

12 April 2016

Background Information and Draft Employers' Position on ILC Discussion on Decent Work in Global Supply Chains

I. Background

The issue of “Decent Work in Global Supply Chains” will be on the agenda of the International Labour Conference in June 2016. As a general discussion item, the Conference has no mandate to develop a new ILO standard on global supply chains, but to develop conclusions that will shape the ILO’s vision, strategy and action plan on global supply chains for the next 3-5 years. The Conference will also discuss the question of whether the ILO should develop an ILO standard on global supply chains in the future, as requested by trade unions. The nominated spokesperson of the Employers’ Group in the discussion will be Mr. Ed Potter (US Employer member of the ILO Governing Body). The ILO report for the Conference discussion can be found [here](#):

http://www.ilo.org/ilc/ILCSessions/105/reports/reports-to-the-conference/WCMS_468097/lang--en/index.htm

II. Employers’ Priorities for the ILO Preparatory Report

In August 2015 the Employers’ Group launched a position paper with preliminary views on the priorities for the ILO Preparatory Report for the ILC Supply Chain discussion.

The main Employer messages were:

- 1) Global supply chains (GSCs) not only stimulate growth and create jobs, but also contribute to productive employment and decent work. The ILC discussion in 2016 should take a constructive approach to the issue. The Employers reaffirm the Governing Body’s decision in March 2014 that the discussion should offer guidance to constituents on how to address both the opportunities and challenges resulting from GSCs.
- 2) The starting point for the discussion must be a clear understanding of the ILO’s activities and initiatives to date with regard to supply chains: what has worked and what has not? The discussion must take a practical approach.
- 3) The cross-border flow of goods and services does not pose a unique challenge to decent work and effective labour regulation. Indeed, any production of goods within a given jurisdiction is always subject to the laws and regulations of that jurisdiction; connectivity to a global supply chain does not alter that fact. Furthermore, there is no evidence that GSCs worsen working conditions, rather the contrary; they are a key driver of the improvement of working conditions in areas of weak governance. Thus,

there is no regulatory gap to be bridged at international level. The challenge is rather to ensure better implementation and enforcement of regulation at national level.

- 4) The ILO Report for the general discussion in the 2016 ILC should not shift the primary duty to protect from States to companies, whether national or global. Indeed, the existing consensus around the UN “protect – respect - remedy” framework and the UN Guiding Principles on Business and Human Rights clearly differentiate between the roles of government and business. International consensus was achieved after a long process of interaction and efforts and it would be counterproductive to question these Principles in the 2016 ILC discussion.
- 5) GSCs are highly diverse, as are national circumstances. The Preparatory Report and 2016 ILC discussion must fully speak to this diversity.
- 6) Insufficient data exist to fully understand GSCs and their impact on local labour markets. There is therefore a need to reinforce capacities to obtain and analyse relevant data.
- 7) Any approach to improve working conditions that is limited to GSC companies would benefit only a fraction of workers. The aim must be to improve framework conditions for more and better jobs generally – for all workers and in all companies.
- 8) To fully harness the potential benefits of GSCs, comprehensive “pro-growth” strategies are needed that facilitate the participation of an economy and its enterprises in GSCs. Experience shows that investment through GSCs has substantially alleviated poverty and created decent work
- 9) Capacity building is key: the discussion on GSCs should include possible mechanisms for the transfer of knowledge and broader capacity building initiatives from large MNE buyers to smaller suppliers, as well as capacity building of the ILO constituents to support national actors in improving the framework conditions on the ground. This would increase the transferability of knowledge and capacities from the supply chain to national actors and institutions.
- 10) The discussion must fully respect the established governance structure of the ILO.

The Workers’ Agenda

In December 2015, the Workers’ Group formulated their goals for the ILC discussion on decent work in global supply chains, which include:

- A revision of the ILO MNE Declaration and the establishment of a complaints mechanism.
- A decision to work towards a Convention on GSCs, which should clarify the roles and responsibilities of governments, provisions for establishing legal accountability; and deal with the employment relationship and non-standard forms of work in supply chains.
- A commitment to work towards increased transparency and traceability in GSCs.

