapter and may also include, depending on the agreement, other relevant stakeholders than those already represented by DAGs. These meetings thus ensure that both parties are committed to cooperating together, although the modalities of cooperation also tend to vary (Orbie, Martens, Oehri, et al., 2016, p. 528).

Despite the opportunities they offer in terms of dialogue and cooperation, civil society mechanisms have been subject to many criticisms, which the European Commission is reportedly working to address. Most of them concern their institutional shortcomings, which make these dialogue and cooperation platforms of trade agreements less effective in supporting the EU's trading partners. Indeed, the role of civil society is not as well developed in the EU as in the U.S., as EU trade agreements do not establish a public submission procedure for civil society bodies to file complaints (International Labour Office,

2017b, p. 47). Moreover, it is argued that their functioning is deficient, as their composition and meetings need to be improved. The annual meetings are considered insufficient to detect early problems and allow stakeholders to voice their demands. In this regard, Van den Putte et al. (2015, p. 3) suggest multiplying the number of meetings, for example by supplementing the annual meetings with four-monthly videoconferences. Further, the lack of continuity and organisation between civil society groups was also denounced, particularly due to the absence of a coordination mechanism (Orbie, Martens, Oehri, et al., 2016, p. 528). Whilst EU DAGs and DAG-to-DAG meetings are chaired by the European Economic and Social Committee (hereinafter EESC), there is indeed no such body for EU trade partners (Orbie, Martens, & Van Den Putte, 2016, p. 20). Finally, lack of funding is seen as an obstacle to effective dialogue between trading partners. This issue has been partially handled by the European Commission, which has raised a EUR 3 million project aiming at “encourag[ing] the exchange of best practices between DAGs in different FTA partner countries’ and ‘improv[ing] interaction between TSD committees (i.e. governmental bodies) and civil society bodies” (European Commission Services, 2018, p. 5). In 2021, the European Commission also announced the implementation of the Single Entry Point, a new complaints system enabling all EU stakeholders, including civil society, to play a direct role in the implementation of TSD Chapters (European Commission, 2021b, p. 1).

**Figure 26:** Five Categories of Civil Society Mechanisms for TSD Chapters



Source: *Civil society meetings in European Union trade agreements: features, purposes, and evaluation*, (Orbie, Martens, & Van Den Putte, 2016), [URL](#)

Beyond the sole framework of trade agreements, other initiatives have been developed so as to promote dialogue and cooperation between the relevant stakeholders. These initiatives, which tend to be more local and aim at ensuring an adequate representation of workers, represent an interesting alternative to the civil society mechanisms of trade agreements. Accordingly, there may be some value in connecting them to DAGs and joint

meetings or in implementing them as good practices in the functioning of civil society mechanisms, so that their outcome better supports EU trade partners.

Some of these initiatives pertain to programmes valuing the dialogue of corporations and governments with workers and trade unions. The importance attached to the opinion of workers is essential to ensure that their rights would be adequately protected, both in the framework of trade agreements and in company policies ensuring respect for human and labour rights. These policies are often designed without taking into account the views of workers, precisely when they are well positioned to identify the risks of violations and propose mitigation measures and grievance mechanisms (ILO et al., 2019, p. 64). As for EU trade agreements, it is argued that civil society bodies, which comprise trade unions and workers, are not given a meaningful role in the implementation of the agreements (Barbu et al., 2017, p. 1). This leaves very little space for workers to express their claims, all the more so as the fear of reprisals often stands in the way of their requests (Weil, 2018, p. 444). Programmes integrating the opinion of workers are therefore particularly valuable.

In this regard, it is worth mentioning the Worker-driven Social Responsibility (WSR) approach, which deals with labour abuses affecting farmworkers. WSR programmes establish a code of conduct in a variety of locations and sectors, which can be described as being “based on binding and enforceable agreements between companies and workers’ organisations mandating companies to cover the costs of higher labour standards and include workers in their design and implementation” (ILO et al., 2019, p. 65). These agreements rely on six principles (Worker-Driven Social Responsibility Network, n.d.):

1. *Labour rights initiatives must be worker driven;*
2. *Obligations for global corporations must be binding and enforceable;*
3. *Buyers must afford suppliers the financial incentive and capacity to comply;*
4. *Consequences for non-compliant suppliers must be mandatory;*
5. *Gains for workers must be measurable and timely;*
6. *Verification of workplace compliance must be rigorous and independent.*

Given the success of some of these programmes, such as the Fair Food programme involving corporate buyers of tomatoes, WSR is considered more efficient than the CSR approach with regard to its impact on forced labour and improvement of working conditions (ILO et al., 2019, p. 65).

Other initiatives have also sought to engage workers’ organisations in collaboration with labour inspectorates in the enforcement of labour standards. These collaborations have been considered as being quite fruitful in countries such as Australia, China and Sweden. They are all the more relevant as the role of labour inspectorates has also been praised as contributing together with child protection monitoring systems to combating child labour in countries such as Brazil, Cambodia and Uganda (ILO et al., 2019, p. 34).

Another notable platform launched by an intergovernmental organisation is ILO-UN Global Compact Child Labour Platform (CLP). The CLP “aims to identify the obstacles to the implementation of the ILO Conventions in supply chains and surrounding communities, identify practical ways of overcoming these obstacles, and catalyse collective action” (ILO, n.d.-a). Described as cross-sectoral, the CLP promotes dialogue between business,



government, workers' and employers' organisations with regard to child labour, particularly in supply chains. Its core activities notably provide a forum of exchange of experience and know-how, training, create linkages with national- and local-level institutions and programmes, contribute to research on child labour and enable to reach out to additional companies (ILO, n.d.-e).

### **3. Support through the Neighbourhood, Development and International Cooperation Instrument**

#### Presentation of the NDICI

The Neighbourhood, Development and International Cooperation Instrument (hereinafter NDICI) was established in the framework of the EU multiannual financial framework (hereinafter MFF) for the 2021-2027 period, following a proposal of the European Commission on 14 June 2018 (European Commission, 2018b). The text of the regulation was approved in a joint vote of the European Parliament's Development Committee (hereinafter DEVE) and Committee on Foreign Affairs (hereinafter AFET) on 18 March 2021, and will have to be formally adopted by the European Council at first reading (European Parliament, 2021c). The European Parliament will then be expected to vote at second reading on the regulation during its plenary session next June or July, for the regulation's last stage of adoption (Immenkamp, 2021, p. 12).

The NDICI groups together all current EU instruments for development cooperation. Those include the Common Implementing Regulation (hereinafter CIR); the Development Cooperation Instrument (hereinafter DCI); the European Neighbourhood Instrument (hereinafter ENI); the European Instrument for Democracy and Human Rights worldwide (hereinafter EIDHR); the Instrument contributing to Stability and Peace (hereinafter IcSP); the Partnership instrument (hereinafter PI); the European Fund for Sustainable Development (hereinafter EFSD); the External Lending Mandate (hereinafter ELM); the Guarantee Fund for External Action (hereinafter GFEA); macro-financial assistance and the European Development Fund (hereinafter EDF). Its budget, which expired on 31 December 2020, was EUR 79.5 billion in current prices (EUR 70.8 billion in 2018 prices).

This clustering of instruments stems from the desire to simplify the structure of the EU's external action architecture, whilst rationalising management and oversight systems (Immenkamp, 2021, p. 5).

Pursuant to Article 4 of the EU Provisional agreement resulting from interinstitutional negotiations (European Parliament, 2021a, p. 34), the structure of the instrument is based on three pillars:

- a **geographical pillar** (Article 4.2), covering programmes for (i) the European Neighbourhood; (ii) sub-Saharan Africa; (iii) Asia and the Pacific; and (iv) the Americas and the Caribbean. These programmes include areas of cooperation such as good governance, democracy, rule of law and human rights; poverty eradication, fight against inequalities and human development; inclusive and sustainable growth and decent employment;

- a **thematic pillar** (Article 4.3), covering thematic programmes on (i) human rights and democracy; (ii) civil society organisation; (iii) Peace, Stability and Conflict Prevention; and (iv) global challenges. Areas such as women and children, and decent work and social protection, will also be covered;
- a **rapid response pillar** (Article 4.4), designed for quick responses and aiming at (i) contributing to peace, stability and conflict prevention in situations of urgency, emerging crisis, crisis and post-crisis, including those which may result from migratory flows and forced displacement; (ii) contributing to strengthening the resilience of states, societies, communities and individuals and to linking humanitarian aid and development action and, where relevant, peacebuilding; (iii) addressing Union foreign policy needs and priorities.

Following Article 17 of the provisional agreement (European Parliament, 2021a, p. 37), a cushion is also designed to address emerging challenges and priorities, and will (i) ensure an appropriate response of the Union in the event of unforeseen circumstances; (ii) address new needs or emerging challenges, such as those at the Union's or its neighbours' borders linked to crisis, either natural or man-made, violent conflict and post-crisis situations or migratory pressure and forced displacement; and (iii) promote new Union led or international initiatives or priorities.

#### The role of the NDICI in the reduction of child labour

The NDICI will be the only instrument to implement the EU's development cooperation policy, which aims at realising the 2030 Agenda for Sustainable Development (hereinafter 2030 Agenda) and its Sustainable Development Goals (hereinafter SDGs), with which the realisation of the children's rights is closely linked. SDG 8.7 indeed urges to "take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour," whilst SDG 16.2 demands to "end abuse, exploitation, trafficking and all forms of violence against and torture of children" (UN, 2015, pp. 20-25).

The NDICI thus raises some expectations on the commitment of the European Union to address child labour. Some recommendations have already been made by various stakeholders to improve the protection of children's rights, both in the context of specific projects and as part of a more global strategy on children. Following the EU's commitment to develop a comprehensive Child Rights strategy, UNICEF recommended, together with other organisations, that the EU institutions "develop and implement a Child Marker to monitor and track impact on children of Neighbourhood, Development, and International Cooperation Instrument (NDICI), ensuring that 25% of annual spending is focused on child-specific outcomes" (UNICEF et al., 2020, p. 18). Similarly, they stressed the need for the EU to "prioritise specific resources that address the needs of children in most vulnerable situations" (UNICEF et al., 2020, p. 19) and to "assist partner countries in building and strengthening child protection systems through EU technical assistance" in line with the EU Action Plan on Human Rights and Democracy 2020-2024 (UNICEF et al., 2020, p. 24). Likewise, a report on the EU support for care reform for children in Uganda in the 2021-2027 period, also suggested practical steps for the EU institutions to ensure that the NDICI

will support a comprehensive reform of the childcare system in Uganda (Hope and Homes for Children et al., 2020).

The text of the EU Provisional agreement (European Parliament, 2021a, p. 34) shows that the European Union has every intention of respecting, through the NDICI, its commitments to human rights, and in particular the rights of the child. Indeed, in the areas of cooperation of both the thematic and geographic programmes, the agreement makes explicit references to the core ILO labour standards and the ILO's Global Agenda on Decent Work,<sup>31</sup> as well as social dialogue,<sup>32</sup> the rights of the child and the fight against child labour,<sup>33</sup> corporate social responsibility and due diligence.<sup>34</sup> A whole section in Annex III on the areas of intervention for thematic programmes is also dedicated to children and youth, and notably emphasises the necessity to focus on "health, nutrition, education, social protection and early childhood development, including through dedicated youth friendly services" as well as on new initiatives to ensure that "children get the best start in life and are protected in all areas from violence, abuses and neglect, including by promoting the transition from institutional to community-based care for children" (European Parliament, 2021a, p. 100).<sup>35</sup>

Furthermore, the NDICI should be understood as building on the instruments it brings together, through which many projects and programmes have already been implemented in relation to labour rights. Many of these projects have been aimed at fostering business and human rights, as well as responsible business conducts. As an example, the *Bangladesh Sustainability Compact* and the *Myanmar Labour Rights Initiative* sought to improve labour rights and safety conditions for workers in the garment industries of Bangladesh and Myanmar (OHCHR, 2020, p. 16). Other projects have been designed to improve labour conditions in developing countries in specific value chains, both under the DCI and the EDF. With regard to the garment and textile sectors, the European Union thus supported the ILO and Food and Agriculture Organisation's four-year "Clear Cotton Project", which aimed to eliminate child labour and forced labour in the cotton, textile and garment value chains in Burkina Faso, Mali and Pakistan (ILO, 2018, p. 2). The project focused on strengthening policy, legal and regulatory frameworks to combat child labour and forced labour in the cotton, textile and garment sector (ILO, 2018). It also sought to assist local governments, public services providers, and other relevant stakeholders to take effective action to stop child labour, through very concrete actions, including due diligence, remedial mechanisms, and the development of community-based multi-stakeholder monitoring. Several other

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<sup>31</sup> See notably Article 31 (European Parliament, 2021b) on the Scope and financing of the EFSD+, the budgetary guarantees and financial assistance to third countries of the provisional agreement; see also Annex III on the areas of intervention for thematic programmes, Part A, para. 6.b, and Annex V on the priority areas of the EFSD+ operations covered by the external action guarantee of the provisional agreement.

<sup>32</sup> See notably Annex II on the areas of cooperation for the geographic programmes, para. 5.a and Annex III on the areas of intervention for thematic programmes, Part A para. 6.b of the provisional agreement (European Parliament, 2021b).

<sup>33</sup> See notably Annex II on the areas of cooperation for the geographic programmes, para. 5.a and Annex III on the areas of intervention for thematic programmes, Part A paras. 4 and 6.b of the provisional agreement (European Parliament, 2021b).

<sup>34</sup> See notably Article 38 on the implementation of External Action Guarantee agreements; Annex II on the areas of cooperation for the geographic programmes, para. 4.g. and 5.e; the Annex III on the areas of intervention for thematic programmes, Part A para. 6.b and Part C para. 1.h. of the provisional agreement (European Parliament, 2021b).

<sup>35</sup> Annex III, Part A para. 4.a. and b.

projects have also been carried out under the “Increasing Knowledge, Awareness, Transparency and Traceability for Responsible Value Chains in the Cotton and Garment Sectors” programme, with the aim of reducing labour rights abuses by improving awareness and transparency on production and consumption (OHCHR, 2020, p. 17). As it combines the EU's various development and cooperation instruments, the NDICI should therefore be able to fund such projects and support the EU's trading partners with concrete measures.

Finally, it should be noted that the European Union is willing to act upon its commitments, as illustrated by a resolution of the EU Parliament on 11 February 2020 on child labour in mines in Madagascar (European Parliament, 2020a). In this resolution, the European Parliament notably recommended the future application of the NDICI “in the context of child labour eradication, including in the area of social inclusion and human development” and urged “the Commission and the EU delegations to ensure meaningful consultations with local and international civil society organisations to ensure that evidence from programmes and the experiences of working children will be taken into account by the NDICI programming process” (European Parliament, 2020a).

#### *D. U.S. support for trade partners*

In the United States, the Millennium Challenge Corporation programme (hereinafter MCC programme) represents another example of an aid programme that could help developing countries meet the requirements of trade agreements and regimes, both before and after ratification. As a foreign assistance agency created by the U.S. Congress in January 2004, this programme is described as providing “time-limited grants promoting economic growth, reducing poverty and strengthening institutions. The investments thus support stability and prosperity in partner countries” (MCC, n.d.-a). The partnerships created with developing countries remain formed as long as the partner countries are engaged in respecting the key principles of the MCC programme, that is, good governance, economic freedom and investing in their citizens.

Countries may only be candidates for MCC assistance if they are classified as low income or lower middle income by the World Bank, and are not prohibited from receiving assistance by federal law. Further, the Board also considers the country's policy performance on 20 independent and transparent policy indicators, the opportunity to reduce poverty and achieve sustainable economic growth within a country, as well as the availability of funds. Candidate countries may then be selected as eligible to the programmes (MCC, n.d.-a). Selected countries, if they agree to participate, then develop a *Compact Proposal* with MCC. Progress is tracked to the application of select indicators featured on MCC's scorecard (MCC, 2021).

MCC's selection criteria incentivise potentially eligible countries to reform policies, strengthen institutions and improve data quality in order to boost their development performance. Three types of grants are provided by the MCC. Whilst compact grants may only be granted for five years for selected countries meeting MCC's eligibility criteria, smaller “Threshold Programs” grants may be proposed to countries which do not meet these criteria, but demonstrate a genuine commitment to improving their policy

performance. Selected countries are thus assisted to become compact eligible and offered the opportunity to demonstrate their commitments to MCC key principles. And finally, the third MCC grant type – Concurrent Compacts for Regional Investments – promotes cross-border economic integration, and increases regional trade and collaboration.

Five countries in West Africa – Benin, Burkina Faso, Côte d’Ivoire, Ghana and Niger – were selected for the first time as eligible countries to this third grant by MCC’s Board of Directors in December 2018 so as to “allow MCC to work with the countries to determine if there are projects that meet MCC’s strict investment criteria as well as evaluate the countries’ ability to work with MCC and a partner country on a regional investment” (MCC, n.d.-b).

The MCC programme thus provides for a genuine incentive for U.S. trade partner countries to improve their policies so as to benefit from both MCC grants and trade agreements with the United States. Although not tied to trade agreements, MCC projects indeed aim at resolving local and concrete issues faced by developing countries, such as electricity or clean drinking water supplies. Whilst reducing the countries’ level of poverty and promoting economic growth, these projects thus may have a positive impact on child labour, although they do not necessarily address this issue in particular.

