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EUROPEAN SUPPLY CHAIN REGULATIONS AND COUNTRIES IN SOUTH ASIA

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ANALYSIS

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1. Executive Summary

Countries in the global North, especially those in the European Union (EU), have drawn up regulations to tackle human rights violations in supply chains, particularly those in global supply chains with extra-territorial effects. While these regulations currently only exist at a national level, the EU is discussing a harmonized regulatory framework across the EU countries. This policy paper is aimed at assessing the likely impact of the proposed regulations or mandatory human rights due diligence (mHRDD) on countries in South Asia pursued by policy interventions through which mHRDD could be made more effective.¹

The paper starts by briefly describing the main global supply chains or global value chains (GVCs) that connect South Asia with the EU and the main human rights violations observed in them. To set the tone for the discussions, it is important to define different wage types, such as living wages, minimum wages and actual wages. This is the prelude to the economics of human rights violations in GVCs. It shows that human rights violations have economic effects on labour, the communities and other users of environmental services, the environment itself, and overall economies of the global South. The paper

further analyzes the existing and proposed human rights due diligence in the EU, with the meaning of transformative change.

In imposing transformative changes, it is significant to consider who should bear the costs of eliminating human rights violations, who the implementing authorities are and can administer mHRDD, carry out the required inspections, and take possible punitive actions. How can human rights standards be synchronized with the varying standards in the South Asian countries is equally crucial for the purpose of better policy interventions. This will pave the grounds for assessing the likely impact on supply chains, both in the EU and in South Asian countries. Finally, the paper puts forward some proposals for changes in the EU's mHRDD framework. Among others, it seeks practical implementation and follow-up on mHRDD, as it foresees liability in the form of sanctions on lead firms for human rights violations. It also suggests that the EU should push for an international agreement, under the aegis of the ILO, on regulation to eliminate human rights abuses in supply chains.

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persons bear any responsibility for the views expressed in this paper.

2. EU-South Asia Supply Chains

The main global supply chains (GSCs) or global value chains (GVCs) that connect South Asian countries, as producers, with EU countries, as consumers,² are those of apparel (Bangladesh, India, Nepal, Pakistan, and Sri Lanka), footwear (Bangladesh, India), fish (Bangladesh and Maldives), carpets (India and Nepal), tourism (Maldives, Nepal and Sri Lanka) and automobiles and parts (India). Other than in the automotive sector, all other major exports from South Asia are in labour-intensive segments of consumer products. However, even including automobile parts, these exports are not open-market sales. They are rather contracted production by South Asian suppliers for lead firms headquartered in the EU. Well-known brands source from South Asia, such as Zara and C&A in apparel, Adidas in footwear, along with retail chains, such as Carrefour, dealing with fish and other fresh products. In automobiles too, Indian manufacturers supply to specifications provided by European automobile companies. In the case of tourism, while there is some direct purchase of tourism products by individual tourists, utilizing web services, much of it is in the form of packages contracted by tour agencies located in the EU countries. Then there are the mining value chains that include those that enter as inputs into traded goods, such as automobile components.

The functioning of these GVCs, however, results in the violation of various human rights of workers, such as the rights guaranteed under Article 7 of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) and various ILO Conventions. Article 7 requires that wages provide workers a “decent living for themselves and their families”, safe and healthy working conditions, equal opportunity and sufficient rest and leisure (Brownie & Goodwin-Gill, 1971, p.174). All member countries of the EU and countries of South Asia have ratified the ICESCR and are thus required to secure its implementation. Nevertheless, there are various violations, such as non-provision of living wages, unequal treatment, particularly based on gender, employment of child labour, the existence of various forms of modern slavery, forced labour, and violation of the right to freedom of association. Just a few of the many human rights violations are mentioned here; a substantial list exists in the European Commission’s Annex to its proposal for corporate sustainability and due diligence.

3. Wage Definitions

Wages earned by workers are a key part of discussions around human rights in GVCs. It is important to clarify some of the wage-related terms used here. Fair wages as defined in the ICESCR as living wages or wages that provide a decent living for workers and their families.

Minimum wages are the wages prescribed by law and government norms. In most modern democracies, the political process has yielded a wage floor, a minimum wage, which a majority of voters is supportive of. In the US, for instance, 62% of respondents to a 2021 Pew Research poll supported a 15 \$ per hour minimum wage (Pew Research, 2021). For most voters, moral consideration outweighs considerations of economic efficiency. International conventions, whether those of the ILO the UN as a whole, support the approach that minimum wages should be based in some way on the notion of living wages, which itself would vary with the level of development of a country.

As the Living Wage Coalition (supported by GIZ and the Dutch Government) and Nathan et al (2022) point out, the concept of a living wage has been around for a long time.

Adam Smith wrote about it. It is included in the 1919 Founding Declaration of the International Labour Organization (ILO). The UN Declaration of Human Rights (1948), the Council of Europe’s European Social Charter (1960) and the UN International Covenant on Economic, Social and Cultural Rights (1968) all include the right to a decent living wage.

A living wage is defined as the amount of money required to cover expenses of a worker and their household. It covers the cost of food, clothing, accommodation, transport, education for children and healthcare for the household. In some calculations, as in what is called the Anker methodology (Anker and Anker 2017) adopted by the Global Living Wage Coalition (<https://www.globallivingwage.org>), the number of wage-earning workers in a household is based on the existing employment intensity, so that 1.5 workers might be required to earn a living wage for a household. In the methodology used by the Asia Floor Wage Alliance (AFWA, 2017) it is assumed that a household should be supported by a single worker’s wage. In the case of India, the Anker methodology gives a 2022 living wage for a garment

² Details of main exports from South Asian countries to the

EU are provided in Annex 1.

worker as approximately INR 18,500 (Euro 210) while the AFWA methodology gives a living wage of INR 22,000 (Euro 250), a difference of about 20 per cent, something that can be settled during negotiations.

