

1 May 2015

## **Ethical Trading Initiative Submission**

### **Consultation on the Transparency In Supply Chains clause UK Modern Slavery Act**

#### **Introduction**

We welcome the opportunity to provide views on the consultation, and stand ready to support and help shape the legislation guidance and implementation of the TISC and the Modern Slavery Act.

As a multi-stakeholder initiative, we believe that collaboration with government will be particularly powerful in efforts to prevent, mitigate and deliver effective remedy to vulnerable workers at risk or victims of modern slavery in supply chains.

Below are responses to the questions:

**Q1 & 2. What level of turnover threshold do you think would be the most appropriate threshold for requiring a business to make a slavery and human trafficking statement? Please explain your answer.**

£36 million.

We feel that whilst there is merit in advancing a global threshold of £ 60m, aligned to the \$100m California Act, the UK has the ambition of leading policy and practice in the area of modern slavery, and as such, the requirement should be aligned with UK-specific law, and position itself at a lower threshold to drive change amongst more companies.

We would like to see more medium and smaller-sized companies reporting under this provision, particularly those that operate below the radar and out of the eye of public scrutiny. This will send a clear message that they are not exempt from demonstrating appropriate due diligence to modern slavery risk throughout their operations. Some of our members would like to see a lower threshold of between £6.5m to £25.9m to align with the definition of a medium sized business in the UK Companies Act. However there is agreement that £36m should be a minimum threshold applicable to listed and non-listed companies across all their operations – in goods as well as services – both in the UK and globally. It should apply to companies trading in the UK as well as in other countries.



We feel strongly that the public sector should be brought into the scope of these requirements. Moreover, the government could set a good example by applying this to all public procurement contracts – regardless of their size.

**Q3 & Q4. To what extent do you agree that there should be a higher turnover threshold set initially to focus on larger businesses and then reduce the threshold to cover more businesses, over time? Please explain your answer.**

The priority should be to set a lower turnover threshold at the figure of £36 million from the beginning. This will gradually influence medium and smaller sized companies further down the supply chain.

Over time more and more companies should be required to be more transparent and accountable for protecting workers from abuse and exploitation in their supply chains, and for demonstrating year-on-year progress in this area. As supply chains and global trade grow increasingly complex, and as global networking and communications drive ever-increasing visibility, there will need to be a wholesale 'culture change' in how business is done. The UK should drive global 'best practice' by requiring more companies to be transparent about their operations, and this will have a knock-on effect on companies operating in other countries around the world.

If the threshold is set higher than £36m, then we strongly agree with this statement. There should be a clear and communicated timeline to achieve the threshold of £36 million so that small to medium companies can prepare accordingly, and this threshold might be reduced further over time.

**Q5. For each of the following headings to what extent do you agree that the activities we think should be included in a statement are the right ones?**

**5i) Information about an organisation's structure, business and supply chains**

Strongly agree. Ensuring human rights / protection of workers needs to be embedded in the entire business operation – including top management in setting policy, vision and resources; human resources in relation to recruitment and employee contracts; procurement; managers and supervisors etc. Increasing visibility of supply chains is critical for oversight and monitoring of labour practices. We note that for multiples, such as supermarkets may have very wide supply chains that there may be a useful division between their responsibility for own branded product supply chains and branded goods where the brand owner should be taking the lead responsibility.

**5ii) Information about an organisation's policies on modern slavery**

Strongly agree. This is now embedded in the legislation.

**5iii) Information about an organisation's due diligence processes in relation to modern slavery in its business and supply chains**

Strongly agree. We do not believe due diligence should focus solely on audits or even independent third party agents. Due diligence should be part of a wider



approach to labour standards, and should run through the entire operation of a company. It needs to involve robust investigation and monitoring systems from top to bottom in a supply chain.

This must go beyond desk based risk assessments, which typically tend to focus on the risk to business and not the risk of slavery being present as a result of action or inaction by the business. We believe workers themselves are the best source of information, and expensive due diligence systems become less important where workers have the right to organise, express their voice and negotiate for themselves. We would like to see companies work in partnership with trade unions and civil society to create effective inclusive due diligence processes.

**5iv) Information about the parts of an organisation's business and its supply chains where there is a risk of modern slavery taking place, and the steps it has taken to assess and manage that risk.**

Strongly agree. Where companies publicly share information about risk then other companies can make use of this information, and it will be particularly helpful to small and medium sized enterprises.

The UN Guiding Principles on Business and Human Rights provides a useful framework for companies to identify salient risks, to map countries, sub-regions, sectors and supply chains that are most likely to involve human rights risks and abuse. This should be combined with the inclusive due diligence discussed above. Furthermore, where companies are open and transparent about their efforts to identify risk, where they are willing to investigate and demonstrate the steps they have taken if modern slavery is found, they will be less subject to criticism and campaigning by the media and NGOs than those who demonstrate wilful neglect or ignorance.