As an example, the MCC’s \$295.7 million Compact (2009-2014) in Namibia funded the \$7.6 million Indigenous Natural Product (INP) Activity. In the words of the U.S. MCC (2017), the activity “aimed to improve quality and increase quantity and sales of five native plant products used in health and beauty markets to ultimately increase harvesters’ income, the majority of whom are women.” The project enabled the training of over 9,000 harvesters and also made sure that children would not be used to harvest the product (NORC at the University of Chicago, 2014, p. 152).

In its 17 years of existence, the agency has *inter alia* trained 405,482 farmers, educated 291,144 students, provided self-sustaining electricity systems generating 21,275,836 megawatt hours of electricity, formalised 320,722 land rights, built 3,935 kilometres of roads, and constructed 1,191 water points.

## *E. Multilateral support to nation-states*

### **1. ILO**

Ever since its creation after World War I at the Treaty of Versailles, the ILO International Labour Organization<sup>36</sup> has established international labour standards in the form of international treaties that countries ratify in order to set the minimum standards for protections at the workplace. Given the ILO’s tripartite design, these standards are not only drafted just by governments, but benefit from the “real economy” perspective of workers and employers who also have a hand in their adoption.

Two ILO conventions that exclusively concern child labour are Convention 138 and Convention 182 (ILO 1973; ILO 1999). In 1973, the International Labour Organization (ILO)

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<sup>36</sup> Its very name represents a compromise: while “Labour” is British English, “Organization” is American English.

adopted a Convention on [Minimum Age \(No. 138\)](#). While Convention 138 prohibits hazardous work below the age of 18, the step taken by the ILO Convention on the [Worst Forms of Child Labour \(No. 182\)](#) was to categorise it as one of the worst forms: C182 prohibits work that could likely harm the “health, safety or morals of children” (ILO, 1999). Apart from hazardous work, C182 also designates slavery-like practices, trafficking, and prostitution as the worst forms of child labour.

A substantial number of these child labourers are exposed to WFCL as they are engaged in agricultural or mining work, where they are exposed to hazardous and forced labour. ILO (2001) Convention 184 on the Safety and Health in Agriculture therefore specifically calls out work which is “likely to harm the safety and health” of individuals, which may only be performed by young persons 18 and older.

The progressive ratification of two ILO standards directly targeting child labour has had a decisive impact in ratifying countries, as national laws and enforcement are shaped to provide proper legal protection to children. Table 17 shows the ratification of The Minimum Age Convention No. 138 and the Worst Forms of Child Labour Convention No. 182, as well as the UN Convention on the Rights of the Child (CRC). The UN CRC (UN General Assembly, 1989) is another international instrument, having been ratified by 196 states (with only the United States not having ratified it to date), that recognises primary education as compulsory, and obliges member states to regulate the working conditions and hours of children. Yet, the only standard which *all* eligible countries have ratified is ILO (1999) C182.

**Table 17:** Ratification of ILO Standards C138 and C182, and the UN CRC

|   | <i>ILO C138</i>  | <i>ILO C182</i>           | <i>UN CRC</i>             |
|---|--|---------------------------|---------------------------|
| <i>convention ratifications</i>                     | 173 (out of 187 eligible)  | 187 (out of 187 eligible) | 196 (out of 197 eligible) |
| <i>countries which have not ratified convention</i> | Australia, Bangladesh, Cook Islands, Iran (Islamic Republic of), Liberia, Marshall Islands, New Zealand, Palau, Saint Lucia, Somalia, Timor-Leste, Tonga, Tuvalu, United States of America | --                        | United States             |

Source: *Ratification by Convention*, (ILO, n.d.-c), [URL](#) & *Convention on the Rights of the Child*, (UN, 2021a), [URL](#)

Through the act of ratification, member states commit themselves to a progressive agenda. Case in point ILO (1973) C138, Article 1:

*Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise*

*progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.*

To date, 53 countries have stipulated the minimum age as 14 years, 78 countries at 15 years, and 44 at 16 years of age.<sup>37</sup>

With regard to the transposition of the standards into national laws, ILO and USDOL report:

*Over the 15 years from 2004 to 2018, a total of 59 countries have developed, revised, or updated their legislative framework to comply with the provisions of ILO Conventions on child labour. Some countries had to change their national constitutions to ensure that the rights of children are fully recognized in law and in practice. Many of the adapted laws related to the establishment of a national list of hazardous work for children below the age of 18. (ILO & U.S. Department of Labor, 2019)*

By signing and ratifying relevant instruments, member states incur legal obligations to improve the lot of children and to bring their national legislation into conformity with those instruments. Furthermore, when countries ratify the convention, they accept being monitored. A "supervisory mechanism" at the ILO holds governments to account, answering the question whether a ratifying government is actually implementing its commitments. Thus, the ILO's child labour standards represent a rallying cry and a central fulcrum for national implementation.

Its engagement of member states, in view of eliminating child labour, the ILO executes in line with Convention 182 Art. 8 (ILO, 1999) and SDG 17 (UN, n.d.). Deliberately connecting the dots between EU trade interests and labour standards in exporting countries, the ILO's Trade for Decent Work Project "aims at improving the application of the ILO fundamental Conventions in EU trading partner countries through improved labour relations and working conditions." At the top of the list is the capacitation of key stakeholders: "Strengthening the capacity of constituents to actively participate in national processes to comply with International Labour Standards (ILS), particularly the Fundamental Conventions" (ILO, n.d.-d). Moreover, the ILO supervisory bodies, including the independent Committee of Experts on the Application of Standards, provide information on countries' efforts to eliminate child labour. Uzbekistan, which has virtually eliminated child and forced labour in its cotton harvest, also benefitted from ILO supervisory action and technical assistance.

While two of the ILO conventions are focussed on child labour, one should keep in mind that fundamental labour rights are indivisible and mutually supportive. Consider the possible interactions on an individual case basis: discrimination against migrants or ethnic minorities may be just as important a factor of child labour as household income; a lack of freedom of association rights can increase inequality and prevent economic growth from delivering social progress. Therefore, progress across all of the core labour rights and factors related to political economy as well as economic indicators are relevant for child labour outcomes.

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<sup>37</sup> See ratifications of ILO conventions: (ILO, n.d.-a)

## 2. IPEC+

Created in 1992, the ILO's International Programme on the Elimination of Child Labour (IPEC) has led global efforts against child labour (ILO & Fundamental Principles and Rights at Work Branch [FUNDAMENTALS], 2019). In 2015, IPEC was expanded to IPEC+, incorporating also the issue of forced adult labour under its aegis, and the programme was placed in the Fundamental Principles and Rights at Work Branch of the ILO. IPEC+ aims to eliminate child labour in all its forms by 2025, as well as eradicate forced labour, modern slavery and human trafficking by 2030. Mirroring the context in which child labour occurs, IPEC+'s three thematic priorities are: (a) Rural and informal economies, (b) Enterprises and global and domestic supply chains, and (c) Situations of crisis and fragility (ILO & FUNDAMENTALS, 2019).

Its strategy is to intervene in the following domains:

- i. Public policies and governance,
- ii. Empowerment and representation,
- iii. Partnerships and advocacy, and
- iv. Knowledge and data.

IPEC activities have reportedly engaged thousands of partners from all regions of the world, including employers' and workers' organisations. Its direct action involves building capacity, convening of constituents in the communities or workplaces where child labour exists, and supporting the work of national trade unions (ILO & FUNDAMENTALS, 2019).

Summarising its output, the ILO (2017) concludes:

*Working in more than 115 member States over 25 years, IPEC+ has raised awareness, encouraged member States to put in place the necessary legal and policy frameworks, pilot-tested interventions, supported public services, the social partners and others in combatting child labour through prevention and remediation, and, in the common family and beyond, it has advocated for appropriate attention to child labour in wider development policies and programmes. These efforts and activities have resulted in nearly 1 million children being withdrawn or prevented from entering child labour through the provision of educational and other opportunities.*

*Over the past decade, with direct assistance from the ILO, more than 60 countries, enacting almost 200 laws, have adapted their legal frameworks to bring them into conformity with the ILO's child labour Conventions. In 57 of these countries, the changes have been implemented through 279 national action plans. In 45 countries, child labour policies have also been integrated into wider national social development frameworks or sectoral policies such as those on education, social protection, agriculture, and the informal economy. Employers' and workers' organizations have also integrated child labour into their policies and actions, contributing in many counties to the implementation of national action plans. (p.14)*

IPEC+ also works with member states to devise or update action plans to tackle child labour in all its forms. Through the Alliance 8.7 programme – for which the ILO provides its secretariat – states may elect to become “Pathfinder Countries” and, by doing so, commit to



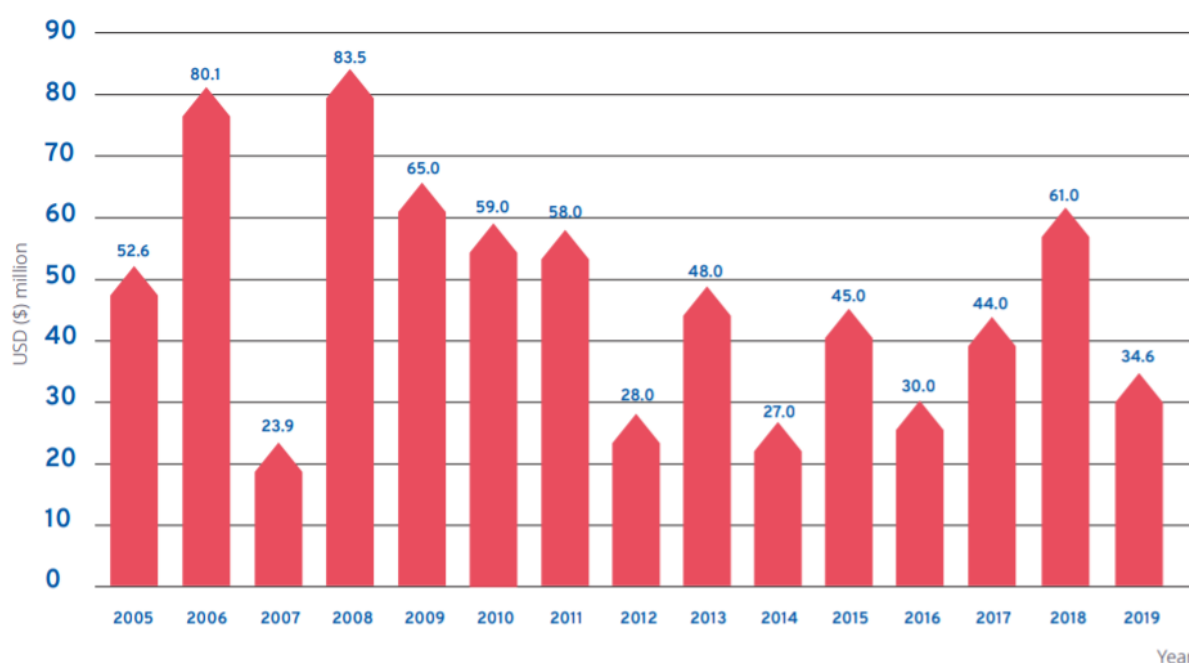
going further or faster to achieve target 8.7. This is notably achieved through the hosting of workshops, resulting in joint plans of action that serve as Alliance 8.7 roadmaps in the countries concerned. To date, 22 countries have signed up to become pathfinder countries (B. Smith, personal communication, May 20, 2021).

Supporting countries implement their ratified conventions pays off: the ILO notes that since 2004, “in its regular review of the application of ILO Conventions No. 138 and No. 182, the ILO’s Committee of Experts has increased seven-fold its comments noting progress with satisfaction and interest” (ILO, 2017).

Due to the increase of child labour due to COVID, IPEC+ launched a project (*COVID-19 impact on child labour and forced labour: The response of the IPEC+ Flagship Programme*) to reach around 1 million vulnerable children, communities and families in an additional 10 countries (ILO, n.d.-b, 2020a).

With respect to the resources allocated to IPEC/IPEC+, as Figure 27 demonstrates, the extra-budgetary allocations to IPEC have oscillated considerably between 2005 and 2019.

**Figure 27:** Approvals for IPEC+ Child Labour and Forced Labour Projects (Extra-budgetary Allocations), 2005-2019

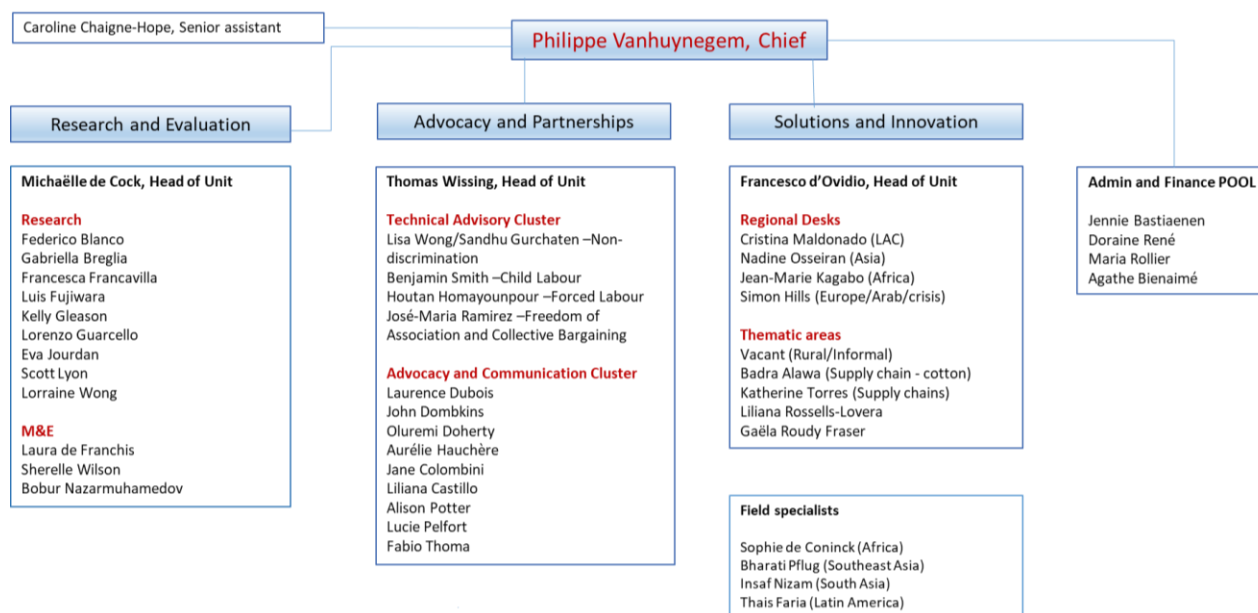


Source: IPEC+ Global Flagship Programme Implementation: Towards a world free from child labour and forced labour, (ILO, 2020b), [URL](#)

Bringing together IPEC and the Department for the Promotion of the Declaration on Fundamental Principles and Rights at Work (DECLARATION), and housed within the ILO Governance and Tripartism Department, the ILO’s Fundamental Principles and Rights at Work Branch (FUNDAMENTALS) was established in 2013. “The Branch promotes policy development, carries out research, and provides technical advisory services on child labour,

forced labour, non-discrimination and freedom of association and collective bargaining” (ILO, 2020c). Figure 28 depicts the FUNDAMENTALS organigram.

**Figure 28: FUNDAMENTALS Branch Structure**



Source: (B. Smith, personal communication, May 20, 2021)

### 3. Child Labour Monitoring Systems

A Child Labour Monitoring System (CLMS), pioneered by the ILO, systematically measures and reports child work data on an ongoing basis for all children in a target community. As data are obtained at the individual child level by trained data collectors, it is a vital and indispensable tool to ascertain child exposure to hazards and risks associated with their work. Upon receiving the data, a dedicated child labour committee (often comprising community leaders) then takes further action, e.g. withdrawing a child from child labour or WFCL. As such, CLMS is an extremely cost-effective and empowering method to detect child labour in a time-sensitive manner (Bayer, 2014).

Various iterations of CLMS have emerged over the years, refined through practice. Originally developed in the Bangladeshi textile sector, an industrial setting, CLMS has also been set up in the agricultural sector. A basic CLMS, for example, was applied in Ghana – the Ghana Child Labor Monitoring System (GCLMS)– having been previously piloted in the 2002-2006 *West Africa Cocoa/Commercial Agriculture Programme to Combat Hazardous and Exploitative Child Labour* (Bayer, 2014). Fairtrade International practices, to date, a form of CLMS that leverages youth participation and agency, notably embodied in its youth-inclusive child labour monitoring in Belize sugar production (de Buhr, 2019). CLMS may also be linked to private sector-led remediation, e.g. as practised in Nestle’s (2019) Child Labor Monitoring and Remediation System (CLMRS) application.

## VI. UNGPs Pillar II – Measures to Enhance the Corporate Responsibility to Respect

### *A. Legislative precedents of mandatory due diligence*

The second pillar of the UNGPs affirms that business enterprises should respect human rights (UN, 2011, p. 13). It clarifies that the corporate responsibility to respect human rights refers to all internationally recognised human rights, which include those expressed in the International Bill of Human Rights and the principles concerning fundamental rights in the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work (UN, 2011, p. 13). The latter include the Conventions on the elimination of forced labour (No. 29 and No. 105), the Conventions on freedom of association and the effective recognition of the right to collective bargaining (No. 87 and No. 98), the Conventions on the elimination of discrimination in respect of employment and occupation (No. 100 and No. 111) and the Conventions on the prohibition of child labour (No. 138 and No. 182). The UNGPs set out that, in order to meet their responsibility to respect human rights, businesses should have in place a human rights due diligence (HRDD) process “to identify, prevent, mitigate and account for how they address their impacts on human rights” (UN, 2011, p. 16).

