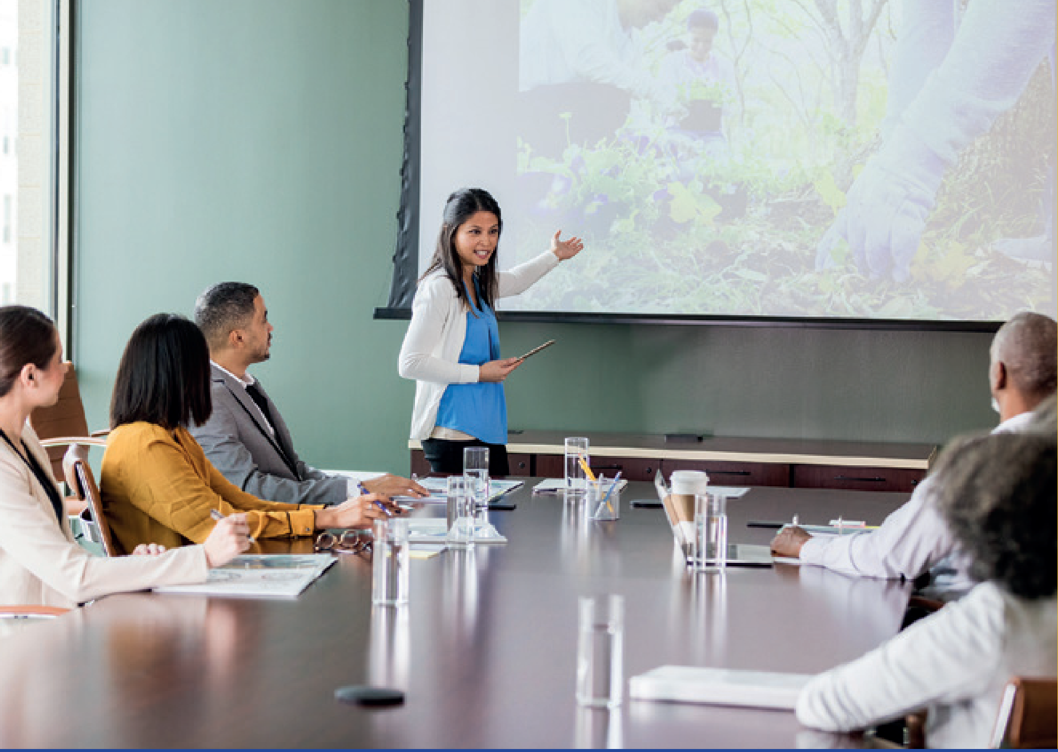

KOMMERSKOLLEGIUM
NATIONAL BOARD OF TRADE SWEDEN

Trade Policy and Policy for Responsible Business Conduct

Contributing to a sustainable economic recovery

2021

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Foreword

The COVID-19 pandemic has intensified sustainability challenges and highlighted weaknesses in global value chains, but it has also emphasised the positive role trade and trade policy can play in economic recovery.

Responsible business conduct is an important tool to manage sustainability challenges and can create resilience in supply chains and global value chains, thereby creating long term value. Strengthening the link between trade policy and policy for responsible business conduct can therefore contribute to a more sustainable economic recovery.

These two policy areas have so far primarily developed in separate tracks. Considering the increasing challenge the pandemic presents, much is to be gained from better policy coherence and deeper policy integration.

This report provides an overview of *reasons why* increased coherence between trade policy and policies to promote responsible business conduct creates synergies leading to more responsible, transparent, and resilient global value chains and in turn a more sustainable economic recovery.

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Stockholm, February 2021

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1 Introduction

The COVID-19 pandemic has exacerbated many sustainability challenges and highlighted weaknesses in global value chains (GVCs), but also created momentum to rethink how trade policy may contribute to a more sustainable way of reaching economic recovery. At the same time, several crucial economic policies, including trade policy and policy for responsible business conduct, are currently under review at the EU level. This offers a unique opportunity to seek better coherence and create synergies between the two policy strains.

Responsible business conduct (RBC) can broadly be described as measures businesses take to integrate sustainability into their decision-making and core business. It is about being aware of and managing the societal impact of business operations and can be seen as a consequence of the sustainability challenges that arise from the development of trade in supply chains and GVCs.

The intention of this report is to contribute to the ongoing analysis of the role of trade policy in managing the consequences of COVID-19 towards a sustainable recovery. The purpose is to provide an overview of *why* the integration between trade policy and policies to promote RBC may reinforce the process towards more responsible, transparent and resilient value and supply chains, thereby laying the groundwork for a long-term and sustainable economic recovery. In the second part of our analysis, which we are planning to deliver during 2021, we wish to examine *how* such closer integration between the two policy areas can be achieved based on the assessment of the current policy environment.

1.1 Background

The crisis caused by the COVID-19 pandemic poses an unprecedented challenge to the global economy. It affects global capacity to implement all 17 sustainable development goals (SDGs) in the 2030 Agenda. The pandemic has not only caused disruption in the implementation of the SDGs, but in some cases even turned back decades of progress.[1] Meanwhile, the world is entering the Decade of Action, with less than 10 years to fulfil the SDGs.

Consequently, ambitious and innovative policy interventions are in demand, including in the field of trade policy. The 2030 Agenda identifies international trade as an engine for inclusive economic growth and poverty reduction that contributes to the promotion of sustainable development.[2] If trade is to deliver on this ambition despite the detrimental effects of the COVID-19 pandemic, more strategic use of all available instruments will be necessary.

Trade is necessary to ensure both the supply of essential products and a response to the economic crisis. The Organization for Economic Co-operation and Development (OECD) has concluded that areas in isolation because of the COVID-19 virus would have been worse off if they did not have access to traded goods and had to rely on the local economy for their supply of both medical equipment as well as food and other necessities.[3] Trade is also essential to change the direction towards reaching SDG 1, no poverty. The World Bank concludes that trade in GVCs can continue to boost economic growth, create jobs and reduce poverty, provided that developing countries undertake deeper reforms and industrial countries pursue open, predictable policies.[4] The benefits of GVC participation can, however, only be widely shared and sustained if all countries enhance social and environmental protection.

As intergovernmental negotiations during the past decades have brought about limited progress in integrating sustainability into global trade, improvements achieved through RBC have become even more important.

RBC encompasses all the interfaces between businesses and society through the value chain. In the context of RBC, the value chain is a broader concept than the supply chain and considers sustainability impact on all stakeholders, from workers to consumers. Even more importantly from a trade perspective, RBC is a way of creating resilience in the value chains and of strengthening their contribution to sustainable development. Companies that apply RBC policies and conduct structured due diligence[5] show a higher adjustment capacity in face of disruptions, such as the COVID-19 crisis.[6] This is primarily due to increased transparency and risk awareness throughout the value chain, achieved by the implementation of RBC standards and principles. Companies that take a proactive approach to address COVID-19-related risks by mitigating adverse sustainability impacts through RBC are therefore likely to build more long-term value and resilience.[7]

1.2 Scope, method and structure

The analysis undertaken in this report focuses primarily on EU trade policy and the EU approach to RBC, although references are made to multilateral as well as national contexts. The analysis is based on a thorough literature review of policy and legal documents as well as reports by leading stakeholders in both policy fields. This is complemented by the evaluation of relevant academic literature.

In the following section, we provide a short overview of the development of RBC policy, the state of the art with RBC regulation, and the roles and perspectives of the private and the public sector. In part 3, we look at the role of RBC for trade policy and study how RBC has been incorporated in various trade policy instruments. In part 4, we develop the rationale for linking RBC and trade for the purpose of making the post post-COVID-19 recovery more sustainable. Finally, in part 5, we present our arguments for enhanced coherence between the two policy fields and its growing relevance in the future.

2 The development of policies for RBC

There are about as many different definitions of RBC, and the similar concepts Corporate Social Responsibility (CSR) and Environmental and Social Governance (ESG), as there are actors involved in the field. For the purpose of this paper, we use the broad definition provided by the European Commission of CSR/RBC as '*initiatives undertaken by enterprises to integrate social, environmental and ethical aspects in their decision making and core business operations*'.[8] The abbreviations CSR, RBC and ESG are hereinafter used interchangeably.