**5v) Information about an organisation's effectiveness in ensuring that modern slavery is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate.**

We believe the guidance should set out clearly that the statement should be about identifying and addressing slavery effectively. It is important to emphasize that responsible companies must be transparent about any problems that they have found, in their own operations or in their supply chains, rather than seeking to hide abuses. Therefore effectiveness should be more explicitly linked to the steps that a company takes such as identification of risk, prevention and mitigation, rather than the much more general wording '**ensuring** that modern slavery is not taking place'.

It is difficult for a single company or even a set of companies working together to 'ensure' that modern slavery is not taking place, particularly in places where governments have inadequate legislation, resources or will to protect workers from abuse and exploitation, and where vulnerability due to poverty and unemployment is exploited and abused by criminals or other intermediaries.



That said, we strongly agree that companies should take responsibility to do what they can to identify risk, prevent and mitigate modern slavery, and it is important that appropriate performance indicators are used drive change and measure progress.

### **5vi) Information about the training on modern slavery available to its staff**

Agree. Training and capacity building is an essential pre-requisite for staff at appropriate professional levels in a company to enable competent and informed decision-making, appropriate action and resourcing allocation to prevent, mitigate and respond to risks or cases of modern slavery. This requires specialised knowledge and skills, needs to be managed sensitively and carefully so that victims are not punished or subject to greater vulnerability because of ignorant or incompetent actions – even if they are well intentioned. Training is also necessary so that the criminal justice, inspection and monitoring bodies are supported to play their part in bringing victims to justice. However it should not be allowed to be seen as an end in itself, or an outcome but as an input leading to more informed action.

### **Q6. For each of the headings above please explain your responses** (explanations set out above), and set out

#### **(a) what information you think companies should disclose about their activities in these areas**

Disclosure should include company commitments to uphold legally binding human rights responsibilities and core labour standards, including forced and child labour, freedom of association, health and safety, non-discrimination.

Disclosure should include policies, resource allocation and strategies on:

- human rights salient risk analysis (countries, sectors, commodities);
- due diligence procedures;
- investigation procedures for suspected cases of modern slavery;
- policies / provision for access to remedy, compensation and justice for victims;
- human resources policies – including hiring and contracting
- Company procedures if suppliers or their own staff are found to persistently ignore / fail to implement their policies and processes.
- Policies with regard to freedom of association and collective bargaining – for both permanent and temporary workers.
- Changes in business practices, relationships or operating procedures that have been adopted to better prevent modern slavery.

Where this information is already described in detail in other public documents they should be able to link to these.

#### **(b) What you think would represent good practice in each of these areas?**



Good practice could include:

- Companies joining multi-stakeholder initiatives such as the ETI. Sustainable progress is more likely where companies take part in multi-stakeholder dialogue and collaborate with others to identify and address critical risks in their supply chains, and support sector or industry-wide improvements.
- In the workplace, employers should provide visible displays for all workers on their rights, grievance procedures, helpline numbers and signposting to elected worker representatives / unions who could act on their behalf if they are unable or unwilling to raise concerns directly with management or police.
- Companies should provide targeted training for relevant decision-makers and managers to ensure they are not actively or out of ignorance contributing to the exploitation and abuse of workers, and enable them to spot the signs of modern slavery and know what to do if they suspect cases.
- Sharing insights, lessons-learned and adapting information to context and changes is critical, and focus on outcomes and changes, not only activities.

It is important to emphasize that from ETI's perspective these steps are not optional extras. In situations where companies have identified a risk, it is difficult to see how they could act effectively without taking such steps.

### **Q7 & Q9. Are there any other areas of activity that you think a slavery and human trafficking statement should cover?**

A high risk factor for modern slavery in supply chains is exploitative or illicit recruitment practices. We would also like to see companies disclosing their policies and due diligence systems on the use of agencies in procuring and employing labour – particularly regarding workers' ability to claim their rights and their terms and conditions of work.

Also, companies should be transparent about their policies on recruitment practices.

### **Q8. What would good practice look like in the areas you have suggested?**

Companies could adopt a 'no fee' policy for workers paying recruitment fees (that could get them into debt bondage), and ensure that they work only with and through registered agents that recognise and support the rights of workers. Companies could also pay compensation to workers that have been recruited illegally, as some leading multinationals have done.

Companies can play an active role in engaging with relevant government authorities to support and strengthen their labour investigation, monitoring and enforcement systems, working with NGOs and trade unions wherever possible and appropriate.

### **Q9. Are there any specific areas of activity that you think businesses in certain sectors should disclose?**

See answers to Q 5,6 & 7 above.