The major Indian trade unions have demanded that Rs.18,000 (Euro 205) should be the minimum wage. At present the minimum wage in the Delhi region, India, is

about Rs. 16,500 (Euro 188), which is about 10% lower than that demanded by the major Indian trade unions. But in the T-shirt manufacturing hub of Tiruppur in Tamil Nadu the minimum wage is much lower at about Rs.12,000 (Euro 125).

4. The Economics of Human Rights Violations in GVCs

In looking at human rights violations, however, it is necessary to go beyond the workplace or factory to affected communities and the environment. There are often human rights violations in the displacement of communities from their traditional lands, with indigenous peoples (for example the so-called Scheduled Tribes in India) disproportionately represented among those displaced (Ministry of Tribal Affairs and Institute for Human Development, 2022). There are also issues of unsafe and polluted environments in producing raw materials, such as cotton for garment value chains (Nathan et al, 2022). Consequently, it is necessary to extend the investigation of human rights violations beyond the factory or workplace to the communities affected by unsafe and polluted environments.

The persistence of most of these human rights violations are the result of market and power-based economic processes, which externalize non-firm economic costs. As recently assessed by Sarosh Kuruvilla (2021), these practices continue in the main, despite the various codes of conduct and regulatory procedures instituted by lead firms who have their headquarters in the EU and other countries of the global North. Market-cum-power based outcomes have resulted in wages in supplier firms that are generally around the national minimum wages, along with gender discrimination, forced labour and various other forms of human rights violations. The persistence of these violations have led to the consideration of interventions by the states where the lead firms governing and profiting from these supply chains have their headquarters.

When such violations of human rights occur within the nation the EU countries have regulatory laws prohibiting and penalizing such violations. The matter, however, is different when these violations occur in off-shore locations contracted by these lead firms. There could be two ways of dealing with these off-shore violations. The first is that of international regulation, by an organization such as the ILO; and the second is that of national regulation in economies of the lead firms, headquarters economies, to

regulate their international business operations. In the second alternative, the EU may be substituted for national regulation. The ILO has not taken up the regulation of GVCs; thus, the onus of regulation remains with the nations or the EU.

A couple of points need to be dealt with before proceeding to the nature and proposals for EU regulation. The first is that lead firms make a strategic choice about the supplier relations they set up. They can choose between a strategy of long-term commitment to suppliers and another based on short-term contracts with various suppliers. There is a strategic choice to have many suppliers with short-term contracts to utilize competition among suppliers to push supplier prices down. While a large retailer like Zara (Inditex) has more than 1,000 suppliers, even medium brands from the EU have from 50 to 150 suppliers each (personal communication Suhasini Singh of FairWear Foundation, 2022). There could be a case to have more than one supplier of a product in order to cover possible supply chain disruptions, as were witnessed during the COVID pandemic and the earlier SARS epidemic, and seen in the 'China plus 1' strategy for supply. The more-than-thousand suppliers for Zara can be contrasted with the 83 suppliers to Patagonia (Patagonia Finished Goods Suppliers List, 2020), which has a stated policy of consolidating its supply chains, to build long-term relations with suppliers.

The second point is that human rights violations are not only a matter of respecting human rights but also an economic matter, because some human rights violations provide economic benefits. For instance, ignoring productivity differences or using a productivity-weighted wage cost, the cost of employing child labour³ may be Euro 0.25/day while the adult wage is Euro 2/day, providing an extra benefit to the employer of E 1.75/day per child employed. Again, if the prevailing adult wage is Euro 2/day while the living wage is Euro 6/day, then the benefit to the employer is Euro 4/day per adult worker employed. If women are paid Euro 1,5/day while men are paid Euro 2,

³ The numbers in this section are indicative estimates of

relative wages in the garment industry in India.

then the benefit to the employer of this discrimination is an extra Euro 0.5/day per woman worker. The difference between the wages paid and the living wage becomes the economic benefit from violations of the human rights of labour.

Similarly, if the price of clean water from the municipality is Euro 1/cusec (cubic metres per second), while the cost of reproduction of clean water is Euro 6/cusec, then there is a benefit or reduction in the monetary cost of Euro 5/cusec. The violation of environmental requirements, such as those of meeting the cost of treating water used in production or the costs of treating effluents result in so-called externalities. They pollute the water of nearby rural communities and destroy the rivers, as has happened for example with the Nooyal in Tiruppur and the Buriganga in Dhaka. Human rights discourse now recognizes the right to a safe and clean environment for communities, along with a living wage for workers, in the absence of any gender discrimination and so on.

Firms, both lead firms and suppliers, base their actions on market prices, along with the manner in which they can bring power to bear in these market relations. However, there is an important part of economic relations that are not covered by existing market relations. These are covered under the term externalities. Externalities are the costs or benefits that are not covered by the market-based price system. For instance, the degradation of the rural water supply as a result of releasing untreated effluents into the water network is an externality that is not covered by the price paid by the firm for water. The cost of treating such water also becomes an externality. Externalities are not covered by market transactions and thus lead to market failure. To take the most obvious example of market failure is the matter of greenhouse gas (GHG) emissions. These are external to firms, but affect the global climate situation by using up the capacity of the global sink to absorb unregulated GHG emissions. These externalized costs have also been called the hidden costs of global supply chains, costs that are imposed on workers, communities and the planet (LeBaron and Lister 2022).