- A commitment to work towards increased safety and the reduction of temporary contracts and contract/agency labour in supply chains.
- Establishment of minimum living wage rates and a minimum wage setting mechanism.
- Establishment of a global labour inspectorate which could be set up sector-wise.

III. The ILO Report on Decent Work in Global Supply Chains (ILC105/IV)

On 7 April 2016 the ILO Office published the report (available [here](#)) that will serve as basis for the discussion. The report contains four main areas:

- 1) GSCs and the world of work, which focuses on production trends, trade trends in GSCs, investment trends and the scale and quality of employment in GSCs.
- 2) Upgrading for decent work in GSCs, which focuses on economic upgrading, social upgrading and downgrading in GSCs and the link between economic and social upgrading in GSCs.
- 3) Governance in GSCs, which focuses on governance approaches to promoting decent work in GSCs, public governance, private governance, social partners' initiatives, multilateral initiatives and closing the governance gap.
- 4) Way forward, which focuses on the ILO experience in promoting decent work in GSCs, suggestions for the way forward, as well as suggested points for discussion.

The ILO report is problematic in the way that

- It takes the position that GSCs are themselves the problem and that market competition and the use of suppliers (vs. wholly-owned and operated production) lead to bad working conditions.
- It focuses almost exclusively on GSCs from developing / emerging economies to developed economies (South-North), and predominantly on the textile and garment industry, giving one-sided and biased views in terms of the variety and differences across sectoral supply chains.
- It defines GSCs as only those supply chains connected to brand name "lead firms" and states that these lead firms control their supply chains and can, through their market power, dictate prices and the terms and conditions of production in the supply chain.
- It does not provide sufficient data to back up its claims, with whole arguments based on anecdotal evidence or claims that GSCs "may" cause certain problems. Some paragraphs even start with "a case was reported...".
- It does not present a clear assessment of ILO activities and programmes – what has worked and what has not – and does not allow any conclusion about what needs to be improved, scaled up or stopped.

- It does not adequately address the State duty to implement and enforce national laws and instead states that GSCs have created a “regulatory” gap since the customer is outside the country of production.
- And since all GSCs are, by definition, part of international trade, the report essentially claims that international trade causes bad working conditions and that the labour aspects of trade are somehow “unregulated”.

IV. Proposed key Employer Messages for the 2016 ILC Supply Chain Discussion

The ILC discussion will be structured around an opening debate, as well as debates on four questions. The Employers’ Group may wish to consider the following messages:

A. General Messages

1. The ILC discussion on Decent Work in GSCs is of high priority for the Employers’ Group, because GSCs are not only an important reality in today’s global economy, but also because they contribute significantly to productive employment and decent work. Indeed, local communities and local business want to be part of GSCs. GSCs are proved to be positive, as an opportunity for economic and social development.
2. GSCs are highly diverse, as are national circumstances. The report of the Office initially recognises this diversity and stresses that supply chains are also increasingly becoming geographically diverse. However, the report goes on to focus exclusively on GSCs from developing / emerging economies to developed economies (South-North), and predominantly on the textile and garment industry, and ignores the vast number of GSCs that flow North-North, North-South and South-South. The Employers’ Group would like to stress that this is not only a general discussion on decent work in GSCs from the textile sector or in South-North GSCs. The significant limitations of the report will hamper the work of this committee taking a comprehensive approach to the issue of decent work in GSCs. The conclusions of this discussion must be applicable, relevant and beneficial to the full range of realities and GSC relationships.
3. Cross-border trade is not only conducted by large MNEs, but also by many medium-sized companies. The discussion must take this diversity fully into account, otherwise it will ignore a substantial part of the issue. This is also particularly relevant as medium-sized need different support from the ILO than MNEs.
4. GSCs are extremely complex and dynamic business networks that are constantly changing and shifting in response to economic factors and market conditions. Contrary to the report’s approach that, as lead firms, buyers control their supply chains and can, through their market power, dictate prices and the details of production in the supply chain, the reality looks very different. In fact, a buyer’s ability to influence the business conduct of the supplier depends on market position. Not only do small and medium-sized companies often have little leverage over their suppliers, but large multinationals may also find themselves similarly constrained

