



TAKING STOCK, LOOKING AHEAD

Human Rights and the
Commodity Trading Sector



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About this paper: This is the latest in a series of occasional papers by the Institute for Human Rights and Business (IHRB). Papers in this series provide independent analysis and policy recommendations concerning timely subjects on the business and human rights agenda from the perspective of IHRB staff members and external experts.

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1 Introduction



Introduction



The 2013 Swiss Federal Council Background Report on Commodities highlighted the economic importance of commodity trading to Switzerland. The report identified challenges for the sector around human rights and environmental standards, and included a number of recommendations including the strengthening of Swiss commitment to the Extractive Industries Transparency Initiative (EITI), the promotion of corporate social responsibility, and the intensification of multi-stakeholder dialogue on advancing implementation of the United Nations Guiding Principles on Business and Human Rights (UNGPs).

That dialogue, facilitated by the Institute for Human Rights and Business (IHRB) and involving the Swiss Federal Department of Foreign Affairs, the State Secretariat for Economic Affairs and Geneva, Zug and Ticino Cantonal representatives, as well as key participants in commodity trading and civil society organisations with expertise in this area, resulted in publication of “The Commodity Trading Sector Guidance on Implementing the UNGPs” in November 2018.¹

In the nearly two years since the Swiss government released the Guidance, efforts to advance this agenda have focused on follow up actions and dissemination activities. These efforts include Swiss government sponsored international outreach to the commodity trading communities in Singapore and London, as well as the organisation of panel discussions at commodities and extractives conferences, and consultations with selected commodity traders on specific issues they are working on to address as part of their implementation efforts. Other participants in the multi-stakeholder group that developed the UNGPs Guidance have followed up on their commitments as well. For example, the Swiss Trading and Shipping Association has offered professional training based on the Guidance to employees of member companies.² Civil society participants continue their work to hold commodity traders accountable for involvement in human rights abuses,³ and call for implementation of the Guidance, while pursuing related initiatives including legislation relating to due diligence obligations on Swiss companies, and a proposed regulator for commodity trading modelled on financial services regulators.⁴

Two years on, it is widely accepted that the UNGPs Guidance should be the first point of reference for any commodity trading company seeking to understand its responsibilities and implement human rights due diligence processes in its business. At the same time, it should be stressed that significant work remains for companies to demonstrate publicly their commitment to implementing human rights due diligence processes in line with the UNGPs and other relevant international standards.

1 “The Commodity Trading Sector Guidance on Implementing the UNGPs” 2018: <https://www.ihrb.org/focus-areas/commodities/the-commodity-trading-sector-guidance-on-implementing-the-ungps>

2 STSA Business and Human Rights Certificate: <https://stsa.swiss/training/stsa-business-and-human-rights-certificate>

3 See for example “Commodities trading”, Public Eye: <https://www.publiceye.ch/en/topics/commodities-trading>, “Raw Materials”, Swissaid: <https://www.swissaid.ch/en/topics/raw-materials/>, “Global businesses – global responsibility”. Bread For All: <https://breadforall.ch/topic/business-and-human-rights/>

4 “Five years of inaction - Why regulation of the commodity trade in Switzerland is long overdue”, Public Eye, 2018: <https://www.publiceye.ch/en/publications/detail/five-years-of-inaction>

This report takes stock of progress to date, including a review of information from 50 prominent commodity trading companies based on available online resources (see Annex). The overall review suggests that while some progress has been made over the past two years, many trading companies are still not taking necessary steps to demonstrate publicly that they are responding to the Swiss Government's call to implement human rights due diligence responsibilities. The report also addresses recent developments of relevance to commodity trading and concludes with a number of recommendations for potential future actions by governments and industry actors.

Key Challenges and Developments

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Key Challenges and Developments

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In assessing the current state of efforts to advance implementation of the UNGPs and human rights due diligence processes within the trading sector, a number of issues are commonly raised:

- **Working with suppliers.** Although contractual clauses are commonly used to place legal liability for due diligence failures onto a supplier (on top of requiring due diligence information commitments and representations and warranties), giving the right to claim damages or possibly to terminate the contract, such steps do not relieve commodity traders of human rights responsibilities as set out in the UNGPs. In the same way that a company may outsource critical work to a third party, commodity traders need to be confident that appointing a supplier to carry out due diligence was appropriate given the supplier's skills, experience and capacity. Commodity traders will need to develop more effective ways of monitoring due diligence steps taken to ensure they meet appropriate standards.
- **Engaging with CSOs.** In many cases, people most at risk of rights abuses linked to commodities are not able to represent themselves directly or effectively to commodity traders. They rely on trade unions as well as local and international civil society organisations (CSOs) to highlight these adverse impacts. Although there is evidence of improved dialogue in some contexts, commodity traders often express reluctance to work with CSOs, especially those known for their investigative work, or traders note lack of knowledge or capacity in doing so effectively. It is, however, critical that greater efforts at outreach are made by those involved in trading as ongoing absence of meaningful stakeholder engagement reduces the ability of companies to conduct adequate due diligence and risk assessments in line with the UNGPs.
- **Addressing insufficient commercial leverage.** The effective use of leverage is a key concept in the UNGPs. Where a commodity trader lacks the economic power or influence in a relationship to undertake adequate due diligence, working with other commodity traders through trade associations or other formal or informal groups can help to address risks. Steps in this direction to date are, however, limited as such actions can raise concerns with respect to breaching competition laws when discussing business with competitors. This affirms the importance of more dialogue with authorities and others in the industry, which could lead to joint actions to ensure such activities are carried out in well-managed environments with appropriate safeguards.

The following sections address specific areas where developments relating to responsible business practices are likely to have direct implications for commodity trading in the time ahead.

1. OECD Guidance

The OECD continues to be an active participant in discussions concerning responsible business conduct, supply chains and respecting human rights. Historically, the OECD Guidelines for Multinational Enterprises⁵ has been a key go-to instrument for companies looking to improve performance in this area and the OECD National Contact Points are often the only mechanism available to complainants.

The OECD has developed “Due Diligence Guidance for Responsible Business Conduct”⁶ that deals with a wide range of issues for multinationals, but also due diligence guidance for specific industry sectors. These include the following topics:

- Responsible Supply Chains of Minerals from Conflict Affected and High-Risk Areas⁷
- Child labour risks in the minerals supply chain⁸
- Meaningful Stakeholder Engagement in the Extractive Sector⁹
- Responsible Agricultural Supply Chains (with the FAO)¹⁰

OECD guidance has been utilised by companies involved in the primary mining and agriculture sectors, but at present, these OECD guidance documents do not deal directly with commodity trading. This means commodity traders with vertically integrated operations, while benefiting from the OECD guidance with respect to production assets, have no comparable guidance endorsed by governments to inform trading activities.

Although commodity traders can use existing OECD guidance to help understand the risks inherent in their supply chains, this is a fairly complex exercise that is likely to be beyond the capabilities of many small and medium-sized enterprises. More efforts by all relevant actors are required to address this challenge in the context of the OECD and beyond.