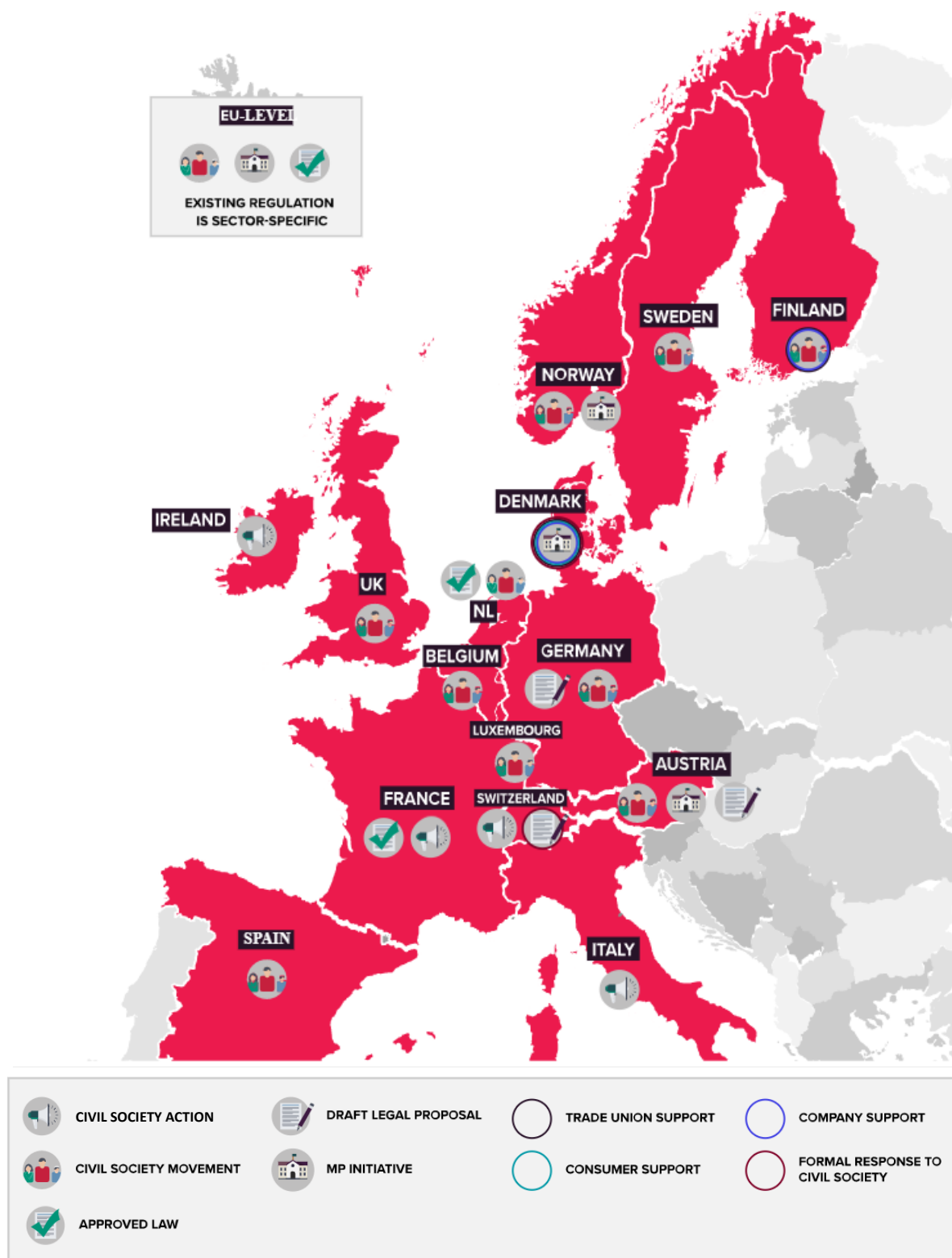
In recent years, a growing number of nation-states have adopted or considered the adoption of legislation turning the “soft” HRDD requirement under the UNGPs into a legally binding duty. The two main examples of existing legislation in this respect are the French Duty of Vigilance Law and the Dutch Child Labour Due Diligence Act. In addition, a number of legislative initiatives have been put forward by various EU member states and at the European level (see Figure 29).

These new laws will have a significant impact on numerous private sector actors across sectors. This will include for instance (amongst many other examples), the garment industry in South Asia which supply European brands (or non-European brands selling products on the EU market), or the small-scale farmers growing cocoa in Côte d'Ivoire and Ghana that supply European food and beverage companies (or non-European companies selling products on the EU market): while many such suppliers are already subject to some HRDD processes, they are bound to intensify in the wake of mandatory HRDD laws.

#### **1. France**

The French Duty of Vigilance Law (FDVL) adopted on 2 February 2017 and enacted on 27 March 2017 (LOI n° 2017-399 du 27 Mars 2017), was the first legislation in the world to introduce binding human rights due diligence requirements on certain companies through the establishment of a duty of vigilance.

**Figure 29:** Due Diligence, Legislative and Movement Initiatives in Europe



Source: Human Rights Due Diligence: the State of Play in Europe, (Shift, 2021), [URL](#)

The FDVL has a twofold objective: (1) to enhance corporate accountability in order to prevent business-related human rights or environmental harms, and (2) to improve access to remedy for individuals and communities whose human rights have been adversely

affected by the activities of French companies. It requires large French companies<sup>38</sup> to put in place, disclose and implement a vigilance plan (*plan de vigilance*) detailing the “reasonable vigilance measures to identify risks and prevent serious violations of human rights and fundamental freedoms, health and safety and the environment resulting from the own activities of the company or the companies under their control, or from the activities of their subcontractors and suppliers with whom they have an established business relationship” (LOI n° 2017-399 du 27 Mars 2017).<sup>39</sup> Child labour would fall within the scope of the law insofar as it constitutes a serious violation of human rights and fundamental freedoms (Duthilleul & de Jouvenel, 2020).

The vigilance plan must include five elements, in particular (Code de Commerce art. L225-102-4):

- a mapping of the risks involved, containing in particular the identification, analysis and prioritisation of risks;
- procedures to regularly assess risks associated with the activities of subsidiaries, subcontractors or suppliers with whom the company has an established business relationship;
- actions to mitigate risks and prevent serious harm;
- a whistleblowing mechanism collecting reports of potential and actual risks and effects, drawn up in consultation with the company's representative trade unions;
- a mechanism to monitor measures that have been implemented and evaluate their effectiveness.

In case of non-compliance, the French Duty of Vigilance law provides for two judicial enforcement mechanisms. First, any interested party can seek an injunction to compel a company to establish, implement and publish a vigilance plan. Second, the legislation provides that a company may incur civil liability, in the conditions set forth under French Tort Law, whenever its failure to comply with the obligations set forth in the legislation give rise to damage.

A number of studies have investigated the implementation of the law. The study by Ibañez et al. (2020) found mixed corporate performance: “the compliance score average for the 134 companies was 66%, with a median to 76%.” Yet the “compliance levels and the quality of reporting in general decreases for the latter requisites of the law, namely those concerned with assessing and disclosing the adequacy of the plans to address the risks at issue” (Ibañez et al., 2020, p. 4). According to a report from *Enterprises pour les droits de l'homme* (EDH, 2018), the law prompted 70% of companies to start mapping risks of adverse human rights and environmental impacts or to revise existing mappings and processes. In addition, whilst only 30% of companies had a dedicated process of identifying risks of adverse human rights impacts prior to the adoption of the law, the report found that 65% of companies had a dedicated process following its adoption (EDH, 2018, p. 13). A 2019 report

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<sup>38</sup> The FDVL applies to companies incorporated or registered in France for two consecutive fiscal years which employ at least 5,000 people in France (either directly or through their French subsidiaries), or at least 10,000 worldwide (through their subsidiaries located in France and abroad).

<sup>39</sup> In French Law, the notion of ‘established business relationship’ is characterised by its regularity, its stability and the volume of business involved. See Cour de cassation, Chambre Commerciale, 15 septembre 2009, n° 08-19200, Bull. IV, n° 110.

by Shift highlighted that “the requirements of the Duty of Vigilance Law have pushed companies to improve their reporting” (Shift, 2019, p.5). The report notes that, “overall, 55% of companies slightly improved the maturity of their disclosure, with an average overall score of 2.58/5, up from 2.45/5 before the entry into force of the Law” (Shift, 2019, p. 5), which is slightly higher than the average non-French company (Shift, 2018, p. 6). One study found generally high levels of compliance with the legislation, and observed that the French Duty of Vigilance has had some positive impacts on business practices (Duthilleul & de Jouvenel, 2020).

However, a majority of companies seem to have adopted a compliance-orientated approach, and to have focused on the risks to the business itself, rather than on the risks to people and the planet (ActionAid et al., 2019). Furthermore, consultation with external stakeholders (which is encouraged but not made compulsory under the FDVL) has remained limited in practice (Barraud de Lagerie et al., 2020). To address some of these issues, a recent report for the French Government recommended to nominate a public authority which would be in charge of: (i) monitoring the promoting and implementation of the law; (ii) contributing to the harmonisation of corporate practices; and (iii) promoting sectorial and multi-party approaches (Duthilleul & de Jouvenel, 2020).

Finally, despite its objective to improve access to remedy for victims, the FDVL failed to address a number of obstacles to accessing remedy faced by claimants in concrete cases. In particular, the burden of proof remains on the claimant, who will need to prove that they suffered damage as a result of a fault on the part of the parent company or lead company (Bright, 2021).

## 2. The Netherlands

The Dutch Child Labour Due Diligence Act (DCLDDA) was adopted on 14 May 2019,<sup>40</sup> although it has yet to enter into force.<sup>41</sup> It is framed around a double objective of preventing the use of child labour in supply chains thereby ensuring consumer protection (Enneking, 2020):

*we have taken into consideration the desirability of enshrining in law that companies that sell goods and services on the Dutch market should do everything within their power to prevent their products and services from being produced using child labor, so that consumers can buy them with peace of mind. (The Dutch Child Labour Due Diligence Act, 2019, Preamble)<sup>42</sup>*

Child labour is defined in Article 2 of the DCLDDA (2019) as meaning:

*in any case, any form of work, whether or not under an employment contract,*

<sup>40</sup> The Netherlands Child Labour Due Diligence Act of 2019: “Wet van 24 oktober 2019 n. 401 houdende de invoering van een zorgplicht ter voorkoming van de levering van goederen en diensten die met behulp van kinderarbeid tot stand zijn gekomen (Wet zorgplicht kinderarbeid).”

<sup>41</sup> Its exact date of its entry into force is to be determined by Royal Decree. It may, in fact, never enter into force if the legislative proposal published in March 2021 is adopted as the latter would effectively replace it.

<sup>42</sup> For an unofficial translation please see Ropes & Gray LLP publication (Littenberg & Blinder, 2019).

*performed by persons who have not yet reached the age of 18 and which is included among the worst forms of child labor referred to in Article 3 of the Worst Forms of Child Labor Convention, 1999.*

In addition, Article 2 specifies that if the work takes place in the territory of a State Party to the Minimum Age Convention, 1973, child labour shall further be defined as “any form of work prohibited by the law of that State in implementation of that Convention,” in the alternative, the DCLDDA (2019) states that child labour shall be understood to mean:

*i. any form of work, whether or not under an employment contract, performed by persons who are subject to compulsory schooling or who have not yet reached the age of 15, and ii. any form of work, whether or not under an employment contract, performed by persons who have not yet reached the age of 18, insofar as such work, by virtue of the nature of the work or the conditions under which it is performed, may endanger the health, safety or morality of young persons.*

However, child labour shall not include light work as defined in Article 7(1) of the Minimum Age Convention (ILO, 1973), carried out for a maximum of 14 hours a week by persons who have reached the age of 13.

The DCLDDA (2019) requires companies selling goods or supplying services to Dutch end users (art. 4.1)<sup>43</sup> to exercise human rights due diligence (art. 5). In particular, companies are to investigate, on the basis of reliable sources that are reasonable known and accessible to the company, whether there is a reasonable suspicion that the goods or services to be supplied have been produced using child labour (art. 5.1). Should such a suspicion arise, the legislation mandates companies to adopt and implement a plan of action (art. 51). The legislation refers to the ILO-IOE Child Labor Guidance Tool for Business (ILO, 2015) as a benchmark for the due diligence exercise (DCLDDA, 2019, art. 5).

Under Article 4 of the DCLDDA (2019), companies are required to declare that they exercise due diligence in order to prevent goods or services from being produced using child labour (art. 4.1). More specifically, they are to send a statement to a public supervising authority who is in charge of supervising compliance with the law (art. 3.1). The public supervising authority is to publish the declarations in a public register on its website (art. 4.5).

In case of non-compliance with the obligations laid out in the law, the public supervising authority can issue binding instructions accompanied by a time limit for execution (art. 7.4), and impose an administrative fine in case of continued non-compliance (art. 7). The company can be fined up to €8,200 in case of failure to submit the statement in accordance with Article 4, or up to 10% of the worldwide annual turnover in case of failure to exercise due diligence in accordance with Article 5 (Littenberg & Blinder, 2019). In addition, repeat offenders can incur criminal sanctions (DCLDDA, 2019, art. 9).

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<sup>43</sup> The legislation does not express any restriction in terms of size of the companies, turnover or in terms of legal form of the companies falling in its scope but Article 6 provides that categories of companies may be exempted from the legislation by general administrative orders. Under Article 4.4, companies that are merely transporting goods are exempt from this requirement.

Anyone whose interests are affected by the actions or omissions of a company failing to comply with the provisions under the DCLDDA (2019) can submit a complaint to the public supervising authority (art. 3.2) on the basis of concrete evidence of non-compliance (art. 3.3), after having submitted it first to the company which has six months to address it (art. 3.4).

Although an important step towards addressing human rights harms in global supply chains, the DCLDDA (2019) suffers from various limitations. First of all, the law applies to companies (wherever they are registered) supplying goods and providing services to Dutch end-users, but does not cover the goods sold and services provided in the Netherlands as part of value-addition [i.e. excluding the pre-Original Equipment Manufacturer (OEM) level]. In addition, it does not cover the goods and services sold or provided by Dutch companies outside of the Netherlands (Bright, 2021). For these last two categories, issues of child labour remain unaddressed by the legislation.

Secondly, the human rights due diligence obligation can be discharged simply by receiving goods or services from a company which has issued a statement indicating that it exercised due diligence. However, the reporting requirement is a one-off exercise, which does not need to be repeated annually (Bright & Macchi, 2020), whereas the UNGPs call for a continuous exercise of human rights due diligence.

Finally, in terms of enforcement mechanisms, the DCLDDA provides for the possibility for the public supervisory authority to issue administrative fines, but the public supervising authority does not have pro-active powers in this respect as only complaints submitted by third parties can trigger enforcement (MVO Platform, 2019). In addition, the legislation does not contain any civil liability mechanisms. Although administrative fines could, arguably at least, play a deterrent function, they do not provide actual remedy for victims of child labour. In this respect, it has been noted that “companies might do the absolute minimum to meet the law’s requirements. For example, they may quickly get rid of child labourers if discovered without taking responsibility for remediation of impacts that have already occurred” (MVO Platform, 2019).

In addition to the DCLDDA, a legislative proposal in the Netherlands calling for a bill on Responsible and Sustainable International Business Conduct was launched by four major political parties in the Dutch parliament on the 11th of March 2021 (MVO Platform, 2021; “New Bill Could Force Dutch Companies,” 2021). The bill provides for a duty of care on all companies registered in the Netherlands or selling goods or providing services on the Dutch market whereby “any enterprise that knows or can reasonably suspect that its activities may have negative impacts on human rights, labour rights or the environment in countries outside the Netherlands must take all measures that may be reasonably required of it to prevent such impacts,” or mitigate or reverse them, or refrain from the relevant activity, and, where necessary, to enable remediation.<sup>44</sup> In addition, the bill would impose a duty to exercise human rights due diligence (overarching and not limited to child labour) for companies which exceed two of three thresholds: a balance sheet total of 20 million, a net

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<sup>44</sup> See Unofficial Translation of Dutch Bill for Responsible and Sustainable International Business Conduct, Section 1.2. (n.d.)



revenue of at least 40 million or an average of 250 employees during the financial year.<sup>45</sup> If adopted, the law would be enforced by a public regulator, which would be able to issue financial sanctions in case of non-compliance. Repeated failure within five years to prevent activities that cause or contribute to adverse human rights impacts, or to provide remedy would constitute a criminal offence. In addition, the bill also provides for the possibility for third parties to hold companies liable in civil court for harms suffered as a result of a violation of the law. If adopted, the law would replace the Child Labour Due Diligence Law.

## *B. Forthcoming mandatory due diligence legislation*

### **1. Germany**

Germany is now also poised to pass a law enhancing corporate accountability for environmental and human rights outcomes, charging companies to take measures to prevent, minimise or remediate negative impacts. Three German Ministers announced on the 12th of February, 2021, that they had reached an agreement on the details of a due diligence act. The March 3, 2021 “government draft” (“*Regierungsentwurf*”) (Law on Corporate Due Diligence in Supply Chains, 2021) will now be further negotiated in the Bundestag.