The definition and the scope of the concept has developed significantly over the past decades. What started mainly as a means of risk assessment or as charity work has developed considerably.[9] The concept of RBC now encompasses all three dimensions of sustainability and requires the integration of social, environmental and economic risk management within the core of business.[10] Consequently, RBC principles expect companies to both avoid and address any negative impact of their business operations, as well as to make a positive contribution to sustainable development throughout the entire value chain.[11]

What constitutes a CSR/RBC-related activity is constantly changing in response to new contexts and challenges, means of communication and the expectations of relevant stakeholders.[12] RBC principles are materialized in a number of international instruments, guidelines and standards – see Box 1 for an overview of the CRS/RBC standards generally referred to in EU trade policy.

Box 1. Overview of the CRS/RBC standards and guidelines generally referred to in EU trade policy

OECD Guidelines for Multinational Enterprises[13] is one of the most comprehensive international standards on RBC. Expectation of businesses to act responsibly covers all areas of business responsibility. Monitored by National Contact Points,[14] which promote the guidelines and function as a grievance mechanism providing access to remedy in cases against companies when the Guidelines are not met.

The OECD has also developed a Due Diligence Guidance for Responsible Business Conduct as a practical support for enterprises on how to perform due diligence, as well as sectoral guidance to identify and assess risks in particular sectors, including minerals, extractives, garment and footwear, agriculture and financial services.[15] The OECD specifically mentions building resilient supply chains as a purpose of these sectoral guidelines.

UN Global Compact

UN initiative with the aim of making businesses aware of the ethical dimension of business practices and encouraging them to increase their social responsibility, establishing 10 principles in areas within human rights, labour rights, anti-corruption and environmental responsibility.

UN Guiding Principles for Business and Human Rights[16]

The UNGPs implement the UN ‘Protect, Respect and Remedy’ Framework on the issue of human rights and transnational corporations and other business enterprises, providing a global standard for promoting respect for human rights throughout business practices. National governments are encouraged to develop their own National Action Plans (NAPs) that put the UN’s principles into practice at the national level.

International Labour Organization (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy[17]

Provides direct guidance to enterprises on social policy and inclusive, responsible and sustainable workplace practices. Includes areas such as employment, training, conditions of work and life, industrial relations and general policies, based on the principles in international labour standards.

These international standards and guidelines on RBC create a common understanding and clear expectation of what companies should do to behave sustainably and responsibly. Predictability and consistency contribute to creating a level playing field for businesses regarding responsible conduct in the international marketplace.

Many RBC strategies and measures have a direct impact on the terms of trade. For example, RBC standards and guidelines generally require transparency and disclosure of business information and are increasingly becoming more detailed.[18] Companies are expected to conduct due diligence of their value chain in order to identify sustainability risks, as well as to report on the risks they have identified, and on the way of managing them. Some companies choose to implement codes of conduct imposing sustainability requirements throughout their supply chain. It should be noted that it is far from uncomplicated to comply to the requirements of international guidelines and that the capacity to conduct RBC policies varies greatly between sectors and companies. In general, multinational enterprises (MNEs) are better equipped to do so than small and medium-sized enterprises (SMEs).

2.1 RBC as a consequence of GVC development

RBC policies and activities can be seen as an attempt to prevent and address sustainability implications of fragmentation of production and trade through GVCs. Globalization and the fragmentation of value chains has had many positive development effects, but not without concern for potential negative sustainability effects, such as negative labour market outcomes, a lack of protection for labour rights, and the risk of carbon leakage.[19] These risks are deeply connected to national preconditions, such as infrastructure, governance levels, rule of law and policy environment.[20] A less robust governance structure is associated with sustainability risks for both trading companies and for countries that want to attract international trade.

On the one hand, companies may shy away from doing business in countries with limited capacity for legal enforcement, due to potential reputational and legal risks.[21] On the other, lax domestic regulation on, for example, protection of the environment or labour rights, may be considered attractive to companies.[22] Comprehensive social and environmental regulation can be seen as increasing product costs for businesses and thereby a disadvantage for countries competing for investments. The fact that trade in GVCs enables the location of production where the cost of production is the lowest, creates a risk for a so-called *race to the bottom* where countries seek a competitive advantage through lower levels of protection. This is especially the case for economies that need to attract trade and investment but have limited institutional capacity to ensure compliance with regulation. In such contexts, and especially at the time of crisis, companies may be tempted to neglect respect for high standards of business conduct as a strategy to gain competitive advantage.

Committing to adhering to international standards and principles on RBC can be a way to manage this temptation and to level the playing field for what is considered a responsible and sustainable behaviour. In fact, companies wanting to protect basic labour rights for workers in their supply chain, even in countries where the government has difficulties upholding these rights, has been a contributing factor to the development of RBC standards.[23]

2.2 From shareholder to stakeholder

RBC has been driven and developed primarily by the private sector. As a consequence, the private sector has been leading this development, including through self-regulation, while the regulator has remained mostly reactive.

2.2.1 The business rationale for acting responsibly and sustainably

It is by now increasingly recognized that RBC is good for business.[24] McKinsey finds that effective execution of ESG can impact operating profits by as much as 60%.[25] For example, RBC may reduce costs through more environmentally friendly policies, such as energy efficiency measures.[26] Being perceived as exposed to fewer risks may also reduce the cost of capital through higher credit ratings and more beneficial loans.[27] Profits may arise from portfolio diversification through innovative and sustainable business models, opening up new markets, as well as building an attractive brand that allows charging a price premium.[28] Consequently, working actively with sustainability through RBC is a matter of competitiveness, which is especially important for trading companies facing international competition.

RBC is today deeply connected to managing expectations from not just shareholders, but all stakeholders. The motivation and pressure to act responsibly and sustainably come from all directions. An increasing number of employees are looking for a higher purpose at work; consumers purchase goods with a demonstrated commitment to sustainability; and investment flows into sustainable alternatives are ever increasing.[29] Interestingly, motivation may also come from the supplier side. For example, a case study from the National Board of Trade has shown that one of the main motivations for companies that engage in gender equality and women's economic empowerment in the supply chain, is to maintain commercial relationships with suppliers in a competitive market.[30]

These findings gain additional relevance in times of crisis. The OECD reports that the market volatility following the COVID-19 crisis has increased investor interest in ESG issues, and that ESG funds are already outperforming traditional funds. [31] The OECD also finds it likely that the impact on brand strength and corporate reputation will apply in a post-COVID-19 context, with investors and consumers looking more favourably to companies that have sought an RBC approach to the crisis.[32]

2.2.2 Stakeholder analysis is especially important for trading companies

Internationalization and trade in GVCs increase the number and widens the circle of stakeholders a firm interacts with. For example, a firm that starts to export gains new stakeholders, such as foreign customers and destination country governments. Conversely, importing firms add foreign suppliers and governments in the countries they source from to their stakeholder list. Potential CSR/RBC preferences of these stakeholders will likely influence firm decisions and CSR activities if these preferences differ from those of the domestic stakeholders.[33] This ought to mean that firms who trade internationally have even more incentives to conduct their business in accordance with RBC principles.

2.3 From voluntary to *de facto* to *de jure*

Originally, CSR/RBC were seen as purely voluntary commitments by individual businesses that went beyond the legislated requirements of their operations, with the aim of mitigating potential negative environmental and social consequences of their activities. Recognizing that many sustainability challenges are similar, and as a way to level the playing field, businesses started to cooperate. Several voluntary international guidelines on how businesses can manage their social and environmental impact were developed. One of the driving forces was to contribute to fair competition by preventing a free-rider problem where certain companies invest heavily in sustainability issues and others do not.

Although the majority of horizontal guidelines were developed under the auspices of international organizations or governments, it was often done on private sector initiative and with extensive private stakeholder involvement. As a growing number of businesses started to adhere to these voluntary guidelines, they became a de facto requirement. Consequently, if a new company wishes to enter a specific supply chain, it has no choice but to commit to a conduct based on the RBC standards.[34]

In addition to increased demand for business to comply to RBC standards, there has been a growing recognition that the successful RBC requires complementary government action. [35] As a consequence, governments are gradually taking a more active role in promoting and enabling RBC, both through the creation of policy frameworks, and through observing RBC standards themselves when acting as an economic actor[36] to ensure policy coherence. [37] This adds to a trend of "legalization" of RBC,[38] creating regulatory requirements in place of previously voluntary measures.