It should be recalled that OECD guidance for minerals and agricultural supply chains include high-level guidance on structuring due diligence processes, but offer no insights into how to manage longer trading chains of ownership with limited visibility that are characteristic of commodity trading. This is where the Swiss UNGPs Guidance for commodity trading can be helpful, but more concerted efforts within the OECD will be required to develop additional guidance targeted for traders within existing frameworks.

5 “Guidelines for multinational enterprises”, OECD (2011): <http://mneguidelines.oecd.org/mneguidelines/>

6 “Due Diligence Guidance for Responsible Business Conduct”, OECD (2018): <http://mneguidelines.oecd.org/due-diligence-guidance-for-responsible-business-conduct.htm>

7 “Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas”, OECD (2016): <https://mneguidelines.oecd.org/mining.htm>

8 “Practical actions for companies to identify and address the worst forms of child labour in mineral supply chains”, OECD (2017): <https://mneguidelines.oecd.org/child-labour-risks-in-the-minerals-supply-chain.htm>

9 “Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector”, OECD (2017): <https://www.oecd.org/publications/oecd-due-diligence-guidance-for-meaningful-stakeholder-engagement-in-the-extractive-sector-9789264252462-en.htm>

10 “Guidance for Responsible Agricultural Supply Chains”, OECD-FAO: <https://mneguidelines.oecd.org/rbc-agriculture-supply-chains.htm>

2. Transportation

One important characteristic of all commodity value chains is the need to move commodities by sea, road, rail, river, pipeline, etc. Some commodities, such as gold, are also transported by air.

Transportation services are no different to any other aspect of the commodity value chain in that commodity traders are expected to include the use of transportation and transit facilities in their human rights policies and practices. To date the sustainability focus of transportation services has been largely environmental. But of course, driving the engine of this transportation is a huge invisible global workforce on land and sea that is critical in ensuring delivery of commodities to every next stage in its supply chain. The COVID-19 pandemic has highlighted the importance of ensuring that the rights of transport workers are respected as a matter of course, so that during times of crisis their human rights are not compromised in efforts to prevent disruption of distribution networks.¹¹ Although there are no existing standards or guidance tools dealing specifically with commodity traders' use of transportation services, there are several overarching transport and logistics resources, tools and initiatives available.¹² While transportation also includes air, rail and road, as up to 90% of the world's trade is transported by sea, it is worth looking in more detail at developments relating to the maritime industry.

Shipping

The Maritime Labour Convention (MLC), 2006,¹³ "A Seafarers' Bill of Rights", incorporates and builds on sixty eight existing maritime labour conventions and recommendations, as well as more general fundamental principles, to ensure decent working and living conditions for all seafarers.¹⁴ The MLC has been ratified by 97 states representing over 90 per cent of global shipping. Despite widescale ratification, ensuring effective implementation of the MLC is problematic. A particular risk amplifier of sea operations is the complex and often opaque ownership and management structures of vessels and the networks of service providers involved in keeping vessels in operation. When commodity traders manage or obtain transportation services, there is a clear need to consider these issues, including recognition that due diligence, mitigation and remediation obligations apply here as they do to the direct commodity value chain.

Useful initiatives for commodity traders when considering their maritime human rights impacts include Danish Shipping's "Navigating Human Rights: A Guide to Human Rights Due Diligence and Salient Human Rights Issues in Shipping", prepared by the Danish Institute for Human Rights (DIHR)

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- 11 IHRB published a commentary in March 2020 highlighting the human rights impacts of the pandemic on global transportation workers "The Invisible Transport Workforce Keeping Supply Chains Moving": <https://www.ihrb.org/focus-areas/covid-19/commentary-invisible-transport-workforce-keeping-supply-chains-moving>
- 12 See for example the various initiatives of the International Transport Workers' Federation: <https://www.itfglobal.org/>. See also BSR's "10 Human Rights Priorities for the Transport and Logistics Sector": <https://www.bsr.org/en/our-insights/primers/10-human-rights-priorities-for-the-transport-and-logistics-sector>, and more specifically, CSR's Responsible Trucking Initiative, <https://www.csreurope.org/responsible-trucking>
- 13 Maritime Labour Convention, ILO (2006), last updated in 2018 and out for amendment consultation as this report goes to print: <https://www.ilo.org/global/standards/maritime-labour-convention/text/lang--en/index.htm>
- 14 "An ITF Guide for Seafarers to the ILO Maritime Labour Convention" (2006): https://www.itfglobal.org/media/581902/sbor_english.pdf

in 2019.¹⁵ DIHR is also cooperating with the Rafto Foundation for Human Rights and IHRB in ongoing Responsible Shipping Dialogues with key actors in the maritime industry with the aim of encouraging better awareness of and adherence to human rights standards. An initial product of these dialogues is a 2019 briefing note on the “Ship Lifecycle: Embedding Human Rights from Shipyard to Scrapyard”.¹⁶ Such initiatives will generate further useful guidance on the kinds of issues that arise in relation to ships and human rights and should be used to develop specific commodity trader due diligence policies and procedures on the use of shipping (as a voyage or time charterer).

Ship operations

If vessel construction and breaking activities seem too remote for a commodity trader that doesn’t directly own ships to consider, vessel and crew management issues clearly are part of due diligence expectations for the sector. Crew hiring, pay and conditions, ability to leave the vessel, transit through high risk zones, loading and discharging at terminals or in ports with poor facilities or in territories with safety issues, and access to proper medical care are just some of the issues highlighted by the reports mentioned previously. A challenge for commodity trading companies as they consider the range of business relationships they manage is how best to incorporate emerging good practice steps and mitigating measures in their own dealings with shipping companies.

Terminals and ports

Commodity traders do not often have the opportunity to choose the port facilities or terminals at which they take or make delivery, but this is even more the case for vessel owners and operators who act on charterers’ orders. The Navigating Human Rights guidance mentioned above gives useful examples of negative human rights impacts on dockworkers and other transport workers, including poor occupational health and safety standards and elevated accident rates, excessive working hours without adequate rest and below living wages, all of which could form the basis for traders as they engage in new and existing relationships with port authorities.¹⁷

It should also be stressed that when private security services are used to protect port facilities, terminals and vessels, commodity traders should rely on participation in the International Code of Conduct for Private Security Service Providers¹⁸ to select and monitor providers.

Shipping and COVID-19

Commodity supply chains, like all supply chains, have been significantly impacted by COVID-19 outbreaks worldwide. While most commodity trading companies will have been concerned with changes to supply and demand in the commodities they trade, as well as taking precautions to keep their employees safe, the need for essential commodities to be exported and imported can leave the least protected workers in the supply chain and their families and communities vulnerable.