It has been argued in Nathan et al (2022) that paying below living wages also externalizes part of the cost of reproducing labour power. The argument for living wages is that this is the level at which minimum wages should be set, certainly in production for brands that earn profits often in excess of 50 per cent for products manufactured in off-shore production located in the global South.

Both, the low wages and the non-payment of environmental costs together reduce the monetary cost of production of the goods supplied in value chains. This low cost of production is extracted at the point of production, the factory or the field. But in value chain production, the unequal power relation between the few lead firms and the many manufacturers allows the former to extract most of the benefits of the low prices of inputs. This is often done through the system of 'open costing' where manufacturers must reveal every item of cost.

These low prices due to human rights violations are a loss both to workers and the national economies of the manufacturers. Conversely, with the elimination of human rights abuses, there would be an increase in the prices of these inputs, whether of gendered labour or environmental services. This would lead to higher prices of the exported goods, with higher wages and an increase in the value captured at the level of the supplier economies.

Consequently, the elimination of human rights violations is both a matter of increasing the wages and well-being of workers in the supply chains and of enabling supplier firms and supplier countries to increase their own accumulation. A rough calculation (Nathan, forthcoming) shows that about 30 per cent of the gross margins of lead firms is due to the human rights violation-based employment of labour and use of environmental services. This increase in the gross margins of lead firms due to human rights violations, called *reverse subsidies*, extracted from labour and the environment, and exported from supplier countries of the global South (Nathan et al, 2022). The extent of this reverse subsidy would vary across commodities and countries.

Would a move to eliminate human rights abuses by instituting living wages negate or substantially reduce the competitiveness of countries of the Global South, including those in South Asia, in manufacturing? Living wages are calculated on the basis of national economic conditions. They broadly vary by sets of countries, grouped into low-income, low-middle-income, middle-income and high-income countries. A calculation by the Living Wage Coalition, supported by, among others, GIZ and the Dutch Government, gives the following monthly living wage calculations for 2022: Bangladesh (Dhaka) – Euro 255, China (Shenzhen) –Euro 455, Brazil (Sao Paulo) Euro 555 (Global Living Wage Coalition 2022, converted to Euro).

In contrast, the living wage for a worker's family in an East European country, Bulgaria, was Euro 586 in 2019. These figures show that contracting out-sourced production on the basis of living wages would not eliminate competitive advantage due to lower per capita income, as is the case with Bangladesh or India. However, in the case of upper middle-income countries, such as Brazil, there would be an effect on competitiveness, if living wages were instituted in Brazil but not in Eastern European countries, such as Bulgaria. South Asia, being composed of lower-income and lower middle-income countries, would not be affected by the exclusion of East Europe from mHRDD.

The ILO's Maritime Labour Convention, uses a similar broad country categorization to set wages for low-income economies, emerging-economies and high-income economies (Ryder, 2020). Such setting of wage levels regulates, but does not eliminate, differences between groups of countries based on their overall per capita income levels.

Why we cannot count on national regulation by the supplier countries to eliminate human rights violations? The supplier economies are low- and middle-income countries that compete to secure the employment

provided by insertion in global value chains. Thus, even where they have regulations, for instance, against bonded or forced labour, they tend to ignore these violations as they compete to secure employment. The result is wages around national minimum wages and weak national regulation. Two large-scale studies of labour conditions in various value chains, point out that wages tend to remain at the level of the national minimum wages (Vaughan-Whitehead & Caro, 2017; Kuruvilla, 2021). The Asia Floor Wage Alliance (2021) documents the deliberate deregulation of labour in several Asian supplier countries to make their economies more attractive for GVC employment. However, it is the policy of competition among suppliers that is the base of this human rights violation.

In addition, lead firms use their monopsony power to carry out clearly unfair business practices. For instance, with the onset of the COVID-19 pandemic many brands refused to pay for goods already delivered, cancelled orders for which inputs had been purchased, and so on (Anner, 2020). Even in normal times, they have refused to cover costs incurred because of a rise in legal minimum wages and refused to cover costs incurred because of changes in product design (Vaughan-Whitehead & Caro, 2017). Suppliers were often bullied by brands to accept contract prices below costs and ended up paying lower wages (Vaughan-Whitehead and Caro 2017). These are the business practices of monopsony, with their frequency and intensity varying with the extent of monopsony power. Monopsonies use the existing vulnerabilities of labour and their inelastic supply curves to push down prices of outsourced products below what would otherwise occur.

The vulnerabilities of workers, women and men, already exist in the supplier economies. Vast labour reserves, low productivity in possible alternative employments in agriculture or the urban informal sector, intersecting with gender, caste, and community vulnerabilities – these are the pre-existing conditions leading to vulnerability to human rights abuses, such as in child labour, trafficking, gender and other inequalities in wages and wages well below living wages. However, the actual labour outcomes in GVCs are the result of strategic choices of brands to reduce costs to the absolute minimum possible. As argued by Genevieve LeBaron (2020), modern slavery is a strategic choice of brands as they allow the utilization of vulnerabilities in the quest to minimize costs, or to put it another way, to maximize profits. Vulnerabilities create the conditions in which brands can profit from human rights violations, such as in using forced labour.