The draft law provides for a corporate duty-of-care to avoid human rights issues in their own activities and in their supply chains. In this respect, companies would be required to exercise human rights due diligence in relation to their Tier 1 (direct) suppliers. Where prompted by circumstances, the human rights due diligence obligation would extend throughout the entire supply chain. This would be the case in particular where the company obtains substantiated knowledge of a possible violation. The law’s scope takes a phased-in approach: it would enter into force on January 1st, 2023, when it would first apply to approximately 600 German companies with over 3,000 employees. On January 1st, 2024, the law would then also apply to companies with over 1,000 employees, which currently works out to a total of 2,891 companies” (Bayer, 2021).

At its core, the German draft law shares certain similarities with the 2017 FDVL (see Table 18).

The draft German *Lieferkettengesetz* includes the requirement for in-scope companies to identify and manage risk related to adverse human rights impacts, with a specific focus on 11 adverse impacts, of which the first two concern child labour. These are:

#### (§)Article

- (2)1. Child labour (ILO C. 138)
- (2)2. WFCL (ILO C. 182)
- (2)3. Forced labour
- (2)4. Modern slavery
- (2)5. OHS

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<sup>45</sup> See Unofficial Translation of Dutch Bill for Responsible and Sustainable International Business Conduct, Section 2.1., and see also (Wilde-Ramsing et al., 2021).

- (2)6. Freedom of association
- (2)7. Employment discrimination
- (2)8. Withholding of wages /minimum wage
- (2)9. Environmental harm
- (2)10. Land grabbing
- (2)11. Misuse of security services

**Table 18:** Comparison Between German Draft Lieferkettengesetz and FDVL

|                              | <i>Loi de vigilance</i>   | German Draft <i>Lieferkettengesetz</i>   |
|------------------------------|---|--|
| # of subject companies       | 2019: 134   | 2023: 600<br>2024: 2891  |
| Duty of care scope           | own operations, tier 1 + (“controlled entities” + “established commercial relationships”) <sup>46</sup> | own operations, tier 1 + (where prompted by circumstance -- “Anlass”) <sup>47</sup>  |
| Enforcement                  | judicial enforcement mechanisms   | enforcement and toolkit via a public regulatory authority (BAFA), including fines but no specific judicial enforcement mechanism |
| Scope of corporate liability | violation of duty of vigilance (“obligation de moyens”)   | violation of duty of care (“Bemühenspflicht”)  |
| Remedy                       | undefined <sup>48</sup>   | up to 10% of the annual turnover <sup>49</sup>   |
| Public reporting             | yes   | Yes  |

Source: The French Duty of Vigilance Law, (LOI n° 2017-399 du 27 Mars 2017), [URL](#) & Law on Corporate Due Diligence in Supply Chains (2021), [URL](#)

<sup>46</sup> The French Duty of Vigilance law (LOI n° 2017-399 du 27 Mars 2017) goes beyond tier 1. In particular, the concept of control (in 'controlled entities') is defined in the French Commercial Code as ‘exclusive control’, which enables the company to ‘have decision-making power, in particular over the financial and operational policies of another entity’. The concept can refer to legal control, de facto control or contractual control. The concept covers subsidiaries that are directly and indirectly controlled and therefore includes first-tier subsidiaries and lower tiers of subsidiaries over which a company exercises decision-making power. The concept of ‘established commercial relationships’ aims to limit the scope of suppliers and subcontractors that a company must include in its vigilance plan. Under French Law, an established commercial relationship means a ‘stable, regular commercial relationship, taking place with or without a contract, with a certain volume of business, and under a reasonable expectation that the relationship will last’. It is therefore narrower than the concept of business relationships referred to in the UN Guiding Principles insofar as it excludes ad hoc relationships but does reach beyond tier 1.

<sup>47</sup> The draft German law features a risk-based duty of care requirement (“risikobasierte Sorgfaltspflichten”) encompassing 3 spheres:

1. own operations (“Eigener Geschäftsbereich”);
2. immediate suppliers / contractual business partners (“unmittelbare Zulieferer” / “Vertragspartner”); and
3. where prompted by circumstance (“Anlass”) associated with upstream suppliers that are not contractually connected to the company (“mittelbare Zulieferer nicht vertraglich verbunden”).

<sup>48</sup> The provisional fine provision was stricken from the draft law by the Conseil Constitutionnel. See: “Decision no. 2017-750 DC of 23 March 2017.”

<sup>49</sup> Subject to a pending decision by the Federal Ministry of Finance.

In terms of enforcement, the draft law opts for a public enforcement mechanism through a public regulatory authority (BAFA). The designated public regulatory authority has the power to issue fines in connection with non-compliance with the law. Furthermore, non-complying companies can be excluded from the award of public procurement contracts (Law on Corporate Due Diligence in Supply Chains, 2021).

Concerning the question of a business termination, the German draft law advances the principle of engagement before disengagement ("*Befähigung vor Rückzug*") as the advised *modus operandi*, with business termination only to be employed as the very last option (*ultima ratio*) (Law on Corporate Due Diligence in Supply Chains, 2021).

Unlike the French Duty of Vigilance Law, the German draft law does not establish a judicial enforcement mechanism with a new civil cause of action for affected individuals. The two types of enforcement mechanisms differ significantly: while enforcement through a public supervisory body may play a very important role in ensuring compliance with the law, it fails to provide remedy for affected individuals and communities, in line with the requirements under the 3rd pillar of the UNGPs.

In March 2021, the author of the UNGPs – Professor John Ruggie – published a letter addressed to German Ministers welcoming elements of the new draft German law whilst expressing concerns about certain areas which are not so closely aligned with the UNGPs. These include, *inter alia*, the fact that "the specific obligations on companies to proactively identify risks and take action to address them apply only to the company's own operations and its direct suppliers – that is, to Tier 1 suppliers" which "for a significant number of German companies [...] is not where the most severe risks lie." Ruggie highlighted that "a focus on Tier 1 alone would lead companies to focus on relationships that are less likely to pose significant human rights risks, while ignoring others (beyond Tier 1) where the probability of such risks is higher." He also emphasised that the approach requiring to go beyond Tier 1 if the company obtains "substantiated knowledge" of a possible violation is not satisfactory insofar as identifying human rights impacts constitute the first step of the HRDD process, and that if substantiated knowledge of a possible violation is already available, then the company should determine the appropriate remedial action based on its degree of involvement with the human rights harm (Ruggie, 2021).

## 2. Switzerland

In Switzerland, the Swiss Responsible Business Initiative launched in 2016 obtained a popular majority in the vote of the 29th of November 2020, even though it was eventually rejected for failure to obtain support from a majority of the cantons. As a result, the Indirect Counter-Proposal of the Council of States will most likely enter into force. The latter provides for reporting requirements whereby certain large Swiss public-interest companies<sup>50</sup> will be required to publish a non-financial report reporting on environmental issues, including CO2 targets, social and employee-related matters, respect for human rights and the fight against corruption (The Federal Assembly of the Swiss Confederation, 2020). It

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<sup>50</sup> Companies, whose registered office, central administration or principal place of business is in Switzerland (see: Bueno, 2019).

also provides for due diligence obligations for Swiss companies in relation to “minerals and metals potentially originating from conflict or high-risk zones”; as well as for “products or services, for which there is a well-founded suspicion of child labor” (The Federal Assembly of the Swiss Confederation, 2020)(in line with the Dutch Child Labour Due Diligence Act) (ibid).

### 3. Norway

In Norway, the Norwegian Draft Act “relating to transparency regarding supply chains, the duty to know and due diligence” (Ethics Information Committee, 2019) was published in November 2019, providing for transparency obligations – a “duty to know” of “salient risks that may have an adverse impact on fundamental human rights and decent work, both within the enterprise itself and in its supply chains” and to provide information to interested third parties – for all companies importing goods or services into Norway, and for a duty to exercise due diligence with regards to human rights and decent work for larger companies.<sup>51</sup> The Draft Act also provides for a public supervisory authority in charge of monitoring and ensuring compliance with the law.

### 4. European Union

The momentum in support of mandatory human rights due diligence legislation has been building both at domestic levels and at the European Union. The EU is developing its own mandatory human rights and environmental due diligence (mHRDD) law, with a legislative proposal to be introduced in 2021. Both the EU Commission and the EU Parliament have been extensively exploring options for mHRDD.

On the 10th of March 2021, the European Parliament adopted a resolution (the so-called “Lara Wolters’ Report”) with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL)) – including draft text for a suitable EU directive. Article 4.1 of the report provides that:

*Member States shall lay down rules to ensure that undertakings carry out effective due diligence with respect to potential or actual adverse impacts on human rights, the environment and good governance in their operations and business relationships.*  
(2020/2129(INL))

*Lara Wolters’ Report* refers specifically to “the situation of an estimated 152 million children in child labour, 72 million of whom work in hazardous conditions, many of them being forced to work through violence, blackmail and other unlawful means,” which is described as “unacceptable and particularly worrying” (2020/2129(INL)). The report also refers to the need to prepare non-binding guidelines with due account, *inter alia*, of the UN Committee on the Rights of the Child General Comment 16, on State “obligations regarding the impact of the business sector on children’s rights” (2020/2129(INL)). It cites the Children’s Rights and Business Principles (UNICEF et al., 2012), developed by UNICEF, the UN Global Compact

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<sup>51</sup> Larger companies are defined in the draft act as those exceeding two of the following thresholds: sales income of NOK 70 million; total assets of NOK 35 million; an average of 50 full-time employees in the accounting year.

and Save the Children and the series of guidance documents developed by UNICEF as sources of reference. Finally, it calls for “complementary measures such as the prohibition of the importation of products related to severe human rights violations such as forced labour or child labour; stresses the importance of including the objective of combating forced labour and child labour in Trade and Sustainable Development chapters of Union trade agreements” (2020/2129(INL)).

In terms of enforcement, the report provides for the need for each Member State to designate a national competent authority responsible for the supervision of the application of the Directive, with the power to impose sanctions. The text refers in particular to “proportionate sanctions to infringements of the national provisions adopted in accordance with this Directive” (art. 18). Article 18.2 further specifies that:

*The competent national authorities may in particular impose proportionate fines calculated on the basis of an undertaking’s turnover, temporarily or indefinitely exclude undertakings from public procurement, from state aid, from public support schemes including schemes relying on Export Credit Agencies and loans, resort to the seizure of commodities and other appropriate administrative sanctions.*  
(2020/2129(INL))

The draft text also provides for a civil liability provision whereby “undertakings” should, “in accordance with national law be held liable and provide remediation for any harm arising out of potential or actual adverse impacts on human rights, the environment or good governance that they, or undertakings under their control, have caused or contributed to by acts or omissions” (2020/2129(INL), art. 19.2), which is coupled with a due diligence defence (art. 19.3).

### *C. EU Investment Protection Agreements*

Trade policy concerns just as much the international trade of goods and services as it does cross-border investments. Net outflows of EU foreign direct investment were USD 246 billion in 2019 (BoP, current USD) (International Monetary Fund, n.d.). Signed on a bilateral basis, investment protection agreements (IPAs) help “protect and promote investment of European companies abroad” by protecting the assets of European companies “against practices by the host State, which are prohibited in the EU” (European Commission, 2020a, pp. 1–3). As of 2020, EU Member States were party to some 1400 IPAs with third countries (European Commission, 2020a).

Such protection does not translate into a *carte blanche* for corporations operating abroad: as the EU IPAs “only provide protection for investments that are in accordance with domestic legislation,” companies “are therefore legally bound by all the obligations contained in the domestic legislation of the host State, including environmental or labour protection or respect of human rights” (European Commission, 2020a, p. 4). Yet in a competitive investment climate, there is the real danger that exporting countries relax or simply do not enforce labour standards “in order to attract foreign investment” in the first place (Titievskaja et al., 2021, p. 2).

Thus, the EU could go one step further: existing and future Investment Protection Agreements could foresee that investments that take undue profit from child or adult labour would not be protected under the dispute settlement scheme established in the IPA, unless they explicitly work toward improving working conditions and the payment of living income/wages, with measurable and enforced milestones. Furthermore, IPAs could, in their articles outlining the objectives, be conditioned upon the UN Principles for Responsible Investment.

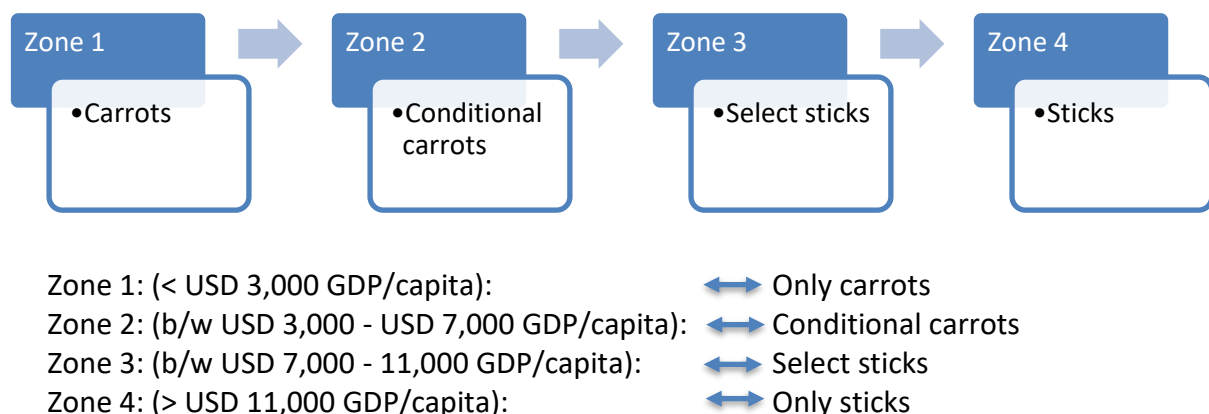
Existing IPAs may be retrofitted to reflect this reform. For example, the EU-Vietnam Investment Protection Agreement, in *Chapter 4: Institutional, General and Final Provisions*, ARTICLE 4.3, in section “Amendments”, explicitly states that the “Parties may amend this Agreement” (European Commission, 2018c).

## VII. Policy Options

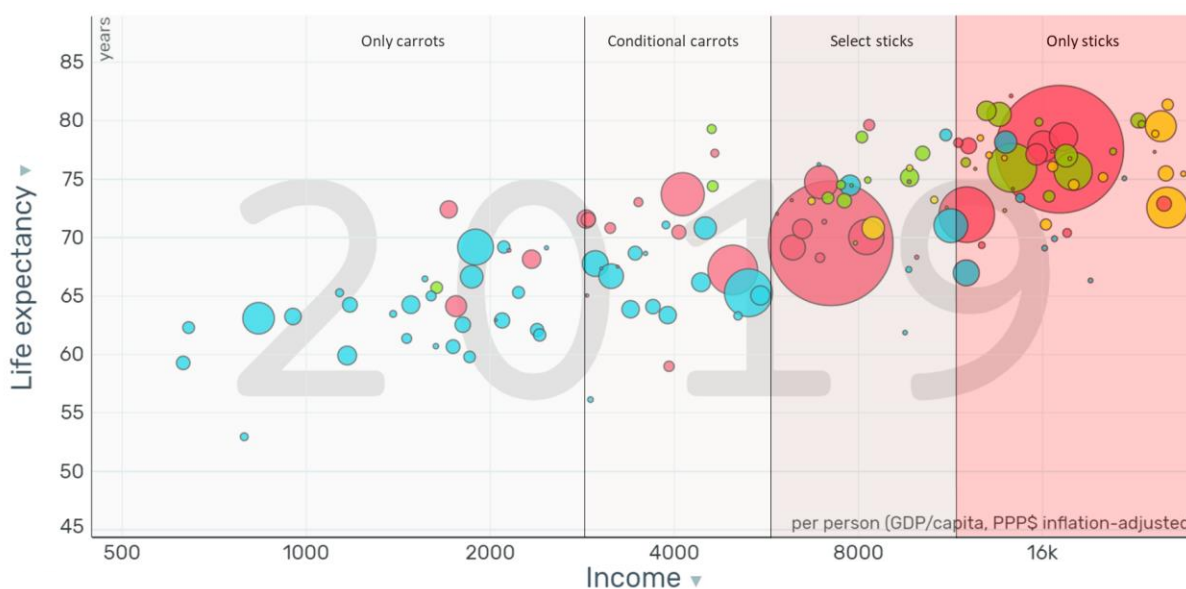
### A. Progressive conditionality in bilateral trade agreements

In translating the above findings into policy recommendations, the following propositions are put forward.