15 “Navigating Human Rights: A Guide to Human Rights Due Diligence and Salient Human Rights Issues in Shipping”, Danish Shipping (2019): <https://www.danishshipping.dk/en/policy/human-rights/>

16 “Ship Lifecycle: Embedding Human Rights from Shipyard to Scrapyard”, IHRB, Rafto, DIHR (2019): <https://www.ihrb.org/focus-areas/trade/the-ship-lifecycle-embedding-human-rights-from-shipyard-to-scrapyard>

17 p7, “Navigating Human Rights: A Guide to Human Rights Due Diligence and Salient Human Rights Issues in Shipping”, Danish Shipping (2019): <https://www.danishshipping.dk/en/policy/human-rights>

18 “The International Code of Conduct for Private Security Service Providers”, ICoCA: https://www.icoca.ch/en/the_icoc

In May 2020, the UN Global Compact issued a press release urging governments to work together to keep ocean-related supply chains moving. The recommendations were based on the work of the COVID-19 Task Force of the initiative's Action Platform for Sustainable Ocean Business, consisting of representatives from leading companies, industry associations, financial institutions, UN specialised agencies and academic institutions. They drew attention to the fact that *"travel restrictions and grounded airplanes have rendered routine crew changeovers virtually impossible. Ocean-based supply chains are also challenged. Offshore operations are essential to global energy supplies, and mariculture and capture fisheries constitute vitally important sources of food and animal feeds."*¹⁹ This was followed in September 2020 by a joint statement from the ILO, FAO, UNGC, IMO, OHCHR, UNCTAD and IOM calling urgently on member States to establish and implement measurable, time-bound plans to increase the rate of crew changes, describing the now 300,000 stranded seafarers a 'humanitarian crisis'.²⁰

In order to facilitate safe transportation of goods, the IMO issued COVID-19 guidance for personal protective equipment and for interactions between ship and shore-based personnel.²¹ Commodity traders should ensure that their transportation providers are putting this best practice guidance into effect in order to manage the risk of infections and safeguard their supply chains. Of additional relevance to commodity traders are the human rights implications for crew of the use of bulk carriers to store commodities in anticipation of improved market value.²²

Leverage

Commodity traders are expected to use and increase their leverage to address the kinds of risks inherent in transporting their commodities - including raising awareness, helping to build technical capability, encouraging the implementation of standards, and assessing risks in relation to port developments. These actions can also be taken in relation to trucking contracts and the assessment of rail networks. These are the kinds of programmes that might be too large and complex for an individual trading company but are realistic when working in industry and multi-stakeholder groups.

3. Futures and Derivatives Markets

One of the most significant issues in commodity value chains is the break that occurs when a physical commodity is used for delivery in settlement of a futures contract.

Commodities interact with the financial markets in a number of ways. The most common is through the use of commodities futures exchanges to price and/or deliver commodities. In addition, some commodities are used as price references in over-the-counter derivatives and the bond markets sometimes produce products that are valued using commodity prices (or baskets of commodity prices). The main concern recently has been the negative impact commodity prices may have on realisation of

19 "Disruption of Ocean Supply Chains Due to COVID-19 to Cause Significant Global Shortages", UN Global Compact (May 2020): <https://unglobalcompact.org/news/4534-05-05-2020>

20 "Stranded seafarers: A 'humanitarian crisis'" (Sept 2020): https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_755390/lang--en/index.htm

21 "Coronavirus (COVID 19) - Personal protective equipment", IMO (May 2020): [https://www.wcdn.imo.org/localresources/en/MediaCentre/HotTopics/Documents/COVID%20CL%204204%20adds/Circular%20Letter%20No.4204-Add.15%20-%20Coronavirus%20\(Covid%2019\)%20-%20Personal%20Protective%20Equipment.pdf](https://www.wcdn.imo.org/localresources/en/MediaCentre/HotTopics/Documents/COVID%20CL%204204%20adds/Circular%20Letter%20No.4204-Add.15%20-%20Coronavirus%20(Covid%2019)%20-%20Personal%20Protective%20Equipment.pdf)

22 "Second wave of floating storage triggered by ailing oil market", Reuters (September 2020): <https://uk.reuters.com/article/us-global-oil-floating/second-wave-of-floating-storage-triggered-by-ailing-oil-market-idUKKBN2602EX>

specific human rights. This could potentially be an issue either due to high prices adversely impacting those who rely on the end products, or to low prices on people in resource-exporting countries. There may also be impacts linked to price volatility due to trading strategies implemented by some traders to push prices higher or lower (rather than as a result of underlying supply and demand), for example by stockpiling or transporting more slowly than is typical, or through specific futures trading operations.

Commodity price volatility

Different commodities go through periods of price stability (or stagnation if you're a trader that relies on price volatility) and volatility. Low prices benefit end users, and high prices benefit producers, in principle. The flip side of this is that low prices can cause hardship and deteriorating working conditions for those working in commodity exporting countries and high prices, especially high food prices, can cause hardship everywhere. Studies into food price volatility became urgent in the late 2000s following a period of high volatility between 2006 and 2008.²³ The role of speculation (not normal commercial hedging activities) came under scrutiny by, among others, Olivier De Schutter, Special Rapporteur of the United Nations Human Rights Council on the right to food in 2010²⁴ and in Oxfam's 2016 report "Precarious Lives: Work, food and care after the global food crisis".²⁵

A second issue for futures trading is the impact on traceability of commodities and the problem of not getting to choose a supplier. In a typical commodity purchase in the physical markets, a buyer and seller are known to each other and they have the opportunity to conduct due diligence (in theory) including codes of conduct and contract clauses that address human rights. By contrast, when a trader settles futures positions on an exchange, they may have to take delivery of physical commodities on standard terms from an unknown seller. This excludes any legal possibility to refuse to take delivery of particular goods, even if acceptance of them puts the buyer in conflict with its own human rights policy or practices.

At the moment, no futures exchange operators accept responsibility for the human rights profile of the goods delivered through their exchange. It is theoretically possible for exchanges to introduce appropriate requirements around the commodities delivered as settlement, but that would require either a form of certification or changes to standard contractual language.

Futures exchanges serve a specific purpose in the commodity markets. They act as a hedging tool for producers and end users, as a pricing tool for traders, and as a way to obtain exposure to commodity markets for investors who don't want to, or are not able to, make or take physical delivery. For them to function this way, the forward price must converge with the spot price, so that on a contract expiry date the futures contract settles at the same price as the commodity is sold in the spot market. One of the factors that affects price are divergent contract terms and therefore futures contracts aim to track physical market contract terms as closely as possible. So, it is unlikely that an exchange's contract committee will introduce terms that are not already considered market practice in standard physical contract terms.

