

Revision of Amfori Code of Conduct, 2021

Finnwatch comments

Overall comment: In the document the concept “sphere of influence” is used. The concept can be useful when considering how a company can **promote** human rights or support other social goals. However, when it comes to companies’ responsibility to **respect** human rights, the sphere of influence is not used. In the UN Guiding Principles, influence is not a basis for attributing responsibility to a company for human rights harm. Instead, responsibility is determined by the human rights impact of its activities: whether it causes or contributes to an adverse impact, or its operations, products or services are directly linked to adverse impact through a business relationship. Its influence—here understood as leverage—then becomes relevant in identifying what it can reasonably do to address that impact and will normally vary in these contexts. Concepts in the BSCI CoC need to be aligned with UNGPs.

COC: “The amfori BSCI Code of Conduct is a commitment document for amfori members and their business partners to ~~make reasonable effort within their sphere of influence to~~ exercise human rights due diligence in line with internationally recognized principles.”

Finnwatch comment: Suggest deleting the words “make reasonable effort within their sphere of influence to”. All businesses must exercise HRDD. Analysis of reasonable effort and leverage are included in HRDD.

COC: “This document gives a direction to the amfori members and their business partners in order to conduct responsible business, and to identify, prevent, mitigate, account for and remediate adverse human rights impacts in their supply chains.”

Finnwatch comment: Wording should be aligned with UNGPs. Suggest changing the word “supply chains” to “value chains”. Same comment applies throughout the document. Although BSCI might provide tools mostly for the upstream part of the value chain it is still important to acknowledge that human rights due diligence is required for the whole value chain (including downstream value chains). This is an issue that BSCI might face for example in cases where its signatories provide raw materials or components for companies situated in Xinjiang, China.

COC: “The signatories undertake to implement the amfori BSCI Code of Conduct in a holistic approach to ensure the continuous improvement of human rights due diligence within their organisations and supply chains.

Finnwatch comment: To give some flesh to these commitments, clear targets and milestones should be set and progress towards those targets be monitored and reported on. To ensure coherence, those targets should be related to the criteria in the BSCI Code of Conduct.

COC: The signatories commit to exercise ~~reasonable endeavour within their sphere of influence~~ to abide by the values and principles of the amfori BSCI Code of Conduct.

Finnwatch comment: Instead of ‘reasonable endeavour’, companies should commit to exercise ‘best endeavour’. This should be exercised throughout the entire value chain.

COC: Cooperation: “The signatories will have a greater impact on, and better chance of identifying, preventing, mitigating and remediating human rights violations in their organisations and supply chains by working together and taking a holistic approach to due diligence.”

Finnwatch comment: Wording should be aligned with UNGPs. Suggested wording “The signatories will have a greater impact on, and better chance of identifying, preventing **and** mitigating **human rights risks** and remediating human rights **abuses** in their organisations and **value** chains by working together and taking a holistic approach to due diligence.” It would be also useful to elaborate a bit further on what is meant by remedy in the BSCI CoC context. Corrective action plan to address non-compliances identified during an audit may help to reduce the likelihood of such breaches re-occurring going forward; however, it does not provide remedy to the victims of actual violations.

COC: “The signatories commit to being transparent: (...) through disclosure to shareholders, stakeholders, and governments regarding their impacts on the supply chain and in the surrounding communities, in line with national legislation requirements where available and if reasonable.”

Finnwatch comment: BSCI should strive for better practice beyond legal reporting requirements. Signatories should commit to make public at least their tier 1 supplier information.

COC: “adopt and communicate a written human rights policy statement, in line with the complexity and size of operations, approved at the most senior level”

Finnwatch comment: Human rights policy statement should be integrated into the company’s business strategy. Such a policy should spell out commitment to respect human rights, including by mitigating climate change.

COC: “..expect their business partners to cascade the information to the relevant business partners and stakeholders in the supply chain..”

Finnwatch comment: It should be clarified that companies need to know their value chain and exercise active HRDD through their whole value chain. Passing information to the 1st tier suppliers only is not enough.