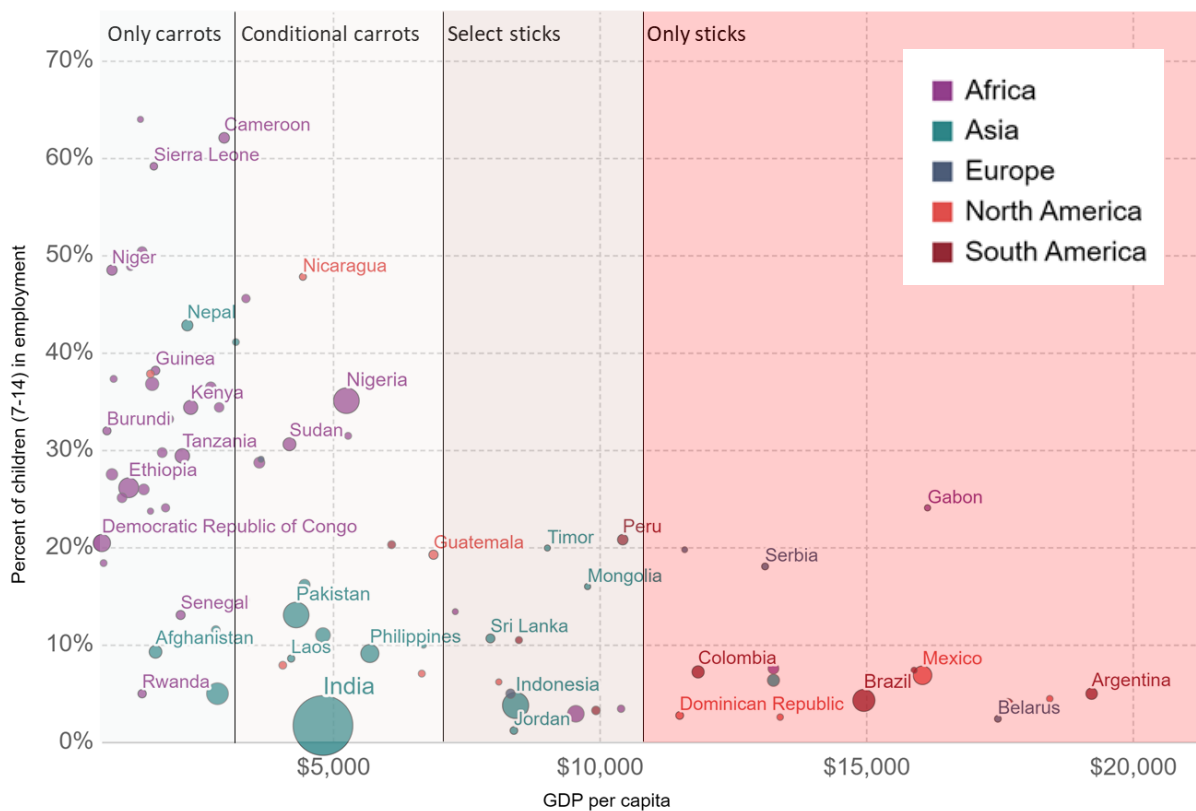
Mindful of (1) Basu's adult-child labour substitutability condition, (2) harm done through embargo externalities to child labour outcomes, (3) WFCL constituting a higher risk to child survival and wellbeing than non-WFCL child labour, and (4) living income/wage conditionality being as important as child labour conditionality for child labour outcomes (as implied by leading child labour models), a progressive system of carrots and sticks is advanced.



Consider the below graph (Figure 30), drawn from Gapminder, that shows GDP/capita (adjusted for inflation and purchasing power parity) in 2020 along the x-axis and life expectancy on the y-axis. We have added lines indicating where each of the 4 zones begins and where they end. Figure 31 also depicts the 4 zones, but through the vantage point of GDP per capita against the share of children in employment.

**Figure 30: GDP Per Capita vs. Life Expectancy, Zone 1-4**

Source: Adapted from Gapminder.org, CC-BY

**Figure 31: GDP Per Capita vs. Share of Children in Employment, 2012; Zone 1-4**

Notes: Bubble sizes are proportional to the population of children aged 5-14 years. Lines have not been adjusted for inflation.

Source: Children in employment, total (% of children ages 7-14), adapted from Understanding Children's Work project, based on data from ILO UNICEF and the World Bank (n.d.), [URL](#)

### **1. Zone 1: (< USD 3,000 GDP/capita): Only carrots – no conditionality**

In our current formulation, countries below upper-middle income would most likely be in Zone 1. Engagement should rely solely on carrots and avoid the use of sticks completely. These countries are likely to have a very large share of the population suffering from severe poverty, educational opportunities in rural areas will be missing or substandard, and the government is very likely unable to enforce child labour standards universally.

Basu (1999) and Grootaert (1998) contend that first steps should be to encourage countries to allow light work with schooling rather than an outright ban in order to protect poor families' economic wellbeing and prevent child starvation.

The ILO/IPEC+ observes:

*Child labour is a complex phenomenon influenced by a multitude of factors. Its complexity means that there is no single or simple answer to it: the response must address many parameters, for example through policies which promote social and economic development, compulsory education in line with the minimum age for employment, and decent work for adults and young people, as well as effective social protection (ILO & U.S. Department of Labor, 2019, p. 8).*

Investing in education, healthcare, and social protection in countries with high numbers of child workers is one of the most effective ways of eradicating child labour (credit constraints and temporary shocks furthermore underline the need for social protection lifelines). Children are less likely to drop out of a quality education system in order to work, and parents are less likely to financially rely on their children if they themselves have quality jobs and are supported by adequate social protection.

If conditionality was attached to Zone 1 intervention, it could be done through process-based carrots, i.e. the condition of processes in place to address the problem at hand. Such carrots could include: the identification of child labour in high-risk sectors (through CLMS systems), the establishment of child protection systems, and building on public and private sector efforts under the UN Guiding Principles.

The Neighbourhood, Development and International Cooperation Instrument – the fund now to be used by the EU for international development – provides the Commission with an opportunity to do this.

### **2. Zone 2: (b/w USD 3,000 - USD 7,000 GDP/capita): Conditional carrots**

Between \$3000-\$7000, at the beginning of Zone 2, free trade agreements should include labour chapters that spell out concrete, measurable actions that can be independently monitored, evaluated, and verified.

Countries such as Kenya, Nigeria, and Tanzania in Africa, and Bangladesh, Nepal, and Pakistan in Asia would take necessary action to reduce the incidence of child labour. Failure



to demonstrate progress would open the door to reducing the incentives provided – no punishments per se, but a denial of benefits that had been offered previously. While there is still deep and persistent poverty in many areas, the governments of these countries have demonstrated at least some capacity at administering country-wide programs such as moving towards universal education.

In these lower levels – Zone 1 and the beginning of Zone 2 – the focus is on encouraging governments to provide meaningful alternatives to child labour that would ensure household survival and stability. Basu et al. (1999, p. 1093) conclude:

*Even if legal intervention in the child labor market is found to be undesirable, that does not mean government should sit back and wait for natural economic growth to gradually remove children from the labor force. Government can intervene in the market to create a variety of incentives, such as providing better and more schools, giving school meals, and improving conditions in the adult labor market, which result in a reduction of child labor.*

Complementary interventions should create progress towards reducing the *worst forms of child labour* with supportive help from EU policies, including accommodative trade policies that respect human and labour rights.

In addition to focussing directly on the eradication of child labour, carrots could be tied to outcome-level outputs that work toward the end goals of abolishing child labour and eradicating the Worst Forms of Child Labour, and feature metrics such as school attendance and children in employment.

The primary difference in this regard between Zone 2 and Zone 3 is that Zone 2 provides for additional incentives, the removal of which is unlikely to violate the spirit or letter of any existing agreement, while Zone 3 features the introduction of penalties.

### **3. Zone 3: (b/w USD 7,000 - 11,000 GDP/capita): Select sticks**

Between \$7,000-\$11,000, conditionality would begin introducing some specific negative consequences. Countries such as Guatemala, India, Ukraine, Venezuela, and Viet Nam have generally maintained more than 75% literacy rates, and though there is variation between states or provinces in income, there are at least some areas of the country where less than 10% of the population is in absolute poverty in PPP terms. It is envisioned that the negative consequences would be applied to the continued existence of the *worst forms of child labour*, while carrots are still the focus to reduce other forms of child labour.

### **4. Zone 4: (> USD 11,000 GDP/capita): Only sticks**

Above \$11,000, literacy rates are near universal, suggesting sufficiently effective governance to oversee the vast majority of formal firms and ensure child labour laws are being enforced. In these countries, there will be relatively few carrots, while labour chapter conditionalities will rely most heavily on the threat of imposed consequences.

## 5. Use of other measures to justify exceptions

While this discussion has focused on expected commonalities, attention should always be paid to the specific context of each country and to prioritisation. Rather than imposing a single standard for all countries within an income bracket, care should be taken to “play the ball where it lies” (to use a golf metaphor). The focus is on making progress, first at reducing and then removing the worst forms of child labour, then on ensuring safety and health standards and that children are able to attend school regularly and consistently. Such a process is also more likely to be accepted by the country – meaning both its government and its people – than would the perception of outsiders forcing Western attitudes on an unwilling populace.

As discussed earlier in this paper, it would be a mistake to rely solely on GDP/capita as the one measure of how to address the problem of child labour. Basu and Tzannatos (2003) mention particularly the ratio of child labourers to adult unskilled labour: since child labour acts as a substitute for adult unskilled labour, the higher that ratio is, the greater the impact on adult wages could be by reducing child labour. Therefore, the more likely it is there are multiple equilibria, holding all else constant. The above four-zone recommendations provide an outline, emphasising that GDP/capita is a proxy for better measures of poverty, good governance, capacity, and quality of the education system where such data are not available, not timely, or not reliable.

For example, Nigeria has a GDP/capita of more than \$5,000, placing it in the middle of Zone 2. However, because of intense inequality and poverty, Nigeria’s multidimensional poverty index score (.254) is more than twice as high as the Republic of Congo (.112) and 28% higher than Pakistan (.198) (which are slightly poorer in GDP/capita terms) and on par with Malawi (.243) and Rwanda (.259), who have less than half Nigeria’s GDP/capita. According to Gapminder data, only two other countries with an income above \$3000/year have higher rates of extreme poverty, with 71% living below \$3.20/day and 39% below \$1.90/day. Their adult literacy rate (62%) is similarly worse than in the Republic of Congo (82%), though similar to Pakistan’s (59%). Nigeria’s statistical capacity increased from 44 to 73 from 2004-2012, but has fallen again to 53 by 2020 (see World Bank, 2020). Pakistan’s statistical capacity has remained above 73 since 2004, while Congo has stayed around 49. In terms of corruption, Nigeria ranks 149/180 by Transparency International, while there are many poorer countries that perform much better. Because of this deep level of poverty and history of government incapability, it would be reasonable to expect less from this country than others at a similar level of GDP/capita.

In addition, recalling the first principle to do no harm, another caveat should be kept in mind. With increasing wage disparities and inequality, extreme poverty has become an issue of pockets of poverty within middle- and upper-middle income countries. In China, for example, average incomes in Beijing and Shanghai are more than twice the national average, while Gansu and Heilongjiang are only half the national average. It would certainly be appropriate to treat firms operating in richer, better educated, eastern China under the rules and expectations of the 4th Zone – and this accounts for the vast majority of those firms hoping to export to the EU. However, the poorer provinces are closer in income to

Zone 2 or 3, and educational opportunities are similarly lacking. In those provinces, there would be a greater danger that even a surgical use of sanctions, as in Section 307, has the potential to push children into worse working situations. Discretion should therefore be exercised in faithfully executing sanctions to ensure that no harm is done to marginalised groups living in pockets of poverty of otherwise upper-middle income countries. Further deliberations, however, may also consider to what extent national policies, e.g. with social dumping ramifications, are deliberately fostering such domestic inequality, and whether a moral hazard is left unpunished by not holding to account Zone 4 countries.

## 6. Suggested carrots and sticks

A four-zone system of incentives and disincentives is advanced, comprising a policy of *progressive conditionality* that would allow the EU to responsibly and effectively exercise its purchasing power on the matter child labour.

### Possible carrots

We suggest that the following carrots be embedded into existing policy and instruments.

**Table 19:** Possible Carrots

|               | <i>carrots</i>  |                              |   |
|---------------|---|------------------------------|---|
|               | <i>aid<br/>(empirically<br/>proven<br/>interventions)</i> | <i>aid<br/>(conditional)</i> | <i>conditional<br/>market<br/>access,<br/>preferences</i> |
| <b>Zone 1</b> | X   | X                            |   |
| <b>Zone 2</b> | X   | X                            | X   |
| <b>Zone 3</b> |   | X                            | X   |
| <b>Zone 4</b> |   |                              |   |

**A. Aid (empirically proven interventions):** European aid programmes such as the Neighbourhood, Development and International Cooperation Instrument (NDICI) may step up interventions with demonstrated success in reducing child labour. Obviously, that aid could take the form of direct assistance to the education system itself – providing the funds to build schools, employ or train teachers, or reduce schooling fees. Another means of supporting education systems is by following Brazil’s Bolsa Familia or Mexico’s Progreso programmes, which provide income and food support to families who meet certain criteria. These criteria most often include that all children are attending school. Dreze and Kingdon (1999) have also demonstrated that school participation is higher when a meal is provided. Food-for-education programs, therefore, can also directly improve the outcomes of concern. Dammert et al. (2018) reveal the body of evidence for the effectiveness of (conditional and unconditional) cash transfers.

B. Aid (conditional on performance): Aid may be provided, however premised on performance tied to educational outcomes (e.g. of primary, secondary school enrolment), and/or monitoring outcomes (e.g. the identification of child labour in high-risk sectors through child labour monitoring systems and the establishment of child protection systems) and/or economic outcomes (e.g. payment of living income/wages, price stabilisation,<sup>52</sup> farm gate prices, etc.). Also Aid for Trade (AfT) may be leveraged to this end. There is value in creating a stronger association between existing aid programmes (such as the AfT and the NDICI) and trade agreements/arrangements, as it would help trade partner countries make better use of their agreements with the EU. Technical collaboration with the ILO is advised for such engagement, given that a neutral referee would be needed to provide data and judgement on performance.

Furthermore, the EU may use its role as a major importing bloc to exert influence by asking the trade partners to make pre-ratification commitments, whereby they would demonstrate their determination on the issue. In support, the EU could use its AfT and NDICI instruments to provide future trade partners with expertise and the resources needed to implement the measures and reforms needed.

C. Conditional market access and trade preferences: A licensing model (a form of a non-tariff trade barrier), instituted through bilateral agreements or MOUs with countries exporting the commodities suffering from a significant amount of child labour, in conjunction with the above described financial and capacity-building assistance, would serve to improve standards of governance and law enforcement.<sup>53</sup>

To further incentivise the necessary performance, trade preferences in FTAs could include the dismantlement of barriers to trade, whether tariffs or non-tariff barriers.<sup>54</sup> Tariff reductions for specific child labour outcomes such as the progressive elimination of WFCL and the reduction of child labour in EU trade partner countries may be considered, in line with the Franco-Dutch non-paper suggesting the staging of tariff liberalisation (Direction générale du Trésor, 2020).<sup>55</sup> Furthermore, the institution of a minimum wage, for those

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<sup>52</sup> In “June 2019, Côte d'Ivoire and Ghana took an initiative on cocoa prices that led to an agreement with the cocoa and chocolate industry to create a Living Income Differential (LID) to ensure decent revenue to local farmers. At this stage, it is a US\$400/ton premium paid beyond the price of the cocoa futures markets” (International Partnerships, 2021). Meanwhile, the first payments have reportedly been paid to farmers in Ghana.

<sup>53</sup> A licensing system allowing a trade partner to meet the agreed-upon standards, as presented by Brack (2019), “could be modelled after the Voluntary Partnership Agreements (VPAs) between the EU and timber-exporting countries under the FLEGT Action Plan. VPAs are designed to ensure that all timber products exported to the EU have been legally produced – once products are FLEGT-licensed, they gain easier access to the EU market. Although it has proved difficult and time-consuming to establish the licensing systems, the process of negotiating and implementing VPAs has in some cases significantly improved governance and law enforcement, making the forest sector more transparent and accountable, and reducing illegal logging. This model could be adopted to cocoa, either based on the legality of production or on wider objectives” (Brack, 2019).

<sup>54</sup> Some in-scope countries/commodities, e.g. Ghana/Ivory Coast + cocoa, already enjoy tariff-free and quota-free trade.

<sup>55</sup> The Franco-Dutch proposal on trade, socio-economic effects and sustainable development proposes that parties “should introduce, where relevant, staged implementation of tariff reduction linked to the effective implementation of TSD provisions and clarify what conditions countries are expected to meet for these

countries that do not have one, may be a step towards the attainment of a living income/wages. Process-level outcomes may also be considered, such as CLMS coverage and outcomes (child labour can and is being measured through various CLMS iterations). In addition, a trade partner's ratification and implementation of ILO conventions that strengthen the parent's – and especially the mother's – position to earn a living is relevant here. While the eight fundamental conventions C87, C98, C29, C105, C138, C182, C100, and C111 are indeed foundational, a number of conventions directly target women (e.g. ILO C189, C156, and C190). Especially for new FTAs, pre-ratification commitments (e.g. the signing/ratification of core ILO standards) should be a feature. Last but not least, the formalisation of the informal economy is another key measure to improve working conditions and reduce child labour.

The reduction of these barriers should be conditioned on agreed-upon outcomes and include time-bound roadmaps and targets. Each existing FTA should be retrofitted with a time-bound roadmap and dispute settlement mechanism, which would include the following specifications, and new ones would contain them by default. Establishing roadmaps, milestones and concrete and verifiable objectives in the FTAs would allow the EU to avoid the ambiguous language as formulated in the EU-South Korea FTA (see, e.g., EU-Korea panel of experts).<sup>56</sup> A dispute settlement would be included in the frame of new or revised TSD chapters, where state-to-state dispute settlement would be authorised. A dispute is triggered where there was no progress on an agreed-upon i.e. milestone was not met. As child labour outcomes depend on the living conditions of their families, strengthening the enforcement of labour-related provisions of the TSD chapters would be imperative.