At a conceptual level, the structure of value chains described above is one of monopsony, where few buyers face many suppliers (Kumar, 2020; Nathan, 2021; Nathan

et al, 2022). There are degrees of monopsony, just as there are degrees of monopoly (see details in Nathan, 2021). There is a high degree of monopsony power of the lead firms in products for the manufacture of which only easily acquired knowledge is required, entry barriers are low, and there can be many manufacturers, as in the manufacture of garments or shoes. Where the knowledge required is somewhat more complex, and entry barriers are high due to scale requirements, as in consumer electronics, the degree of monopsony power of lead firms is lower. In IT services, where the knowledge required is quite complex resulting in high barriers to entry, and the production of the service also requires continuous interaction between buyers and sellers, then there may be virtually little or no monopsony power. Where the out-sourced inputs required are themselves protected by patents, as in some automotive components, then there is effectively a counter-monopoly. In addition, associational strength of the suppliers can also counter monopsony power. This famously was the case with OPEC, which used its associational power to change the share of petroleum prices going to the owners of crude oil.

Countries in the EU and the EU itself have policies to regulate monopolies in the product market. However, they are only just becoming aware of the need to regulate monopsonies, particularly where the monopsonies build their supply chains off-shore in the global South. It is this global monopsony structure that increases the profits of lead firms through the supply chain. Without using the term monopsony, the ILO study “highlights the fact that the relationship between brands and their suppliers helps to explain wages and working conditions at the end of the supply chains in terms of the high number of working hours, stressful work rhythms and also low wages” (Vaughan-Whitehead & Caro 2017, p. 21).

What is needed then of state action in the EU countries is to set limits to the extent to which this monopsony power can be used to result in violations of human rights along the supply chains. As mentioned above, lead firms do have a choice of supplier relations whether of the longer-term or short-term variety, with the former likely to lead to better employment conditions than the latter. The point of human rights due diligence (HRDD) is to compel companies (lead firms) to move towards longer-term contracts with dedicated suppliers which would enable the elimination of human rights violations. To put it simply, a system of HRDD based on penalties for violations, with the penalties calibrated with the extent of the violation, such that it would be cheaper to eliminate human rights violations rather than pay the penalties for their violations.

5. Existing and Proposed HRDD in the EU

Human rights due diligence has moved from merely requiring reporting on likely violations and proposed actions to mandatory human rights due diligence (mHRDD), where the law is used “to compel companies to take proactive steps to identify, prevent, mitigate and account for how they address their adverse human rights impacts” (UNOHCHR, 2020, p. 3). There are some design issues in mHRDD relating to which the EU needs to choose, such as – the objective of the regulation, who will be liable for violations, the sharing of the burden of mitigation, comprehensive or issue-based, priority, threshold, and consequences of non-compliance.

The objective of the mHRDD needs to be set. It could be incremental change, where any positive change is accepted; or, it could be a transformative change which is (a) progressive, in a normative sense of promoting social justice; (b) systemic, addressing various factors simultaneously and in an inter-related way; and (c) long-term, in that it cannot be easily reversed in the short-term (UNRISD 2016, p. 32). In the case of labour conditions, a transformative change could be interpreted to mean the achievement of decent work conditions, which form part of both the ILO’s objectives and the SDGs.

The EU has set itself the objective of achieving “decent work worldwide” (EU, 2022). More than 100 European companies and business associations have asked for a swift adoption of mHRDD. As spelt out in the EU document, these have four elements:

1. Employment – promoting employment.
2. Standards and rights at work, including the elimination of forced labour and child labour and anti-discrimination.
3. Social protection, including healthcare and income security, and minimum living wages,
4. Social dialogue and tripartism – as means to achieve better wages and working conditions.

Much attention has been given to eliminating child labour and forced labour. The EU document also says, “The elimination of child labour and forced labour is at the heart of this endeavour,” (EU, 2022). Such attention is warranted as these are the worst forms of human rights violations. Nevertheless, it is important to take note also of non-payment of living wages. Low wages below living wages have far-reaching effects – they lead to poor human development being transmitted across generations; they force workers to accept excessive overtime to come closer to meeting family needs; thus, shortening their effective working lives. The then German Development Minister, Gerd Müller, and the Dutch Foreign Trade Minister, in a 2021 joint statement, committed their governments to promote living wages and incomes. Many major brands, Zara (Inditex), for instance, have committed to living wages in their Global Framework Agreements (GFAs) with the global labour union, IndustryAll and registered these GFAs with the ILO.

One more element is part of the SDGs in the decent work agenda. This is the elimination of gender-based harassment and violence on the shopfloor. As many studies have shown, short lead times, linked to ‘Fast Fashion’, increase pressure to complete high work quotas and result in the use of gender-based harassment and violence as a means of industrial supervision (Nathan et al., 2022). Forced labour, as per the ILO definition, also includes involuntary overtime, which is a feature of working with conditions of short lead times under the dictates of Fast Fashion. Therefore, based on the ICESCR and ILO Core Labour Standards, it is necessary to emphasize the elimination of: (1) child labour; (2) forced labour; (3) achieving equal living wages, and 4) elimination of gender-based violence as key elements of decent work. These can be the core of mHRDD.

6. Who Should Bear the Costs?

Eliminating human rights violations, such as concerning child and forced labour involve costs. The elimination of child labour will require its substitution by higher-priced adult labour. The end of forced labour, as with forced overtime, will increase wage costs. Ending gender-based harassment and violence will also have costs not just through the monitoring and redressal mechanism, but also through the reduction of work quotas to reasonable amounts. Meeting the costs of reproduction of environmental services will also have its price. Who should bear all these costs?

