**U.S. Council for International Business’ responses to UN Working Group on Business & Human Rights’ call for input to the 2019 GA Report on government policy coherence – May 31, 2019**

**23rd session of the Working Group on Business and Human Rights**

**Call with business associations/organizations**

**Friday, 17 May 2019, 3.00pm-4.00pm**

**Business associations inputs to the 2019 GA report of the Working Group on**

**policy coherence in government action**

**to protect against business-related human rights abuse**

**Background**

Ensuring policy coherence in government action is critical to the effective implementation of the UN Guiding Principles on Business and Human Rights (the Guiding Principles) and to helping businesses to comply with their responsibility to respect human rights. However, a lack of policy coherence in government practice remains widespread across regions and often departments and agencies that shape business practices are not sufficiently aware of or equipped to act in conformity with the State’s international human rights obligations.

Identifying practical ways of improving coordination and coherence building at the State level can contribute to addressing such challenges. The Working Group has consistently highlighted that National Action Plans on Business and Human Rights (NAPs)[[1]](#footnote-1) provide a useful tool to help strengthen policy coherence to help protect against business-related human rights abuses. An increasing number of States have adopted or initiated processes to develop such NAPs and other policy frameworks.

In order to assist States further to meet their human rights obligations, the Working Group’s report to the 2019 General Assembly will look at what can be learned from current efforts to **strengthen policy coherence in the context of the implementation of NAPs** **and other policy frameworks, such as specific chapters on business and human rights in national human rights action plans**.

In the process of preparing the forthcoming report, the Working Group invites business associations (as well as their member companies) to provide inputs based on a number of guiding questions below. The inputs received in response to this open call will inform the Working Group’s report.

**Guiding questions for business organizations and business associations**

1. **What are the concrete policy coherence challenges you and your member companies see in practice in regard to business and human rights?**

There are numerous policy coherence challenges that companies face. Below is a select, and certainly incomplete, set of examples.

1. The UN’s “Guiding Principles on Business and Human Rights” (UNGPs) note that the “responsibility of business enterprises to respect human rights applies to **all** enterprises regardless of their size, sector, operational context, ownership and structure” (emphasis added). However, the emergence of various disclosure and due diligence regulations have focused only on the largest companies, generally defined as a minimum revenue threshold. The argument is often made that such legislation “levels the playing field” but, in reality, it generally tends to be focused on the same set of large companies, many of whom already have human rights policies, codes of conducts, or other programs to address human rights impacts. In addition, this new legislation has prioritized cross-border regulation rather than the strengthening of domestic law and the corresponding and critical element of effective enforcement of domestic law. These cross-border regulations often omit small- and medium-sized enterprises (SMEs) and state-owned enterprises. What is more, SMEs and micro enterprises account for over 90% of the world’s businesses. Thus, much of the emerging regulation is inconsistent with the UNGPs and isn’t targeting the types of businesses more likely to cause or contribute to adverse human rights impacts.

## In the US, Section 307 of the [Tariff Act of 1930](https://www.cbp.gov/trade/programs-administration/forced-labor) (19 U.S.C. § 1307) and the [Trade Facilitation and Trade Enforcement Act of 2015](https://www.congress.gov/bill/114th-congress/house-bill/644/text?utm_source=google&utm_medium=google&utm_term=(not%20provided)&utm_content=undefined&utm_campaign=(not%20set)&gclid=undefined&dclid=undefined) prohibit the importation of merchandise mined, produced or manufactured, wholly or in part, in any foreign country by forced or indentured child labor – including forced child labor. In addition, the [Countering America's Adversaries Through Sanctions Act](https://www.treasury.gov/resource-center/sanctions/Programs/Pages/caatsa.aspx) introduced prohibitions on the importation of goods produced by North Korean citizens located in any country because of a presumption that such labor is either convict, forced or indentured labor. US business contributes directly and meaningfully to efforts to prevent forced labor. However, these examples of legislation presume that the presence of forced labor is always know-able across complex, global, diverse, deep supply chains and presume that US importers are aware of the presence of forced labor at all points in the chain – including when employment decisions are not actually made by them. US business would benefit greatly from increased transparency regarding the process by which allegations are accepted and handled, as well as greater clarity on evidentiary standards used to assess allegations and companies’ demonstration of compliance. The legislation, individually and taken as a whole body of work, also greatly disincentives deliberate, sustainable and effective remediation advanced over a reasonable amount of time. In contrast, if there is any possibility of the presence of forced labor, importers and buyers are left with little choice but to immediately sever the relationship for fear they could be subject to criminal sanctions. As a result, the goal of collaborative capacity building that is articulated in the UNGPs is undermined. These laws can also disincentivize public disclosure or transparency – which is not a goal of business.