23 See for example "Food Price Volatility and the Right to Food", FAO (2011): http://www.fao.org/fileadmin/templates/righttofood/documents/RTF_publications/EN/issuesbrief_PRICEvolatility_EN.pdf

24 "Food Commodities Speculation and Food Price Crises - Regulation to reduce the risks of price volatility", OHCHR (2010): https://www2.ohchr.org/english/issues/food/docs/Briefing_Note_02_September_2010_EN.pdf

25 "Precarious Lives: Work, food and care after the global food crisis", Oxfam (2016): <https://policy-practice.oxfam.org.uk/publications/precarius-lives-work-food-and-care-after-the-global-food-crisis-620020>

The upside to this is that when there is sufficient uptake of human rights relevant clauses in physical trading contracts, then futures contracts will adopt those same clauses. There is no survey of trading terms that covers the adoption of human rights clauses and companies typically only provide their terms to their direct trading counter parties. Of those that are published, in particular the well-known BP Oil International General Terms and Conditions for Sales and Purchases of Crude Oil and Petroleum Products (2015²⁶), the various sets of Shell General Terms and Conditions (the latest published for Shell Canada in 2019²⁷) and the ConocoPhillips General Terms & Conditions For U.S. Crude Oil Contracts (2017²⁸), none have any references to human rights, although these terms are supplemental to specific contracts and those contracts may themselves contain human rights clauses. Some standard contracts do incorporate by way of reference the company's supplier code of conduct and this is another way in which futures exchanges could progress efforts to integrate UNGPs related policies and actions in their business without altering the contract terms.

On the issue of traceability and certification, if widely adopted in a specific commodities physical market, then it is likely that those documents will also be required in order to make delivery through the futures exchange.

The LME approach

The London Metal Exchange (LME) announced in 2019 that it would introduce responsible source rules with full engagement required by 2022 and full compliance by 2023.²⁹ The LME published two papers in response to its consultation on proposed amendments to the LME Rulebook to introduce responsible sourcing requirements. The first paper is an overview of LME responsible sourcing, alongside amendments to the LME Rulebook to implement the LME Policy on Responsible Sourcing together with a Red Flag Assessment template. The second paper provides a summary of feedback received to the consultation exercise.³⁰

The LME Policy leverages the OECD Responsible Supply Chains of Minerals from Conflict Affected and High-Risk Areas as its due diligence standard, requires third party audits of producers' environmental and health and safety practices, gives the LME investigatory and enforcement powers, and has a grievance procedure open to use by any person. As is often the case with specialist futures exchange publications, these can be difficult documents to understand without direct knowledge of the LME. To this end, the LME has continued to engage on the issue, for example, Matthew Chamberlain, LME Chief Executive Officer participated in IHRB's "From Fragility to Resilience - Commodities Trading in Times of Crisis" webinar on 20 May 2020.³¹

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- 26 "BP Oil International General Terms and Conditions for Sales and Purchases of Crude Oil and Petroleum Products" (2015): <https://www.bp.com/content/dam/bp/business-sites/en/global/bp-global-energy-trading/documents/news-and-resources/bp-oil-gtc-2015-version-1.1.pdf>
- 27 "General Terms and Conditions for the Sale and Purchase of Products", Shell Trading Canada (August 2019): https://www.shell.com/business-customers/trading-and-supply/trading/general-trading-terms-and-conditions/_jcr_content/par/textimage.stream/1566253234786/e09bd10a47f8b74108c3b047528306a9345af61c/shell-trading-canada-products-gt-and-cs-2019.pdf
- 28 "General Terms & Conditions For U.S. Crude Oil Contracts", ConocoPhillips (2017): <https://www.conocophillips.com/about-us/how-energy-works/doing-business-with-us/general-terms-conditions-for-u-s-crude-oil-contracts/>
- 29 "LME sets out responsible sourcing requirements" (October 2019): <https://www.lme.com/en-GB/News/Press-room/Press-releases/Press-releases/2019/10/LME-sets-out-responsible-sourcing-requirements>
- 30 Both papers can be found at: <https://www.lme.com/About/Responsibility/Responsible-sourcing>
- 31 "From Fragility to Resilience - Commodities Trading in Times of Crisis", IHRB (May 2020): <https://www.ihrb.org/focus-areas/commodities/video-commodities-trading-in-times-of-crisis>

Neither bilateral over-the-counter derivatives instruments (entered into directly between the parties and often mediated by a broker) nor fixed income instruments, such as commodity-linked bonds, typically involve the delivery of physical commodities. Some providers of these instruments have attempted to prevent them from being used to hedge physical trade flows that don't meet some aspect of good ESG practice, in the same way that a bank might refuse to lend to a commodity trader on a transaction basis. One impediment to that approach is that hedging is often managed on a trading book basis, where a trader has a portfolio of derivatives transactions made up from individual transactions that, taken as a whole, hedge their physical trading book and where it is often not possible to identify a specific hedging transaction as being linked to a specific physical transaction.

Until there is a change in physicals market practice that is mirrored by the futures exchanges, is there anything that can be done by a commodity trader to gain control over this aspect of its supply chain? One approach is to avoid taking physical delivery from the exchange. Although this goes against the original purpose of most futures exchanges, many commodity traders only use the futures markets for pricing their off-exchange sales and purchases and for hedging (closing out their positions prior to expiry of the futures contract). Obviously, if every market participant took this approach then the futures contracts would become ineffective, but such a step could be useful to commodity traders seeking to implement human rights due diligence commitments and as a way of applying pressure on commodity exchanges to introduce responsible sourcing rules.

4. Transparency

Transparency is often seen as a governance issue exclusively relating to anti-bribery and corruption, but it goes to the heart of responsible sourcing for commodity traders and effective implementation of the UNGPs.

The lack of transparency in the reporting of company activity has hindered effective analysis of supply chains, making it difficult for lawmakers to make policy relating to commodity trading and human rights and for CSOs to engage with companies. Some may think this is the reason why commodity trading companies try to avoid reporting on their activities, but there is increasing evidence that points to the economic and social benefits accrued by companies who embrace transparency, in particular from access to ESG-linked loans.

Commodity traders who are developing human rights due diligence processes in line with the UNGPs need to come to terms with reporting requirements in order to make their efforts pay off for both them and their stakeholders. Multiple reporting schemes exist offering various levels of sophistication and the use of standardised reporting can help stakeholders assess and compare a company's due diligence activity with peers.³² Detailed reporting by commodity traders is, however, still uncommon.

³² See UNGPs Reporting Framework's "Cross-References to Other Initiatives": <https://www.ungpreporting.org/resources/cross-references-to-other-initiatives/>

Transparency legislation has been implemented in a number of areas in different countries. Examples of transparency requirements are those relating to shareholdings, trusts, derivatives transaction reporting, and accounting. Another area involves minerals sourcing in order to deal with the risks of conflict minerals that resulted in legislation in the United States³³ and the European Union.³⁴

The main voluntary transparency scheme relating to commodities is the Extractives Industries Transparency Initiative (EITI). EITI has historically concerned itself with *“disclosure of information along the extractive industry value chain, from how extraction rights are awarded, to how revenues make their way through the government and how they benefit the public”*.³⁵ EITI deals only with oil, gas and mining, at present. A recent expansion of the initiative seeks to include first trade commodity payments to states and state-owned enterprises (SOEs).³⁶ “First trade” in this context means the scenario where the state or SOE sells commodities to commodity trading companies. Additionally, EITI has recently released new reporting guidelines for companies buying oil, gas and minerals from governments, developed by the EITI Working Group on Transparency in Commodity Trading.³⁷

Some extractives companies who also trade commodities are members of EITI already (e.g. Glencore, BP, Equinor, Shell and Total) and some commodity trading companies have joined expressly to report their first trades (Trafigura, Gunvor and Philia).