If a trade partner were to be found in violation of the conditions embedded in the trade agreement, the trade benefit could also be withdrawn. However, here again, the withdrawal of this carrot is only advised to be applied in Zone 2 countries, where it would not be likely to further aggravate child labour and human rights abuses. In addition, one may envision a grace period in which the trade partner would be subject to a probationary period during which it would have to demonstrate its intention to remedy the violations of the trade agreement.

To this end, TSD clauses in present FTAs would need to be reformed, and new TSD clauses written into forthcoming FTAs. Existing bi- and multi-lateral agreements would need to be

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reductions, including the possibility of withdrawal of those specific tariff lines in the event of a breach of those provisions. This approach would allow the EU to bear the fruits of its cooperative approach, while strengthening enforcement" (Direction générale du Trésor, 2020, p. 1).

<sup>56</sup> The EU-SKo Report of the Panel of Experts (Jill Murray et al., 2021) found, in paragraph 276, that the agreement had lacked time-bound measures to be taken by South Korea: "The Panel finds it significant that the last sentence of Article 13.4.3 does not set a specific target date or a particular milestone for the ratification process: the provision merely states that the Parties should make 'continued and sustained efforts towards ratification'. Nor have the Parties referred to any specific target dates or discernible schedules that they have agreed, which may help guide the Panel's analysis." Thus, the EC has been advised that FTAs spell out concrete, measurable actions, regularly monitored along milestones codified in TSD chapters. See, e.g. recent Opinion of the International Trade Committee (European Parliament, 2021a), paragraph 4, advising that: "trade and sustainable development (TSD) chapters include a roadmap with concrete and verifiable commitments upon which progress in other chapters will be made."

reviewed, aided by the fact that FTAs contain an amendment and review clause (due within the 10th year of entry into force).<sup>57</sup>

With respect to the required monitoring and measurement such a regime would entail, the appropriate executive powers must rely on independent metrics, measurement, and enforcement. In order for the Chief Trade Enforcement Officer (CTEO) to act on the information received through the “Single Entry Point,” codification by means of a decision or regulation would be necessary such that the Chief Trade Enforcement Officer may investigate and take the appropriate measures by activating the dispute settlement mechanism or to envisage other penalties. And mutatis mutandis, same for GSP.” No easy task, given the multitude of multilateral agreements to enforce. The CTEO would also liaise with the European External Action Service (EEAS), and rely on a reputable 3rd party, such as the ILO, to monitor and report on the agreed-upon conditions that could trigger the application of conditional carrots.

#### Possible sticks

The following disincentives may be embedded into existing policy and instruments.

**Table 20:** Possible Sticks

|               | <i>Sticks</i>               |                                    |                          |                             |
|---------------|-----------------------------|------------------------------------|--------------------------|-----------------------------|
|               | <i>surgical import bans</i> | <i>public procurement measures</i> | <i>creation of lists</i> | <i>rebalancing measures</i> |
| <b>Zone 1</b> |                             |                                    | X                        |                             |
| <b>Zone 2</b> |                             |                                    | X                        |                             |
| <b>Zone 3</b> |                             | X                                  | X                        |                             |
| <b>Zone 4</b> | X                           | X                                  | X                        | X                           |

D. Surgical import bans: The U.S. has the powers of blocking specific shipments of specific companies that produce goods with forced labour or child labour (through its Tariff Act mechanism). If the EU acquired similar powers, it could act systematically, surgically, and decisively on the practice of child labour – as a matter of last resort – with a particular scope on its hazardous/worst forms.

Yet, in order to prevent doing more harm than good, the surgical import bans should only be deployed within a set scheme of progressive conditionality, and preferably only be

<sup>57</sup> For instance, see JEFTA (European Commission, 2018a):

ARTICLE 23.1 – General review: “Without prejudice to the provisions concerning review in other Chapters, the Parties shall undertake a general review of the implementation and operation of this Agreement in the 10th year following the date of entry into force of this Agreement, or at such times as may be agreed by the Parties.”

ARTICLE 23.2 – Amendments: “1. This Agreement may be amended by agreement between the Parties.”

deployed on Zone 4 countries in light of the possible collateral damage caused. We furthermore would advise against the use of blanket (sector-wide) sanctions applied to the most vulnerable countries. Company-specific sanctions, however, are defensible.

While also the EU, through a new legal framework (Council Decision CFSP 2020/1999 and Council Regulation EU 2020/1998), has the powers to target natural and legal persons, entities and bodies responsible for, involved in or associated with serious human rights violations and abuses worldwide, designating an individual or an entity will require a significant degree of consensus (the Council of the EU may only proceed with designations on the basis of unanimity among all member states<sup>58</sup>). In addition, while slavery is explicitly listed, child labour is not (yet the practice may fall under the scope of the sanction regime where those child labour violations are widespread, systematic or are otherwise of serious concern). Whereas the powers of the EU Council mirror those of the U.S. GloMag, no EU powers are currently in place that would mimic the U.S. Tariff Act import ban mechanism.

Furthermore, the EU should apply a holistic effort where governments partner with civil society and with industry to enhance and improve information collection, prevention, enforcement, and remediation. In particular, the EU needs to address possible tension between strict enforcement of the proposed legislation on import bans and accepted principles related to human rights due diligence and remediation. These principles are embodied in the UN Guiding Principles on Business and Human Rights, and as the EU moves towards establishing a mandatory human rights and environmental due diligence directive, any proposal on sanctions should be aligned with the UNGPs.

E. Public procurement measures: Under U.S. Executive Order 13126 of 1999, goods may be excluded from federal procurement, and consequences, including debarment, assessed for violations. Also the public sector in Europe could lead by example. This could occur through the reform of public procurement laws, but also be enshrined in the chapters of the FTA.

In addition, punitive measures may be complemented with public procurement policy of *buying by example*. Such a policy would entail government buyers meeting minimum criteria for legality and social and environmental standards. Drawing on experience from the timber industry, Brack (2019) explains: “All EU Member States are significant purchasers of food and catering services, and most already possess frameworks for sustainable procurement; many have adopted timber procurement policies to restrict buyers to legal and sustainable timber products.” To this end, private certification systems may be engaged: “In practice, applying this approach to cocoa would probably mean that public purchasers would need to rely on [product] certification schemes and company programmes” (Brack, 2019).

F. Creation of lists: The U.S. Department of Labor establishes and regularly updates a *List of Goods* produced by child labour or forced labour and their source countries (under the 2005 TVPRA regulation), as well as a *List of Products* and their source countries produced by forced or indentured child labour and their source countries (under Executive Order 13126). A surgical (black)listing approach targeting products, countries, individuals and/or

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<sup>58</sup> Enforcing the sanction regime, including determining the applicable penalties for the infringement of the restrictive measures, falls within the competency of member states.

companies is advised also for the EU, that would serve as a monitoring tool, inform public procurement, as well as send “signals” to the market.

G. Rebalancing measures: As the EU-UK’s TCA features a “rebalancing measure” that offers a clear mechanism for a trade partner to seek and – if need be, unilaterally – obtain redress for a position of “unfair disadvantage.” In order to be in a position to credibly challenge a trade partner on child labour ultimate outcomes, the EU should insert conditionality in re-negotiated and future trade deals, which in turn could trigger “rebalancing measures.” The necessary monitoring and measurement underpinning the decisions could, as *with C. Conditional trade preferences* above, be provided by the ILO in liaison with delegations of the EEAS.

Before the step of introducing necessary rebalancing measures, further reform should be undertaken on the existing cooperation mechanisms implemented in TSD chapters, and, in particular, the conclusions of the expert panel, should be given more importance so that consultations are not in vain. For example, consideration could be given to making the panel's findings binding. To ensure that the EU's trading partners remain proactive in improving human and labour rights, 'sticks' could be applied in cases where the panel's recommendations have not been implemented within a reasonable timeframe. The sanctions could include the provisional suspension of any commitments under the trade agreement. However, these disincentives should be applied with caution to ensure that sanctions do not harm citizens rather than the government that has failed to meet its commitments. For example, sticks should be introduced in cases where the EU's trading partner has ceased to show continuous and sustained efforts, rather than in cases where human rights are not considered to be protected to the same level as in the EU.

Specifically with regard to Dialogue and Cooperation Platforms within FTAs, more attention should be paid to existing platforms for dialogue and cooperation, and in particular to civil society mechanisms. Civil society should have the opportunity to be involved at every stage of the trade agreement process, from the negotiation stage to the implementation of the agreement. In particular, the role of workers' organisations, which are distinct from other groups in their representational capacity, have a key role to play in monitoring respect for labour rights in FTAs (as is notably practised in the USMCA). The institutional shortcomings of the agreements' civil society mechanisms should be addressed, for example, by increasing the number of meetings, by giving more importance to the civil society's feedback and by ensuring that the EU's trading partners are endowed with a mechanism akin to the European Economic and Social Committee (EESC), which could enable the coordination of the partner's DAGs. Better continuity should be established between the dialogue platforms of the trade agreements on the one hand and workers' demands and initiatives implemented at the local level on the other. In addition, the ILO could play a robust role in supporting EU trade partner countries through Dialogue and Cooperation Platforms.

We would, however, purposefully advise against the re-establishment of tariffs as a potential stick, e.g. a measure to introduce higher tariffs/embargos for goods associated with child labour and WFCL (or trade volume based on conditions). Basu and Tzannatos (2003, p. 167) point out the danger of such an approach:



*“Once an instrument of global action is created that can impede the flow of goods from nations that violate minimal labour standards, it will be used as a protectionist instrument by industrial countries, as with other measures in the past (...) . Second, (...) international action to stop child labour in the production of traded goods will simply drive children into the nontraded sector, which could be worse for them.”*

### ***B. Mandatory corporate due diligence legislation***

In recent years, legislative developments have been taking place in a growing number of countries, which have introduced or are considering the introduction of legislation on mandatory human rights and environmental due diligence. A number of recommendations may be made to this regard:

An overarching human rights due diligence framework, accompanied by specific guidance, performance standards and key performance indicators for certain industries with widespread child labour in supply chains

Amongst the laws and legislative proposals on mandatory human rights due diligence requirements in Europe, certain ones are issue-specific (e.g. the Dutch Child Labour Due Diligence Act), while others provide for a horizontal framework for all human rights and environmental issues (e.g. the French Duty of Vigilance Law). In a recent study for the European Commission on Due Diligence Requirements through the Supply Chain (Torres-Cortés et al., 2020), stakeholders voiced a strong preference for an overarching framework as it was felt that a focus on a specific issue, sector or commodity would create fragmentation and could detract companies’ attention from other potentially more salient human rights or labour rights issues for the specific company (Torres-Cortés et al., 2020, p. 142). In addition, the overall preference emerged for a regulation which would apply regardless of size of the company but which takes into account the specificities of the sector, and the size of the company in the implementation. However, it is recommended that specific guidance in relation to certain industries in which widespread issues of child labour exist in supply chains (e.g. cocoa, cotton, etc.) be issued in order to assist companies in the implementation of their due diligence duty (Brack, 2019).

#### Due diligence obligations to reach entire value chains

Amongst the examples of laws and legislative proposals on mandatory human rights due diligence, certain aim to reach the entire supply chain (e.g. the Dutch Child Labour Due Diligence Act), whilst others cover part of the supply chain (e.g. the French Duty of Vigilance Law) and others mostly focus on first-tier suppliers (e.g. the Draft German *Lieferkettengesetz*).

In a recent letter addressed to the German Ministers on the Draft German *Lieferkettengesetz*, John Ruggie, the author of the UN Guiding Principles on Business and Human Rights, noted that:

*Although the draft law defines the concept of supply chain broadly to include the entire value chain, the specific obligations on companies to proactively identify risks and take action to address them apply only to the company's own operations and its direct suppliers — that is, to Tier 1 suppliers. In contrast, the UNGPs and the OECD Guidelines cover the full spectrum of value chain actors, for the simple reason that Tier 1 suppliers typically are not the biggest source of the problem. True, this can vary by industry sector, but for a significant number of German companies this is not where the most severe risks will lie – for example, in footwear and apparel, food and beverages, automobile parts, and others. A focus on Tier 1 alone would lead companies to focus on relationships that are less likely to pose significant human rights risks, while ignoring others (beyond Tier 1) where the probability of such risks is higher (Ruggie, 2021).*

As a result, it is crucial – in line with the international standards such as the UNGPs – that the due diligence obligations extend to entire value chains.

#### Responsible purchasing practices on the part of companies

Companies' purchasing practices may significantly contribute to breaches of labour and human rights standards in global value chains, and may also have adverse effects on child labour outcomes. The interpretative guide on the corporate responsibility to respect human rights issued by the Office of the High Commissioner for Human Rights (OHCHR) mentions an example illustrating the situation in which a company may contribute to adverse human rights impacts:

*Changing product requirements for suppliers at the eleventh hour without adjusting production deadlines and prices, thus pushing suppliers to breach labour standards in order to deliver (OHCHR 2012, p. 17).*

Indeed, purchasing practices such as cut-throat cost negotiations, cancelled orders and delayed payments, can trigger an increase in business pressure resulting in worker layoffs, worker overtime, as well as a decline in worker productivity. Sudden changes to orders are commonplace in the garment industry, and especially recently as markets recoiled due to COVID-19 (Lewis, 2020). Last-minute changes to purchase agreements is also common in the cocoa industry (Niava & Bayer, 2018). The common cocoa-industry practice of “revolving” (in which orders are deliberately placed over and above what any given supplier can handle, only to cancel them last minute) weakens a supplier's business and negotiation position (ibid).

The centrality of responsible purchasing practices is also acknowledged in the resolution of the European Parliament (2020/2129(INL), Considerant 1). It is therefore recommended to include in mandatory human rights due diligence legislation requirements for companies to examine their own purchasing practices, as is the case in the example of the Draft German *Lieferkettengesetz*.<sup>59</sup>

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<sup>59</sup> See Letter from John Ruggie to German Ministers regarding alignment of draft supply chain law with the UNGPs (Ruggie, 2021).

### Meaningful stakeholder consultation throughout the due diligence process

A stakeholder mapping along entire value chains will reveal not only employee groups but also communities that have a stake in the enterprise or outcomes. In order for such stakeholders not to become “externalities,” or, in the worst cases, collateral damage to the operations, stakeholder consultation throughout the due diligence process is necessary.

### Dissuasive sanctions and strong enforcement mechanisms

Experiences of transparency legislations with weak enforcement mechanisms such as the UK Modern Slavery Act of 2015 have shown that the lack of strong enforcement mechanisms and deterring sanctions can be associated with widespread issues of non-compliance (Bright, 2021). Existing legislation and legislative proposals on mandatory human rights due diligence legislation usually opt for one of the following two enforcement mechanisms – which are often presented as an either-or question – either the public regulatory authority or judicial enforcement mechanisms. It is suggested that both are needed as they play on different levels. The public regulatory authority is helpful to ensure the monitoring of the compliance with the law and to clarify some aspects of the law, as shown by the French experience with the Duty of Vigilance Law. In this respect, the recent report to the French Government on the implementation of the law mentioned that it is currently impossible to establish a reliable list of companies who are subject to the law, and that several areas of legal uncertainty remain. A public regulatory authority could help clarify these areas of uncertainty, and this is the reason why the report recommended to nominate a public authority that would be in charge of: (i) monitoring the promoting and implementation of the law; (ii) contributing to the harmonisation of corporate practices; and (iii) promoting sectorial and multi-party approaches. In addition, the public regulatory authority can be empowered to exclude companies from the award of public procurement contracts (such as in the case of the Draft German *Lieferkettengesetz*) which could play an important dissuasive function and incentivise compliance by companies of their due diligence obligations. However, even in cases where the public regulatory authority has the authority to give sanctions such as administrative fines to companies (as is provided in the Dutch Child Labour Due Diligence Act and in the Dutch and German draft laws), the money of the fine does not go to the victims and, as such, it simply does not provide compensation to the victims for the harm suffered. In this respect, judicial mechanisms can play a key role in enhancing access to remedy for victims and overcoming recurrent barriers faced by claimants in concrete cases (Marx et al., 2019).

### Coordination through the Chief Trade Enforcement Officer (CTEO)

The EU will also have to consider how to ensure proper coordination between government agencies and how to provide technical assistance and support to businesses wanting to remedy situations of child labour in their supply chains. To these ends, the office of the Chief Trade Enforcement Officer (CTEO) could play a critical role.

### *C. Lifting protection for investments into child labour sectors*

The EU should reform existing and future Investment Protection Agreements (IPAs) such that investments that take profit from child labour would not be protected under the dispute settlement scheme established in the IPA, unless they explicitly aim at improving working conditions, with measurable and enforced milestones. Furthermore, IPAs could, in their articles outlining the objectives, be conditioned upon the UN Principles for Responsible Investment ([www.unpri.org](http://www.unpri.org)).

## VIII. Linkages and interactions between proposed interventions

Once in effect, the trade regime as envisioned in this study would reinforce responsible business conduct (RBC) and Human Rights Due Diligence (HRDD) and vice versa. While HRDD is conducted at the individual company level, scrutinising their at-risk supply chains, the trade regime advances targeted support, incentives and disincentives for government-driven action. A re-invigorated engagement on the issue from the public and private sector would create new opportunities for public-private cooperation and synergies.