Several medium and small brands, working with the FairWear Foundation, have been including and paying living wages in their costing of garments. These small- to medium-sized brands increase the prices they pay to suppliers, covering the increase in costs by either retail price increases or profit cuts (FairWear Foundation, 2016). A similar position should be taken concerning living wages being factored into prices paid by large lead firms. The contracts between lead firms and manufacturers should take care of all these increases in wage costs.

Two other types of costs need to be dealt with. One are the

prices of environmental services, such as paying the reproduction cost of clean water, and effluent treatment. In sum, this is the cost of Net Zero production that is a post-Paris Accord responsibility of countries and firms. Net Zero is a requirement not only for production undertaken within a country, but also for off-shored production that is consumed within the country concerned. The reduction in emissions will count against the emissions attributed to the importing countries. A large portion, 74 per cent, of emissions in the apparel industry are incurred in the manufacturing process in countries of the global South (McKinsey, 2019).

By off-shoring the manufacture of apparel they consume, the importing countries are only off-shoring or exporting the emissions of their consumption. The polluter who should pay, is not the manufacturing but the consuming country. On the simple principle of “the polluter pays”, the consuming countries would be required to bear the costs of the Net Zero production that will be attributed to their consumption of apparel, footwear and other products procured through global value chains. Of course, to the extent that the same factories are also used to produce for the domestic market, there should be a sharing of these Net Zero costs based on the “common but differentiated responsibilities” principle accepted by the United Nations Framework Convention on Climate Change (UNFCCC).

What should be the basis of deciding the distribution of responsibilities? Many analyses have shown the distribution of the retail price along the value chain. This comparison, however, neglects the costs incurred in each segment of the value chain. A better method could be that of comparing the gross margins in different segments. Taking broadly some brands and manufacturers, we get the following distribution of gross margins shown in Table 1.

Table 1: Gross Profit Margins (%) – Headquarter (Europe) and Supplier (India) Firms

Name of Corporation	
Europe	2021
Zara/Inditex	60.1
H&M	52.8
Adidas	50.2
L&V	68.9 (2022)
C & A	48.13 (2022)
India	
Infosys	31.8 (2022)
TCS	30.2 (2022)
Garment Manufacture	6 (2016-17)
Leather	6.7 (2016-17)
Auto-components	9.7 (2016-17)
Pharmaceuticals	12.2 (2016-17)
IT Services	14 (2016-17)

Source: See Annex 2.

India industry data. (2016-17). Sector data from Annual Survey of Industries (ASI).

In the key GVCs of apparel and footwear, the ratio of European brand margins to Indian manufacturer is between 8:1 and 10:1. Common costs could then be distributed in this ratio. There is yet another element of cost in the likely EU protocols – that of preparing the required documentation for demonstrating compliance. At present, such documentation is prepared through audits; and the costs of these compliance audits are borne by the manufacturers or suppliers. Under the likely EU laws, the scope of the audits will increase and will cost more than earlier.

Discussions with manufacturers reveal dissatisfaction with the audits that each brand or lead firm requires. There would be considerable savings if the new EU regulations require just a single set of documents for each shipment. The compliance requirements could be added to the usual customs documents. This would reduce the cost of documenting compliance.

7. Implementing Authorities

At present, only the lead firms themselves supposedly check compliance with codes. To be effective, the new regulations will require some type of third-party checking. This could be the customs authorities in each country, both in the EU importing countries and in the manufacturing-cum-exporting countries themselves. The grant of the right to inspect to customs authorities in the exporters is necessary to remove any trace of a bias in inspection rights given only to the authorities in the importing countries.

The EU is considering empowering EU customs authorities to check on possible violations of forced labour regulations. For the new broader human rights standards,

this power could be placed with customs authorities in both importing and exporting countries. Of course, this would require international treaties to provide and implement such rights. This would be in line with the inspection and impounding rights granted to all port authorities in the ILO’s Maritime Labour Convention. Port authorities in every country have the power to inspect all ships that call in the port regarding compliance with both labour and environmental standards. The port authorities can also impound ships that are held to violate these labour and environmental standards. However, there is a need to extend executing-cum-administrative authorities beyond border customs. Trade unions and workers as such should be able to access remedies for human rights

violations. These contact points cannot be just in the EU, as that would be very expensive and long drawn-out for workers and even unions from South Asia and other countries of the global South. EU or OECD contact points

across South Asia could make access to remedial actions for workers, and unions.

8. Issues in Synchronization

There are issues in synchronization of likely EU directives on different types of employment practices and domestic laws in the various South Asian countries. For instance, there are varied age limitations on employment in South Asia – Nepal below 16 years; India below 14 years and no limit on children with their parents at home; Bangladesh below 14 years; the Maldives below 16 years; and Pakistan and Sri Lanka below 18 years. Thus, only Pakistan and Sri Lanka comply with the ILO definition of child labour as being those below 18 years. However, this has not had any impact on the employment of those below 18 years in export factories. This is the one human rights regulation that has generally been implemented in export factories in South Asia. But child labour does continue either as part of homework or in hard-to-monitor rural areas – and lead firms are not unaware of these displacements.

