

Response to the “Public Consultation on Draft Human Rights Guidance for the Commodities Trading Sector”

Geneva, April 24th, 2018

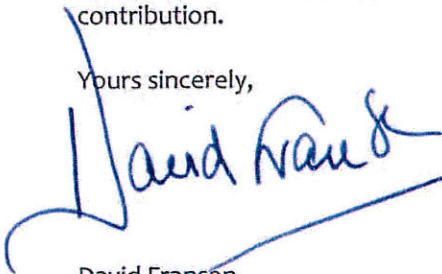
The Swiss Trading & Shipping Association (“STSA”) welcomes the opportunity to submit its comments on the draft version of the Commodities Trading Sector Guidance on Implementing the UN Guiding Principles on Business and Human Rights (“Guidance”). It is a useful document that provides information and practical examples for companies performing a commodity trading activity. The topics covered in this public consultation are of interest to the companies that the STSA represents.

STSA is a non-profit, non-political Swiss association representing companies active in commodity trading and shipping activities, trade finance and related services. STSA brings together three regional associations, 190 members and institutions, and over 100 professionals.

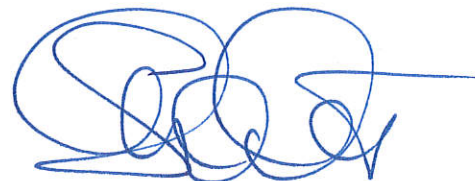
The full response of the STSA can be found hereafter. It is based on the input collected from the association’s members.

STSA remains at the disposal of the Institute for Human Rights and Business to discuss further this contribution.

Yours sincerely,



David Fransen
STSA President



Dr. Stéphane Graber
STSA Secretary General

STSA response to the “Public Consultation on Draft Human Rights Guidance for the Commodities Trading Sector”

As a general comment on the document, STSA would like to emphasize the importance for the Guidance to maintain the spirit of the UNGPs and therefore to encourage companies to voluntarily implement the UNGPs for Business and Human Rights while underlining the progressiveness of the approach.

The STSA’s comments on the Guidance are two-fold, touching mainly on **(1) the scope of application of the Guidance** and **(2) the practical implementation of the UNGPs**.

In STSA’s view, the points underlined below should be considered in the final version of the Guidance. They are accompanied by our detailed comments and amendment proposals.

(1) Scope of application of the Guidance

As mentioned page 16, the purpose of the Guidance is to “provide [...] practical actions for commodities trading firms on how to put the corporate responsibility to respect as set out in the UNGPs into practice within their operations and as part of their business relationships.”

STSA reminds that, according to the Terms of Reference, the guidance applies to the commodity trading activity as understood under Section G of the International Standard Industrial Classification of All Economic Activities issued by the United Nations Statistics Division. As such, throughout the document “commodity trading firms” and “commodities trading sector” should be replaced by “companies performing a commodity trading activity”.

- **Page 5, the title of BOX 1 shall be amended as follows:** “BOX 1 - General Descriptions of activities performed in commodity trading”.
- **Page 6, section 1.3 “Objectives of the Guidance”, 2nd paragraph shall be amended as follows:** “The Guidance summarizes what the UNGPs expect of all companies performing a commodity trading activity, regardless of their area of activity or size, and offers practical examples and recommendations for implementing “human rights due diligence” as set out in the UNGPs with particular focus on the characteristics of and challenges associated with commodity trading.”
- **Page 8, section 1.4 “Scope of the Guidance”, 2nd paragraph shall be amended as follows:** “Companies’ activities and business relationships - the Guidance applies to companies performing a commodity trading activity and intends to help them to put the UNGPs into practice throughout their own activities and supply chain, including in relation to their business relationships with third parties. “Business relationships” in the UNGPs are understood to include “relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services.” For example, in the context of commodity trading, this may include financial institutions, certification providers, shipping and other transportation providers. This is understood to include “business relationships in its value chain, ~~beyond the first tier~~, and minority as well as majority shareholding positions in joint ventures.”
In addition, it should be added that it is not expected to do a due diligence beyond the first tier business relationships in all cases.
- **Page 8, section 1.4 “Scope of the Guidance”, third paragraph shall be amended as follows:** “Companies of all sizes - the Guidance is meant to be applicable to all companies performing a commodity trading activity, of different sizes and with varying types of ownership and structure. The

UNGPs note that small and medium-sized companies may have less capacity as well as more informal processes and management structures than larger companies, and therefore policies and processes will take different forms. Nevertheless, some small and medium-sized companies can be involved in severe adverse impacts requiring corresponding measures regardless of their size. Wherever possible, attention is given in the Guidance to approaches that may be more appropriate for smaller companies in the sector.”

- **Page 11, Box 4, Selling section shall be amended as follows:**

“Sale of products whose further improper transformation or use impact the health of people by containing substances above the applicable legal limit (e.g. high Sulphur fuels, copper concentrate with a high content of mercury, residue of pesticides in agricultural products).”

(2) Recommended actions to put the UNGPs into practice

- **Page 20, 1st paragraph on the requirement to include human rights expectations in formal agreements with business relationships shall be amended as follows:**

“This means managers ~~should~~ are encouraged to discuss the company’s human rights policy with counterparts and set out human rights expectations in collaborative initiatives as well as in the formal agreements or documentation with business relationships”.

It would be too restrictive and difficult in practice to implement, especially when lacking leverage to force including such commitments in formal agreements.

- **Page 24 and following, section i, iv, v on the requirement to consult affected stakeholders:**

It is key to highlight in this section that it is not possible for practical reasons for companies that are not causing/contributing to human rights abuse to directly engage with affected stakeholders. More emphasis should then be given to the last two paragraphs of section v.

- **Page 36, on the key actions:**

More clarity needs to be provided on actions to be taken in preventing and mitigating adverse impacts for the different situations (i.e. “cause”, “contribute”, “linked through business relationship”) should be done.

- **Page 41 “key action” and page 42 “develop indicators” in relation to tracking performance for trading companies who are linked to through business relationship:**

It is essential to distinguish the different expectations between trading companies depending on whether they “contribute to /cause” or the ones who are “linked through business relationship”. It is key that for companies that are only “linked through business relationship”, internal reports from the company that “contributes/causes” should be the basis of the assessment.

- **Page 47 and following:**

More clarity is needed on actions to be taken in providing for or cooperating in remediation for the different situation between “cause”, “contribute to” and “linked through business relationships”.

We would also like to underline that this guidance focuses on procurement but it can equally apply to distribution, a topic it would therefore be important to also address. Indeed, there might be counterproductive effects on local development. How should the distribution of food commodities to countries that do not respect human rights be addressed? Withholding distribution of food commodities to these countries might adversely impact local populations. This issue should be addressed in the guidance in order to avoid potential negative effects on local development.