## The US government has endorsed the UNGPs, which note, among other things:

## “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.”

However, the US conflict minerals rule (The Dodd-Frank Wall Street Reform and Consumer Protection Act, Section 1502) requires ALL publicly-traded companies using gold, tin, tungsten or tantalum, to conduct an assessment of whether those materials come from the Democratic Republic of Congo or an adjoining country, regardless of the company’s operating contexts, operations, products or services, and then issue an independently audited report of the analysis. As a result, publicly-traded companies with de minimus amounts of 3TG, such as apparel companies, may be required to divert resources away from potentially more salient human rights risks to an issue that could be less pervasive, severe, or linked to a company’s business than other priorities, e.g., forced child labor in cotton.

1. **Is there an effort on the part of the government, in which your member companies are domiciled, to improve policy coherence in the area of business and human rights? If so, what is the nature of the process and have you or your member companies been involved? What were the challenges and opportunities encountered?**

In September 2018, the Governments of Australia, Canada, New Zealand, United Kingdom and the United States issued a joint statement: [Principles to Guide Government Action to Combat Human Trafficking in Global Supply Chains](https://www.state.gov/principles-to-guide-government-action-to-combat-human-trafficking-in-global-supply-chains/). This statement was welcomed by business and is helpful because it recognized the need to address human trafficking issues in public procurement and provided a constructive opportunity for policy alignment across jurisdictions.

Within the US, the development of the US National Action Plan on Responsible Business Conduct (USNAP), carried out from 2014 – 2016, was a positive exercise because it enabled various US government agencies to align around principles, definitions and approaches to human rights.

During the development of the USNAP, US companies, largely through the US Council for International Business, as well as other business membership organizations, had the important opportunity to participate actively and constructively in several US government convenings on the development of the USNAP.

1. **Have improvements in policy coherence, including through development of NAPs or other policy frameworks, impacted on the business practices of your member companies and, if so, in what ways? Please provide examples.**

The clarity resulting from the USNAP and improved coordination among US government agencies has been positive for business and has provided greater information for business on the experts and resources within the US government that can be called upon when companies are carrying out human rights due diligence or more broadly working to demonstrate respect for human rights in their operations. While the USNAP was a strong start to driving alignment within US government, other US government agencies are now arriving later to the process, and new opportunities for alignment have emerged. As an example, the US Department of Labor (DOL) International Labor Affairs Bureau (ILAB) and State Department Bureau of Democracy, Human Rights, and Labor (DRL) is staffed with career officials with deep subject matter expertise on labor and human rights. Drawing on such expertise could benefit other parts of the US government charged with carrying out newer policy initiatives. At the same time, these agencies experience resource constraints that limit the ability to both coordinate around a new initiative, as well as ensure effective implementation. Significant new funding is necessary to support the growing efforts of these agencies to shape and respond to policy developments and work with stakeholders to properly address new responsibilities.