2.4 Trend towards RBC regulation

Growing public awareness of the importance of sustainability on the one hand, and expectation that trade and the private sector are necessary to achieve the SDGs on the other, has increased pressure on governments to introduce regulatory requirements on RBC. The pressure comes from the civil society, the investors and – not least – the companies themselves.[39] The companies are positive towards regulation primarily as a way to level the playing field and to encourage engagement. The latter is perhaps thanks to the increased self-awareness that voluntary measures are not always sufficient. Recent reports[40] show a lack of implementation by companies who voluntarily commit to RBC standards. For example, in Germany businesses are currently responsible for monitoring subsidiaries for human rights violations on a voluntary basis, but if not enough companies conduct human rights due diligence[41] (HRDD) on a voluntary basis, mandatory legislation may be implemented. [42] This confirms the assessments of global businesses,[43] which indicate that if left to a voluntary approach, it is only a minority of companies that take action on their human rights responsibilities. [44] This speaks in favour of governments introducing more mandatory regulation.

Regulation is also seen as a way to counteract the "short termism" built into most business models. This implies that businesses tend to focus on short-term shareholder value maximization rather than long-term interests of the company, which reduces the long-term economic, environmental and social sustainability of business.[45] Evidence from EU listed companies between 1992 and 2018 confirms that trend. The problem with short-term strategies is that they can lead to 'overwhelming environmental, social and economic consequences for companies, shareholders, investors and society at large', jeopardizing the prospect of achieving the SDGs and the goals of the Paris agreements. [46] In addition, the short-term thinking hinders companies from seeing new opportunities for investment or building resilience in the supply chain.

2.4.1 Examples of regulation on RBC

The increased pressure on the public sector to regulate business sustainability in the supply chain has led to various responses at the national as well as transnational level. They range from adoption of guidelines and action plans to introducing mandatory regulatory requirements in the field of CSR. The focus for recent regulatory interventions has been primarily on HRDD.[47]

Regulatory responses at the national level[48]

In Europe, France, the UK and the Netherlands have adopted regulations requiring companies to carry out supply chain due diligence, or to report on actions to deal with adverse human rights and environmental impacts through their supply chains. Other countries, such as Germany, Switzerland, Norway and Finland are currently considering specific legislation on HRDD.

UN Treaty process

In 2014, the UN Human Rights Council initiated a process towards an international legally binding instrument to regulate business activities based on requirements in international human rights law – a treaty on business and human rights.[49] An intergovernmental working group was established and negotiations are ongoing, with a Second Revised Draft of a treaty published in August 2020.[50] This process, however, still has a long way to go, which may be illustrated by the fact that the EU does not even have a negotiating mandate.[51] Such a regulation might also prove difficult to realize since it would require a harmonization of legal frameworks on all levels and within most policy areas.[52]

EU-level regulation

Initially, the EU's engagement in CSR focused primarily on promoting CSR in the EU and encouraging enterprises to adhere to international guidelines and principles. The Commission engaged in enhancing the visibility of CSR and disseminating good practices, through the integration of CSR into education, training, and research. In 2011, the Commission adopted its renewed strategy for CSR, which builds on the idea of a smart mix of voluntary policy measures led and developed by enterprises and, where necessary, complementary regulatory intervention by the public authorities.[53]

The first regulatory interventions by the Commission addressed a number of specific sectors where European trading companies are faced with particular sustainability challenges, such as conflict minerals and illegally harvested timber.[54]

In 2014, the EU adopted the first horizontal regulation in the field of RBC, the Non-Financial Reporting Directive (NFRD), introducing binding reporting obligations on sustainability issues, see Box 2.

Box 2. Non-Financial Reporting Directive (NFRD)

The NFRD introduces binding reporting obligations for a certain category of companies to disclose information on their strategies in the fields of the environment, social and worker concerns, human rights, the fight against corruption and boardroom diversity.
The Directive applies to large undertakings, which are public-interest entities such as publicly listed companies, banks and insurers employing more than 500 staff members, which covers approximately 6000 large companies across the EU.

The intention of the directive is twofold: to help investors, consumers, policymakers and other stakeholders to evaluate the non-financial performance of large companies, and to encourage these companies to develop a responsible approach to business.

The NFRD does not specify how the information shall be disclosed, but recommends that companies can use recognized international guidelines. This flexible approach has been criticized for not offering sufficient incentive for businesses to behave more sustainably, as well as for creating an inconsistent reporting landscape that hinders both comparability and accountability. Consequently, when launching the European Green Deal, the Commission committed to review the NFRD in 2020, with the intention of ensuring that investors, civil society and other interested parties have access to the information they need, while not imposing excessive reporting obligations on companies.

EU current legislative process on sustainable corporate governance
The variety of national regulatory initiatives risks fragmenting the internal market, and the corporate governance framework already varies significantly among EU Member States. This impelled the Commission to launch a study on regulatory options to require companies to conduct human rights and environmental due diligence in order to ensure a level playing field and set a minimum common ground for long-term sustainability while avoiding market distortions.

Box 3. The case of human rights due diligence in global supply chains

A risk-based Human Rights Due Diligence (HRDD) is a key element to RBC and corporate respect for human rights, included e.g. in UNGP and OCED MNE Guidelines, described by the OECD as a process through which businesses "*identify, prevent and mitigate their actual and potential negative impacts and account for how those impacts are addressed*".

The World Benchmarking Alliance have reviewed almost 230 global companies and show that even if there has been great progress on meeting the fundamental principles of the UNGP, the protection of human rights is still a challenge. The report shows that less than 50% of the companies perform an HRDD of their value chain. There also seems to be a disconnect between commitments, processes and actual results. It seems to be hard to translate commitments on human rights work into practice.

Of special interest from a trade perspective is that the benchmarking report for the first time included the automotive sector, a highly traded sector with complex value chains. It was the worst performing sector ever included in the benchmarking, with supply chain management as their major weakness. Nine out of 10 companies scored 0 in terms of demonstrating how they manage risks on fundamental labour rights, such as forced or child labour, freedom of association and collective bargaining.

It is also noteworthy that the negative human rights impact is overwhelmingly focused on developing countries. Out of 225 allegations of severe human rights impacts, such as forced or child labour, 85% occurred in developing countries (predominantly in India, China and Indonesia) despite the fact that 78% of the companies assessed are based in or have their headquarters in OECD member countries. Industries where human rights abuses, such as child labour or forced labour are more frequent, are less likely to contribute to global supply chains. The child labour that does contribute to export to a great extent does so indirectly (e.g. agriculture and raw materials).

These findings are an important reminder that trade in GVCs has a wide, and not always positive impact on sustainability. It also makes it perfectly clear that any effective efforts to prevent and eliminate human rights abuses such as child labour in value chains has to go beyond the immediate suppliers in "Tier 1" and "extend beyond the downstream suppliers of supply chains to comprise actors in the upstream segments of supply chains" to be effective.[55]

2.5 The role of government in RBC

When trade globalizes, the impact of businesses expands. In a world of GVCs and complex business structures, multinational enterprises (MNEs) increasingly gain influence over trade policy and the terms for conducting business internationally. The creation of private RBC standards and guidelines for managing sustainability impacts is one example of this development and means that modern trade is not only regulated by states and trade organizations, such as the World Trade Organization (WTO), but de facto also by private actors. This should be taken into account when assessing the role of government and public policy in RBC. It is equally clear that governments and companies both have a part to play, and that their roles differ with regard to, for example, capacity, legitimacy and accountability.

When discussing the nexus between trade policy and policy for RBC it is important to bear in mind that, unlike states, corporations are not subjects of international law. This means that international agreements and conventions, such as trade agreements or international conventions on human rights, are not legally binding for them. Companies have no responsibility to protect or implement obligations in these international agreements, including provisions on RBC. However, including RBC commitments in trade policy is an important way of recognizing the complementary role of businesses in promoting sustainable value chains.

The role of governments in RBC can be divided into two main categories: to promote and enable effective implementation of RBC standards, and, as an economic actor, to lead by example – such as through public procurement policies, requirements on sustainability reporting for state-owned enterprises, trade promotion, and trade policy.

In line with the OECD Guidelines, the expectation on governments is to provide an enabling framework for companies to act responsibly, in particular through[56]: 1) Regulation: establishing and enforcing an adequate legal framework that protects the public interest and underpins RBC, and monitoring business performance and compliance with regulatory frameworks; 2) Facilitation: clearly communicating expectations on what constitutes RBC, providing guidance with respect to specific practices and enabling enterprises to meet those expectations; 3) Cooperation: working with stakeholders in the business community, worker organizations, civil society, general public, across internal government structures, as well as other governments to create synergies and establish coherence with regard to RBC.