None of the South Asian countries has minimum wages that approximate living wages. They vary from 25 per cent in Bangladesh and Sri Lanka to 35 per cent in India (AFWA, 2022). Existing minimum wages had been characterized in one Indian Supreme Court judgment as poverty wages. However, had minimum wages in these countries been close to living wages, there would have been no basic problem of low wages since employers are legally required to pay at least minimum wages. At the same time, agreements to pay more than minimum wages do not face legal hurdles, as the minimum wage can legally be exceeded. For instance, FairWear factories where living wages paid by some brands are used to increase the wage level do not face any legal problems. There are, many sectors where employees are paid something like living wages.

The problem might not be so much one of synchronization but of political opposition to the EU setting labour and environmental standards that would have an impact beyond the export sectors. With the growth of per capita incomes in the South Asian economies, there has been substantial growth in domestic demand whether it is for apparel, footwear, or tourism. The same units often manufacture for both export and domestic markets. They cannot have different labour standards in different production lines within the same factory. Thus, they are likely to oppose having to pay living wages for the products produced for their retail chains. This could lead to opposition to the EU setting labour and environmental standards for South Asian manufacturing units.

There could also be opposition from collectively-organized suppliers, such as the Bangladesh Garment Manufacturers and Exporters Association (BGMEA). The

BGMEA had opposed the extension of the Accord Agreement, entered into after the Rana Plaza tragedy. In this Accord, most European brands had provided funding for improvement of factory construction. It was reported that the BGMEA objected to brands deciding what the funds they provided should be used for. There are likely to be similar objections to funds provided to remedy human rights violations. In private discussions, members of the BGMEA have often said that setting wages was Bangladesh's sovereign right.

Is there any way to overcome such likely opposition from national firms in South Asia? When lead firms, due to pressure from consumer groups and the danger of reputational damage, pressed for ending child labour in factories there was opposition from some manufacturers. This was only tackled, when brands' purchase officers insisted that without such compliance, manufacturers were likely to lose orders. Similarly, it would have to be made clear that exports to the EU would be at risk if labour and environmental standards were not met; and that customs authorities had instructions to impound shipments that were suspected to contravene these standards. What is now likely to be done for violations of forced labour regulations should be extended to the case of other agreed human rights issues, including living wages, non-discrimination, and the absence of gender-based harassment and violence.

The objections from supplier groups points to the importance of dialogue between the EU and supplier countries in framing and formulating mHRDD. As a unilateral EU move, there is likely to be much opposition of a nationalist kind against the extension of so-called European values to other parts of the world. A number of representatives of business in South Asia made just such arguments against colonial imposition in a recent (November 2022) session on South Asian reactions to human rights due diligence. Of course, they do not represent the views of workers, who are affected by human rights abuses and would welcome relief. As would be expected, discussions with trade unions and other CSOs in South Asia show that they are in favour of stricter international action on denials of workers' rights.

Besides dialogue, probably as part of trade agreements, it would also help gain acceptance by moving from an EU platform to a global platform for mHRDD regulations. The ILO is a tripartite body with representatives from government, business, and workers. It is an obvious candidate for being the platform to initiate dialogue to lead to formulation of globally-agreed regulations for

eliminating human rights violations in global supply chains.

9. Possible Impact on Brands and Suppliers

Eliminating human rights abuses, such as involved in child labour, forced labour or modern slavery, low or poverty wages, unequal wages, and gender-based harassment and violence – eliminating all these human rights abuses would increase the monetary cost of production of the GVC goods imported into the EU. This immediately reiterates a point made earlier – the beneficiaries of low costs of these imported goods are the brands and retailers who can utilize their monopsony power to keep prices low. A rough calculation showed that the human rights violating costs of labour and environmental services amount to some 30 per cent of lead firms' gross margins (Nathan, forthcoming). In general, this is the benefit to brands from the human rights violation in their supply chains, some of which may be passed onto EU consumers as consumers' surplus.

It is fair to say that monetary costs of production should not be based on those resulting from human rights abuses; and that, the human rights respecting prices should be those at which GVC products are imported into the EU. Such an increase in GVC product prices can be dealt with by brands in several ways. One is to keep retail prices unchanged and accept a reduction in profits. This has been done by some brands paying living wages. Another way is to increase retail prices, possibly including a label that this increase in retail prices is due to the brand's eliminating human rights abuses in its value chains. The 10-15 per cent increase in retail prices is something that surveys show consumers willing to accept for products made respecting human rights (Nathan et al., 2022).

Besides the above likely effects of an increase in costs on profits or retail prices, there will be one more effect on the whole process. With input costs going up, there will be a push to economize on management costs. Further, management costs would also be increased by the mHRDD reporting requirements. These management costs are increased by brands having to deal with myriad manufacturers. As mentioned above, Zara/Inditex has more than 1,000 suppliers while even medium to small apparel brands have 50 to 150 suppliers.

High input prices would foster a strategy of using a few suppliers and building long-term relationships. Reducing the number of suppliers would lead to building longer-term relationships with a few suppliers, as such is usually the case with auto component suppliers. Over time, as brands and suppliers are in continuous conversation, both sides are likely to increase investment in making production more efficient and improving quality. However, there would be fewer workers per unit output. Overall, employment

would depend on the growth of the market, both globally and nationally. Poor labour standards and human rights violations should not be ignored in the name of increasing employment. Different policy instruments are required to deal with the objectives of ending human rights violations and increasing employment.

Supplier firms would also benefit from an increase in the costing of wages to include living and equal wages, along with the elimination of child and forced labour. They would be able to adopt human resource policies that are more conducive to the development of the capabilities of labour. Studies show that stress on the development of workers' capabilities is accompanied by an improvement in firm performance (Ichinowski & Shaw, 2003). Nevertheless, there could be some negative impact on suppliers from South Asia. Their competitiveness vis-à-vis other suppliers might go down, affecting their ability to attract orders. This, however, can be countered by an increase in productivity of suppliers in South Asia. Such a push to increase productivity would be a welcome measure, particularly as it would be brought about by an improvement in human rights conditions along the value chain.