One of the reasons given by the trading companies for joining the scheme was that the improved transparency facilitates the use of ESG-linked banking facilities. The EITI provides a useful model that could be extended into other areas of commodity trading, to allow transparency at the same time as preserving commercial confidentiality.

Certification and Traceability

One of the biggest obstacles to effective due diligence in supply chains is being able to trace the history of commodities from origin to final destination.

Commodity traders will be well aware of the various standards and schemes that relate to the specific commodities traded by them, but stakeholders should also be aware of the limitations of certification, for example where suppliers deliberately mislead or obstruct certification agents.³⁸ Certification is still a useful tool, but in itself is likely not sufficient alone to meet a trading company’s UNGP due diligence obligations.

33 “Requiring Disclosure to Increase Transparency Regarding the Sourcing of Conflict Minerals”, U.S. Securities and Exchange Commission (August 2012): <https://www.sec.gov/news/public-statement/2012-spch0822121aa-mineralshtm>

34 “Combatting Conflict Minerals”, EU (2017): <https://ec.europa.eu/trade/policy/in-focus/conflict-minerals-regulation/>

35 Extractives Industries Transparency Initiative (EITI): <https://eiti.org/>

36 “Transparency in the First Trade”, EITI (2019): https://eiti.org/files/documents/eiti_commodity_trading_transparency_may2019_web_0.pdf

37 “Reporting guidelines for companies buying oil, gas and minerals from governments”, EITI (2020): <https://eiti.org/document/reporting-guidelines-for-companies-buying-oil-gas-minerals-from-governments>

38 “Rainforest Alliance certifying unethical pineapple farms, activists claim”, Guardian (May 2020): <https://www.theguardian.com/global-development/2020/may/29/rainforest-alliance-certifying-unethical-pineapple-farms-activists-claim>

5. Financing Commodity Trade

The financing of commodity traders is fundamental to the way businesses are operated and the requirements of finance have always driven commodity trader behaviours in all markets. How traders are financed and the benefits traders can obtain by systematic application of human rights due diligence in their business is increasingly driving management decisions in both banks and trading companies.

Recent reports note that *“Top commodities traders are increasingly turning to ESG-linked loans for some of their critical financing needs and to bolster sustainability credentials with the aid of banks who are also encouraging such businesses to boost [the] credit quality of their loan portfolios. Loans jumped six-fold in 2019 to \$7.8 billion as crop traders Cofco International Ltd. and Louis Dreyfus Co. won sustainability loans and now link the bulk of their financing to ESG targets.”*³⁹

ESG indicators are used by investors to evaluate corporate behaviour and to determine the future financial performance of companies. It is essentially *“a subset of non-financial performance indicators which include sustainable, ethical and corporate governance issues such as managing a company’s carbon footprint and ensuring there are systems in place to ensure accountability”*.⁴⁰

ESG is also referred to as sustainable or ethical investing. These are umbrella terms for investments seeking both positive returns and positive long-term impacts on society, environment, and the performance of the business. Therefore, there are two reasons a bank might want to consider ESG financing: because they have their own corporate responsibility mandates linked for example to the UNGPs or the SDGs; and/or because their analysts advise that ethical businesses generate lower non-financial risks.

Examples of metrics covered by ESG requirements are around carbon emissions, deforestation, low-sulphur fuels, supply chain traceability, human rights indicators (see box below), SDG indicators, internal controls and organisation, audit requirements, diversity in the workforce (including the boardroom), equality in pay and conditions, anti-bribery and corruption, and anti-money laundering controls.

TYPES OF FINANCE

Where trade financing is done on a transaction basis, the finance is tied to a particular stock of goods that that client is buying, and the bank might take a pledge over the stock (or the title documents). This makes it straightforward for the bank to ask for and assess due diligence on the origin of the goods. Borrowing based finance is not tied to a specific stock of goods and the bank typically takes collateral through inventories, receivables and cash. This arrangement still makes it possible for the bank to ask for due diligence information, but as inventories constantly change, it is more challenging. Balance sheet financing is not tied to stocks and collateral is not taken over receivables, etc. Instead, the bank relies on the financial strength of the trader and these are the types of loan that are typically syndicated to multiple lending banks. This kind of arrangement is more likely to be managed through ESG reporting, as the bank will not have any visibility on particular transactions, inventory or cash flows. The different types of finance put the bank into a different kind of relationship with the value chain and that varies the approach and the kind of leverage that the bank could take or apply to enhance human rights due diligence processes.

39 “Oil Trader Gunvor Expands Sustainability Loans Despite Virus”, Bloomberg (June 2020): <https://www.bloomberg.com/news/articles/2020-06-18/oil-trader-gunvor-expands-sustainability-loans-despite-virus>

40 “What is ESG? Definition and meaning”, Market Business News:<https://marketbusinessnews.com/financial-glossary/esg-definition-meaning/>

Sensitivity to the sustainability profile of their investments has impacted bank lending practices for several years. ESG finance was already a factor in 2018 when energy trader Gunvor announced that it was the first energy commodity trader to secure a sustainability-backed loan. The loan was arranged by ING Bank. Gunvor's loan reportedly linked lower interest rates to meeting certain environmental targets as well as employee safety improvements and its support of the EITI.⁴¹

ING was the lead bank with a further 13 banks participating in the renewal, including ABN AMRO, Rabobank, Société Générale and China Construction Bank.⁴² Gunvor reportedly met those targets and renewed the facility in 2020.⁴³ There is no publicly available information on the precise targets nor on the assessment methodology used by the lenders to determine compliance with the loan terms.

Gunvor has taken a further ESG-linked loan in the second quarter of 2020 (with a different mix of lenders) bringing its ESG loan portfolio to more than one billion US Dollars.⁴⁴ Interestingly, the loan was oversubscribed by Euro 70 million, demonstrating that there is demand for ESG finance from lending banks despite the impact of COVID-19 on petroleum prices during the first and second quarters of 2020.⁴⁵ Note that this loan was to finance a petroleum refinery, not for the commodity trading book.

ING Bank also financed agribusiness conglomerates Olam, Wilmar and COFCO, both of whom conduct trading activities as part of their business. One recent noteworthy example in the agribusiness sector is COFCO International's sustainability-linked loan in 2019. This \$2.3 billion US Dollar loan was agreed with a consortium of 21 banks. The loan has annual targets on social and environmental topics and on traceability progress. On human rights, COFCO International has initiated a partnership with an international NGO to conduct human and labour rights impact assessments across its operations and key supply chains. It is not clear if this was a loan target and if it is, what the scope of it requires. COFCO International notes that it *"will build on the robust foundation established in Year 1 to make tracing large volumes of soy a reality, and rapidly – to fulfil the next two years' loan targets"*.⁴⁶

Obtaining greater visibility on soy production should allow the company to assess farmer environmental and social performance and help build capacity. The company stated that it had other sustainability commitments covered by the loan terms.