3 RBC and trade policy today

As concluded above, trade policy contributes to the shape and development of GVCs. Along with increased recognition of the potential negative impacts on sustainable development of trade in GVCs, trade policy also developed a role in addressing the effects of trade in GVCs. As of mid 2019, about one-third of regional trade agreements in force included labour provisions, and it is standard for the EU to include a chapter on trade and sustainable development in their Free Trade Agreements (FTAs).

Trade policy also increasingly includes provisions on the expectation that business should behave responsibly. Even though the vast majority of trade agreements do not refer to CSR/RBC, the number of CSR clauses in trade agreements have seen a rapid increase over the last decades, going from zero in the year 2000 to over 30 in 2016.[57] This development indicates an increased legalization of RBC, as well as its increased connection to trade policy.

3.1 RBC and the WTO

Sustainability is engrained in the multilateral trading system in many ways. The agreement establishing the WTO specifies sustainable development as a key objective of the multilateral trading system, and thereby a guiding principle for application and interpretation of the WTO trade rules.[58] The integration of social issues into trade agreements was, however, due to fierce opposition from developing countries, excluded from the WTO agenda since the Singapore Ministerial Declaration 1996, and handed over to the ILO. One could argue that since RBC initially focused primarily on corporate *social* responsibility, it shared the fate of the social agenda under the WTO. Moreover, as the WTO governs countries and not companies, RBC standards established by companies for companies were not considered to be covered by the WTO mandate.

Despite this initial caution, RBC has been discussed in the WTO as a potential strategy to manage criticism of globalization, including a proposal in 2002, from the then Director General of the WTO, for the Doha Round to include negotiations on a code of conduct for multinationals explicitly linked to the WTO agreement.[59] In 2003, WTO members banned trade in so-called conflict diamonds, agreeing to trade only with diamonds that had received a certification, with the intention to ensure that the mining and production of the diamonds were free from human rights violations.[60]

Criticism levelled against including RBC-related measures into the multilateral trade agenda has included that such measures could be trade distorting because they create barriers to trade based on a qualitative requirement. [61] For example, in advance of the Doha ministerial conference, developing countries argued that the use of social or eco-labelling could create de facto trade barriers and impede market access for developing country producers.[62] In addition, measures including requirements based on how a good is produced, could challenge the current WTO approach to “like products”, a fundamental aspect of the WTO principle on non-discrimination.

Consequently, persisting limitations in inclusion of RBC in the WTO negotiations led to its increased integration in other trade instruments, especially FTAs. The first FTAs to include a reference to CSR was the US–Chile Trade Agreement (2003).[63]

3.2 The inclusion of RBC in current EU trade policy

With the opening of EU trade policy towards inclusion of a wide range of sustainability considerations, RBC issues have become increasingly integrated in the European trade policy and practice. The 2015, Trade for All strategy emphasizes that the EU’s trade and investment policy must respond to consumers’ concerns by reinforcing corporate social responsibility initiatives and due diligence across the production chains. [64]

Concrete examples of implementation of this ambition through EU trade policy, which will be discussed below, are inclusion of RBC considerations in FTAs, cooperation with international organizations and country-specific strategies, as well as in EU trade relations with developing countries through the General Scheme of Preferences (GSP) and Aid for Trade instruments. Some of the RBC-related regulations described above also have a clear trade connection, such as the EU “Conflict Minerals Regulation”, EU Timber Regulation, and the EU Non-Financial Reporting Directive. [65]

3.2.1 RBC in EU FTAs

The European Parliament has called for systematic integration of legally binding CSR clauses in all future trade agreements since 2011.[66] In 2017, the European Commission committed to contributing to the promotion of CSR/RBC through its trade policy and to reinforce international instruments on CSR/RBC. This objective is to be achieved through 1) The negotiation and implementation of provisions on CSR/RBC in trade and investment agreements; 2) Active participation in the work of international fora on CSR/RBC; 3) Conflict minerals regulation; and 4) Country-specific partnerships.[67]

CSR provisions have been included in EU FTAs since the Joint Declaration in EU–Chile 2004. In the most recent FTA negotiations, they are systematically integrated in Trade and Sustainable Development (TSD) chapters. The provisions have developed from general references to international guidelines, to explicit commitments to promote specific CSR instruments. The most common types of provisions include joint cooperation activities, encouragement of enterprises to commit to voluntary CSR mechanisms, as well as commitment to facilitate and promote trade in goods subject to CSR schemes. Additionally, depending on the partner country, provisions may include commitments to implement measures to promote the uptake of relevant sectorial guidelines, such as the OECD Due Diligence Guidance on conflict minerals, for example, Chile.[68]

During recent years, CSR provisions have gained increased attention in the implementation of sustainability commitments in FTAs. Recently adopted FTAs introduce innovative implementation mechanisms that are applicable to provisions of TSD chapters and CSR clauses. The mechanisms rely on the active participation of civil society, at the national level, and of international organizations.[69] Taking action on RBC is also one of the main priorities for the EU's strategic work with effective implementation and enforcement of TSD provision in FTAs.[70] In this regard, a clear trend can be observed towards including the private sector in the strategic planning of implementation of the European sustainability ambitions. A recent example can be found in the Sustainability Impact Assessment (SIA) for negotiations of the Association Agreement between the EU and Mercosur of July 2020, where RBC-related actions are recommended to address potential negative sustainability impacts of the future agreement.[71] This is a clear indication that RBC is seen as a trade-related tool, which can be used to address risks related to trade liberalization, and that the contribution of the private sector is used as a complement to the intergovernmental implementation activities.

3.2.2 International cooperation[72] and country partnerships

In addition to cooperation following from commitments in FTAs, the Commission also engages in several international partnerships to promote RBC. [73] Notable examples of partnerships include[74]: the *Bangladesh Sustainability Compact* where the Commission encourages

EU companies to contribute to safe working conditions in the garment sector in Bangladesh, and works with the government to create a better enabling environment; *the Labour Rights' Initiative in Myanmar*, which aims to support the government and stakeholders in promoting fundamental labour rights and responsible business practices; and the *Ship to Shore Project – Combating Unacceptable Forms of Work in the Thai Fishing and Seafood Industry*, which contributes to the prevention and reduction of forced labour, child labour and other unacceptable forms of work and the progressive elimination of exploitation of workers, particularly migrant workers in the Thai fishing and seafood processing sectors.[75]

3.2.3 Generalized Scheme of Preferences (GSP) and Aid for Trade (AfT)

RBC ambitions are also increasingly present in the EU's trade relations with developing countries. In the ongoing revision of the EU's Generalized Scheme of Preferences (GSP), the European Parliament has called for incorporating CSR into the GSP and GSP+ system, ensuring that transnational corporations whose subsidiaries or supply chains are located in GSP beneficiary countries are required to comply with national and international legal obligations on human rights, labour rights and environmental rules.

RBC ambitions are also reflected in the 2017 updated EU Aid for Trade (AfT) Strategy.[76] In line with the Strategy, AfT should promote RBC through using official development assistance more strategically as a catalyst to mobilize private financing. It should also promote social and environmental sustainability along value chains through integrated and multi-stakeholder approaches, with sustainability as part of companies' core strategies.

Recognizing that meeting standards required by international guidelines may pose a difficulty for low-income countries, the strategy is an attempt to complement commitments to RBC and sustainability with technical assistance and development cooperation. The idea is to offer practical support to governments' efforts to create enabling conditions for sustainable businesses by promoting CSR/RBC practices and by encouraging and assisting the uptake by businesses of international due diligence guidelines, following international standards.[77]

4 Linking RBC and trade for a sustainable, long-term and resilient recovery

Having presented the development of RBC policy and how it is incorporated into trade policy, this section analyses how and why linking these policy areas may contribute to making economic recovery more sustainable.

4.1 Trade is a necessary, but not a sufficient tool towards sustainable economic recovery

Trade is a requisite for economic growth. The development of trade as it is conducted today with a strong division of labour in GVCs has brought enormous economic prosperity. GVCs can generate growth, employment, skills development and technological transfer. The ILO estimates that about one out of seven jobs in the world is supply chain-related.[78] Trade in GVCs has also led to a massive rise in the participation of emerging and developing countries in the global economy and its value is more important for economic development in developing countries than high-income countries.[79] But economic growth is not automatically translated into inclusive and sustainable economic growth.