Within South Asia too, there could be negative impacts on some suppliers, particularly small suppliers, and labour. As mentioned above, excluding child or forced labour, and paying higher wages will increase costs of production. Small enterprises, household enterprises in particular, might not be able to compensate for higher costs with improved productivity. Further, child or forced labour excluded from value chains and facing increased poverty, might be forced to move to even worse forms of employment in the unorganized sector. There had been reports of former child labour in garment factories moving into sex work after being displaced from garment factories (ILO, 2013).

Considering the above analysis, human rights actions in value chains cannot be stand-alone measures. There need to be ways of rehabilitating workers displaced from child or forced labour. In addition, there need to be development measures to reduce vulnerability leading to child or forced labour, or other human rights violations. Human rights actions deal with the demand side for vulnerable types of labour. Development measures are needed to deal with the supply side of vulnerable labour. Both together are needed to end human rights abuses in value chains.

10. Suggested Modifications of EU Supply Chain Regulations

The EU's proposed mandatory Human Rights Due Diligence (mHRDD) is a step in the direction of establishing the legal liability of lead firms for human rights violations along the value chain. Unlike merely reporting requirements, the mHRDD involve legal liabilities and thus administrative and civil actions as penalties for the violations. This is a long overdue and welcome step in eliminating human rights violations in GVCs. In this concluding section, some modifications or specifications to the regulations are proposed.

There has been much stress on the elimination of child and forced labour. As proposed by German and Dutch Trade Ministers, living wages (for workers) and living incomes (for producers of inputs, such as raw cotton) should also be brought to the forefront. The ILO's core labour standards provide a set of five factors to be included in the mHRDD framework: child labour, forced labour, living wages, equal wages, and gender-based harassment and violence.

The proposal has thresholds for the mHRDD implementation. Small and medium companies are exempt from its provisions. There are many small and medium EU lead firms managing GVCs in South Asia and elsewhere. Workers in these value chains, however, should not be exempt from the benefits of mHRDD. More importantly, the threshold creates a perverse incentive to remain below the regulatory threshold or break up trade transactions among related companies to evade regulation.

Public procurement is about 12 per cent of GDP in OECD countries. It is not likely to be less for the EU. Public procurement can be required to follow socially acceptable standards. Its contracts can specify the necessity of adhering to human rights standards not only within EU countries but also in procurement through value chains in the global South.

mHRDD provides for fines and sanctions for the violation of the accepted standards. These fines should not be just symbolic but act as deterrents to violations. Fines that are equal to or more than the differences in cost due to the violation of human rights would make it less costly to fulfil human rights obligations rather than to violate them.

Lead firms utilize suppliers organized in many tiers. While Tier-1 suppliers are generally large firms, those further down the chain get progressively smaller. The problem with setting a tier up to which mHRDD will apply is that, in order to escape regulation, suppliers may subcontract to a lower tier. For instance, it has often been noticed in the carpet industry, that child labour is moved away from factories in urban locations to rural workshops or even rural households. It is difficult to monitor such small and dispersed units and they may evade the regulatory gaze.

Nevertheless, it is desirable from a human rights point of view that there not be any regulatory threshold, whether for brands/lead firms or suppliers. However, concentration could be on the biggest lead firms with the highest profit amounts, both for campaign and audit purposes, without excluding any firms from the purview of mHRDD.

Besides trade unions, many civil society organizations both in the EU and South Asia, have been active in exposing human rights abuses and campaigning for regulatory action to end these abuses. Such civil society organizations should be allowed to play a role in implementing mHRDD. They could be allowed to bring cases of abuse before the relevant authorities.

Similarly, whistle-blowers, often employees of firms, have played a role in providing inside information on violations of law. Regarding mHRDD too, whistle-blowers should be given legal protection for exposing and bringing violations to the notice of the authorities. Workers and communities from South Asia or other parts of the global South should be able to access mHRDD implementing authorities in the EU. This is usually prohibitively expensive. Digital communication, including video conferencing, can be used to reduce costs and thus enable workers and communities to approach mHRDD implementing agencies in the EU.

Even if access is ensured, there is the further problem of deciding under what law cases would be decided. It seems that in a case involving a Pakistani worker and a German firm, the German courts held that Pakistani law should be applicable. But the entire purpose of mHRDD would be defeated if the national law of the aggrieved worker were to apply. For instance, the requirement to pay living wages is not part of the legal system in any of the South Asian or other supplier countries. But this is understood to be a violation of the European commitment to living wages in its supply chains. In order to be meaningful, cases under mHRDD should be decided on the basis of the standards set down in the rules pertaining to mHRDD.

Of course, it is not being argued that the living wage should immediately apply to all workers in South Asia. That would be desirable but could only be achieved as the per capita productivity of the overall national economy increases. However, in global value chains that provide the type of profits earned by lead firms, as was seen earlier in this paper, the living wage can certainly be applicable. Without saying anything about the national minimum wage, mHRDD should require that the wage and other standards specified under mHRDD for GVCs, should be the basis for deciding cases brought under its provisions.