when they source only a marginal quantity of the supplier's production, or when the supplier has a monopoly. As is the case with some intermediaries, the supplier may just be a much bigger company. Furthermore, it is often impossible or impractical, either economically or logistically, to control all suppliers and subcontractors. The UN Guiding Principles fully recognise this challenge in UN Guiding Principles 17, which states that "where business enterprises have large numbers of entities in their value chains it may be unreasonably difficult to conduct due diligence for adverse human rights impacts across them all. If so, business enterprises should identify general areas where the risk of adverse human rights impacts is most significant, whether due to certain suppliers' or clients' operating context, the particular operations, products or services involved, or other relevant considerations, and prioritize these for human rights due diligence."

5. In exercising due diligence, companies rely heavily on social audits. Audits give the buying company an overview of the situation in a supplier company at a given point in time. The situation might already be different the following day. Moreover, many tragic accidents in supplier companies have resulted from fatal decisions in specific situations that are not necessarily linked to issues that could have been identified in an audit. In short, even rigorous auditing cannot guarantee full control over a supplier's behaviour.
6. There are decent work challenges in some GSCs as there are decent work challenges in some economies generally. The cross-border flow of goods and services does not pose a unique challenge to decent work and effective labour regulation. Indeed, what is missing are clear data on working conditions on GSCs in comparison to purely domestic companies. Research suggests that working conditions in GSC companies are rather better than in domestic companies. Much more research by the ILO is needed to get a better understanding.
7. Moreover, any production of goods within a given jurisdiction is always subject to the laws and regulations of that jurisdiction; connectivity to a GSC does not alter that fact. Thus, there is no regulatory gap to be bridged at international level. The challenge is rather to ensure better implementation and enforcement of legislation at national level.
8. At the international level, the UN Guiding Principles on Business and Human Rights provide a clear approach as to the different responsibilities of governments and companies with regard to human rights. States have the obligations to protect and fulfil human rights and fundamental freedoms. The role of business enterprises as specialised organs of society performing specialised functions requires compliance with all applicable laws and respect of human rights. In the discussion the Employers must build on this international consensus on this, not jeopardise it. It would not only lead to uncertainty for companies, as well as all for other stakeholders, if the conclusions of the ILC 2016 discussion were not in line with the main international instruments such as the UN Guiding Principles on Business and Human Rights or the OECD MNE Declaration, but also weaken their impact - since most actors would most likely not take them up. It is also a matter of policy coherence to ensure that the ILC conclusions constructively contribute to the debate rather than try to redefine internationally agreed principles and norms.

9. According to the ILO World Employment Social Outlook 2015, 20.6 per cent of the global workforce is linked to GSCs (ILO WESO, page 132). This is an impressive figure. However, at the same time, it must be recognised that around 80 per cent of workers are not linked to GSCs. Similarly, Margaret Jungk, former member of the UN Working Group on Business and Human Rights, pointed out in a recent article in the Huffington Post that “the vast majority of economic activity is carried out by small-scale companies, ones you've never heard of, mostly in the informal sector. Their goods don't travel across borders, and when they exploit their workers or harm communities, you don't hear about it”. Decent working conditions have to be ensured for all workers – not only for the 20 per cent of the global workforce that is linked to GSCs. People who work in the informal, purely domestic economy have the same right to decent working conditions as the worker in the factory next door working to produce an item that is sold on the global market. The aim must be to improve framework conditions for more and better jobs generally – for all workers and in all companies.

B. What opportunities and challenges for the realisation of decent work and inclusive development have emerged from global supply chains and how have the challenges been dealt with?

