T.M.C. Asser Institute
R.J. Schimmelpenningcklaan 20-22
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Research project: 'Doing Business *Right*'

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Dear Ms. Kaag,

We value the opportunity to contribute to the discussion. Please see enclosed our response to the open consultation on 'Vernieuwd Beleid Buitenlandse Handel en Ontwikkelingssamenwerking'. We specifically address question 5 in our submission.

Best regards,

Enrico Partiti

Antoine Duval

Question 5: In your opinion, what opportunities are there in the areas of manufacturing, trade and investment to achieve social progress (for example, better working conditions, higher wages, more opportunities for women and young people) or tackle ecological challenges (for example, in the areas of water, the climate and biodiversity)?

The emergence of a responsibility for business to respect human rights enshrined in the UN Guiding Principles on Business and Human Rights has to be supported and channeled by the trade and development policies of the Ministry of Foreign Affairs in order to maximise its impact, and consistent with the obligations of the Netherlands under international law and the SDGs. This means that the potential contribution of private actors in the pursuit of social and environmental goals (and SDG 12) should be strongly incentivized, under a strong framework for action and supervision exercised by the Dutch government.

Work in multi-stakeholder platforms and sectoral business organisations, especially in the framework of the Social Economic Council, should continue, and the first steps made must be accompanied by an increased involvement of market actors and a scaling up of efforts and goals. This must be matched by a sufficient margin of manoeuvre provided by national and EU competition law to allow undertakings to engage in 'sustainability agreements' including minimum pricing agreements. While no 'blank cheque' should be given to corporations via blanket exemptions from competition scrutiny if public goals are pursued, the 'publicisation' of private agreements via national legislation is not a bulletproof solution either, as it remains open to challenges under EU freedom of movement. A potential solution could involve a broad understanding of accountable efficiencies, both temporally and geographically, which can be used to justify an otherwise anticompetitive agreement.

Generally, work in the IRBC Agreements should continue and be extended to other sectors. The Agreements could benefit from an increased level of transparency at all stages, from discussion over due diligence to dispute

and complaints resolution, in order to allow all interested parties to engage in the discussions and critically assess the operation of the agreements. This is particularly relevant for the subject matter of human rights due diligence. Its implementation and operationalisation by corporations requires a collective effort where several parties engage in discussion to actually establish and clarify the expected moral obligation of business actors. In this framework, public knowledge of the situation is crucial to defining the proper scope of such obligations, for assisting corporations in their achievements, as well as for human rights holders to feed in in the process with their own personal perspective. Ideally, the agreements should serve, in full cooperation with other relevant actors (OECD National Contact Points; private standard-setters; specific instruments and tools established by other organisations), as a platform for elaborating a case-law on due diligence, identifying specific actions required in specific contexts and scenarios, as well as providing an accessible and effective remedy for potential victims. In this regard, it is crucial that the Agreements by subjected to regular independent reviews of their impact in order to trigger a positive feedback loop of institutional learning and adaptation. This would cement the leading role of the Netherlands in the domain of business & human rights/ global value chain governance, and allow for a strong position in scaling up these issues at the EU level. Ultimately, a unified EU approach (perhaps culminating in EU legislation) appears necessary to avoid distorting the competitive opportunities of corporations established in different EU Members and to effectively tackle their negative externalities throughout their globalized supply chains.

The engagement with other private initiatives such as voluntary sustainability standards and labels should continue with rigorous benchmarking activities, and careful selective engagement with certain schemes (for example in legislation or in public procurement). It is fundamental that different competing private standards are aligned upwards, and the Netherlands and other EU Member States can play a role. More stringent initiatives should be distinguished from laxer schemes, both in terms of substance and procedures. A strong preference should be given to schemes whose standards are closely aligned to international and national provisions, and are in fact drafted by many different interest-groups (i.e. multi-stakeholder schemes), with inclusive processes for weaker stakeholders and a non-dominant role of the industry. Such schemes should be identified and favoured via legislation, public procurement and other multi-stakeholders initiatives, in light of their potential greater contribution to global sustainability governance.