One benchmark used by the financial sector is the Equator Principles. An updated version of the Equator Principles was published in July 2020.⁴⁷ An initiative taken by banks is the Thun Group of Banks, *"an informal group of banks who work together with the purpose of understanding how human rights can best be respected and promoted across the breadth of different banking activities"*.⁴⁸ The

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- 41 "Oil trader Gunvor closes sustainability-linked \$745 million loan", Reuters (2018): <https://www.reuters.com/article/us-gunvor-grp-financing-environment-idUSKCN1MP1DT>
- 42 "Gunvor renews US\$725m sustainability-linked facility" (February 2020): <https://ctmfile.com/story/gunvor-renews-us725m-sustainability-linked-facility>
- 43 "Oil Trader Gunvor Vows to Use More Sustainability-Linked Loans", Bloomberg (January 2020): <https://news.bloomberglaw.com/banking-law/oil-trader-gunvor-vows-to-use-more-sustainability-linked-loans>
- 44 "Gunvor Closes New Sustainability-Linked Borrowing Base to Support German Refinery" (June 2020): <https://gunvorgroup.com/news/gunvor-closes-new-sustainability-linked-borrowing-base-to-support-german-refinery/?i=1>
- 45 "Oil Trader Gunvor Expands Sustainability Loans Despite Virus", Bloomberg (June 2020): <https://www.bloomberg.com/news/articles/2020-06-18/oil-trader-gunvor-expands-sustainability-loans-despite-virus>
- 46 "COFCO International wins multiple awards for sector-leading sustainability-linked loan" (May 2020): <https://www.cofcointernational.com/stories/cofco-international-wins-multiple-awards-for-sector-leading-sustainability-linked-loan/>
- 47 "The Equator Principles" (July 2020): <https://equator-principles.com/wp-content/uploads/2020/01/The-Equator-Principles-July-2020.pdf>
- 48 "Thun Group of Banks - description": https://www.business-humanrights.org/sites/default/files/Thun%20Group%20of%20Banks_description_final.pdf

discussions of the Thun Group are informed by input from industry experts and supported by the University of Zurich Centre for Human Rights Studies. The group has issued two discussion papers (2013 and 2017⁴⁹), the first elaborating on the application of the UNGPs to banking. The letters and articles commenting on these papers and the Thun Group of Bank's responses are available at the Business & Human Rights Resource Centre.⁵⁰

Dutch Banking Sector Agreement

The Dutch Banking Sector Agreement (“DBA”) on International Responsible Business Conduct regarding Human Rights is a three-year agreement that came into force in December 2016 and ended in December 2019. It was negotiated and entered into by groups representing the Netherlands Government, the Dutch Banking Association, trade unions and civil society organisations.⁵¹ The purpose of the agreement was to strengthen the processes and principles in the Dutch banking sector regarding the OECD guidelines and UNGPs, especially those related to human rights and to bring these learnings to relevant, international forums, and shape an international level playing field and larger impact for people on the ground.

Important reports include those of the Increasing leverage working group on how banks can move beyond traditional commercial leverage.⁵² In particular, the report identifies an eco-system perspective where individual banks can address issues by using broader leverage within the business relationship, working with business partners, bi-lateral engagement with third parties and through multi-stakeholder collaboration, including with non-business actors. Crucially, the report contained ideas for action in 18 areas developed from consultation with DBA parties. Some of those with specific relevance to commodity trading were for banks *“to work proactively in increasing leverage by supporting clients to improve their performance on social and environmental standards and human rights before an incident occurs”* using technical assistance and by developing common tools and training to help clients improve their practices, and providing evidence and metrics that help banks make the business case to clients.⁵³ In addition, the idea to focus on sector specific value chains led to analysis of the gold⁵⁴, oil and gas⁵⁵, palm oil⁵⁶ and cocoa⁵⁷ value chains by the DBA's value chain working group.

The methodology of the value chain working group was to apply the OECD Guidelines and the UNGPs as its normative framework. Each report mapped the value chain, identified human rights impacted,

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- 49 “Paper on the Implications of UN Guiding Principles 13b & 17 in a Corporate and Investment Banking Context”, Thun Group of Banks (2017): https://www.business-humanrights.org/sites/default/files/documents/2017_12_Thun%20Group%20of%20Banks_Paper_UNGPs%2013b%20and%2017.pdf
- 50 “Thun Group of Banks releases new Paper on implications of UN Guiding Principles for corporate & investment banking”: <https://www.business-humanrights.org/en/thun-group-of-banks-releases-new-discussion-paper-on-implications-of-un-guiding-principles-for-corporate-investment-banks>
- 51 “State of play of the Dutch Banking Sector Agreement” (November 2019): <https://www.imvoconvenanten.nl/en/banking/news/state-of-play-banking>
- 52 “Increasing leverage working group - Progress report phase I” (July 2018): <https://www.imvoconvenanten.nl/en/banking/about-this-agreement/-/media/E9F74FB5154F4C74B098E5C1B5F9F0CA.ashx>
- 53 The SILA 2017 Report (an internal report prepared for DBA)
- 54 “Analysis of the Gold Value Chain” (November 2019): <https://www.imvoconvenanten.nl/en/banking/about-this-agreement/-/media/31DD8F9E7F444F67A7C324A61A2B962D.ashx>
- 55 “Analysis of the Oil & Gas Value Chain”: <https://www.imvoconvenanten.nl/en/banking/about-this-agreement/-/media/966FCA95E1D84B50835BE78CE02B94D6.ashx>
- 56 “DBA's Analysis of Severe Human Rights Issues in the Palm Oil Value Chain and Follow-up actions” (August 2019): <https://www.imvoconvenanten.nl/en/why/-/media/38D966E2E7C44201875B460B2601480C.ashx>
- 57 “Cocoa value chain analysis” (July 2018): <https://www.imvoconvenanten.nl/en/banking/about-this-agreement/-/media/1C66016FC721457EB4B90E082310AFCE.ashx>

looked at current human rights approaches, and set out recommendations. Using the cocoa report as an example, commodity traders were identified in first processing (cocoa mass, butter and powder) financed by international banks through syndicated loans, trading and processing into chocolate done by five traders (some listed on stock exchanges) financed by international banks through bilateral or syndicated trade commodity finance and corporate bonds. The bulk of the bank connection is through trade commodity finance done through one of transaction or borrowing based or balance sheet finance.

It is worth noting that the analyses of the gold and oil and gas value chains look very different to the cocoa analysis. The palm oil analysis, like the cocoa analysis, finds large integrated players involved in refining and trading, but in palm oil their involvement goes further along the chain into growing and milling. The differences in value chains revealed by the analyses mirrors the findings of the IHRB Mapping Study carried out in preparation for the development of the Swiss Guidance on the UNGPs, which concluded that the commodity trading sector is diverse and commodity specific and that one approach does not fit all value chains.⁵⁸

HUMAN RIGHTS PERFORMANCE INDICATORS

The Dutch Banking Sector Agreement group of banks published a white paper in November 2019 that set out suggested performance indicators. The paper notes that “*Factors of influence when determining relevance or feasibility are for instance, size of the bank, nature of the specific business activities and relationships of a bank, type of sectors the bank is active in or resources for reporting and transparency.*”

The areas are covered in three sections:

- A. Governance of respect for human rights;
- B. Defining the focus of reporting; and
- C. Management of salient human rights issues.