Such reinforcing engagement would also directly affect child labour outcomes. The effective roll-out of RBC and HRDD would result in more child labour ultimately being found in the formal sector. For example, children exposed to the Worst Forms of Child Labour would be identified and excluded from this work. To avoid such children simply being pushed into the informal sector, the public-sector action would need to kick in. Where social services are insufficiently capacitated to properly support families prompted to transition, aid and knowhow may be required. This example illustrates the need for the advised reforms related to UNGPs Pillar I and II to advance in tandem. With the EC expected to put forward its proposal on RBC and Due Diligence in June, 2021, now is the time to consider the “externalities” of increased scrutiny – and in some cases increased formalisation – of labour inputs. As the act of adopting due diligence legislation is certainly no silver bullet, both approaches must be developed in parallel. Furthermore, FTAs must stimulate national- and local-authority cooperation and capacity-building, e.g. in supporting citizens and CSOs, informing them about grievance mechanisms, and helping suppliers on the ground to live up to new or enforced production standards.

## IX. WTO compatibility

Given that the impact of trade on child labour and child welfare will depend on the rules of trade, we would be remiss not to investigate the World Trade Organization (WTO) rules currently in place. At the WTO, member states agree upon the rules of international trade, which are then, in turn, enforced by the WTO.

Attempts have been made to bake labour standards – and with it, child labour standards – directly into the rules of the WTO, as “human rights and labour rights do not feature explicitly in the WTO mandate” (Titievskaja et al., 2021, p.2). Notably, at the Singapore Ministerial Declaration of 1996, academics put forward reforms for WTO rules to include a labour rights or social clause, propositions which were summarily rejected (Joseph, 2011, Chapter 5). Instead, WTO members passed a resolution declaring that the WTO did not have the competence to enforce labour rights and deferred to the ILO as the supranational agency charged with developing and monitoring core labour standards: the ILO “is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them” (WTO, 1996). Yet in its deferral to the ILO, the multilateral group signalled that labour issues were effectively not material trade issues, given that the ILO, as a 3<sup>rd</sup> party, would take no active part in WTO rulemaking, nor have bearing on bilateral trade agreement framing or dispute resolution *per se*.<sup>60</sup> A few years later, “when President Clinton and some EU leaders tried to bring workers’ rights into the next round of multilateral trade negotiations at the 1999 WTO ministerial meeting in Seattle, developing countries rejected the initiative” (Burtless, 2001). In sum, efforts to introduce labour standards into the trade equations at this multilateral platform have thus far fallen short.

Writing two decades ago, Mitro’s (2002, p. 1234) synopsis still characterises the present situation:

*Thus far, developing nations have argued effectively that core labor rights provisions actually disguise protectionist policies and erode the competitive advantage developing nations enjoy in labor costs. In response, developed countries argue that, if structured to avoid protectionism, fundamental labor rights can and should be included in the WTO.*

With the treatment of broader labour standards yet to be codified into WTO rules, and its dispute settlement bodies yet to deal with international human rights issues, a prediction as to how potential legal battles might be resolved is, “at this stage, theoretical” (Titievskaja et al., 2021, p. 3). Put another way, the “current wording of the WTO rules leaves room for interpretation with regard to whether measures to protect human and labour rights can be allowed or not” (Titievskaja et al., 2021, p. 8).

Indeed, existing WTO rules allow members “to depart from the key principles,” if the trade-restrictive measures demonstrate “appropriate regulatory intent,” do not constitute “arbitrary or unjustifiable discrimination between countries where the same conditions prevail,” and are “justified under one of ten ‘general exceptions’ (GATT Article XX)” (Titievskaja et al., 2021, p. 4), which is meant to constitute an exhaustive list of exceptions.

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<sup>60</sup> For its part, the ILO’s treatment of matters involving trade and labour rights is based on the 1998 Declaration on Fundamental Principles and Rights at Work, which stresses that labour standards should not be used for protectionist trade purposes, and that nothing in the Declaration and its follow-up shall be invoked or otherwise used for such purposes (ILO, 1998); in addition, it states that the comparative advantage of any country should in no way be called into question by this Declaration and its follow-up. Furthermore, the 2008 Social Justice Declaration states that the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage and that labour standards should not be used for protectionist trade purposes (ILO, 2008).

In the absence of multilaterally-agreed upon rules, bilateral trade agreements have expanded coverage of trade and labour issues. The U.S., for example, introduces labour-related conditionality in its FTAs, yet within the bounds of WTO rules.

Unilateral “measures” may be justified by drawing on four *existing* General Agreement on Tariffs and Trade (GATT) provisions.

### 1. Social dumping and unfair competition

As our child labour footprint findings revealed, the EU imported EUR 36 billion worth of goods from China in 2019 that were reportedly produced with forced or indentured child labour (see Table 11). The institution of unpaid pupil/student work programs could be considered by trade partners as constituting an unfair advantage, and certainly a far cry from the WTO-celebrated condition of a “low-wage” “comparative advantage” [see Singapore Ministerial Declaration in 1996 (WTO, 1996)]: “We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question.” More specifically, one could consider the systematic institution of child labour in industrial processes a form of “social dumping.” This term, e.g. operationally defined as “unfair competition due to the application of different wages and social protection rules to different categories of workers” (European Parliament, 2015), is one of four types of dumping recognised by the WTO (along with price, service, and exchange dumping) (WTO, 1994b).

In light of Basu’s “substitution axiom,” which features a scenario where children’s work competes for wages with adults, in a free trade context, the specific firms and the Chinese government would also benefit from the practice, as they could produce products more cost-effectively, and possibly out-compete otherwise equal international competitors, *ceteris paribus*. Such a deliberate practice, in fact, is singled out in the *U.S. Trade Promotion Authority Act of 2015*, which prohibits “the diminution of labor standards to attract trade and investment.”

This example of an “unfair advantage” associated with child labour may run counter to existing WTO principles of fair competition. The WTO GATT (Article 6) and Anti-Dumping Agreement together stipulate when and how countries may take action against dumping.<sup>61</sup> In response to an unfair advantage, *if* the injured trade partner can demonstrate a “causal relationship between the dumped imports and the injury to the domestic industry” (WTO, n.d.-a), the remedy proposed by the WTO is anti-dumping action involving “charging extra import duty on the particular product from the particular exporting country in order to bring its price closer to the ‘normal value’ or to remove the injury to domestic industry in the importing country” (WTO, n.d.-c).

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<sup>61</sup> See definition of dumping as per the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, Part I: Article 2 – Determination of Dumping: “2.1 For the purpose of this Agreement, a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country” (WTO, 1994a).

It is, however, a big “*if*.” In the 2017 WTO Arbitral Panel established to arbitrate between the Dominican Republic and the U.S. in their trade dispute, the panel noted that a “failure to effectively enforce labor laws will not necessarily result in lower prices or altered trade flows” (Arbitral Panel, 2017, para. 177).<sup>62</sup> In a real-world scenario, for example, the social dumping perpetrator could simply pocket the margin. Moreover, the panel observed that an attempt to “establish that an effect on prices is due to a failure to enforce and not to such other factors” would effectively comprise an effort in futility (Arbitral Panel, 2017, para. 178).<sup>63</sup> Furthermore, “even if such information were available, the effects of a failure to effectively enforce labor laws may be impossible to quantify with sufficient precision to attribute any particular price reduction or increase in sales volumes to them.”

Yet one social dumping exception is explicitly permitted by GATT: Article XX(e) allows states to exclude the products of prison labour – the only labour-related exception highlighted in the GATT Agreement. In order to invoke the Article XX(e) exception from the most-favoured-nation clause, the complaining party would have to prove the alleged violation (Trebilcock & Howse, 1995). As interpreted by Mansoor (2004), “Article XX(e) was conceived as protection against unfair competition deriving from the low costs of prison labour,” with which “no private company would be able to compete.” However, as the text explicitly refers to the products of prison labour rather than the labour conditions under which they are produced – thus confirming its indifference towards the methods of production (Diller & Levy, 1997) – it is uncertain whether the products of forced labour in a non-prison-context may be also considered in-scope of Article XX(e), their market-distorting function notwithstanding.

## **2. Child labour threatening the health of children**

The practice of the worst forms of child labour – which includes labour that impairs the health of the child – may be in-scope of a WTO rule exception. GATT Article XX(b) reads: “nothing in this Agreement [the GATT] shall be construed to prevent the adoption or enforcement by any contracting party of measures: (...) (b) necessary to protect human, animal or plant life or health” (WTO, 1994c). In theory, a trade partner could unilaterally take action (for instance, banning products made by child labour) and justify their action under GATT Article XX(b), as long as the overriding “chapeau” was upheld, i.e. that the country taking measures was not applying the exception “arbitrarily or unjustifiably[.]

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<sup>62</sup> “Cost savings resulting from a Party’s failure to effectively enforce may or may not be passed on to customers. They may instead be retained as increased profits. Further, even if they were passed on to customers, they may be counteracted by price effects in the opposite direction due to a myriad of factors such as currency exchange rate fluctuations, increases in costs of material inputs, capital equipment or transportation” (Arbitral Panel, 2017, para. 177).

<sup>63</sup> Attempting “to establish that an effect on prices is due to a failure to enforce and not to such other factors would often be so fraught with difficulty as to make proof of trade effects impossible. Even if information on final product or service prices is available [...] through public sources, information on such matters as costs of material inputs, capital equipment or transportation will typically not be publicly available, but rather only available from the employer or employers allegedly benefitting from the alleged failure to enforce. As discussed in our preliminary ruling of February 17, 2015, the Agreement and the Rules do not grant powers to a panel to compel disclosure of such information. Nor do they grant such powers to any other body. A complaining Party may therefore find itself unable to obtain economic information from the relevant employers. Further, even if such information were available, the effects of a failure to effectively enforce labor laws may be impossible to quantify with sufficient precision to attribute any particular price reduction or increase in sales volumes to them” (Arbitral Panel, 2017, para. 178).

resulting in discrimination between those countries where same conditions prevail and that the measures [did] not amount to ‘disguised restrictions on the international trade’” (WTO, 1994c). In his analysis, Vanpeperstraete (2021, p.16) concludes that: “Article XX(b) can be interpreted to cover policy concerns such as forced labour [and] child labour [...], which can be captured by either universal instruments or widely ratified conventions established by the UN or the ILO. In such cases, a unilateral import ban will be likely to be considered an acceptable policy tool.” Mitro (2002, p. 1242) further clarifies that for a legislative measure to meet the Article XX(b) exception, “child labor must be a legitimate health concern and the restriction contained in the [legislation] must be essential to achieving the stated objective.”

### 3. Public morals

Furthermore, WTO members may restrict trade on moral grounds under Article XX(a) regarding the protection of “public morals.” Interestingly, with the insertion of the public moral exception clause in the GATT in 1945, the drafters did not define or clarify the meaning of “public morals” (Wu, 2008). This ambiguity thus offers some freedom of interpretation. One example constitutes the case of seal products: “Article XX(a), was invoked, for instance, by the European Communities to justify a general ban on the marketing of seal products following the moral outrage caused by the inhumane killing of seals. The WTO Appellate Body endorsed the EU ban in its final ruling, but emphasised that the measure had to be fully non-discriminatory” (Titievskaja et al., 2021, p. 5). If WTO members were to justify its measure under Article XX(a) – as with any invocation of “Article XX(b), the requirements of the overriding “chapeau” must be satisfied.

Wu (2008, p. 221) observes that multilateral and bilateral agreements have routinely included a public morals provision: “Today, incorporating a public morals exception clause into an international trade agreement has become nearly a standard practice. Almost one hundred trade treaties now include such a clause.” At the bilateral level, the U.S. and the EU both commonly include a public morals exception into their trade agreements. To date, the U.S. has banned products made with indentured child labour on the grounds of protecting public morality, an exception to GATT not challenged by other states (Wu, 2008, p. 223). As previously discussed, the U.S. is affecting import bans through the amended *U.S. Tariff Act of 1930*, which explicitly targets and bans the importation of products having been produced with forced or indentured adult or child labour. Furthermore, in 1997, U.S. Congress banned products made by indentured child labor as per the Treasury and General Government Appropriations Act (1997). This particular enforced “trade barrier” has not been challenged in the WTO dispute settlement system. Thus, especially with regard to cases involving the worst forms of child labour, which on a regular basis produces moral outrage in its citizenry, the EU would stand on solid ground in its invocation of an exception as per Article XX(a).

### 4. Law of Treaties and ILO C182

As explained by the European Parliamentary Research Service, one potential legal theory involves the Vienna Convention on the Law of Treaties (VCLT) (UN, 1969). Created in 1969 and entered into force in 1980, a principle enshrined in the VCLT “provides that ‘any relevant rules of international law applicable in the relations between the parties’ have to be taken into account when interpreting a treaty (Article 31(3)(c))” (Titievskaja et al., 2021, p. 3). In its GATT Article XX, WTO rules do, in fact, recognise “measures” “to secure



compliance with laws or regulations which are not inconsistent with the provisions of this Agreement” (WTO, 1994c, para. 562).<sup>64</sup>

However, a number of issues are associated with such an approach:

- 1) Only “those norms to which all WTO members have subscribed are relevant when interpreting WTO rules” (Titievskaja et al., 2021, p. 4) (ILO Convention 182 would, however, meet even such a strict interpretation – see Table 21 below).
- 2) “Not all countries have signed and ratified the Vienna Convention (including EU Member States France and Romania)” (Titievskaja et al., 2021, p. 4).
- 3) The Law of Treaties ‘applies to treaties between States’ according to its Article 1, and a “1986 extension of the convention to cover international organisations such as the EU has not yet reached the necessary minimum number of ratifications to enter into force and the EU has not signed it” (Titievskaja et al., 2021, p. 4).

**Table 21:** Membership and Ratifications

| <i>body / instrument</i>                      | <i>nation-states</i>   |
|---|--|
| WTO   | 164 members  |
| Vienna Convention on the Law of Treaties 1969 | 116 ratifications  |
| ILO C182                                      | 187 ratifications (out of 187 eligible)                                |
| UN CRC  | 196 ratifications (out of 197 eligible, with only the U.S. abstaining) |

Source: *Ratification by Convention* (ILO, n.d.-c), [URL](#); *United Nations Treaty Collection: 11. Convention of the Rights of the Child* (UN, 2021a), [URL](#); *United Nations Treaty Collection: 1. Vienna Convention on the Law of Treaties*, (UN, 2021b), [URL](#) & *Members and Observers* (WTO, 2016), [URL](#).

Based on the above analysis, the EU has, in fact, two legal theories premised on GATT Article XX(a) “public morals” and GATT Article XX(b) “health protection” with which it would have the best chances of justifying (1) enforcement in its bilateral trade agreements, as well as (2) surgical import bans.

### **Multilaterally-driven reform**

Yet in order to create a more level, multilateral playing field for all actors at the trade table, reform premised on sustainable development may be worth pursuing.

The Preamble to the agreement establishing the WTO refers to the objective of improving living standards and sustainable development. In light of many existential threats to the body, including “the fact that topics such as environmental degradation, climate change or decent work are considered taboo” (European Commission, 2021d, p. 6), the EU Trade

<sup>64</sup> GATT Article XX itself stipulates that “nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:” (...) “(d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices[.]” (WTO, 1994c).

Policy Review argues that sustainability threats pose risks requiring concerted, all-hands-on-deck action:

*As global challenges proliferate, WTO members should be able to coalesce around the objective of addressing the most pressing problems they face: economic recovery and development, free from competitive distortions, as well as environmental and social sustainability as part of the green transition of economies. Addressing these problems would be in line with the objectives of the UN Sustainable Development Goals (the 'SDGs'), to which all WTO members have committed (European Commission, 2021d, p. 6).*

Potential reform to the WTO, according to the EU, could recognise the role that labour standards play in sustainable development:

*Instead of trade policies focusing primarily on economic growth, broader trade policy objectives that acknowledge the importance of human and labour rights could accelerate the achievement of the United Nations sustainable development goals (SDGs). In a globalised world, trade, economic growth, labour rights and human rights are deeply intertwined. (Titievskaja et al., 2021, p. 2)*

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## XI. About Development International e.V.

The non-profit organisation Development International (DI) e.V., registered in Germany, implements research at the intersection of law, business and development since 2014. DI's mission is to provide independent and scientific assessment, clarity and accuracy on issues with an empirical deficit, thus enabling constructive discussions. We also develop and implement intervention strategies and evidence-based solutions to achieve sustainable development outcomes, and build capacity to transfer knowledge and skills to other stakeholders throughout the process.

On the web, DI is located at: <https://www.developmentinternational.org>

## Annex I – Child labour metrics

The following four entities either themselves systematically collect data, and/or compile primary data in order to create relevant metrics.