### **Q10. What would good practice look like in the areas you have suggested?**

It is critical that there is a central government website that posts and monitors a list of companies required to publish their Modern Slavery statement. This will enable citizens, businesses, investors and consumer groups to compare corporate responses to the challenge of addressing slavery and forced labour. (The lack of a central repository is one of the most significant limitations of the California Act).

The government website should include links to company statements on modern slavery, and this should also apply to all public procurement suppliers.

The Anti-Slavery Commissioner should have oversight and should report on progress of this Clause to parliament each year. His/her report should include the number of companies required to report each year, those that have published their statements, those that have not, and on the quality of information provided on policies and action.

The statutory guidance should specify a minimum set of criteria (outlined above) for each statement. This will create a level playing field by enabling transparency and public scrutiny on the quality and content of information provided by each company.

We would agree that companies should include a link to their statement in a prominent place on their website's homepage with links to supporting documents (e.g. employment policies). the statement should be 'clearly accessible and easy to find on the corporate website'.

Companies that are willing to openly feature feedback and comments from trade unions and civil society organisations set powerful examples to others. This practice encourages good quality reporting.

We also agree that if companies do not have a website, they must provide a copy of their slavery and human trafficking statement within 30 days to anyone who makes a written request for one. Requests should stipulate who in the company should respond to the written request so that this is realistically achieved within 30 days.

We would advise that companies report annually, aligned with the financial reporting cycle. In light of a growing trend for integrated reporting, it makes sense to link the preparation of the slavery and human trafficking statement to the annual reporting process.

### **Q11. To what extent do you agree or disagree that any guidance the Government publishes should include the following aspects in relation to making a slavery and human trafficking statement?**

- **Advice on publishing a statement online:** Strongly agree
- **Advice about when to publish a statement** Strongly agree (see above)
- **Advice about the signing of a statement** : Strongly agree (this should be at the level of Director / Board)



- **Advice on what to do if you suspect or identify slavery in your supply chain:** Agree advice would be helpful on general principles and approach, but each case and context will be different, and needs to be managed sensitively and professionally on a case-by-case basis.

We would like to see a stronger focus on **prevention** that can deliver long-term change, and that will require effective human rights-based policies and business models, sustainable purchasing practices, credible due diligence analysis, better visibility of supply chains, sound investigation systems, competent decision-making and capacity.

### **Q12. What would good practice look like in relation to publishing a statement online?**

We believe that the enabling right of workers to freedom of association, negotiating their own terms and conditions of work is the most effective means to prevent modern slavery. As such, companies that make visible their commitment to respect for workers' rights would be a welcome step in demonstrating their commitment to preventing and tackling modern slavery in the long term. It could include 'best practice' that features public feedback alongside the report (see earlier comment).

Other responses to this question are explained above.

### **Q13. What would good practice look like in relation to the timing of publishing a statement?**

See above

### **Q14. What would good practice look like in relation to the signing of a slavery and trafficking statement by the business or organisation?**

See above

### **Q15. Do you have any further comments on what the statutory guidance should include?**

The ETI and its tripartite members would be happy to help shape and comment on guidance based on the different expertise and perspectives of companies, NGOs and trade unions, based on their common commitment to respecting workers' rights in global supply chains.

There are some 'principles' of good practice, but each context, sector and supply chain is somewhat different. As such, we suggest a nuanced approach to guidance rather than a 'one size fits all' wherever possible. However, as stated above, there should be clear criteria and requirements for reporting to enable comparability and common expectations for businesses that operate across sectors.





We are wary about over-reliance on audits and quick-fix technical solutions to complex problems that require long-term commitments, targeted resources and multi-stakeholder dialogue to find appropriate solutions.

We would like to see significant investment in research and a repository for evidence on what works and why; lesson-learning and forums to share knowledge and experience. This should inform the guidance, and it should be updated regularly.

**Q16. Are you responding in an individual capacity or on behalf of a particular organisation?**

This submission represents the views of a tripartite multi-stakeholder organisation, representing the views of over 85 major retailers, brands and suppliers, 16 large and small NGOs and four national and international trade union federations representing over 160 million workers around the world.

ETI's members have committed themselves to upholding and promoting the ETI Base Code which is based on core ILO conventions, with respect for workers' rights at the heart of their membership. Their participation is based on the lived experience and assumption that global supply chains are complex and challenging, and that enabling workers to claim their rights in the workplace is best achieved through dialogue and multi-stakeholder working.

**Q17 & 18 . If you are responding on behalf of an organisation, which of the following best describes your organisation (if more than one describes your organisation, please choose one which you feel represents the main focus of your work).**

ETI's members represent:

- Private Sector - Business Retail Manufacturing
- Trade Union
- NGO - campaigning, policy advice, research & service provision
- NGO Other: multi-stakeholder initiative

**Q18. If you are responding in an individual capacity, which of the following best describes your background or area of expertise?**

N/A