Each objective or goal is time-bound, has examples and includes additional relevant information that can be used to assess the borrower’s performance. An example indicator is set out below:

C2.1 How does the company identify which stakeholders to engage with in relation to each salient human rights issue, and when and how to do so?

Additional relevant information: The bank has a robust process to identify the key stakeholder groups that are or may be affected and to assess when and how to engage them. By [xx] the bank identifies the different types and number of actual and potential adversely affected stakeholders in relation to salient human rights issues (local communities, workers, farmers, trade unions, CSOs and other relevant external stakeholders) and reviews the list at least every [xx [period]].

- ***The number of stakeholder groups engaged in relation to each of the salient human rights issues.***
- ***How the bank takes rights-holders’ perspectives/inputs into consideration within corporate lending.***
- ***How the bank identifies and uses proxies (media, expert opinions, NGO reports, etc.) to learn more about stakeholders’ exposure to the salient human rights issues through corporate lending/how many proxies engaged.***

58 “The Swiss Commodities Trading Industry - A Mapping Study”, IHRB (2017): <https://www.ihrb.org/focus-areas/commodities/swiss-commodities-trading-mapping-study>

Incentivising the Trader

Loan pricing has been used by ING, ABN AMRO and Rabobank in the cocoa trading sector. One loan included a margin discount and margin premium applied when the borrower's sustainability performance changed. In practice, this should mean that the borrower has met the human rights performance indicators set in the loan agreement and that for each loan renewal those performance indicators should be set to drive higher performance from the borrower.

Both the Gunvor and COFCO International examples are useful, although commercial confidentiality around the loan terms makes it difficult to assess the scope of the human rights targets, how these are assessed, and the extent to which they are being met, even with commodity traders publishing more information than previously on their human rights due diligence and impacts.

Due to the involvement in the loans of participants in the Dutch Banking Sector Agreement, it may be reasonable to assume that the performance indicators look like those set out in that group's white paper, but note this comment in ING's Human Rights Update 2019: *"In the context of the DBA, ING is involved in a working group titled 'Transparency'. This working group explores meaningful performance indicators for human rights for the banking sector. A future action for us could be to take our experience of performance indicators forward and continue to engage with clients based on what we continue to learn."*⁵⁹

ING's Human Rights Update 2019 reports that risk management was more advanced in soft commodity trading. Traders of soft commodities such as cocoa and coffee often encountered environmental and social impacts and issues, and took more action (compared to the construction sector for example) in terms of their human rights risk management practices, including in their value chains. Some were able to elaborate on integration and measurement as well as topics such as policy and reporting lines. Clients talked about years of external human rights scrutiny on the sector, and clear human rights expectations due to the level of risks and violations known in the sectors.

As clients had long experienced the business implications of human rights risks, their management of these issues was – commensurate to their size and impact – more advanced. It would be helpful to the bank's stakeholders if they included more detail on the actual requirements of ESG-linked loans, case studies on due diligence (with both successful and unsuccessful outcomes) and some detail on the benefits to borrowers, in each case whilst protecting client confidentiality. ABN Amro also produces a human rights report and in 2018 gave some insight into how the bank assessed clients and potential clients for human rights risk.⁶⁰

59 "Human Rights Update 2019", ING: <https://www.ing.com/web/file?uuid=697e5d81-0325-4f04-b2ff-cbcd64945925&owner=b03bc017-e0db-4b5d-abbf-003b12934429&contentid=48393>

60 "Putting people centre stage - Human Rights Report 2018", ABN Amro: https://www.abnamro.com/en/images/Documents/040_Sustainable_banking/080_Reporting/2018/ABN_AMRO_Human_Rights_Report_2018.pdf

Recommendations and Next Steps

3



Recommendations and Next Steps

3

Based on evidence to date, the final section of this paper offers a number of conclusions and recommendations for potential next steps as part of ongoing efforts to foster a culture of responsible trading.

1. Although some commodity trading companies do appear to be taking serious steps in advancing their human rights due diligence processes, the wider sector is still lagging in addressing these issues as core business priorities. The efforts by the Swiss government to promote responsible commodity trading consistent with international standards are notable and some significant trading companies have taken steps to incorporate relevant UNGPs provisions into their governance frameworks. However, many trading companies have not demonstrated similar actions. This raises questions about the future value of encouraging companies to look to standards such as the UNGPs or relevant OECD guidance in developing their own approaches as a central strategy and whether other means should be given greater consideration. For example, research points to the finance sector as currently the most effective stakeholders driving adoption of human rights due diligence processes with commodity traders. Moving forward, more focussed engagement with those lenders involved in the ESG loan market would appear warranted, in part to help them tailor human rights performance indicators used in ESG loans to address trading supply chains.

2. Governments should give further consideration to the potential for direct incentives to commodity traders to improve human rights due diligence performance. It would be useful at least to identify the options available, for example, business tax credits, which have been used to drive sustainability behaviours in various jurisdictions⁶¹ and could be used to incentivise human rights due diligence and training by commodity traders, although tax incentives face significant political opposition in some countries. Along similar lines, incentives could be considered for expedited customs clearance for qualifying importers, the setup of specialist units to coordinate country or region-specific due diligence (research, coordination, diplomatic assistance, etc) potentially as part of a national action plan, or state support for certification schemes for key commodities that transit through a buyer's country or are processed within that country, in order to encourage adoption.

3. Legislation that requires some form of human rights due diligence on, or awareness of, supply chains has already been implemented in some countries, notably the UK and Australian Modern Slavery Acts,⁶² the French Corporate Duty of Vigilance Law,⁶³ and the Dutch Child Labour Due

61 See for example City of Philadelphia's Sustainable Business Tax Credit: <https://www.phila.gov/services/payments-assistance-taxes/tax-credits/sustainable-business-tax-credit/>

62 UK Modern Slavery Act 2015: <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>; Australia Modern Slavery Act 2018: <https://www.legislation.gov.au/Details/C2018A00153>

63 LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre (1): <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034290626&categorieLien=id>

Diligence Law.⁶⁴ Other countries are considering legislation, including Germany and Switzerland’s Responsible Business Conduct initiative.⁶⁵ The European Union is also considering legislation following the publication of a new study⁶⁶ and Commission commitment⁶⁷ to introducing rules for mandatory corporate environmental and human rights due diligence. These developments suggest that when encouragement and incentives fail, legislation is likely to play a larger role. The role of legislation requires further dialogue and study, and should involve a wider range of governments, in particular from countries where commodities are sourced.

4. The LME responsible sourcing rules are not yet in effect, so it is not possible to assess their effectiveness at dealing with due diligence for futures delivery in the supply chain. The LME model benefits from having identifiable “brands” of metals delivered onto the exchange and this is not something that can be done with all commodities. The agricultural and petroleum markets need to find solutions that work with their commodity types and although traceability/certification may be imperfect, it will be better than taking no action in this context. Governments who have significant futures exchanges operating in their countries should encourage those exchanges to test possible solutions, in part to give effect to their own UNGP national action plans.