Along with enabling production to be outsourced, the GVC development has also enabled companies based in high-income countries to in effect outsource several sustainability challenges. The COVID-19 crisis has exposed many vulnerabilities in trade value chains as well as challenges with corporate action in addressing the issues. Goods consumed in high-income countries often cause higher emission of greenhouse gases in the countries where they are produced. Decent work deficits and human rights abuses in supply chains occur mostly in developing countries where the production takes place, while the responsible companies are based or have their headquarters in high-income countries, predominantly OECD countries.[80] Despite these challenges, as the OECD claims '*(t)rade is essential to save both lives and livelihoods*'.[81]

4.2 Both the pandemic itself and responses to it create challenges for international trade flows

Even though the continuance of international trade in GVCs is crucial to meet the challenges resulting from the crisis, it is currently facing several types of resistance. The pandemic and governmental responses, such as confinement, closed borders, export bans and shutdowns,[82] have created enormous challenges for businesses to continue their normal operations. Supply chain interruptions, cash flow problems, weaker final demand are just a few of the effects on the business side.[83] The United Nations Conference on Trade and Development (UNCTAD) estimates that the economic and social disruptions caused by COVID-19 have led to about USD 6 trillion in losses in global trade, which is about 50% larger than the decline in trade during the economic recession in 2008.[84] The problems business face, such as financial distress, have also led to mass unemployment and a direct impact on the workers who lost their jobs. Companies themselves have taken several extraordinary measures to ensure their continued business, such as urgent redirection of production, which may cause difficulties adhering to their usual RBC commitment and processes.[85]

This development has added fuel to a debate regarding the risks and downsides of trade in GVCs. Many of the trade-restrictive measures taken have been motivated with the purpose of reducing potential risks of being dependent on suppliers located on the other side of the world, adding to existing trade tensions, restrictions and distortions, tariff increases and government support. They have culminated in discussions about the need for potentially protectionist measures, such as the reshoring, relocating and shortening of supply chains, general sourcing considerations, as well as requirements of domestic production for strategic products, often framed in terms of resilience. Some argue that this urge for supply chain resilience will transform GVCs drastically.[86]

In this context, it should be borne in mind, that not all reshoring and relocation strategies can be labelled as protectionist. They may be a result of a commercial decision of a company. For example, the desire to be closer to the end consumer seems to drive a trend towards regionalization of value chains.[87] The technical development towards automation may reduce labour costs and enable business operations to move closer to the end consumer, which may also provide shorter process times, less risk of interruptions in the supply chain, and lower transportation costs.[88]

Nevertheless, even though the continuation of open trade is the best global response on an aggregate level, it is easy to see how individual countries may consider reshoring and increasing domestic production in an attempt to protect their citizens – for example, through the ambition to create a domestic supply of necessary goods.[89] As evidenced by a recent National Board of Trade report, these types of measures will most likely prove to have negative consequences both for the issuing countries, as well as developing countries, whose capacity to participate in global trade will be further limited.[90]

4.3 Transparency as a way to reinstate trust in global trade

As the impact of COVID-19 and governmental responses to it on the global economy has become increasingly visible, the WTO finds a slowdown in trade restrictive measures.[91] One important avenue through which to face the criticisms raised and reinstate trust in international trade is to increase the focus on transparent and sustainable value chains.

Countries need to be able to trust that global markets will supply the goods and services they need. The OECD identifies transparency, global dialogue and co-operation as essential elements to rebuild confidence in both the global economy and in globalized trade.[92] This entails, on the one hand, focusing on notifying any trade-related measures taken in response to COVID-19 to the WTO. On the other hand, it refers to openness in business operations, which is critical to reducing market uncertainty and highlighting risks, and which may help develop more effective responses to the crisis. Being transparent requires investments in information gathering, monitoring market development, and communicating findings.[93] This reference to openness in business operations is the main link between trade policy and policies for RBC.

4.4 RBC is a key component of a responsible and sustainable economic recovery

The most recognized way to create awareness of business impact is to conduct a risk-based due diligence. This is a key element to RBC and described by the OECD as a process through which businesses '*identify, prevent and mitigate their actual and potential negative impacts and account for how those impacts are addressed*'.[94] Accounting for the impact is a matter of creating transparency of business operations.

Transparency leads to increased risk awareness and contributes to creating resilient value chains, as evidenced by the fact that companies that apply RBC policies and conduct structured due diligence show a higher adjustment capacity in face of disruptions, such as the COVID-19 crisis.[95] Companies taking a proactive approach by mitigating adverse sustainability impacts through RBC are therefore likely to build more long-term value and resilience.[96]

The recovery of international trade and GVCs requires an increased focus on sustainability, where RBC is a crucial element. The desire for fast economic recovery after the crisis poses a risk that sustainability considerations will be downgraded by both businesses and governments alike. This was the case during and after the financial crisis in 2008–2009. Today, however, sustainability considerations are much more engrained in both business strategies and governmental policies. Companies to a greater extent actively engage in working towards a sustainable future, as well as ensuring a level playing field. Increasingly, the private sector is spearheading the development. An increasing number of companies use the SDGs as the basis for their sustainability engagement and there are several examples of how responsible businesses have both a positive impact on the SDGs as well on company performance.[97] Consequently, including an RBC approach in the policy responses to the current economic crisis places a stronger emphasis on corporate responsibility to be accountable for their impact in their value chain and may contribute to creating a balance between economic and sustainability commitments.

4.5 Policy coherence and partnership create synergies in efforts to reach sustainable development goals

The need for cooperation, partnership and policy coherence to achieve he SDGs has already been highlighted in the 2030 Agenda and the Addis Ababa Action Agenda (AAAA).[98] The exacerbated sustainability challenges increase this need to reach synergy effects. Implementing the SDGs is a joint responsibility, emphasizing the need for coordinated and multi-stakeholder approaches and calls for a robust involvement of the private sector in global development. International RBC standards touch upon most SDGs and provide a framework for action, including for issues that may be out of the company's control. They provide assistance in prioritizing and addressing the most significant impact from the business operation, and thereby constitutes an important tool to maximize the contribution from the private sector to the SDGs.[99] Implementing RBC principles is one way of operationalizing business ambitions to contribute to the SDG.

In order to deliver on the SDGs despite the increased pressure on the sustainability agenda caused by the crisis, governments need to ensure that all public policies are consistent with, and do not undermine, the achievement of the SDGs. Consequently, a priority for trade policy should be to support and incentivize the private sector to implement the 2030 Agenda and to build sustainable value chains. Stronger government action is needed to improve policy coherence, set clear expectations and create incentives for businesses to act responsibly by leading by example.[100] Enhancing policy coherence requires that governments collaborate with each other, and the private sector, to make sure that international RBC principles and standards, as well as initiatives on RBC developed at the international level, are coordinated and consistent.[101]

5 Why further coherence between EU trade policy and policy for RBC is important to contribute to a sustainable recovery post-COVID-19

The following section provides an analytical overview of motivations for why it is important to strengthen the link between trade and RBC policies to create synergies in policy efforts to make EU economic recovery more sustainable.

Since trade policy contributes to the shape of GVCs, trade policy also has a role in addressing the sustainability effects of trade conducted in GVCs

Recognizing that trade may have a negative sustainability impact, FTAs increasingly include sustainability provisions with the intention to manage the effects of the trade they facilitate. However, since companies are not bound by trade agreements, they are not directly responsible for the implementation of their provisions, including those on sustainability. This can be seen as an accountability gap – a discrepancy between the benefits companies receive from trade agreements, and the accountability for the trade they are able to conduct through the new market access.

By including RBC/CSR provisions into EU trade policy, public policy may support and create an enabling environment for the private sector's commitments to responsible business conduct. This may contribute to creating responsible value chains and the coherence of business behaviour globally. Encouraging the alignment of corporate behaviour with sustainable development objectives through trade policy may also be a way of closing the potential gap between provided benefits and lack of responsibility for implementing sustainability provisions.[102]

International trade may contribute to the spread of RBC, and vice versa, RBC may contribute to increased trade flows

Empirical evidence indicates that firms that import inputs or export outputs are more likely to engage in RBC, which is probably connected to the changes in stakeholder composition.[103] Consequently, encouraging domestic firms to connect to international markets may also contribute to the spread of RBC practices. In addition, recent research has found that a country's CSR rating has significantly positive results on international trade flows.[104] These findings in combination make a strong case for policy coherence between trade policy and policy for RBC.

Promoting sustainable and transparent value chains through RBC may help restore trust in the global trading system

A sustainable economic recovery requires international trade, but the potential of GVCs to deliver an inclusive and sustainable economic recovery is questioned. Adhering to RBC principles, such as transparency, may contribute to restoring trust in trade in GVCs. Public policy, including trade policy, should promote RBC to reinstate trust in the global trading system.