1. GSCs are job creators: GSC-related jobs represent 20.6 per cent of total employment, up from 16.4 per cent in 1995. Indeed, GSCs moved people from subsistence agriculture into paid employment and improved particularly the status of women through paid employment. In Bangladesh, for example, employment in garment manufacturing has offered several million women job opportunities for the first time. The rise of GSCs thereby helped to mitigate persistent differences in employment trends across genders.
2. GSCs enhance productivity and stimulate innovation: they facilitate the transfer of knowledge from buyers to suppliers, promote new technologies in production processes and thereby enhance productivity and competitiveness. They also stimulate product upgrading: more and more suppliers are moving from simple products to more high-tech products. Suppliers thereby invest more in R&D themselves. New technologies, furthermore, lead to skills up-grading.
3. GSCs are ladders for development, as countries such as China, South Korea, Taiwan have shown. The disaggregation of production into separate stages allows their firms not only to find their place on the ladder, but to move up the rungs as their capabilities improve. GSCs encourage that upward movement by rewarding skills, learning, and innovation. Indeed, overcoming obstacles to GSC participation can pay big dividends: Developing economies with the fastest growing GSC participation have GDP per capita growth rates 2 per cent above average. Finally, shifts of manufacturing activities within a country, as for instance in China, are creating opportunities in new territories within a country.
4. Countries have unleashed the potential of global trade to varying degrees: countries differently tap into the potential that GSCs can have for job creation and development. Findings of a joint OECD, WTO & World Bank Study suggests that “not all firms and countries are equally involved in GVCs. Some of these factors are permanent, such as a country's geographic location, while others can be shaped by

the laws and policies that a country enacts (...) These include the modernity of the infrastructure, the skills of its workforce, and – perhaps most important of all – the friendliness of the business climate.” Moreover, the study stresses that “the principal role of governments is not to create, subsidize, or tax GVCs, nor to regulate them more than is necessary. Instead, governments should foster environments that are friendly to production, investment, transportation, communication, and trade. (...) Key elements of a welcoming business environment include macroeconomic stability, access to finance, and the overall ease of doing business.”

5. Decent Work challenges in GSCs are not unique to GSCs, but reflect general challenges in the local environment: working conditions in GSCs are not worse than those in the purely domestic economy at local level. On the contrary, data seem to indicate that they are rather better. Recent research found, for instance, that “the preponderance of evidence suggests that employment in export manufacturing offers superior compensation to employment in non-export manufacturing. The exporter advantage in wages is even greater when alternative employment is in the informal sector.” Although challenges differ between countries, some general challenges are often the high prevalence of the informal economy, ineffective labour inspection, high levels of corruption, ineffective judiciary systems, badly developed social protection systems, etc. These challenges need to be addressed at national level. The annual ILO General Survey gives an overview of some of these challenges.
6. Companies have been very active in addressing decent work challenges in GSCs: MNEs have made huge efforts to complement national labour regulation with private compliance and capacity building activities. While these interventions may not be perfect, they do support domestic producers in conforming to standards of decent work. However, GSCs are complex arrangements, with larger companies often having several tens of thousands of suppliers in many tiers, which are also continually changing. Especially further down the supply chain, there is a higher likelihood of suppliers being active in the informal sector. Concrete opportunities for companies to influence the supply chain are varied and depend especially on the number of suppliers involved, as well as the structure and complexity of the supply chain and the market position of the company relative to the supplier. Furthermore, it needs to be recognised that practices or codes imposed by buyers on suppliers in their audit of supplier companies often impose rigidities and costs.

C. What policies, strategies, actions and programmes have been put in place by the Office, ILO constituents and other stakeholders to ensure that economic development and decent work, including respect for international labour standards, go hand in hand?

1. For decades the ILO has been engaged in areas that are highly relevant for working conditions in supply chains: Fundamental Principles and Rights at Work, Labour Administration and Inspection, Social Dialogue, Sustainable Enterprise Development, Skills Development and Social Protection Floors. Indeed, when the ILO was founded in 1919, global supply chains were already a reality of the economies of that time and the work of the ILO was regarded as impacting the working conditions in supply chains. This valuable work need to be properly brought to the GSC discussion as it is a main driver of change in areas with weak governance challenges.