5. Although there are many commodity-specific trade associations, as well as geographically organised associations, commodity traders don’t always have a straightforward way of identifying and working with other traders on common due diligence issues. One example of producers, traders and end users working together, or at least to a common framework, is Bonsucro, which focuses on the sugar cane supply chain and has operated since 2005. Trader engagement with CSOs local to commodity producers and supply chain infrastructure could be one way of connecting traders and resolving due diligence concerns, but it is often difficult for SME traders to identify reliable CSO partners without trade association help (see for example Bonsucro’s call for community partners⁶⁸). Commodity traders need to make it clear to their associations that they are prepared to commit and invest time and resources in building this kind of capacity.

6. Benchmarking of companies by independent civil society and investor organisations (for example the Corporate Human Rights Benchmark⁶⁹) has grown and is likely to continue to develop (for example, see the new methodology under public consultation phase by the Responsible Mining Foundation⁷⁰). Benchmarking can provide useful high-level insight into a sector, commodity value chain or individual trading company. Detailed investigations into these areas by news organisations and CSOs are still the only way allegations of serious human rights abuses come to light.⁷¹ The overall impact of benchmarks and investigations is hard to assess at present but such efforts should continue to develop. It is unclear

64 See: <https://www.eerstekamer.nl/9370000/1/j9vvkfvj6b325az/vkbklq11jggy/f=y.pdf>

65 Germany: <https://www.business-humanrights.org/en/german-development-ministry-drafts-law-on-mandatory-human-rights-due-diligence-for-german-companies>; Switzerland: <https://www.business-humanrights.org/en/switzerland-ngo-coalition-launches-responsible-business-initiative>

66 “Study on due diligence requirements through the supply chain”, EU (2020): <https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>

67 “EU Commissioner for Justice commits to legislation on mandatory due diligence for companies”, BHRRC (2020): <https://www.business-humanrights.org/en/eu-commissioner-for-justice-commits-to-legislation-on-mandatory-due-diligence-for-companies>

68 “Bonsucro promoting workers and community voices in the Sugarcane Value Chain”: <https://www.bonsucro.com/complaints-and-grievances/community-voice-in-sugarcane/>

69 Corporate Human Rights Benchmark: <https://www.corporatebenchmark.org/>

70 Responsible Mining Foundation: <https://www.responsibleminingfoundation.org/ret/>

71 See for example Public Eye: <https://www.publiceye.ch/en/topics/soft-commodity-trading>; <https://www.publiceye.ch/en/topics/commodities-trading>; see also Gold Laundering – why I decided to tackle the gold trade and human rights” Mark Pieth (May 2019): <https://www.baselgovernance.org/blog/gold-laundering-why-i-decided-tackle-gold-trade-and-human-rights>

if commodity traders change their behaviour as a result of such initiatives, although investigations do make an impact on government policy (for example proposing new laws, funding research and initiatives) and end users of commodities (manufacturers of consumer goods, including the food industry).

7. Finally, trade associations have a critical and ongoing role to play in advocating for and assisting members in implementing human rights due diligence processes. For example, in its current code of conduct, the Swiss Trading and Shipping Association (STSA) commits to *“Raise awareness and support the implementation of the United Nations Guiding Principles on Business and Human Rights in Switzerland”* and *“Raise awareness and support the implementation of the various OECD Guidelines in Switzerland, if applicable to the industry it represents”*. However, individual STSA members are not currently required to make a corresponding commitment in the section of the code.⁷² Many trade associations still don’t refer to human rights or the UNGPs on their websites, in their governing rules or as an initiative. Such lack of leadership increasingly looks like a disservice to trade association members, particularly to SME commodity traders who ideally need to combine resources to implement standards like the UNGPs in their businesses.

72 STSA Code of Conduct: <https://stsa.swiss/values/code-of-conduct>

Annex



Annex



Examples of Human Rights References in Trading Company Online Information

As part of the research undertaken for this report, information from 50 prominent commodity trading companies was reviewed based on available online resources. 37 companies made specific references to human rights in their policies, public reports etc. and of these, 19 specifically referred to the UNGPs. Based on publicly available information, the 14 companies listed below were more transparent on reporting human rights related policies and actions than their peers, including by describing due diligence processes, publishing whistleblower contact lines etc.

Archer Daniels Midland Company	Illustrated value chain clearly and methods to mitigate human rights abuse in high risk areas, as well as partner information in CSR report (2019, p.22 ff.).
BHP	Referred to human rights on Website, annual report, CSR report, and in a dedicated human rights policy paper. Described the use of human rights training video in sustainability report and the business & ethics conduct cases in the preceding year (2019, p. 66 ff.).
Eni Suisse SA	Stated number of hours spent on human rights training and the number of employees trained. Published number of whistleblower activities and detailed information on due diligence process in a dedicated human rights report (2020) and sustainability performance report (2019, p. 24 ff.).
Equinor	Stated the number of employees in training sessions. Described e-learning programme on human rights. Published a human rights page on website translated into seven languages. Described actions undertaken and number of sites assessed on human rights violations and published human rights performance data of recent years in sustainability report (2019, p. 45 ff.).
Glencore Agriculture Limited (Glencore Agri)	Stated human rights policies and actions on Website, CSR report and annual report. Published a dedicated 36 page long human rights report (2019) with the progress achieved in 2019 and goals for the future.
Lafarge Holcim Ltd	Stated methods and number of production sites that have been assessed and described indicators and changes in training taken. Described the most common identified risks in sustainability report (2018, p. 45 ff.)
Louis Dreyfus Company (LDC)	Established a human rights observance committee and illustrated examples of how human right violations were mitigated in the preceding year in sustainability report (2018, p. 27 ff.)

Noble Group	Described human rights due diligence process and current numbers of human rights complaints in sustainability report (2018, p.26 ff.).
Novex Trading (Swiss) SA	Stated the numbers of incidents related to human rights in annual report (2019, p. 128 ff.)
Olam International Limited (Olam)	Stated actions taken to stop human rights violations. Published information on how employees were trained and the number of participants for the preceding year in annual report (2019, p. 84 ff.).
OMV Supply Trading AG	Described due diligence process, the number of employees trained, overall learnings from a self assessment investigation and further actions taken to mitigate human rights abuses in sustainability report (2019, p. 100 ff.).
Trafigura	Stated progress in implementing human rights due diligence in CSR report (2019, p. 29 ff.)
Vale International SA	Described due diligence process, stated the number of employees trained and the number of incidents that occurred in sustainability report (2019, 59 ff.)
Wilmar International	Described supplier reporting tool and how potential human rights risks are identified. References to partners to monitor the supply chain in CSR report (2019, p. 86 ff.)



This report takes stock of progress by commodity traders since 2018 in integrating human rights due diligence in operations and business relationships. The report addresses recent developments of relevance to commodity trading and includes recommendations for potential future actions by governments and industry actors.