1. **What role should industry associations play to strengthen rather than undermine the governments’ efforts to enhance policy coherence in promoting business respect for human rights?**

The question itself is problematic in that it wrongly assumes that the default position for industry associations is to undermine governments’ efforts to enhance policy coherence. The private sector benefits from, and expects, clarity, consistency, and predictability in places where it conducts business – as well as an overall enabling environment for economic activity. Many businesses have committed to respecting human rights and work through their business organizations to even more broadly promote proactive, effective, experienced-based solutions to addressing human rights issues. At the global-level, the International Organization of Employers, Business at the OECD, and the International Chamber of Commerce – and many of their individual member associations – have all committed to the UNGPs and have kept the UNGPs front and center in business and human rights discussions. They have consistently promoted participation in the UN Forum on Business and Human Rights, the OECD’s Global Forum on Responsible Business Conduct and numerous other human rights fora. Industry associations have also played a key role in facilitating UNGPs training and peer-to-peer business exchange among their members and beyond their membership to smaller companies. In support of the important work done by the US DOL ILAB, several US businesses and business associations have advocated to Congress to maintain or increase DOL ILAB’s funding. Lastly, the International Labor Organization’s International Training Centre is currently developing enhanced Responsible Business Conduct training (inclusive of various human rights issues) to deliver to industry associations around the world (see [here](https://www.itcilo.org/en/areas-of-expertise/strengthening-employers-organizations/promoting-responsible-business-conduct-in-supply) for details), which will further strengthen their member companies’ awareness, knowledge and capacity to address human rights issues.

1. **Are there any linkages made to encourage policy coherence in promoting responsible business conduct as part of the efforts to engage the corporate sector to contribute towards the Sustainable Development Goals?**

While human rights are not explicitly cited as one of the UN Sustainable Development Goals (SDGs), human rights clearly align with the 17 SDGs. In this context, the USNAP aligns with and complements broader US government actions in support of the SDGs.

Many US Government efforts surrounding the SDGs focus on data collection. In 2018, the US released its, [*Sustainable Development Report Of The United States 2018*](https://www.sdgusa.org/uploads/SDGreport2018.pdf)*,*which seeks to analyze the baseline of the 50 US states on SDGs. The results show significant geographical variation across the US, as well as the need for significant improvements nationwide to achieve No Poverty (Goal 1), Gender Equality (Goal 5), Reduced Inequalities (Goal 10), Climate Action (Goal 13) and Peace, Justice & Strong Institutions (Goal 16).

The US Government also released the [*U.S. SDG Data Revolution Roadmap Roundtable Report*](http://reports.opendataenterprise.org/us-sdg-report.pdf)in January of 2017. The report opens with the following quote from the Center for Open Data Enterprise:

“The U.S. Government has a unique opportunity to ensure that data is collected, maintained, and utilized for the Sustainable Development Goals. To do so, the government will need an ambitious, detailed Data Roadmap and the commitment to follow it.”

Finally, US AID continues to partner with countries and communities around the world to tackle some of the most intractable problems such as child and maternal death, hunger, gender inequality and climate change.

1. **Please provide any other relevant information relating to policy coherence to protect against business-related human rights abuse that you think that the Working Group should take into account in its preparation of the report to the General Assembly.**

To truly bring about protection and respect for human rights around the world, more focus needs to be given to building the capacities of governments to write laws that meet international standards, and then effectively enforce those laws in their own jurisdictions. If every government in the world enacted sound governance and rule of law in their own counties, it would provide a strong foundation of respect for human rights globally. In particular, more intra-national coordination is needed across domestic agencies to address adverse human rights impacts at the source. Better alignment and coordination are also needed across law enforcement, judiciaries, and ministries or departments of home affairs, commerce, labor, agriculture, immigration, etc.

The above, together with increased numbers of companies - especially SMEs– acting to demonstrate their corporate responsibility to respect, and with engagement from civil society, is the best combination of actions to progress protection and respect for human rights around the world.

In addition, before governments embark on new regulation with transnational characteristics, there should be an objective, evidenced-based analysis, carried out in consultation with rights-holders, on whether such legislation – directed only towards large transnational corporations – has been effective in preventing or remedying adverse human rights impacts. Notable regulations to evaluate would be the US conflict minerals rule and the UK Modern Slavery Act.

1. The Working Group has issued guidance for States to support development of NAPs to advance implementation of the Guiding Principles [https://www.ohchr.org/Documents/Issues/Business
/UNWG\_NAPGuidance.pdf](https://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf) [↑](#footnote-ref-1)