2. The ILO has also engaged in a number of programmes directly targeting companies, such as Better Work, the Score Program, the Social Protection Platform and the Child Labour Platform. It is unfortunate that the report does not give any analysis of the lessons learned from these activities.
3. There are, at international level, many other initiatives, such as the OECD Guidelines for Multinational Enterprises and the pro-active agenda of the OECD with regard to responsible business conduct, the UN Global Compact, ISO 26000. There are, moreover, many sectoral initiatives and sourcing initiatives, such as the Business Social Compliance Initiative (BSCI). The G7 started to promote sustainable supply chains during the German G7 Presidency last year and established the Vision Zero Fund. At national level, the UK recently adopted the Modern Slavery Act, which requires certain businesses to disclose what activity they are undertaking to eliminate slavery and trafficking from their supply chains.
4. For this ILC discussion it is important to stress that in view of the multitude of existing activities the ILO should not duplicate work, but rather ensure that the ILO is adequately engaged in the relevant initiatives that have a focus on employment and social policy and call on the Office to strengthen efforts to fully participate in such initiatives. As a starting point it would be extremely helpful if the Office could map the different initiatives, indicate the engagement of the ILO in them and assess the success of the initiatives. Since the report does not provide such information, a follow-up discussion on these issues should take place in an ILO Meeting of Experts or at the ILO Governing Body.

D. What kinds of governance systems, including standards, in global supply chains can best support the achievement of growth, decent work and inclusive development and how can synergies be created?

1. Most States have national laws in place, but these laws are not always effectively implemented and enforced. The mission and history of the ILO is built on its mandate to develop and promulgate international labour standards. The Organization has spent nearly 100 years working to ensure that standards are in place, that Member States ratify ILO conventions and implement them in practice; the standards are enacted into national law; labour administration and inspection systems ensure that they are followed; and judicial processes are available where they are not. These national “governance systems” are in place and working effectively in many countries. And while no system is perfect, it is clear that some countries face a number of challenges to ensure that their governance systems work effectively. Each such country has its own set of circumstances: while some may need to improve national laws, the main challenges relate to inadequate systems and institutions for labour administration and inspection to ensure compliance, as well as effective judicial systems to address instances of non-compliance. Thus, the root problem is not supply chains per se, but rather weak national governance systems in certain countries.
2. The UN Guiding Principles on Business and Human Rights already define the scope of responsibility for both States and business enterprises. The ILO does not need to reinvent the wheel: any discussion on the scope of responsibility of States and

business enterprises for human rights must be based on the UN Guiding Principles on Business and Human Rights, the most authoritative international instrument on this subject.

3. Private compliance initiatives can complement public enforcement/compliance efforts, but they cannot and should not be used as a substitute for public enforcement. All of the above are individual responsibilities, meaning the failure of one party to meet its responsibility does not shift the responsibility to another. Thus, the failure of a government to enforce the law, or of a supplier to comply with the law, does not shift their responsibility to someone else. Additionally, the mere existence of a business relationship does not mean that one party has “contributed” to the adverse impacts of the other party.
4. The ILC discussion should start from the principle that fundamental principles and rights at work should not depend on whether someone happens to work for a company which happens to have a customer with a supply chain code of conduct. Fundamental rights need to apply to all workers and all employers, which requires the effective implementation and enforcement of national law.

E. What should Governments and the social partners do in order for global supply chains to achieve stronger coherence between economic outcomes and decent work, including respect for international labour standards? What can other actors do? What should the ILO do to support them in these efforts?