COC: “The signatories commit to the protection of vulnerable individuals, and members of vulnerable groups and communities, to the best of their influence.“

Finnwatch comment: Signatories should be transparent about whom they have identified as being vulnerable and what are the concrete measures taken to protect them and their interests.

COC: “include all workers in their due diligence, especially the vulnerable parts in their supply chain”

Finnwatch comment: In addition to workers, all affected individuals and groups should be included. To ensure that this is implemented in practice, BSCI should require signatories to be transparent on how these groups have been identified, what their input to the due diligence process has been and how the company has acted on their input.

COC: “work progressively towards the payment of a living wage that is sufficient to afford a decent standard of living for the workers and their families”

Finnwatch comment: Living wage is a human right. “Working progressively towards” is not enough, living wage must be paid. Suggest new wording: “recognise that living wage is a human right and commit to payment of a living wage, calculate a living wage and establish a clear target for closing the gap between prevailing wage and a living wage; progress towards closing the gap must be monitored and reported on in a transparent manner.”

COC: “where a pay rate for production, quota or piece work, is established, allow workers to earn at least a wage which respectively meets or exceeds applicable legal minimum wages, industry standards, or collective bargaining agreements (where applicable) within standard working hours,”

Finnwatch comment: Suggest adding “whichever is higher”

COC: “Partial payment in the form of allowance “in kind” is accepted in line with ILO specifications“ and “Exceptions specified by the ILO are recognized” etc. references to specifications established in other standards

Finnwatch comment: For clarity it would be recommended to include the exceptions allowed in relation to working hours in the text, or at least a link to where these can be found.

COC: “ use overtime as an exceptional and voluntary practice, paid at a premium rate of minimum 125% of the standard rate”

Finnwatch comment: BSCI should strive for a higher standard than mere ILO minimum standards. Overtime premium of 50 per cent above the regular wage is a standard in many countries.

COC: “maintain records of all health and safety incidents”

Finnwatch comments: This should also include information on near-miss situations. More generally, the OHS section should also cover mental health and risks arising from non-physical factors such as, for example, burnout or work-related stress.

COC: “provide an adequate number of safe, separate toilets for each sex, and paper towels and washbasins with hand soap in all work areas,”

Finnwatch comment: Suggest deleting the word “paper” and replacing it with “hygienic”. Unecological single use paper towels should not be set as a mandatory standard.

COC: “progressively compensate the damages incurred to the workers within a reasonable timeframe, and within the framework of the same international principles, if historical or actual failure of adherence to principles is identified”

Finnwatch comment: all recruitment related fees charged to the workers should be reimbursed. To ensure harmonized application, a definition of recruitment related fees covered by the Employer Pays Principle should be included. We recommend using the ILO definition of recruitment fees and related costs:
https://www.ilo.org/global/topics/fair-recruitment/videos/WCMS_743685/lang--en/index.htm

COC: “12- Protection of the Environment”

Finnwatch comment: All companies need to align their operations with limiting global temperature rise to 1.5°C above pre-industrial levels. This is also a pressing human rights issue. We suggest adding this to the CoC in order for it to be future-fit. In line with this goal the signatories should also calculate and report their carbon footprint.

COC: 13- Ethical Business Behaviour

Finnwatch comment: Finnwatch recommends that BSCI recognises tax as a human rights issue. Section on Ethical Business Behaviour should include wording on tax. At the minimum level the wording should be based on OECD Guidelines: “It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with both the letter and spirit of the tax laws and regulations of the countries in which they operate.”

Given the nature of the industrial sectors using the BSCI systems, as well as the need for societies to heavily invest resources in socially just ecological transition, it should be also added that “Business do not seek for tax holidays or other special tax treatment in their countries of operation.”

COC: “Monitoring in the Supply Chain • Business partners monitor that the amfori BSCI Code of Conduct is observed internally and by their business partners involved in the production process, based on a continuous improvement approach.”

Finnwatch comment: Wording should be aligned with the UNGPs. Suggest changing the words “business partners involved in the production process” to “business partners involved in the value chain”