International standards and guidelines on RBC create clear expectations in responsible behaviour, contributing to a level playing field, fair competition and avoiding unnecessary barriers to trade

Including references to specific international standards and guidelines on RBC in EU trade policy provides these instruments with clarity of expectations on how trading companies should analyse and manage their sustainability impact in the value chain, without creating unnecessary barriers to trade. Clarity and consistency in requirements are also preferable from a supplier's perspective. A supplier that provides input to many different companies may have difficulties adjusting their business to fulfil demands from many different standards, or separate company level codes of conduct. This is especially important from a development perspective since many input suppliers are located in low-income countries.

Currently, RBC and corporate governance framework vary significantly among EU member states. Additional regulation on a national level, such as mandatory human rights due diligence, risk creating a fragmentation of the internal market. Any future regulatory intervention should happen on the EU level and be as harmonized as possible to avoid fragmentation and promote a level playing field. The scale and scope of EU-level regulation contributes to creating a minimum common ground for corporate sustainable behaviour while avoiding market distortions. In addition, RBC requirements on all companies operating on the EU market may create spillover effects.

Active RBC engagement makes trading firms less sensitive and more resilient in times of crisis, providing the foundation for future more sustainable business operations

Risk awareness and supply chain transparency that follow from active RBC work have proven to make firms more resilient in a crisis. Additional research on US firms indicates that having high CSR levels also makes firms more creditworthy, thereby reducing the risk of financial distress, likely leading to a more attractive corporate environment, better financial stability and more crisis-resilient economies.[105] This finding is prevalent in firms operating in competitive markets and with strong governance. Even though the connection is exacerbated during non-crisis periods, it is still additional support for the fact that the encouragement of RBC practices is a way to enable firms to be strong and resilient enough to be able to keep business operations going even during times of crisis.

Increased inclusion of RBC measures into FTAs provides an arena for increased legality and enforcement of RBC commitments

Embedding RBC provisions into legally binding instruments such as trade agreements, signals a stronger legal commitment from the parties to promote sustainable and responsible corporate behaviour. In addition, connecting RBC to trade policy can be a way of providing access to remedy through the enforcement mechanisms in trade agreements.

Promoting RBC through trade policy has the potential to help integrate low-income countries into international trade in a sustainable way

Firms in low-income countries may face ‘liabilities of origin; that is a negative perception about their ability to conduct their business responsibly’,[106] which in turn might hinder them from entering international markets and benefitting from the potential economic growth. Studies have found that engaging in CSR activities has been an effective strategy to overcome this perception. Consequently, a trade policy that promotes the implementation of RBC standards in low-income partner countries, e.g. through AfT strategies or through the implementation of FTA provisions, may also help integrate firms in low-income countries into international trade, contributing to the trade-related development goals in SDG 17.

The development of MNE corporate structures creates a governance gap, causing a need for better understanding of the interplay between voluntary RBC measures and regulation, as well as creating additional motivation for increased connections between trade and RBC policies

The reality of corporate structures of multinational enterprises means that a great portion of trade might take place between legal entities within the same corporate structure, instead of through international trade as traditionally understood, “among nations, at arm’s-length, and at prices determined by demand and supply in the marketplace”.[107] This trade could be seen as less international and more “internal” and may escape the realms of international trade regulation, and is increasingly hard to regulate.[108] The law primarily governs separate legal entities within the multinational corporate group and only to a certain degree governs the multinational enterprise as a whole, which in reality creates a governance gap challenging for traditional standards and regulation to fill.[109] Any regulation intended to govern corporate behaviour and sustainability effects by MNE business operations needs to take this governance gap into account. By contrast, RBC policies are, as a rule, applicable to the entire MNE value chain. Including references to RBC policies in trade policy would strengthen their importance and help bridge this regulatory fragmentation.

The Fourth Industrial Revolution (4IR) may facilitate RBC in GVC

The development of trade under the so-called Fourth Industrial Revolution (4IR) – rapid digital technological development – will have a profound impact on production, employment, consumption etc., and will consequently change both the nature of trade, and the conditions for doing business.[110] Parts of this trend towards digital technologies, including distributed ledger technology (such as blockchain) and artificial intelligence (AI), may enable a shift towards more transparent supply chains, making RBC elements such as due diligence easier, and enable fast accountability for business operations. Any policy reform needs to also take this into account.

6 Sammanfattning

Krisen orsakad av covid-19-pandemin utgör en utmaning utan motstycke för den globala ekonomin och har försvårat möjligheten att nå flera av de globala hållbarhetsmålen i Agenda 2030. Samtidigt skapar krisen en möjlighet att tänka nytt kring alla politikområdens möjligheter att bidra till en mer hållbar återuppbyggnad.

Handlande företags hållbarhetsarbete kommer att spela en allt viktigare roll i arbetet med att skapa ansvarsfulla och motståndskraftiga värdekedjor. Hållbart företagande kan brett beskrivas som de åtgärder företag vidtar för att integrera hållbarhet i beslutsfattande och affärsverksamhet. Det handlar om att vara medveten om och hantera den inverkan som deras affärsverksamhet har på samhället i stort och kan delvis ses som en naturlig konsekvens av utvecklingen att handel sker i globala värdekedjor. Företag som ligger i framkant med sitt hållbarhetsarbete i värdekedjan också är bäst rustade att hantera kriser såsom covid-19-pandemin.

Under 2021 pågår en översyn av såväl EU:s handelspolitik som politik för hållbart företagande, vilket erbjuder en unik möjlighet för ökad policykoherens i syfte att nå synergieffekter mellan dessa politikområden. Fokus för denna utredning är därför behovet av policykoherens på EU-nivå.

Syftet med denna rapport är att belysa kopplingarna mellan handelspolitik och politik för hållbart företagande (Responsible Business Conduct), samt analysera *varför* en utökad policykoherens mellan dessa politikområden skapar synergieffekter i arbetet mot ansvarsfulla värdekedjor, vilket lägger grunden för en långsiktig och hållbar ekonomisk återuppbyggnad.

Handel är ett avgörande instrument för att säkerställa tillgång till basala produkter, samt att möta den ekonomiska krisen. Men det krävs ytterligare ansträngningar för att handel i globala värdekedjor ska bidra till en hållbar utveckling. Både covid-19-pandemin i sig och de flesta handelshindrande åtgärder som vidtagits för att hantera pandemins effekter, har skapat stora utmaningar för internationella handelsflöden. Dessutom har pandemin synliggjort stora brister i hanteringen av hållbarhetsutmaningar i globala värdekedjor.

För att återskapa förtroende för internationell handels förmåga att bidra till en hållbar återhämtning krävs ökad transparens i värdekedjorna. Hållbart företagande, vari transparens är en grundprincip, är ett avgörande bidrag till hållbara och motståndskraftiga globala värdekedjor. Att främja och möjliggöra näringslivets arbete med hållbart företagande kan därför bidra till långsiktigt värdeskapande och mer ansvarsfulla, hållbara och motståndskraftiga värdekedjor.

[1] The Sustainable Development Goals Report – 2020, https://unstats.un.org/sdgs/report/2020/The-Sustainable-Development-Goals-Report-2020.pdf

[2] Paragraph 68, Transforming our world: The 2030 Agenda for Sustainable Development.

[3] OECD*, COVID-19 and International Trade: Issues and Actions, OECD Policy Responses to Coronavirus (COVID-19)*, 12 June 2020; National Board of Trade, *Improving Economic Resilience through Trade: Should We Rely on Our Own Supply?* 2020.

[4] World Bank, *World Development Report 2020: Trading for Development in the Age of Global Value Chains.*

[5] E.g. in accordance with international guidelines and principles such as UN Global Compact, UN Guiding Principles on Business and Human Rights, OECD MNE Guidelines, OECD Due Diligence Guidance for Responsible Business Conduct, and ILO Social Policy Principles for Multinational Enterprises.

[6] OECD, *COVID-19 and Responsible Business Conduct, OECD Policy Responses to Coronavirus (COVID-19)*, 16 April 2020.

[7] National Board of Trade, *Improving Economic Resilience through Trade: Should We Rely on Our Own Supply?,* 2020.

[8] Trade Aspects of Corporate Social Responsibility (CSR) /Responsible Business Conduct (RBC) Ref. Ares(2017)910443 - 20/02/2017

[9] National Board of Trade, *Trade and Social Sustainability: An Overview and Analysis* (2017).