1. ILO Conventions and Recommendations are addressed to governments. The conclusions of the ILC discussion must express the need for governments to pass appropriate legislation where necessary and to enforce it responsibly and effectively.
2. Strong national governance frameworks are important because they ensure that all workers, independently of whether they work for a company involved in a GSC or for a purely domestic company, are covered by legislation. Moreover, strong national governance frameworks are important with regard to the sustainability of improvements: GSCs are constantly changing. Once a business relationship ends, the sustainability of any improvements achieved in the supply chain company could be jeopardised, especially if the progress is not embedded in efforts to strengthen overall governance.
3. Good governance at national level also facilitates efforts of companies to improve working conditions and to increase productivity in their supply chains. At the same time, it also enables the transfer of knowledge and capacities from the supply chain to national actors and institutions. Companies cannot and should not replace the state, but they can support governments, through their supply chain management, in their efforts to strengthen the application of international standards, increase productivity and improve working conditions. If governments fail to fulfil their primary role to implement and enforce fundamental social and environmental standards, it will be more difficult for companies to foster better working conditions in the supply chain companies. Moreover, the likelihood of purely domestic companies, as well as public administrations taking up some of the practice, is much lower.

4. Good governance does not necessarily mean more regulation, but rather regulation that is enforced and enforceable, that ensures good working conditions and does not present a barrier to companies being set up in the formal economy and hiring people. The conclusions of the 2015 ILC discussion on SMEs called on governments to simplify overly complex regulations and to design new rules and regulations with a view to their possible effects on SMEs and the well-being of workers in SMEs.
5. The strength of the ILO lies in its tripartite character and its collaboration with its constituents – governments, employers’ organisations and trade unions. Thus, the ILO has to support national actors to improve the framework conditions on the ground, which would increase the transferability of knowledge and capacities from the supply chain to national actors and institutions.
6. Capacity building is essential in enabling employers’ organisations and trade unions to engage more actively in national debates on suitable framework conditions for job creation, decent work and economic growth through trade and investment, as well as in strengthening the capacity of social partners to give guidance and advice to their constituents to seize the opportunities of engaging in global trade.
7. The ILO flagship initiative on OSH should be rolled out extensively with maximum resource allocation. The programme should equally benefit GSC companies and domestic companies.
8. The ILO should undertake more research and analysis to have verifiable data on GSCs – and reinforce capacities of constituents to obtain and analyse relevant data.
9. The ILO should better coordinate supply chain related activities internally and establish internal-governance mechanisms that ensure that different programmes and projects complement one another. As a first step, the Office should undertake a comprehensive mapping of supply chain activities, on what works and what does not, and report the findings to the ILO Governing Body.
10. The ILO should improve access to resources and better communicate existing guidance and initiatives.
11. Partnerships matter. There are plenty opportunities for collaboration. The general discussion should highlight the opportunities various actors have to address non-compliance with national law in global supply chains, including:
 - Efforts by governments, individually and collectively, to improve the rule of law by reducing corruption and informality, establishing independent judicial systems, ensuring basic freedoms and improving implementation and enforcement of national law, building the capacity of national governments and institutions to implement and enforce the law, and building the capacity of all companies (domestic producers and exporters) to comply with national law.
 - Efforts by companies to establish, maintain and constantly improve supply chain management programs in a wide variety of sectors.
 - Efforts by the ILO, workers’ organisations, civil society groups and others to work directly with suppliers and producers to improve compliance with national law.

12. Multiple efforts can be implemented simultaneously:

- work to support national governments in labour administration and inspection;
- work with national employers' organisations to improve compliance systems and performance in domestic producers, and
- work with exporters and international buyers to continue to improve and transfer knowledge and experience to domestic producers.

V. Next steps

- Comment on the draft messages by **9 May** to thorns@ioe-emp.org
- Engage with your government, particularly the ministries of economy and trade on the issue. At the end of the day, this discussion is highly trade relevant.
- Participate in the IOE webinar on the ILC Supply Chain Discussion on **13 May at 15:00 CET**. Register by **9 May** with awuku@ioe-emp.org
- Circulate asap the IOE Supply Chain survey to your company members and encourage them to respond.
- Send any relevant information, data and studies asap to thorns@ioe-emp.org