The EU should utilize its importance in the global trading systems to push for an applicable international agreement, under the aegis of the ILO, on regulation for eliminating human rights abuses in supply chains. Without

underestimating the difficulties in arriving at such an international agreement, a push by the EU and other European governments and brands would make an impact

on the protracted international negotiations required for such international agreements.

11. ANNEX 1

Main Exports of South Asian Countries to the EU

Total Exports and Share of EU-27 from Major South Asian Countries (2019)

	Exports to EU (Million USD)	Export to World (Million USD)	Share of EU Exports to Total Exports (Million USD)
Bangladesh	23558	47565	50%
India	48270	323251	15%
Maldives	82	158	52%
Nepal	80	960	8%
Pakistan	8142	23819	34%
Sri Lanka	3211	11974	27%

Source: UN COMTRADE

Major Products and Share of EU from Major South Asian Countries

Bangladesh

	Exports to EU (Million USD)	Exports to World (Million USD)	Share of EU Exports to Total Exports (Million USD)
Articles of apparel and clothing accessories, knitted or crocheted	12461	21057	59%
Articles of apparel and clothing accessories, not knitted or crocheted	9185	19852	46%
Footwear, gaiters and the like; parts of such articles	676	1190	57%
Other made-up textile articles; sets; worn clothing and worn textile articles; rags	391	1056	37%
Other vegetable textile fibres; paper yarn and woven fabrics of paper yarn	31	758	4%

India

	Exports to EU (Million USD)	Export to World (Million USD)	Share of EU Exports to Total Exports (Million USD)
Machinery, mechanical appliances, nuclear reactors, boilers;	3577	21264	17%
Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral	4061	44533	9%
Natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad	2428	36734	7%
Organic chemicals	4764	18247	26%
Vehicles other than railway or tramway rolling stock, and parts and accessories	1801	17413	10%

Maldives

	Exports to EU (Million USD)	Export to World (Million USD)	Share of EU Exports to Total Exports (Million USD)
Fish and crustaceans, molluscs and other aquatic invertebrates	63896	116448	55%
Preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates	14755	35060	42%

Nepal

Row Labels	Exports to EU (Million USD)	Export to World (Million USD)	Share of EU Exports to Total Exports (Million USD)
Animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal ...	0	245	0%
Articles of apparel and clothing accessories, not knitted or crocheted	16	50	33%
Carpets and other textile floor coverings	19	68	27%
Coffee, tea, maté and spices	3	75	4%
Man-made staple fibres	0	83	0%

Pakistan

	Exports to EU (Million USD)	Export to World (Million USD)	Share of EU Exports to Total Exports (Million USD)
Articles of apparel and clothing accessories, knitted or crocheted	1517	3029	50%
Articles of apparel and clothing accessories, not knitted or crocheted	2079	2815	74%
Cereals	326	2376	14%
Cotton	666	3252	20%
Other made-up textile articles; sets; worn clothing and worn textile articles; rags	1774	4071	44%

Sri Lanka

	Exports to EU (Million USD)	Export to World (Million USD)	Share of EU Exports to Total Exports (Million USD)
Articles of apparel and clothing accessories, knitted or crocheted	1244	3062	41%
Articles of apparel and clothing accessories, not knitted or crocheted	636	2144	30%
Coffee, tea, maté and spices	161	1603	10%
Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral ...	0	338	0%
Rubber and articles thereof	332	893	37%

Tourism and Travel (2019)

Country	Share of GDP (%)	Share of Total Exports (%)	Share of Employment (%)
1. Bangladesh	3	0.7	2.9
India	7	5.8	8.4
Maldives	53.5	81.4	53.3
Nepal	7.5	24	7.8
Pakistan	5.8	3.6	6.1
Sri Lanka	10.5	24	10.9

Source: Travel and Tourism Council, <https://wtcc.org/Research/Economic-Impact>, last accessed September 8, 2022.

12. ANNEX 2

Gross Profit Margins of Lead Firms in EU and Supplier Firms in India

Adidas Gross Profit Margin of 50.2% in 2021:
<https://www.macrotrends.net/stocks/charts/ADDYY/adjdas-ag/gross-margin>, last accessed November 9, 2022.

C&A Gross Profit Margin of 48.13% in 2022:
<https://in.investing.com/equities/c-a-modas-sa-financial-summary>, last accessed November 9, 2022.

H&M Gross Profit Margin of 52.8% in 2021, against 54% in 2017:
<https://www.statista.com/statistics/964121/gross-margin-of-the-h-and-m-group-worldwide/>, last accessed November 9, 2022.

Infosys Gross Profit Margin 30.2% in 2022:
https://finbox.com/NYSE:INFY/explorer/gp_margin, last accessed November 9, 2022.

LV Gross Profit Margin of 68.9% in 2022, Over 10 years a minimum of 64.45% and maximum of 68.91%:
<https://www.gurufocus.com/term/grossmargin/LVMUY/Gross-Margin-Percentage/LVMUY>, last accessed November 9, 2022.

TCS Gross Profit Margin 31.8% in 2022:
<https://www.wsj.com/market-data/quotes/IN/XNSE/TCS/financials/annual/income-statement>, last accessed November 9, 2022.

Zara Gross Profit Margin of 60.1% in 2021, highest in a decade:
<https://www.businessoffashion.com/news/retail/zara-owner-inditex-quarterly-profit-jumps-80-on-post-covid-wardrobe-renewal/>, last accessed November 9, 2022.

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https://www.ohchr.org/sites/default/files/Documents/Issues/Business/MandatoryHR_Due_Diligence_Issues_Paper.pdf, last accessed September 5, 2022.

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