[10] http://mneguidelines.oecd.org/

[11] OECD, *Responsible Business Conduct and the Sustainable Development Goals* https://mneguidelines.oecd.org/RBC-and-the-sustainable-development-goals.pdf

[12] National Board of Trade, *Trade and Social Sustainability: An Overview and Analysis* (2017).

[13] https://mneguidelines.oecd.org/mneguidelines/

[14] http://mneguidelines.oecd.org/ncps/

[15] https://mneguidelines.oecd.org/duediligence/

[16] https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

[17] ILO, Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (MNE Declaration), 5th Edition (2017). https://www.ilo.org/empent/areas/mne-declaration/lang--en/index.htm

[18] Jacur, Francesca Romanin. *Corporate Social Responsibility in Recent Bilateral and Regional Free Trade Agreements: An Early Assessment*. European Foreign Affairs Review 23, no. 4 (2018).

[19] ILO Research paper No 13, Corporate social responsibility in international trade and investment agreements: Implications for states, business and workers (2016).

[20] National Board of Trade, *Trade and and Social Sustainability: An Overview and Analysis* (2016).

[21] ILO Research paper No 13, Corporate social responsibility in international trade and investment agreements: Implications for states, business and workers (2016).

[21] National Board of Trade, *The Fourth Industrial Revolution: Changing Trade as We Know It* (2019).

[22] National Board of Trade, *Trade and Social Sustainability: An Overview and Analysis* (2016).

[23] Ibid.

[24] A comprehensive overview from 2015 of empirical evidence on the relation between ESG criteria on the one hand, and corporate financial performance on the other, show that the business case for ESG investing is empirically very well-founded. About 90% of studies find a non-negative ESG–CFP relation, and a large majority of studies find positive findings that appear stable over time. Gunnar Friede, Timo Busch & Alexander

Bassen (2015) *ESG and Financial Performance: Aggregated Evidence from more than 2000 Empirical Studies*. Journal of Sustainable Finance & Investment, no. 5:4.

[25] McKinsey links ESG to cash flow in five important ways: 1) facilitating top-line growth; 2) reducing costs; 3) minimizing regulatory and legal interventions; 4) increasing employee productivity; and finally 5) optimizing investment and capital expenditures McKinsey, *Five Ways that ESG Creates Value.* https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/five-ways-that-esg-creates-value

[26] European Economic Review, Volume 101, January 2018. *The Transmission of Socially Responsible Behaviour through International Trade* (2017).

[27] McKinsey, *Five Ways that ESG Creates Value.* https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/five-ways-that-esg-creates-value

[28]In 2015, 66% of global respondents say that they are willing to pay more for sustainable goods. Interestingly, consumers in developed markets are less included to want to pay a premium, consumers in Latin America, Asia, Middle East and Africa are 23–29% more willing to pay a premium for sustainable offerings. 2015 Nielsen Global Corporate Sustainability Report, https://www.nielsen.com/ca/en/press-releases/2015/consumer-goods-brands-that-demonstrate-commitment-to-sustainability-outperform/

[29]A Gallup Survey shows that 90% of employees are looking for a higher purpose at work. ITC, *Corporate Social Responsibility, More than Tick Marks on a Checklist.* https://www.intracen.org/Corporate-Social-Responsibility/; A study from 2015 show that sales of consumer goods from brands with a demonstrated commitment to sustainability grew more than 4% globally, and those without grew less than 1%. 2015 Nielsen Global Corporate Sustainability Report, https://www.nielsen.com/ca/en/press-releases/2015/consumer-goods-brands-that-demonstrate-commitment-to-sustainability-outperform/; Global sustainable investment now tops $30 trillion – up 68 per cent since 2014 and tenfold since 2004. McKinsey, *Five Ways that ESG Creates Value.* https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/five-ways-that-esg-creates-value

[30] A case study on RBC work in apparel supply chains shows that there is huge demand for factories, and RBC projects focusing e.g. on gender equality and women's economic empowerment can be a factor in the competition for suppliers. National Board of Trade, *Trade and Gender Gaps – Can Trade Policy Contribute to Gender-Equal Value Chains?* (2020).

[31] OECD, *OECD Policy Responses to Coronavirus (COVID-19) COVID-19 and Responsible Business Conduct*, 16 April 2020.

[32] Ibid.

[33] European Economic Review, Volume 101, January 2018, *The Transmission of Socially Responsible Behaviour through International Trade* (2017).

[34] Ibid.

[35] OECD, Annual Report MNE Guidelines 2019.

[36] Acting as an economic actor may e.g. be as an owner, purchaser, investor, export and trade promoter etc.

[37] OECD, Annual Report MNE Guidelines 2019.

[38] ILO Research paper No 13, Corporate social responsibility in international trade and investment agreements: Implications for states, business and workers (2016).

[39] E.g. in the Sweden Fair action initiative for national regulation on human rights due diligence, initiated by civil society but supported by a number of large companies such as H&M, IKEA, and Scania, as well as several unions. https://fairaction.se/press-kategori/pressmeddelanden/dags-att-visa-handlingskraft/ Investors are also increasingly paying attention to this issue. In March 2020, a group of 176 international investors, Investor Alliance for Human Rights (including Swedish pension funds), representing over USD 4.5 trillion in assets, encouraged 95 companies that failed to score any points in the HRDD indicators in the CHRB assessment from 2019 and called for urgent improvement and public disclosure of their work on HR protection. Investor Alliance for Human Rights, *Investor Statement Calling on Companies to Improve Performance on the Corporate Human Rights Benchmark.*

https://investorsforhumanrights.org/sites/default/files/attachments/2020-03/Letter%20Calling%20on%20Companies%20to%20Improve%20Human%20Rights%20Performance_FINAL_Feb%2028.pdf

[40] See e.g. World Benchmarking Alliance, *Corporate Human Rights Benchmark Across sectors: Agricultural products, Apparel, Automotive manufacturing, Extractives & ICT Manufacturing, 2020 Key findings* (2020).

[41] Due diligence includes processes that provide a "full supply chain approach; are preventive; are commensurate with, and prioritized in accordance with, the severity and likelihood of harm; form an integral part of an enterprise's risk management and decision-making; and are informed by continuous engagement with stakeholders." ILO, OECD, IOM and UNICEF, *Ending Child Labour, Forced Labour and Human Trafficking in Global Supply Chains* (2019).

[42] A recent survey shows that only 22% of larger companies in Germany perform HRDD, which may trigger compulsory legislation. Devex, Andrew Green, *In Germany, voluntary monitoring of supply chain abuses 'has failed',* 27 July 2020 https://www.devex.com/news/in-germany-voluntary-monitoring-of-supply-chain-abuses-has-failed-97790

[43] World Benchmarking Alliance, *Corporate Human Rights Benchmark across Sectors: Agricultural Products, Apparel, Automotive Manufacturing, Extractives & ICT Manufacturing, 2020 Key findings* (2020).

[44] Ibid.

[45] Study on directors' duties and sustainable corporate governance, EY for European Commission, July 2020.

[46] Ibid.

[47] A risk-based HRDD is a key element to RBC and corporate respect for human rights, included e.g. in UNGP and OCED MNE Guidelines, described by the OECD as a process through which businesses "*identify, prevent and mitigate their actual and potential negative impacts and account for how those impacts are addressed*".

[48] OECD MNE Annual Report.

[49] Human Rights Council. (2014, July 14). Resolution 26/9 Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights (A/HRC/RES/26/9). Retrieved from http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/26/9

[50] Binding Treaty on Business & Human Rights (business-humanrights.org).

[51] Day 1 Summary: UN Treaty on Business & Human Rights negotiations kick off amid major global uncertainties – Business & Human Rights Resource Centre (business-humanrights.org).

[52] Ruggie mentions the need for harmonizing aspects of often vastly different bodies of national, sub-national and international law – for starters, investment law, trade law, corporate law and securities regulation, tax laws, consumer protection law, labour law, anti-discrimination law, other areas of human rights law, and criminal law, and impinge on underlying conceptions of property rights and private contracts. John Ruggie, *Multinationals as Global Institution: Power, Authority and Relative Autonomy*. Regulation and Governance (2017).

[53] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Renewed Strategy 2011–14 for Corporate Social Responsibility, COM(2011) 681 final.

[54] In 2017 the EU adopted the "Conflict Minerals Regulation", which sets out requirements for importers of tin, tantalum, tungsten and gold from conflict-affected and high-risk areas. Modelled on the OECD guidelines, the Regulation requires companies to undertake supply chain due diligence to identify and mitigate risks associated with conflict-affected and high-risk areas. Another example is the EU Timber regulation, which prohibits the sale of illegally harvested timber and derived products in the EU and requires that operators undertake a risk management exercise/due diligence for this purpose. Henceforth the Regulation introduces requirements on information, risk assessment and risk mitigation.