### 1. UNICEF

|                           |   |
|---------------------------|---|
| data issuer               | United Nations International Children's Emergency Fund (UNICEF)   |
| database name             | <a href="#">UNICEF Data Warehouse</a>   |
| key metric                | Child labour prevalence per country: “Percentage of children (aged 5-17 years) engaged in child labour (economic activities).”  |
| underlying data source(s) | Based on Multiple Indicator Cluster Survey (MICS) data.   |
| year(s) of availability   | The <a href="#">Excel database</a> features data from 2010-2019.  |
| Notes                     | <p>The MICS data include a number of child welfare indicators, including infant mortality, education, water and sanitation, malnutrition, immunisation, health, childbirth, family planning and child labour, but current data are lacking for many countries.</p> <p>MICS data on child labour concern children 5 to 17 years old, the type of work and number of hours, but also concerns domestic work (chores). While it is possible to separate out household chores from economic activities, only a few countries are represented.</p> <p>The MICS module on child labour has also been adopted by the <a href="#">Demographic and Health Surveys (DHS)</a> in its questionnaires.</p> |

### 2. Maplecroft

|                           |  |
|---------------------------|--|
| data issuer               | Maplecroft   |
| database name             | <a href="#">Child Labour Index</a>   |
| key metric                | <p>An index measure of child labour risk (scale 1-10), comprised of 3 components: (1) legal framework, (2) enforcement, (3) frequency of violations, provided for the following units:</p> <ul style="list-style-type: none"> <li>• per country / subnational</li> <li>• per industry / sector</li> <li>• per commodity</li> </ul> |
| underlying data source(s) | The index is based on primary data drawn from the ILO, UN, USDOL, U.S. State Department, World Bank, and others.   |
| year(s) of availability   | Updated quarterly, current.  |

|       |  |
|-------|--|
| notes | This index is proprietary, the underlying methods are not public, and thus not subjected to peer review. |
|-------|--|

### 3. ILO

|                           |   |
|---------------------------|---|
| data issuer               | International Labour Organization (ILO)   |
| database name             | database: <a href="#">ILOSTAT explorer</a>  |
| key metric(s)             | <p>The ILOSTAT explorer features child labour prevalence estimates provided by the ILO and UNICEF, disaggregated by country.</p> <p>The ILO's 2016 <a href="#">Global Estimates of Child Labour</a> report features child labour prevalence estimates, organised according to:</p> <ul style="list-style-type: none"> <li>- region (rather than by country). It measures the incidence (along with modalities including age, gender, sector), causes (low, middle, high national income; fragility/crisis) and consequences of child labour.</li> <li>- sector: focused on agriculture, industry and services.</li> </ul>   |
| underlying data source(s) | <p>The ILOSTAT draws on data generated by its Statistical Information and Monitoring Programme on Child Labour (SIMPOC).</p> <p>However, the ILO's 2016 report was produced also with other data sources. It is based on national data sets from 105 countries, with the majority referring to the target reference period 2012 to 2016. They include national data sets derived from:</p> <ul style="list-style-type: none"> <li>- child labour surveys implemented by the ILO;</li> <li>- MICS, implemented with the assistance of UNICEF;</li> <li>- demographic and health surveys (DHS);</li> <li>- national labour force surveys (LFS).</li> </ul> <p>The 2016 estimates were then compared with UNESCO data on school attendance and national trend in child labour.</p> |
| year(s) of availability   | The periodicity is annual, providing a data range from 2010 to 2016.  |
| notes                     | <p>According to UNICEF, <a href="#">SIMPOC estimates</a> are calculated on the basis of the definition used in the national legislation of individual countries. Accordingly, the definition of child labour that is used to calculate child labour estimates differs markedly among countries, as do the resulting estimates.</p>  |

### 4. World Bank

|               |   |
|---------------|---|
| data issuer   | World Bank                                    |
| database name | <a href="#">Understanding Children's Work</a> |

|                           |   |
|---------------------------|---|
| key metric                | Children in employment, total (% of children ages 7-14), per country.   |
| underlying data source(s) | The Understanding Children's Work project is based on household surveys, working in conjunction with the ILO, UNICEF, World Bank and national statistical offices. Pertinent World Bank data is drawn from Living Standards Measurement Study surveys (LSMS). <sup>65</sup> |
| year(s) of availability   | While the periodicity is annual, the most recent data are from 2016.  |
| notes                     | The metric "children in employment" refers to children involved in economic activity <i>for at least one hour</i> in the reference week of the survey. <sup>66</sup>  |

In order to derive the measure of *child labour prevalence*, representative data are required, which in turn are derived from three types of surveys: (1) labour force surveys collecting detailed information on the various types of work in which children participate, (2) multipurpose household surveys (e.g. LSMS), which include details about the child's environment, and (3) population censuses, which commonly cover the economic activities of the family, including children. The World Bank, ILO and UNICEF produce child labour prevalence measures. Keeping track of child labour information published by 3<sup>rd</sup>-party annual reports and collecting anecdotal evidence allows Maplecroft to provide quarterly updates, which serves as a useful trend monitoring tool. Their Child Labour Index values are, however, not designed to collect representative data on child labour.

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<sup>65</sup> LSMS is a type of survey which aims to "collect household data that can be used to assess household welfare, to understand household behaviour and to evaluate the effect of various government policies on the living conditions of the population. LSMS surveys, given their objective, collect data on many dimensions of household well-being (consumption, income, savings, employment, health, education, fertility, nutrition, housing and migration). Information on children's activities is therefore available in economic activity and other modules" (ILO/IPEC & SIMPOC, 2007).

<sup>66</sup> "In line with the definition of economic activity adopted by the 13th International Conference of Labour Statisticians, the threshold set by the 1993 UN System of National Accounts for classifying a person as employed is to have been engaged at least one hour in any activity relating to the production of goods and services during the reference period. Since children's work is captured in the sense of "economic activity," the data refer to children in employment, a broader concept than child labor (see ILO 2009a for details on this distinction)" (The World Bank, 2021).

## Annex II – EU imports associated with child labour

**Table 22:** EU Imports Associated With Child Labour – Example of Cocoa, Cotton, Rice, Sugar Cane, and Tobacco

| <i>Commodity associated with child labour as per USDOL</i> | <i>Country associated with child labour as per USDOL</i> | <i>Child labour prevalence (%) as per UNICEF (year of data)</i> | <i>Value of EU import possibly produced with child labour (EUR)</i> |
|--|--|---|---|
| <b>Cocoa</b>   | Brazil   | no data   | 3,896,408.78  |
| Cocoa  | Cameroon   | no data   | 60,827,393.28   |
| Cocoa  | Côte d'Ivoire  | 17,5 (2016)   | 373,203,085.08  |
| Cocoa  | Ghana  | no data   | 142,485,459.72  |
| Cocoa  | Guinea   | 19,5 (2016)   | 2,606,866.08  |
| Cocoa  | Nigeria  | 28,7 (2017)   | 62,051,710.68   |
| Cocoa  | Sierra Leone   | 21 (2017)   | 3,738,456.48  |
| <b>Cotton</b>  | Argentina  | no data   | 64,372.44   |
| Cotton   | Azerbaijan   | no data   | 10,478.07   |
| Cotton   | Benin  | 17 (2018)   | 269,998.56  |
| Cotton   | Brazil   | no data   | 7,091,689.44  |
| Cotton   | Burkina Faso   | no data   | 251,378.04  |
| Cotton   | China  | no data   | 108,301,926.98  |
| Cotton   | Egypt  | no data   | 9,971,516.52  |
| Cotton   | India  | no data   | 49,860,002.40   |
| Cotton   | Kazakhstan   | no data   | 2,067,337.20  |
| Cotton   | Kyrgyzstan   | 20,1 (2018)   | 91,860.00   |
| Cotton   | Mali   | 10,4 (2017)   | 746,814.00  |
| Cotton   | Tajikistan   | no data   | 169,598.28  |
| Cotton   | Turkey   | no data   | 67,641,399.09   |
| Cotton   | Turkmenistan   | 0,3 (2016)  | 734,713.20  |
| Cotton   | Zambia   | no data   | 11,357.40   |
| <b>Rice</b>  | Brazil   | no data   | 117,920.88  |
| Rice   | Myanmar (Burma)  | no data   | 41,858,855.22   |
| Rice   | India  | no data   | 26,767,071.48   |
| Rice   | India  | no data   | 224.9   |

|                             |                    |             |                |
|-----------------------------|--------------------|-------------|----------------|
| Rice                        | Viet Nam           | no data     | 7,420,081.5    |
| <b>Sugarcane/ canesugar</b> | Belize             | no data     | 12,223,664.64  |
| <b>Sugarcane/ canesugar</b> | Bolivia            | no data     | 1,655.94       |
| Sugarcane/ canesugar        | Brazil             | no data     | 16,917,509.40  |
| Sugarcane/ canesugar        | Burma              | no data     | 462.28         |
| Sugarcane/ canesugar        | Cambodia           | no data     | 2,022,275.84   |
| Sugarcane/ canesugar        | Colombia           | 2,9 (2017)  | 5,017,867.36   |
| Sugarcane/ canesugar        | Dominican Republic | no data     | 1769.90        |
| Sugarcane/ canesugar        | El Salvador        | no data     | 2,039,667.74   |
| Sugarcane/ canesugar        | Guatemala          | no data     | 2,315,595.48   |
| Sugarcane/ canesugar        | India              | no data     | 2,315,595.48   |
| Sugarcane/ canesugar        | Mexico             | 3,6 (2017)  | 134.24         |
| Sugarcane/ canesugar        | Paraguay           | 15,5 (2016) | 3,072,744.62   |
| Sugarcane/ canesugar        | Philippines        | no data     | 615,496.96     |
| Sugarcane/ canesugar        | Thailand           | no data     | 77,309.18      |
| Sugarcane/ canesugar        | Uganda             | 13,2 (2017) | 23,389.08      |
| Sugarcane/ canesugar        | Viet Nam           | no data     | 27,319.24      |
| Sugarcane/ canesugar        | Zimbabwe           | 25,6 (2019) | 742,150.92     |
| <b>Tobacco</b>              | Argentina          | no data     | 15,261,920.96  |
| Tobacco                     | Brazil             | no data     | 119,525,577.60 |
| Tobacco                     | Cambodia           | no data     | 141,519.04     |
| Tobacco                     | Indonesia          | no data     | 34,566,121.20  |
| Tobacco                     | Kenya              | no data     | 2,204,863.92   |
| Tobacco                     | Kyrgyz Republic    | 20.1 (2018) | 60,765.24      |
| Tobacco                     | Lebanon            | no data     | 1,571,229.18   |
| Tobacco                     | Malawi             | no data     | 28,097,531.76  |
| Tobacco                     | Mexico             | 3,6 (2017)  | 2,277,378.84   |
| Tobacco                     | Mozambique         | no data     | 15,620,809.08  |
| Tobacco                     | Nicaragua          | no data     | 3,262,928.02   |
| Tobacco                     | Philippines        | no data     | 11,390,374.06  |
| Tobacco                     | Tanzania           | no data     | 12,201,226.92  |



|         |          |             |               |
|---------|----------|-------------|---------------|
| Tobacco | Uganda   | 13,2 (2017) | 242,625.00    |
| Tobacco | Viet Nam | no data     | 87,419.28     |
| Tobacco | Zambia   | no data     | 5,090,926.32  |
| Tobacco | Zimbabwe | 25.6 (2019) | 12,798,542.88 |

See [our application for further details on other goods and products](#).

## Annex III – Examples of TSD Chapters

**Table 23:** Treatment of Child Labour in TDS Chapters

| Partner country | Type of treaty                | Year of Signature (into force) | Dispositions on child labour in TSD chapters   | Disposition excluding dispute settlement procedures (TSD chapters as non-enforceable dispositions)  |
|-----------------|-------------------------------|--------------------------------|--|---|
| Korea           | FTA                           | 2010 (2015)                    | <b>Chapter 13, art. 13.4 §3 (c):</b> <i>“The Parties, in accordance with the obligations deriving from membership of the ILO and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session in 1998, <u>commit to respecting, promoting and realising</u>, in their laws and practices, the principles concerning the fundamental rights, namely: (...) (c) the effective abolition of child labour (...)”.</i>  | <b>Art. 13.16:</b> <i>“For any matter arising under this Chapter, the Parties shall only have recourse to the procedures provided for in Articles 13.14 and 13.15”.</i><br>Art. 13.14 addresses government consultations, whilst art. 13.15 deals with a panel of experts.  |
| Central America | EU Association Agreement (AA) | 2012 (2013)                    | <b>Title VIII, art. 286.1:</b> <i>the Parties <u>“reaffirm their commitments to respect, promote, and realise in good faith and in accordance with the ILO Constitution, the principles concerning the fundamental rights which are the subject of the fundamental ILO Conventions, namely: (...) (c) the effective abolition of child labour”.</u></i><br><br><b>Title VIII, art. 286.2:</b> <i>“the Parties <u>reaffirm their commitment to effectively implement in their laws and practice the fundamental ILO Conventions</u> contained in the ILO Declaration of Fundamental Principles and Rights at Work of 1998, which are the following: (...) (b) Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour”.</i><br><br>NB: in <b>title III</b> (Social development and social cohesion), art. 42 also states that: <i>“The Parties agree to cooperate in order to promote employment and social protection through actions and programmes, which aim in particular to: (...) (f) ensure the respect</i> | <b>Art. 284.4:</b> <i>“The Parties shall not have recourse to dispute settlement procedures under Title X (Dispute Settlement) of Part IV of this Agreement and to the Mediation Mechanism for Non-Tariff Measures under Title XI (Mediation Mechanism for Non-Tariff Measures) of Part IV of this Agreement for matters arising under this Title.”</i> |

|         |  |             |   |  |
|---------|--|-------------|---|--|
|         |  |             | <p><i>for the fundamental principles and rights at work identified by the International Labour Organization's Conventions, the so-called Core Labour Standards, in particular as regards the freedom of association, the right to collective bargaining and non-discrimination, <u>the abolition of forced and child</u>".</i></p> <p>In <b>title IV</b> (Economic development), art. 63.2 (on Cooperation and Technical Assistance on Trade and Sustainable Development), parties agree to cooperate on : "<i>(...) (e) strengthening institutional frameworks, development and implementation of policies and programs regarding Fundamental Principles and Rights at Work (freedom of association and collective bargaining, forced labour, <u>child labour</u>, no employment discrimination) and the implementation and enforcement of International Labour Organization (hereinafter referred to as "ILO") conventions and labour laws, as agreed by the Parties"</i></p> |  |
| Georgia | AA inc. the Comprehensive and Free Trade Areas (DCFTA) | 2014 (2016) | <p><b>Chapter 13, art. 229.2 (c):</b> same wording i.e. "<u><i>commit to respecting, promoting and realizing (...) the effective abolition of child labour</i></u>".</p>  | <b>Art. 242</b> (referring to art. 242 addressing government consultations, and art. 243 dealing with a panel of experts). |
| Moldova | AA inc. DCFTA  | 2014 (2016) | <p><b>Chapter 13, art. 365.2 (c):</b> <i>ibid.</i></p> <p>NB: in <b>Chapter 27</b> (Cooperation in the protection and promotion of the rights of the child), art. 238 (a) also states that: "<i>such cooperation shall include, in particular: (a) the prevention and combating of all forms of exploitation (including child labour), abuse, negligence and violence against children, including by developing and strengthening the legal and institutional framework as well as through awareness-raising campaigns in that domain</i>".</p>   | <b>Art. 378</b> (referring to art. 378 addressing government consultations, and art. 379 dealing with a panel of experts). |

|           |                                      |             |   |   |
|-----------|--------------------------------------|-------------|---|---|
| Ukraine   | AA inc.<br>DCFTA                     | 2014 (2017) | <b>Chapter 13, art. 291.2 (c):</b> “ <i>The Parties <u>shall promote and implement</u> in their laws and practices the internationally recognised core labour standards, namely: (...) effective abolition of child labour (...)</i> ”.   | <b>Art. 300.7</b> (referring to art. 300 addressing institutional and monitoring mechanisms, and art. 301 dealing with the group of experts).   |
| Japan     | Economic Partnership Agreement (EPA) | 2018 (2019) | <b>Chapter 16, art. 16.3 (c):</b> “ <i>(...) the Parties <u>shall respect, promote and realise</u> in their laws, regulations and practices the <u>internationally recognised principles</u> concerning the fundamental rights at work, which are: (...) effective abolition of child labour (...)</i> ”. | <b>Art. 16.17</b> (referring to art. 16.17 addressing government consultations, and art. 16.18 dealing with a panel of experts).  |
| Singapore | FTA                                  | 2018 (2019) | <b>Chapter 12, art. 12.3 §3 (c):</b> “ <i><u>commit to respecting, promoting and realizing</u> (...) the effective abolition of child labour</i> ”.   | <b>Art. 12.16:</b> “ <i>In case of disagreement on any matter arising under this Chapter, the Parties shall only have recourse to the procedures provided for in Article 12.16 (Government Consultations) and Article 12.17 (Panel of Experts).</i> ”   |
| Viet Nam  | FTA                                  | 2019 (2020) | <b>Chapter 13, art. 13.4 §3 (c):</b> “ <i>to <u>respect, promote and effectively implement</u> the principles concerning the fundamental rights at work, namely: (...) the effective abolition of child labour</i> ”.   | <b>Art. 13.16</b> (government consultations: “ <i>In the event of disagreement on any matter covered under this Chapter, the Parties shall only have recourse to the procedures established under this Article and Article 13.17 (Panel of Experts). Except as otherwise provided for in this Chapter, Chapter 15 (Dispute Settlement) and its Annex 15-C (Mediation Mechanism) do not apply to this Chapter. Annex 15-A (Rules of Procedure) applies mutatis mutandis in accordance with paragraph 2 of Article 13.17 (Panel of Experts)</i> ”). |

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