[55] World Benchmarking Alliance, Corporate Human Rights Benchmark across Sectors: Agricultural Products, Apparel, Automotive Manufacturing, Extractives & ICT

Manufacturing, 2020 Key findings (2020).
https://www.worldbenchmarkingalliance.org/publication/chrb/; ILO, OECD, IOM and UNICEF, Ending Child Labour, Forced Labour and Human Trafficking in Global Supply Chains, (2019).
https://www.ilo.org/ipec/Informationresources/WCMS_716930/lang--en/index.htm

[56] OECD, *Is There a Role for Blockchain in Responsible Supply Chains?* (2019).

[57] See Figure 1. CSR clauses in trade and investment agreements. ILO Research paper No 13, Corporate social responsibility in international
trade and investment agreements: Implications for states, business and workers (2016).

[58] Agreement establishing the WTO, Section 1, Preamble.

[59] Aaronson, Susan, *A Match Made in the Corporate and Public Interest: Marrying Voluntary CSR Initiatives and the WTO*, Institute for International Economic Policy Working Paper Series, Elliott School of International Affairs, The George Washington University (2007).

[60] WTO, Waiver Concerning Kimberly Process Certification Scheme for Rough Diamonds, Decision of 15 May 2003. 2003, WT/L/518, 27 May 2003. Aaronsohn/Abouharb, 2013, p 1097. This was based on an UNGA resolution from 2000 supporting the creation of an international certification scheme for rough diamonds, which led to negotiations between governments, industry and civil society, resulting in the Kimberly Process Certification Scheme. The purpose of this scheme is to prevent conflict diamonds from entering legitimate trade and through the certification assure consumers and producers that they have not traded in diamonds that are indirectly financing war in Sierra Leone or the Democratic Republic of the Congo, i.e. they are "conflict free". States must meet minimum requirements, national legislation and institutions, export, import and internal controls, and commit to transparency in order to trade with each other. https://www.kimberleyprocess.com/

[61] ILO Research paper No 13, Corporate social responsibility in international
trade and investment agreements: Implications for states, business and workers (2016). Reference to Vidal-León, 2013; Aaronson and Zimmerman, 2008; Aaronson, 2007.

[62] Aaronson, 2007.

[63] Francesca Romanin. *Corporate Social Responsibility in Recent Bilateral and Regional Free Trade Agreements: An Early Assessment*. European Foreign Affairs Review 23, no. 4 (2018).

[64] European Commission, Trade for All Strategy (2015).

[65] Additional efforts include e.g. the launch of the initiative Fair and Ethical Trade, a Commission Staff Working Document on "Trade and Worst Forms of Child Labour"; and the communication "A Stronger Role of the Private Sector in Achieving Inclusive and Sustainable Growth in Developing Countries".

[66] European Parliament, Resolution of 8 June 2011 on the external dimension of social policy, promoting labour and social standards and European corporate social responsibility (2010/2205(INI)).

[67] Trade aspects of Corporate Social Responsibility (CSR) /Responsible Business Conduct (RBC) Ref. Ares(2017)910443 - 20/02/2017.

[68] European Commission, *Corporate Social Responsibility, Responsible Business Conduct, and Business & Human Rights. - Overview of Progress* (2019).

[69] For example, during the last five years, the Commission launched two major partnership projects with the ILO and the OECD on responsible supply chains designed to promote RBC approaches in key Asian trading partners and in Latin America.

[70] Non-paper of the Commission services, Feedback and way forward on improving the implementation and enforcement of Trade and Sustainable Development chapters in EU Free Trade Agreements, 26.02.2018.

[71] For example, the SIA recommends that "the EU should encourage European businesses to consider human rights impacts alongside cost–benefit analyses prior to approval of large-scale investments" and that "Mercosur and EU governments should require businesses to present a plan on the provisions of adequate living and working conditions for employees prior to the approval of investment projects that are expected to require a large labour force in underdeveloped areas". SIA in support of the

Association Agreement negotiations between the European Union and Mercosur, Draft Final Report, July 2020.

[72] Trade Aspects of Corporate Social Responsibility (CSR) /Responsible Business Conduct (RBC) Ref. Ares(2017)910443 - 20/02/2017.

[73] This e.g. includes cooperation with the OECD and the ILO on the development of approaches to DD in supply chains, as well as representing the EU in the OECD Investment Committee, which oversees the implementation of OECD MNE Guidelines. The latter also includes sector-specific work in the financial sector, agriculture and mineral supply chains and the textile industry. Cooperation with the ITC concerns *The Standards Map* where the Commission supports the project of the ITC on the mapping of voluntary sustainability schemes, which provides comprehensive, up-to-date and comparable information on such standards through a freely accessible Web-based portal, as well as training and capacity building for local producers organized in cooperation with EU Delegations.

[74] European Commission, *Corporate Social Responsibility, Responsible Business Conduct, and Business & Human Rights: Overview of Progress* (2019).

[75] The Ship to Shore project helped improve compliance with fundamental rights at work through the implementation of the Good Labour Practices (GLP) Programme, an effective complaints mechanism, and increased awareness across the supply chain. EU contributes with funds. European Commission, *Corporate Social Responsibility, Responsible Business Conduct, and Business & Human Rights: Overview of Progress* (2019).

[76] Established through the Communication "Achieving Prosperity through Trade and Investment: Updating the Joint EU Strategy on Aid for Trade", COM(2017)667 and Council Conclusions (15573/17).

[77] Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Implementation of EU Trade Agreements 1 January 2019 – 31 December 2019, SWD (2020) 263 final.

[78] ILO, *World Employment and Social Outlook*, 2015.

[79] UNCTAD estimates that value-added trade in developing countries on average contributed almost 30% to their GDP, compared to 18% in developed countries (UNCTAD, World Investment Report 2013 *Global Value Chains: Investment and Trade for Development*). For developing countries, a 1 per cent increase in GVC participation is estimated to boost per capita income by more than 1%, compared to 0.2% income gain from standard trade (World Bank, World Development Report 2020: Trading for Development in the Age of Global Value Chains).

[80] ILO, OECD, IOM and UNICEF, *Ending Child Labour, Forced Labour and Human Trafficking in Global Supply Chains* (2019).

[81] OECD COVID 19: I OECD Policy Responses to Coronavirus (COVID-19)COVID-19 and International Trade: Issues and Actions, Updated 12 June 2020.

[82] A full list of COVID-19 related measures imposed and notified to the WTO by WTO members is available here: WTO | 2020 News items - WTO report shows slowdown in G20 trade restrictions as COVID-19 impacts world economy

[83] OECD Policy Responses to Coronavirus (COVID-19) *COVID-19 and Responsible Business Conduct*, 16 April 2020.

[84] https://undocs.org/en/A/75/225 UNCTAD, International Trade and Development (2020).

[85] For example, a rushed due diligence process and assessment of new production faculties, which in turn creates a number of challenges to fulfil their RBC commitments. OECD Policy Responses to Coronavirus (COVID-19) *COVID-19 and Responsible Business Conduct*, 16 April 2020.

[86] James Zhan, Richard Bolwijn, Bruno Casella, Amelia U. Santos-Paulino, *Global Value Chain Transformation to 2030: Overall Direction and Policy Implications* 13 August 2020, https://voxeu.org/article/global-value-chain-transformation-decade-ahead

[87] Kommerskollegium / Business Sweden, *En osäker omvärld – så påverkas svenska företags internationella strategier av växande protektionism* (2020).

[88] Coronaviruset gör svenska företag till vinnare - DN.SE
[89] Kommerskollegium, *Covid-19 och den fria rörligheten – preliminära lärdomar från hälsokrisen*, 2020.
[90] National Board of Trade, *Improving Economic Resilience through Trade: Should We Rely on Our Own Supply?* 2020.
[91] https://www.wto.org/english/news_e/news20_e/trdev_18nov20_e.htm
[92] OECD COVID 19: I OECD *Policy Responses to Coronavirus (COVID-19)COVID-19 and International Trade: Issues and Actions*, Updated 12 June 2020.
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[94] http://mneguidelines.oecd.org/
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[99] OECD, *Responsible Business Conduct and the Sustainable Development Goals* https://mneguidelines.oecd.org/RBC-and-the-sustainable-development-goals.pdf
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